



Journal of the Senate

Number 1—Special Session D

Monday, March 29, 1982

At a Special Session of the Florida Legislature convened under Article III, Section 3(c)(1), of the Constitution of the State, as revised in 1968, begun and held at the Capitol, in the City of Tallahassee, in the State of Florida.

The Senate was called to order by the President at 1:00 p.m.
A quorum present—38:

Mr. President	Grizzle	Maxwell	Steinberg
Anderson	Henderson	McClain	Stevens
Barron	Hill	McKnight	Stuart
Beard	Jenkins	Neal	Thomas
Carlucci	Jenne	Peterson	Tobiasen
Childers, D.	Jennings	Poole	Trask
Dunn	Kirkpatrick	Rehm	Vogt
Frank	Langley	Renick	Ware
Gersten	Lewis	Scott	
Gordon	Margolis	Skinner	

Excused: Senators Hair and Johnston

Prayer by Joe Brown, Secretary of the Senate:

Our Heavenly Father, grant this Senate, the House and the Governor the strength, the wisdom and the humility to do their bounden duty for the people of Florida. Amen.

The Senate pledged allegiance to the flag of the United States of America.

By direction of the President, the Proclamation of the Governor convening the Legislature in Special Session was read:

PROCLAMATION

State of Florida
Executive Department
Tallahassee

TO THE HONORABLE MEMBERS OF THE FLORIDA SENATE AND THE HOUSE OF REPRESENTATIVES:

WHEREAS, the Legislature of the State of Florida convened in Regular Session for the year 1982 on January 18, 1982, and

WHEREAS, the Legislature on March 18, 1982 extended the Regular Session and adjourned sine die March 25, 1982, and

WHEREAS, the Legislature, during the Regular Session of 1982 and the extension thereof, failed to apportion the State into districts for election of representatives to the United States Congress, and

WHEREAS, the immediate apportionment of the State of Florida into United States Congressional districts is necessary for the orderly selection of representatives from Florida to the United States Congress,

NOW, THEREFORE, I, BOB GRAHAM, as Governor of the State of Florida, in obedience to my constitutional duty and by virtue of the power and authority vested in me by Article III, Section 3(c) of the Florida Constitution, do hereby proclaim as follows:

Section 1.

That the Legislature of the State of Florida be and is hereby convened in Special Session pursuant to Article III, Section 3(c) of the Florida Constitution, commencing at 1:00 p.m., Monday, March 29, 1982 and extending through midnight, Thursday, April 1, 1982.

Section 2.

That the Legislature is convened for the sole purpose of apportioning the State into representative districts to the United States Congress.



IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Florida to be affixed to this Proclamation convening the Legislature in special session at the Capitol, this 26 day of March 1982.

BOB GRAHAM
Governor

ATTEST:
GEORGE FIRESTONE
Secretary of State

INTRODUCTION AND REFERENCE OF BILLS

By Senator Barron—

SB 1-D—A bill to be entitled An act relating to congressional apportionment; amending s. 8.001, Florida Statutes; providing definitions; amending s. 8.01, Florida Statutes; prescribing the congressional districts of the state; repealing ss. 8.011, 8.03, 8.04, 8.06, Florida Statutes, which provide for the inclusion of certain territory in congressional districts, which provide for the election of representatives to Congress, which prescribe effective dates, and which provide severability; providing severability; providing an effective date.

—was read the first time by title and referred to the Committee on Apportionment.

On motions by Senator Barron, by two-thirds vote SB 1-D was withdrawn from the Committee on Apportionment and taken up instanter.

On motions by Senator Barron by two-thirds vote SB 1-D was read the second time by title and by two-thirds vote was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—37

Mr. President	Henderson	McClain	Stevens
Anderson	Hill	McKnight	Stuart
Barron	Jenkins	Neal	Thomas
Beard	Jenne	Peterson	Tobiasen
Carlucci	Jennings	Poole	Trask
Childers, D.	Kirkpatrick	Rehm	Vogt
Frank	Langley	Renick	Ware
Gersten	Lewis	Scott	
Gordon	Margolis	Skinner	
Grizzle	Maxwell	Steinberg	

Nays—1

Dunn

Vote after roll call:

Yea—Hair

On motion by Senator Barron, by the required constitutional two-thirds vote of the Senate, the following bill was admitted for introduction:

SJR 2-D—A joint resolution of apportionment; providing for the reapportionment of the Legislature; providing definitions; prescribing the state policy followed in such reapportionment; prescribing senatorial and representative districts; providing for omitted areas; maintaining staggered terms in the Senate and preserving the continuity of the Senate; providing for filling vacancies in the Senate; providing an effective date.

