

# SNIFFEN & SPELLMAN, P.A.

123 NORTH MONROE STREET • TALLAHASSEE, FL • 32301  
PHONE: 850.205.1996 • FAX: 850.205.3004  
WWW.SNIFFENLAW.COM

July 7, 2014

Board of County Commission  
Gulf County, Florida  
1000 Cecil G. Costin, Sr. Blvd.  
Port St. Joe, Florida 32456

GULF COUNTY  
2014 JUL 15 AM 7:10  
BOARD OF COUNTY  
COMMISSIONERS

Re: County-wide elections

Dear Commissioners:

Thank you for the opportunity to appear before the Board on Tuesday, June 24, 2014. The purpose of this letter is to summarize in writing my comments and recommendations.

## Background

Article VIII, Section 1(e) of the Florida Constitution requires that after receiving the results of the federal decennial census, the Board must examine and redraw the districts in its county based upon population figures. Specifically, that provision states:

Except when otherwise provided by County charter, the governing body of each county shall be a Board of County Commissioners composed of five or seven members serving staggered terms of four years. After each decennial census the Board of County Commissioners shall divide the county into districts of contiguous territory as nearly equal in population as practicable. One commissioner residing in each district shall be elected as provided by law.

Section 124.01, Florida Statutes, which is the statute that implements the above-quoted constitutional provision, provides, in pertinent part:

### **124.01 Division of Counties into Districts; County Commissioners. –**

- (1) There shall be five county commissioners' districts in each county, which shall be numbered one to five, inclusive, and shall be as nearly equal in proportion to population as possible.
- (2) There shall be one county commissioner for each of such county commissioners' districts, who shall be elected by the qualified electors of the county, as provided by s. 1(e), Art. VIII of the State Constitution.
- (3) The board of county commissioners shall from time to time, fix the boundaries of the above districts so as to keep them as nearly equal in

proportion to population as possible; provided, that changes made in the boundaries of county commissioner districts pursuant to this section shall be made only in odd-numbered years.

Although districts do not have to be identical in population, as a general matter, districts which have a variance greater than ten percent (10%) in population may be subject to challenge. A county has considerable discretion in adjusting its district boundaries, which is subject to a review by the Department of State, and may ultimately be challenged in court. Over time, decisions by Florida courts have defined allowable redistricting considerations to include:

- Major physical boundaries, such as a bridge or a river;
- Political subdivision boundaries;
- Schools;
- Notable major structures; and
- Existing incumbencies, as they represent communities of interest.

Issues that generally cannot be predominant reasons for drawing district lines include: economic status; sex; and race, except where, as here, there are considerations involving the Voting Rights Act and/or the Equal Protection Clause of the United States Constitution.

Following the 2010 decennial census, in 2011, this Board adopted a redistricting plan which did not, in any manner, alter the boundaries of District 4, the majority-minority district established in 1986 by the Consent Decree, which enjoined county-wide voting. As a result, two of the five districts within Gulf County have a greater than ten percent (10%) variance, specifically including District 4, which is under populated by almost 27%.

On July 30, 2012, I accepted this Board's invitation and appeared at a Special Meeting to present remarks about the County's redistricting plan and, specifically, whether that plan needed to be approved by the federal court which retains jurisdiction over the Consent Decree. For reasons which I outlined in a letter dated November 26, 2012, a copy of which is attached, I recommended that approval was neither necessary nor practical. I further advised the Board at that time to strongly consider redistricting in the next odd numbered year to address the variances among its districts, while paying particular attention on the demographic changes which had occurred within the districts since the entry of the Consent Decree.

By letter dated September 5, 2013, a copy of which is attached, I submitted to the Board a proposal encompassing the scope of services I could provide, which, among others, included: 1) the preliminary analysis of census data to determine whether the County can successfully challenge the continuation of single-member districts based on the first of the three factors established by the United States Supreme Court in *Thornberg v. Gingles*, which requires the existence of a sufficiently large and

geographically compact minority group such that it can constitute a majority in a single-member district; and 2) the County's obligation under the Florida Constitution and its statutes to redistrict with less population variance, and, specifically, the extent to which the prison population within the County must be considered in such redistricting efforts. By letter dated October 3, 2013, I was advised that the Board had approved my proposal and authorized me to proceed under the scope of services contained in my September 5, 2013 letter.

