

MEMORANDUM

To: Columbia County Board of County Commissioners
From: Columbia County Citizens Redistricting Committee
Date: August 30, 2021
Re: Citizens Redistricting Committee Recommendation

Background:

In accordance with Article 2.2 of the Columbia County Home Rule Charter (“Charter”), the Columbia County Board of County Commissioners (“BOCC”) created a Citizens Redistricting Committee (“Committee”) made up of 15 appointed citizens members to make recommendations to the BOCC regarding the redistricting of County Commission districts following the 2020 decennial census. Under the Charter, the Committee is required to provide a recommended redistricting plan (“Recommended Plan”) to the BOCC no later than the BOCC’s first regular meeting in September, which Recommended Plan is attached hereto as Exhibit A for the BOCC’s review and consideration.

Analysis:

The Committee’s task, as stated in Article 2.2 of the Charter, is “to divide the county into districts of contiguous territory, following the existing boundaries of municipalities where possible and as nearly equal in population as possible.” Additionally, the redistricting committee “shall, to the extent practicable and consistent with law, preserve the several municipalities and geographically cohesive racial or ethnic minority communities from fragmentation.”

State and federal law as well as longstanding practice support that census data be used in creating voting districts. Due to the COVID-19 pandemic, the release of the 2020 census data was significantly delayed. While County-level census data would have ordinarily been available in March or April following a decennial census year, this year it was not made available until August 12. As a result, the Committee was unable to begin substantive work on redistricting prior to mid-August.

In spite of these delays, in mid-August the Committee took swift action to begin the process by hiring a consultant (Kurt Spitzer and Associates or “KSA”) to assist with analysis of the census data and map preparation as well as legal counsel (Nabors, Giblin & Nickerson, P.A. or “NGN”) to advise the Committee regarding legal requirements related to the redistricting process under state and federal law as well as the County’s Charter.

On August 18, 2021, the Committee held a public meeting at which it received presentations from both its consultant and legal counsel. KSA and NGN described the fundamental principles underlying the creation of voting districts that have been shaped over time by state and federal law, including the state and federal Constitutions and the federal Voting Rights

Act. While population equality is the most important factor in drawing voting districts, jurisdictions are permitted to deviate from perfect population equality to accommodate traditional districting objectives like maintaining communities of interest and creating geographical compactness. Many of these principles are described in the memorandum submitted by KSA, and they formed the basis pursuant to which the Committee approached the redistricting process. These include but are not limited to the following:

- Keeping districts as nearly equal in population as possible.
- Following census blocks, the baseline unit of redistricting and is contained in the 2020 census data.
- Keeping incumbents in their districts.
- Preserving minority voting strength by neither “packing” nor “cracking” districts in a manner that dilutes minority voting strength.
- Preserving municipalities and communities of interest.

The Committee also considered the baseline issue of how to treat the population of state prisoners located within the County. Columbia County has a total population of 69,698 based on the current 2020 Census data. This number includes 2,328 state prisoners who are located entirely within existing District 4.¹ The prison population represents approximately 3.3 percent of the entire County population and 16.7 percent of District 4. For purposes of the 2020 Census, the Census Bureau considers the “usual residence” of the prison population as the place of incarceration, not the permanent residence of each inmate. Under the State Constitution, the prison population is not permitted to vote. The State, not the County, has jurisdiction to make decisions affecting prisoners residing within the State prisons. Additionally, in smaller jurisdictions like Columbia County, inclusion of the prison population can have the effect of inflating the voting power of voters within districts containing prison population and diluting the voting power of voters in other districts. This inflation and dilution can run afoul of the “one person, one vote” principle under the Equal Protection Clause.

The Committee sought the opinion of its legal counsel regarding the prison population issue, and NGN provided a legal memorandum attached hereto as Exhibit B in which NGN evaluated the issue under applicable state and federal law. As further described in the memorandum, in 2016, a federal court in the Northern District of Florida issued a ruling against nearby Jefferson County, finding that that County’s inclusion of prison population within its districting plan violated the constitutional principle of “one person, one vote.”² In reviewing subsequent decisions on this subject, NGN concluded the law is unsettled in this area and that an argument exists that inclusion of the prison population is acceptable because the prison population is counted in the census data as part of the population where the prison is located and the use of this census data is generally acceptable absent any showing of overt discrimination. Ultimately, NGN recommended that while the facts in Columbia County were not as extreme as those in the

¹ When the County conducted redistricting in 2010, the County included the prison population as part of the total County population. The prison population at that time was divided between Districts 1 and 4. Due to census block changes in the 2020 Census, the prison population is now located entirely within existing District 4.