—which was read the first time by title and referred to the Committee on Apportionment.

On motions by Senator Barron, by two-thirds vote SJR 2-D was withdrawn from the Committee on Apportionment and taken up instanter.

On motions by Senator Barron, by two-thirds vote SJR 2-D was read the second time by title and by two-thirds vote was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—36

Mr. President	Grizzle	Margolis	Scott
Anderson	Henderson	Maxwell	Skinner
Barron	Hill	McClain	Stevens
Beard	Jenkins	McKnight	Stuart
Carlucci	Jenne	Neal	Thomas
Childers, D.	Jennings	Peterson	Tobiasen
Frank	Kirkpatrick	Poole	Trask
Gersten	Langlev	Rehm	Vogt
Gordon	Lewis	Renick	Ware

Nays—1

Dunn

Vote after roll call:

Nay—Hair

On motion by Senator Scott, the following documents were published in the Journal:

IN THE SUPREME COURT OF FLORIDA

January Term 1982

THE FLORIDA SENATE,
Petitioner,

March 25, 1982

vs.

THE HONORABLE D. ROBERT
GRAHAM, Governor of the
State of Florida,

Respondent.

PETITION FOR DECLARATORY JUDGMENT, WRIT OF MANDAMUS, OR OTHER EXTRAORDINARY RELIEF

Petitioner, THE FLORIDA SENATE, petitions this Court for a Declaratory Judgment or, alternatively, a Writ of Mandamus or other extraordinary relief, and would show the Court as follows:

1. Petitioner is THE FLORIDA SENATE, and is charged under the Florida Constitution to apportion the Senate of Florida in conjunction with the House of Representatives pursuant to Article III, Section 16, which provides in part as follows:

“(a) SENATORIAL AND REPRESENTATIVE DISTRICTS. The Legislature at its regular session in the second year following each decennial census, by joint resolution, shall apportion the state in accordance with the constitution of the state and of the United States into not less than thirty nor more than forty consecutively numbered districts of either contiguous, overlapping or identical territory and into not less than eighty nor more than one hundred twenty consecutively numbered representative districts of either contiguous, overlapping or identical territory. Should the session adjourn without adopting such joint resolution, the governor by proclamation shall reconvene the legislature within thirty days in special apportionment session which shall not exceed thirty consecutive days, during which no other business shall be transacted, and it shall be the mandatory duty of the legislature to adopt a joint resolution of apportionment.”

The Florida Senate has standing to petition for this Alternative Writ of Mandamus or other extraordinary relief because of its obvious stake in the effectuation of its apportionment duty. The concept of standing is designed to insure that the proper parties are before the Court by determining whether the petitioners have alleged

“Such a personal stake in the outcome of the controversy as to assure that concrete adverseness sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions.” *Baker v. Carr*, 369 U.S. 186, 204, 82 S. Ct. 691, 703, 7 L.Ed.2d 663, 678 (1962); *Flast v. Cohen*, 392 U.S. 83, 99-100, 88 S.Ct. 1492, 1952-1953, 2 L.Ed.2d 947, 961 (1968).

2. The Respondent is the Governor of the State of Florida, who has the mandatory duty under the Florida Constitution, if the Legislature in regular session cannot agree to and adopt a joint resolution of apportionment, to “reconvene the legislature within thirty days in special apportionment session which shall not exceed thirty consecutive days . . .” Art. III, Section 16(a), Florida Constitution.

3. On the 18th day of March, 1982, the Legislature extended its session to March 29, 1982, but on March 25, 1982, adjourned *sine die* without adopting a joint resolution of apportionment, although both the House and the Senate had each passed different plans of apportionment, and much effort and progress had been made in resolving all differences between the two bodies until the House on March 24, 1982, unilaterally cancelled further conference sessions with the Senate.