### Analysis

The question of whether the prison population in Gulf County must be counted in any redistricting effort requires an examination of the definition of "population" as provided by the Legislature. Section 1.01(7), Florida Statutes, provides:

Reference to the population or number of inhabitants of any county, city, town, village, or other political subdivision of the state shall be taken to be that as shown by the last preceding official decennial federal census, beginning with the Federal Census of 1950, which shall also be the state census and shall control in all population acts and constitutional apportionments, unless otherwise ordered by the Legislature.

In 2001, the Florida Attorney General issued an opinion letter and answered the specific questions of: 1) whether a county was required to count the prison population within the district in which the prison was physically located as a part of redistricting; and 2) whether a county could establish a method to distribute the population among the five districts notwithstanding the physical location of the prison. The Attorney General, citing the constitutional and statutory provisions identified above concluded that a county must "count the prison population within the district in which such prison population is physically located when attempting to balance each of the five county district in compliance with Article VIII, section 1(e), Florida Constitution and section 124.01, Florida Statutes." The Attorney General further opined that the County "is not authorized to distribute the population numbers for the prison population among the county's districts, but must utilize the population figures as they exist in place."

Since the issuance of the Attorney General's opinion referenced above, the Attorney General's office has not issued any opinion lessening or overturning its opinions quoted above. In addition, there has been no act by the Legislature or decision by any Florida court affecting the Attorney General's opinion or any of the statutory sections upon which it was based. Therefore, the prison population in Gulf County must be counted in any redistricting effort, even though that population is a) ineligible to vote, b) probably not comprised of local citizens or residents, and c) not able to participate or enjoy the commerce activities of the County.

The Board originally retained me to recommend to it whether the County can successfully seek relief in federal court in the forms of amending, altering or entirely

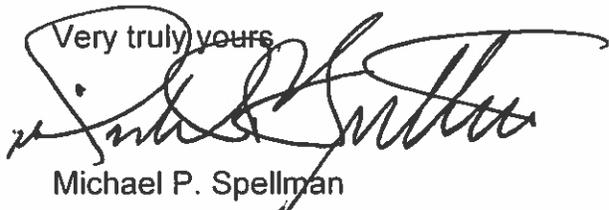
vacating the Consent Decree and return the County's voting process to county-wide elections. To obtain this extraordinary relief, the County will have to prove that one of the three *Gingles* Factors no longer exists. In light of the dramatic demographic changes that have occurred in District 4 over the 28 years since the Consent Decree was entered, the issue of whether a sufficiently large and geographically compact minority group exists within the County appears to be its best argument. In fact, the preliminary review of census data shows that the highest concentration of African American residents is now in the north of the County. However, because the County has the burden of proof, it is vital that it can show that it has complied fully with the mandates of Florida law in its redistricting efforts, which includes counting the prison population, and giving due consideration to the Consent Decree.

Recommendation

It is my recommendation that the Board undertake an effort of redistricting to correct the population deviations currently in place in its five single-member districts. In doing so, I recommend that the Board follow Florida law and use the population as determined by the 2010 federal decennial census, which includes in its count, the prison population within the County at the time the census was done. I further recommend that in conducting its redistricting efforts, the Board should pay special attention to the census blocks reflecting African American concentrations within the County to determine whether a sufficiently large and geographically compact minority group exists in the County which could constitute a majority in a single-member district.

In implementing the above recommendations, there are two additional items which must be addressed: timing and expertise. With respect to timing, Florida law requires that all redistricting efforts be completed by the end of an odd numbered year. Because the County's redistricting efforts will likely result in proceeding before a federal court, which will likely involve evidentiary hearings if not opposition, the County should begin compiling the data necessary for beginning the process of redistricting. With respect to expertise, it is my recommendation that the County retain an individual or firm that specializes in interpreting GIS data in the redistricting context. In this regard, I can assist with the development of any request for qualifications or other efforts to search and locate an appropriate firm or individual.

Thank you for the opportunity to continue working with the Board.