² Calvin v. Jefferson Board of Commissioners, 172 F. Supp. 3d 1292 (N.D. Fla. 2016).

Jefferson County decision, the County should remove the prison population for purposes of redistricting to avoid any potential claim of prison gerrymandering.

On August 25, 2021, the Committee held a public meeting to consider proposed redistricting maps. KSA prepared four maps for the Committee's consideration based on discussion at their August 18, 2021 meeting. After extensive discussion and consideration, the Committee unanimously voted to approve the Recommended Plan for transmittal to the BOCC, subject to two revisions. The first revision altered the boundary in one area between Districts 1 and 5 in order to follow Baya Drive and maintain more compact district shapes. The second revision corrected an unintended error pointed out by KSA that impacted a few lots on the border of Districts 1 and 5.

As set forth in KSA's memorandum attached hereto as Exhibit C, the Committee approved the Recommended Plan, with the dominant criterion being population and balancing several criteria considered in total.

In summary, the Committee considered the following criteria in approving the Recommended Plan:

- Keeping districts as nearly equal in population as possible.

The U.S. Supreme Court has interpreted the Equal Protection clause of the Fourteenth Amendment to require voting districts, including those of state's political subdivisions, to be determined by the "one person, one vote" principle under which districts are drawn with populations as nearly equal as is practicable. The Committee sought to avoid maximum deviations greater than 10%,³ pursuant to which redistricting plans receive a rebuttable presumption of validity.

- Following census blocks, the baseline unit of redistricting contained in the 2020 census data.

Each district within the Committee's Recommended Plan is comprised of individual, whole census blocks. The Recommended Plan does not split census blocks.

- Keeping incumbents in their districts.

The Committee's Recommended Plan keeps all current incumbents in their existing districts.

³ Maximum deviation is measured by summing together the absolute values of the percent deviations from the smallest and largest districts.

- Preserving minority voting strength by neither “packing” nor “cracking” districts in a manner that dilutes minority voting strength.

District 1 in the northern end of the County, historically has had a more significant Black population than in other Districts of the County. The Black population of District 1 as currently constituted is approximately 34.6%. The Black population of District 1 in the Recommended Plan remains roughly unchanged at approximately 34.2%. The overall Black population within the County is approximately 15.5%. The Committee considered that while race is one permissible redistricting factor, race may not be the sole or predominant factor.

- Preserving municipalities and communities of interest.

The City of Fort White remains within a single district (District 2). Currently, portions of the City of Lake City are located within four (4) County Commission districts. Given Lake City’s population, placing Lake City into a single district would be extremely difficult without running afoul of other principles like maintaining population equality among the districts and keeping incumbents in their districts. The Committee considered that splitting Lake City into multiple Commission districts provides Lake City residents access to and influence over the election of multiple commissioners. Based on the foregoing, the Committee determined that in keeping with Charter language providing for cities to be preserved “to the extent practicable and consistent with the law,” placing Lake City within a single district was not practicable and could only be done at the expense of other important factors and considerations.

The Committee submits the attached Recommended Plan, as set forth in Exhibit A, for the Board’s consideration.

Exhibits:

- A. Recommended Plan
- B. NGN Legal Memorandum
- C. KSA Memorandum

Exhibit A
Recommended Plan

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Exhibit A Page 1



Alternative 1.1



DISTRICT	2020 Population IDEAL	2020 Population ACTUAL	Population Deviation	Percent Deviation	Population White	Percent White	Population Black	Percent Black	Population Other	Percent Other	Population Hispanic	Percent Hispanic
District 1	13474	13122	-352	-2.6%	7547	58%	4489	34%	1086	8%	672	5%
District 2	13474	13568	94	0.7%	11169	82%	932	7%	1467	11%	927	7%
District 3	13474	13880	406	3.0%	10751	77%	1623	12%	1506	11%	976	7%
District 4	13474	13009	-465	-3.5%	10447	80%	1195	9%	1326	10%	969	7%
District 5	13474	13791	317	2.4%	9659	70%	2260	16%	1872	14%	1230	9%
Totals	67370	67370	0	0	49573	-	10499	-	7257	-	4774	-