4. On March 25, 1982, the Governor, in performing his mandatory duty to reconvene the Legislature in special apportionment session as described above, issued a proclamation calling the Legislature into Special Apportionment Session “commencing at 10:00 A.M., Friday, March 26, 1982 and extending through noon, March 29, 1982.” A copy of this Proclamation is attached hereto as Exhibit “A”. In issuing this Proclamation, however, it is respectfully alleged that the Governor has seriously abdicated his constitutional duty under Article III, Section 16, and has exceeded his constitutional powers, by purporting to limit, or truncate, the special apportionment session to a period of three days and two hours, which period includes Saturday, March 27, 1982, and Sunday, March 28, 1982. It is the position of Petitioner, the Florida Senate, that the provisions of Article III, Section 16, requiring a special apportionment session, authorizing thirty days for that session, and imposing upon the Legislature a “mandatory duty” to adopt a joint resolution of apportionment, together require the Governor, as a matter of constitutional duty, to convene a special reapportionment session for a period of not less than thirty days, or until a joint apportionment resolution is enacted, whichever comes first. The Governor’s attempt to meet his constitutional obligation to call a special apportionment session, by providing for a maximum special session of 3 days, 2 hours, is arbitrary and capricious; is violative of the Governor’s mandatory duty under the Florida Constitution; and operates to deprive the people of Florida, the Florida Legislature, and petitioner, the Florida Senate, of their last, best opportunity to accomplish reapportionment by the legislative act of the people’s elected representatives and senators, all in contravention and violation of both the spirit and the letter of the Florida Constitution.

5. Under Article III, Section 16(c), (d), and (e), Fla. Const., this Court has exclusive jurisdiction to provide judicial review of any apportionment done by the Legislature, whether in general session, special apportionment session of thirty days, or extraordinary apportionment session of fifteen days. Upon total failure of the Legislature to accomplish reapportionment, this judicial review power is frustrated, and the essentially legislative function of apportionment is itself transferred to this Court as a last resort under Article III, Section 16(b) and (f). The above-described action of the Governor, therefore, by effectively making it impossible for the Legislature to meet its constitutional duty to apportion in a special apportionment session, also operates to negate and frustrate this Court’s judicial power to review an apportionment plan, and requires that it design one of its own. Under Article V, Section 3(b)(7), Fla. Const., which grants this Court the power to issue “all writs necessary to the complete exercise of its jurisdiction,” and Article V, Section 3(b)(8), this court has the jurisdiction and power to protect this right to review, and to require the Governor to extend the special apportionment session for its full allowable term unless a joint resolution is earlier forthcoming.

6. The Governor’s action also has the effect of changing the voting margins necessary for the Legislature to accomplish apportionment. Under the rules of both the Senate and the House, a joint resolution requires a simple majority vote in each house, but must be read on three separate days in each house. See Article III, Section 7, Fla. Const.; House Rule 8.10; Senate Rule 4.12. The “reading” requirement can only be waived by a two-thirds vote. *Ibid.* The Governor’s action, therefore, in purporting to limit the special apportionment session to three days and two hours, means that in effect the Legislature would have to accomplish reapportionment by a two-thirds vote in each house rather than a simple majority vote. This is contrary to the intent of the Constitution which provided for reapportionment to be done by joint resolution which does not go to the Governor for his approval and is not subject to the Governor’s veto, which veto would necessitate a two-thirds vote

to override in each house. The Governor's threatened action would thus seek to accomplish by indirection a result which the Constitution was directly designed to prevent—requiring reapportionment to be done by two-thirds vote of each house.

7. Petitioner has no adequate remedy other than to petition this Court, and represent that it is ready and willing to meet for an entire thirty day special apportionment session, or whatever part of said session that it takes to vote out a "Joint Resolution of Apportionment," in order to make the maximum effort to meet its constitutional apportionment duty.

8. This Court has original exclusive jurisdiction concerning matters of apportionment. Fla. Const., Article III, Section 16 (1968); *In Re Apportionment Law, Senate Joint Res. No. 1305*, 263 So.2d 797 (1972). The Florida Supreme Court is the only court, state or federal, that has jurisdiction under the Florida Constitution to decide the reapportionment question. In addition, the Florida Constitution, Article IV, Section 3(b)(7), gives the Florida Supreme Court ancillary jurisdiction similar to the federal all-writs statute (28 U.S.C. Sec. 1651) to issue "all writs necessary to the complete exercise of its jurisdiction."

9. It is clear that the Governor, in restricting a special apportionment session to less than thirty days, is attempting to deprive the Legislature of its last and best opportunity to reapportion itself as the Florida Constitution expressly provides. It is important to note that special apportionment sessions are not called by the Governor pursuant to Fla. Const., Article III, Section 3(c), which grants the Governor a *discretionary power*, but pursuant to Fla. Const., Article III, Section 16(a), which makes it the *mandatory duty* of the Governor to call a special apportionment session, and the *mandatory duty* of the Legislature to adopt a joint resolution of apportionment within thirty days. The effect of the Governor's attempt to limit this session to three days and two hours—or less than thirty days—is to interfere with the clear constitutional mandate that the Legislature reapportion the state during this special apportionment session.