Very truly yours,  
  
Michael P. Spellman

MPS/twl  
Enclosure

# SNIFFEN & SPELLMAN, P.A.

123 NORTH MONROE STREET • TALLAHASSEE, FL • 32301

PHONE: 850.205.1996 • FAX: 850.205.3004

WWW.SNIFFENLAW.COM  
November 26, 2012

Board of County Commission  
Gulf County, Florida  
1000 Cecil G. Costin, Sr. Blvd.  
Port St. Joe, Florida 32456

Re: County-wide elections

Dear Commissioners:

Since my appearance before the Board at the Special Meeting held on Monday, July 30, 2012, I have conferred with individuals who specialize in various aspects of implementing the Voting Rights Act of 1965, especially with respect to drawing district lines that satisfy the Act's requirements. This letter is written to provide a road map for proceeding forward in light of my remarks at the Special Meeting.

Following the 2010 census, the Commission undertook its legal duty of redrawing the boundaries of the five single-member districts contained within the County. Although I was not a part of that process and did not independently review the process, it is my understanding that the County conducted this procedure in compliance with all Florida and Federal laws and guidelines which included appropriate notice, public hearings and the submittal of the adopted redistricting plan together with appropriate resolutions to the State of Florida Secretary of State.

It is my understanding that the final redistricting plan, which was adopted by the Commission, revised the boundaries in Districts 2 and 3. It is my further understanding that in adopting the final plan, the Commission did not in any way alter the boundaries of District 4, the District which has elected a minority Commissioner since the 1986 Consent Decree ordered single-member districts in Gulf County. As a result of not altering the boundaries of District 4, it is my understanding that the population figures for Districts 1, 2, 3, and 5 are within a close percentage to one another, but that the population of District 4 deviates substantially from the four companion Districts.

Following adoption by the Commission and submission to the Florida Secretary of State, the Commission asked this Firm whether the adopted plan had to be submitted to and approved by the United States District Court as a part of the Consent Decree. At the meeting of July 30, 2012, I recommended that the Commissions' adopted plan of redistricting for 2012 did not need to be submitted to the Court for approval for three reasons. First, the redistricting plan did nothing to alter the boundaries of District 4, and there was no evidence that the minority representation in that District was decreased or negatively affected. Second, at the point I appeared before the Commission, the County was already in the late stage of the 2012 election cycle with qualifying completed and absentee ballots for primary elections already sent out, rendering any

such request to the Court impractical, if not futile. Finally, because the District 4 seat was not on the ballot during the 2012 election cycle, there was no threat that voters within that District would be disenfranchised.

At the meeting of July 30, 2012, there was also discussion about the County embarking on a review of the 2012 election data and the 2010 census data, specifically with respect to population trends, to determine two things: first, whether the County should undertake redistricting again in 2013; and/or second, whether the data from the 2012 election will alter the County's likelihood of success in any effort to challenge, modify or vacate the Consent Decree mandating single-member districts. Specifically, given the population trends since the entry of the consent decree, there may be an avenue to obtain legal relief under the first factor established under the test set forth in *Thornberg v. Gingles*, which focuses on whether a sufficiently large and geographically compact minority group exists to constitute a majority in a single-member district.

As discussed at the meeting, should the County wish to undertake redistricting, its efforts must be completed no later than the end of calendar year 2013. In light of the existence of the Consent Decree, the potential need for Federal Court review and approval, and the potential for concerned citizens and advocacy groups being involved in the process, the County's internal deadline for such a redistricting project should be much earlier. In order to properly review the data, we would again need the opinion and expertise of a well-trained and experienced political scientist and I suggested conferring with the same individual used to analyze data previously, Dr. Charles Bullock.

After conferring with Dr. Bullock, I estimate that the Commission will incur at least \$8,500 but no more than \$12,000 to gather data and based on it, make an initial recommendation whether the County can mount a successful challenge to the continuation of single-member Districts based on the first *Gingles* factor. It is estimated that once all of the election data is available and received by Dr. Bullock, a recommendation can be provided to the Commission within six (6) weeks.

If I can provide additional information about this process, its cost or the time within which it can be completed, I will be happy to do so either in writing, through a representative or by appearing before the Commission.

Thank you once again for the opportunity to work with the Commission on this issue.