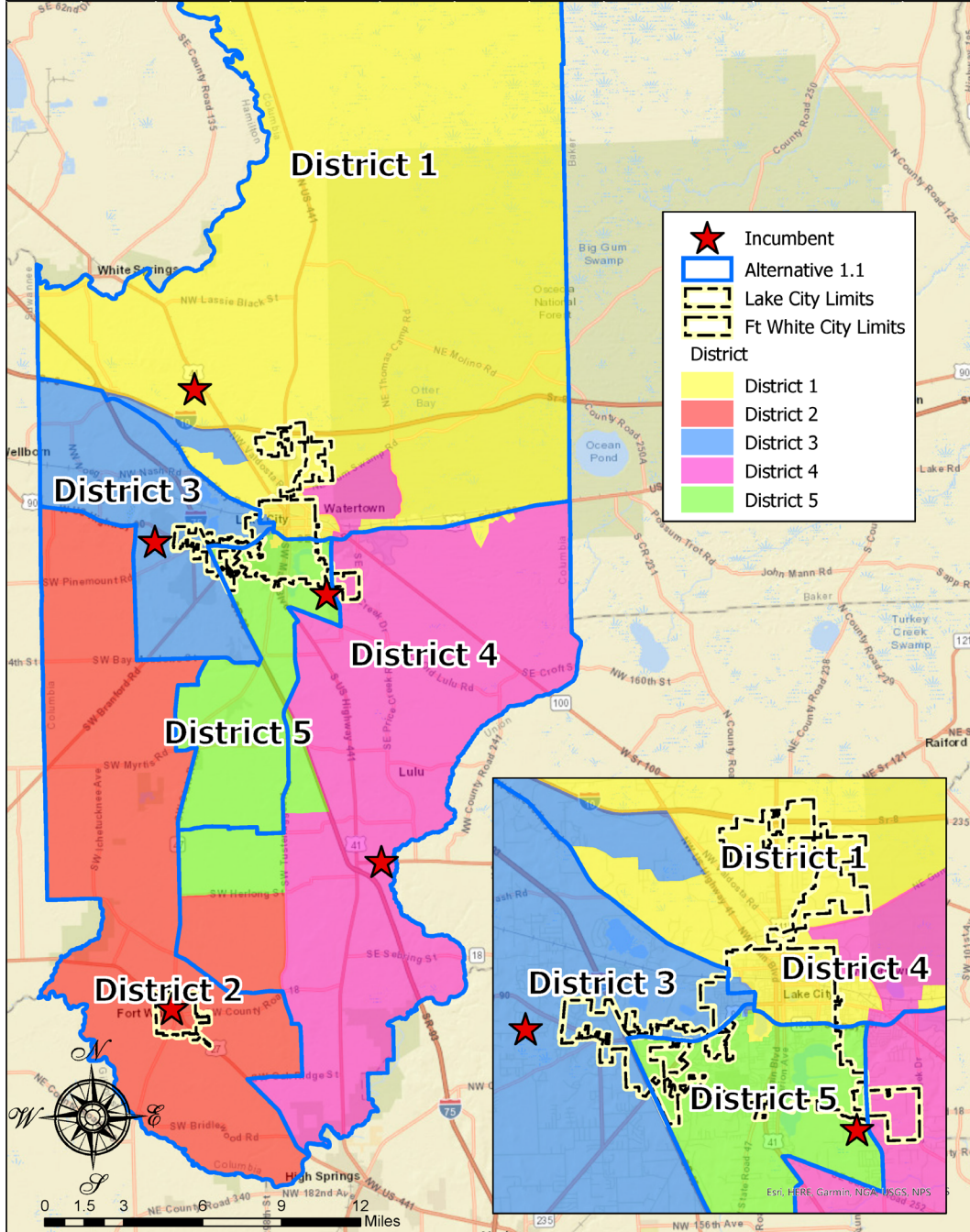


Exhibit B
NGN Legal Memorandum

TALLAHASSEE
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PLANTATION
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Suite 1000
Plantation, Florida 33324
(954) 315-0268 Tel

MEMORANDUM

To: Columbia County Citizens Redistricting Committee

From: Evan Rosenthal, Carly Schrader, and Kirsten Mood, Nabors, Giblin & Nickerson, P.A.