10. The framers of the 1968 Constitution drafted that document in light of the reapportionment struggle of the 1960's which finally resulted in the Legislature being reapportioned by federal court order. The framers, in drafting the 1968 Florida Constitution, Article III, Section 16, attempted to draw a fail-safe system of apportionment so as to avoid the legislative and judicial struggles and disruption of the 1960's. The primacy of the legislative function in matters pertaining to apportionment has been clearly recognized and honored by this Court in its 1972 apportionment decision, *In Re Apportionment Law, Senate Joint Res. No. 1305*, 263 So.2d 797 (1972). The Governor, for reasons best known to himself, is attempting to abort the legislative responsibility to apportion by prematurely forcing this Court to perform what is essentially a legislative function. This Court has authority, of course, to ultimately apportion the State of Florida, Fla. Const., Article III, Section 16(f), but should not be forced into that essentially legislative task prematurely and unnecessarily.

WHEREFORE, THE FLORIDA SENATE petitions this Court to enter the necessary order or declaratory judgment or alternative writ of mandamus prohibiting the Governor from limiting the constitutionally prescribed special apportionment session to any period less than thirty days, absent enactment of a joint resolution of apportionment, and for such other relief as may to this Court seem just. Further, Petitioner respectfully petitions this Court to consider this petition on an emergency basis, to issue any necessary order to show cause to Respondent, and to hear oral argument prior to noon, Monday, March 29, 1982, the time at which the Governor's Proclamation purports to terminate the Special Apportionment Session.

Respectfully submitted this 25 day of March, 1982.

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By: NEAL P. RUTLEDGE,
 Of Counsel

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the following Petition for Declaratory Judgment or Alternative Writ of Mandamus or Other Extraordinary Relief has been hand delivered on this 25 day of March, 1982, to the Honorable D. Robert Graham, Governor of the State of Florida; courtesy copies have also been served by hand delivery upon the Honorable Jim Smith, Attorney General of the State of Florida; the Honorable Ralph Haben, Speaker of the House of Representatives; and to Barry Richard, Esq., 101 East College Avenue, Tallahassee, Florida, Counsel for the Florida House of Representatives.

By: THOMAS W. McALILEY

SUPREME COURT OF FLORIDA

NO. 61,877

THE FLORIDA SENATE, Petitioner,

vs.

THE HONORABLE D. ROBERT GRAHAM,
 Governor of the State of Florida, Respondent.

[March 27, 1982]

ORDER

We find this Court has jurisdiction to construe what authority the Governor has to limit a special apportionment session mandated under article III, section 16(a), Florida Constitution, which directs:

Should that session adjourn without adopting such joint resolution, the governor by proclamation shall reconvene the legislature within thirty days in special apportionment session which shall not exceed thirty consecutive days, during which no other business shall be transacted, and it shall be the mandatory duty of the legislature to adopt a joint resolution of apportionment.

We find the intent and purpose of the constitutional provision requires the Governor to reconvene the legislature in a special legislative apportionment session for a period of thirty days. We find that the Governor has no authority to limit the apportionment session to less than thirty consecutive days and his only discretion is to determine when the period will commence within thirty days after the regular session adjourns.

We conclude the call of the Governor made on March 25, 1982 for three days is contrary to this interpretation and is therefore invalid.

We assume that the Governor as the chief executive officer will perform his constitutional duty and proceed to call the legislature within thirty days from the adjournment of the regular legislative session as extended into a special apportionment session for thirty consecutive days in accordance with article III, section 16(a). We withhold the issuance of any formal process in full confidence that the Governor will perform his duty as required by the Constitution in accordance with this order. A full opinion will follow.

It is so ordered.

SUNDBERG, C. J., ADKINS, OVERTON, ALDERMAN, McDONALD, and EHRlich, JJ., CONCUR.

BOYD, J., DISSENTS

BOYD, J., DISSENTING:

I respectfully disagree with the majority's construction of the constitutional provision. Article III, Section 16(a) of the 1968 Constitution sets a maximum of thirty consecutive days for the special legislative apportionment session but does not fix a minimum number of days for such special session. I, therefore, feel the Governor had constitutional authority to call the session for a number of days less than the thirty consecutive days maximum. See: *In re Advisory Opinion to the Governor*, 206 So.2d 212 (Fla., Jan. 12, 1968), and *Advisory Opinion to the Governor*, 206 So.2d 641 (Fla., Feb. 7, 1968).

On motion by Senator Dunn, the Senate adjourned at 1:36 p.m. to reconvene upon call of the President.