Very truly yours,  
  
Michael P. Spellman

# SNIFFEN & SPELLMAN, P.A.

123 NORTH MONROE STREET • TALLAHASSEE, FL • 32301  
PHONE: 850.205.1996 • FAX: 850.205.3004  
WWW.SNIFFENLAW.COM

September 5, 2013

Board of County Commission  
Gulf County, Florida  
1000 Cecil G. Costin, Sr. Blvd.  
Port St. Joe, Florida 32456

Re: County-wide elections

Dear Commissioners:

Thank you for the opportunity to appear before the Board on Tuesday, August 13, 2013. At the conclusion of my presentation, the Board passed a motion and authorized me to move forward with a proposal I first brought to the Board by letter dated November 26, 2012. Below, I summarize my understanding of the scope of my services from the Board's vote last month, as well as request the Board's approval to broaden the scope of my services based upon the particular facts and circumstances surrounding the upcoming tasks.

As I understand it, the Board's authorization last month approved the collection of data from the County's Supervisor of Elections for the 2012 election cycle and the analysis of that data by Dr. Charles Bullock or an expert recommended by him. Our Firm will then analyze this data against the applicable legal standards to determine whether the County can successfully challenge the continuation of single-member districts based on, specifically, the first of the three *Gingles* factors, which requires the existence of a sufficiently large and geographically compact minority group which can constitute a majority in a single-member district. At the time of the Board's vote, I advised that I would confirm the costs and time estimated in my previous letter, and advise the Board of any change. Based upon my review, I believe that the cost quoted last year may be on the low side, and would ask for up to \$15,000.00 to complete this analysis.

The next phase of my advice and counsel concerns the Board's need to redistrict Gulf County in accordance with the requirements of the Florida Constitution regardless of the findings in the analysis mentioned in the preceding paragraph. As you know, redistricting is generally a lengthy process, requiring, among other formalities, properly-noticed and advertised public hearings and review and approval by the Florida Department of State. I recommend that the County begin this project in the middle of 2014 and plan its budget accordingly so that there is adequate time and resources for publication and any potential challenges in early 2015.

GULF COUNTY  
2014 JUL 15 AM 7:10  
BOARD OF COUNTY  
COMMISSIONERS

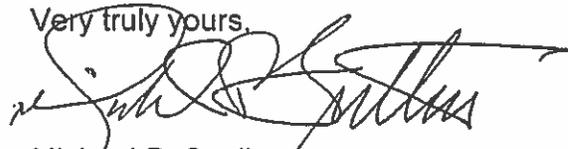
One significant issue which recently came to my attention and, which directly affects this redistricting, is how and to what extent the prison population within the County must be counted. Several years ago, the Attorney General of Florida provided an opinion which specifically concerned Gulf County's legal requirement to include and count the prison population for purposes of apportioning its districts. In any future efforts related to redistricting, the County must abide by this opinion, unless the opinion has been affected either by the Florida Legislature, a subsequent opinion by the Attorney General, or a court decision. For budgeting purposes, and in light of the uncertainty that may accompany this phase of representation, I can only provide a range of expenses – from \$25,000 to \$75,000 – for my services in the County's redistricting effort, which will begin in mid-2014 and come to completion before the end of 2015.

As I see it, the final phase of my representation relates back to the Consent Decree which has been in place since 1986. In the event the data indicates that the County could successfully mount a challenge to the first *Gingles* factor, this would have to occur in all likelihood after the County took on redistricting as a whole. The cost and time which would be involved in the process of asking a Federal Court to significantly modify or terminate the consent decree is subject to several contingencies, including whether and to what extent the County will draw opposition to any request to modify or terminate the Consent Decree, which will directly impact the cost and time required for litigation. I believe that defense costs will range from \$50,000 to \$200,000 from what I know at this time. As the above-mentioned phases get underway and are completed, I will be better able to estimate these costs. Similarly, I will be better able to estimate the County's ability to successfully modify or terminate the Consent Decree mandating single-member districts.

By this letter, I am asking the Board to approve expanding the scope of my services and representation to the Board in the manner set forth above. This request does not require the Board to incur any expenses or authorize me to incur any expenses on the Board's behalf, except as to the collection of and analysis of data, as described in the second paragraph of this letter.

Thank you for the opportunity to work with the Board.

Very truly yours,



Michael P. Spellman

MPS/twl