Date: August 24, 2021

Re: State Prison Populations

SUMMARY

Columbia County has a total population of 69,698 based on the current 2020 Census data. This number includes 2,328 state prisoners, who are located entirely within District 4. The prison population represents approximately 3.3 percent of the entire County population, and 16.7 percent of District 4. For purposes of the 2020 Census, the Census Bureau considers the “usual residence” of the prison population as the place of incarceration, and not the permanent residence of each inmate. However, under the State Constitution, the prison population is not permitted to vote, and the State, not the County, has jurisdiction to make decisions regarding prisoners residing within the State prisons. See Art. VI, § 4, Fla. Const. We have been asked for advice as to whether the Committee should exclude the County’s prison population for purposes of its redistricting recommendation to be presented to the Columbia County Board of County Commissioners. For the following reasons, we recommend that the Committee exclude this population for redistricting purposes to address dilution on the representational strength of other Districts as compared to District 4, referred to as “prison gerrymandering.”

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BACKGROUND

One Person, One Vote Principle

The U.S. Supreme Court has required voting districts to be determined by the “one person, one vote” principle, including for political subdivisions, so that districts must be drawn with populations as nearly equal as practicable or possible. The U.S. Supreme Court has confirmed as recently as 2016 that states and localities may comply with constitutional requirements by using total population numbers from the decennial census. Evenwel v. Abbott, 136 S.Ct. 1120 (2016). Although use of Census population numbers is the default rule, certain deviations from the population data are permissible to accommodate traditional districting objectives, such as maintaining communities of interest and creating geographical compactness. Some jurisdictions do adjust census numbers, including, for example, for prisoners domiciled outside of the jurisdiction.

Attorney General Opinion that Prison Population Must be Included

Article VIII, section 1(e), Florida Constitution, provides that: “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.” In addition, Florida Statute provides that the county commissioners shall keep the districts “as nearly equal in proportion to population as possible.” § 124.011, Fla. Stat.

In 2001, the Florida Attorney General issued an opinion to the Gulf County Board of County Commissioners concluding that the County must include prison populations within the district in which such prison population is physically located. Fla. Op. Atty Gen. 2001-55. The opinion relied on both the state constitution and statutory provisions cited above, and also on section 1.01(7), Florida Statutes which provides that:

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

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acts and constitutional apportionments, unless otherwise
ordered by the Legislature.

The opinion also reasoned that other various groups of individuals who cannot vote, such as aliens, nonresident military personnel and nonresident students are counted and voting status is not a qualification for inclusion in the population for drawing districts. The Attorney General opined that the census figures are the “benchmark” under State law for Florida’s constitutional and statutory scheme of apportionment.

Ultimately, Gulf County did not follow the Attorney General’s advice and excluded its large prison population when redistricting following the 2000 Census. As of the 2016 opinion in Calvin, discussed below, at least seven Florida counties adjusted census data to exclude prison populations when determining whether there is substantial equality of population across districts. Calvin v. Jefferson County, 172 F. Supp. 3d 1292, 1296 n.2 (N.D. Fla. 2016).

Federal Court Strikes Down Jefferson County’s Districting Plan for
Inclusion of State Prison Population

In 2016, Judge Mark E. Walker, United States District Judge, Northern District of Florida, issued an opinion enjoining nearby Jefferson County, Florida and the Jefferson County School Board’s districting plan based on inclusion of state prison population for purposes of redistricting in 2013, determining that inclusion of prison population violated the constitutional principle of “one person, one vote.” Calvin v. Jefferson Board of Commissioners, 172 F. Supp. 3d 1292 (N.D. Fla. 2016).

Jefferson County ultimately followed the 2001 Florida Attorney General Opinion and included its prison population in drawing its districts. However, Judge Walker determined that under the one person, one vote principle, the Constitution forbids Jefferson County’s inclusion of prison population in drawing local districts where inmates comprised a large number of nonvoters who lack a meaningful representational nexus with the Board, and that they’re packed into a small subset of legislative districts. Judge Walker identified three features of the case that made it special. First was the fact that the state prison population, unlike other nonvoting populations, are separated from the rest of society and unable to participate in civic life. Second, these are state prisoners and a county government.

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Third, the size of the prison population relative to size of the district is such that counting the prisoners makes a substantial difference. The court noted that if any of these factors were not present, it would be a different case.

As to the question of size of populations and impacts, the total population for Jefferson County based on the Census was 14,761 residents, which included a prison population of 1,157 prisoners. Only nine of the prisoners were convicted in Jefferson County. When the prison population was included, the districts had a maximum deviation of 8.67%; however, if the prison population was not included, the maximum deviation was 42.63%. The court determined this impact was large enough to dilute the voting and representational rights of Plaintiffs based on the fact that the disparity in population gives the voters included in the district with prison population about one-and-a-half times the voting strength of voters in other districts.

Decisions After *Calvin v. Jefferson County*

Shortly after the ruling in Calvin, the U.S. Supreme Court decided Evenwel, which did not specifically rule on the issue of prison populations for local government districting but instead concerned a challenge to Texas' practice of drawing districts based on census population rather than registered voters. The Court upheld the practice, concluding it was permissible to rely on total population based on the decennial Census data for purposes of Texas' state legislative districts.

After Evenwel, a federal court outside of Florida reviewed a challenge to a local government districting plan which included prison population in a single district and determined that the plan was constitutionally permissible. Davidson v. City of Cranston, 837 F.3d 135 (1st Cir. 2016). Similar to Florida, the Rhode Island Constitution provides that legislative districts shall be constituted on the basis of population and shall be as nearly equal in population as possible. The City Charter provided for six wards which shall contain as nearly as possible an equal number of inhabitants as determined by the most recent federal decennial census. In that case, the total population of the City was 80,387, and of that amount, 3,433 were state prisoners included within one of the six wards. If the prisoners were included in the plan, the maximum deviation was less than 10%; if the prisoners were not included, the maximum deviation would be approximately 35%.

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Initially, the District Court had determined there was a violation of one person, one vote, based on the reasoning set forth in Calvin. Davidson v. City of Cranston, 188 F.Supp.3d 146 (D.R.I. 2016). The First Circuit ultimately disagreed with the District Court, and upheld the plan, concluding the City was entitled to deference absent any showing of discrimination. Davidson, 837 F.3d at 144-45. The First Circuit specifically recognized that use of population from the Census is the constitutional default, but that certain deviations are permissible or “optional,” including the exclusion of inmates. The Davidson court in that case determined this decision was best left to local officials. Id. at 144.

ANALYSIS AND RECOMMENDATION

For purposes of the 2020 Census, the Census Bureau counts prisoners as residents of the correctional facility at which they are incarcerated, as it has historically done. It has been noted by the courts that the Census Bureau does this for pragmatic and administrative reasons, not legal ones. However, the Census Bureau has also received comments that some states and many local governments already adjust their population data to remove prisoners when drawing their districts. The Census Bureau recognizes that some States may decide to move their prisoner populations to the pre-incarcerated addresses for redistricting and other purposes, and therefore, the Census Bureau has also made available additional data pertaining to incarcerated individuals, though it will not adjust the official decennial census counts.

The reasoning provided in support of exclusion of a State prison population for purposes of local redistricting can be summarized as follows:

- (1) Under Article VI, Section 4, Florida Constitution, the prison population is not permitted to vote.
- (2) State prisoners are different from other types of non-voting populations, in that they are isolated from society, and controlled by the authority operating the institution, without a representational nexus to the local Board. With few exceptions, prisoners do not participate in nor utilize County services, programs, and facilities.
- (3) Packing a large prison population into a district can skew the representational strength compared to surrounding districts which do not

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include such a population, such that residents of underpopulated districts receive disproportionately greater representation because of the location of the prison within the district.

(4) Courts have noted in other instances that the vast majority of state prisoners did not reside in the local jurisdiction in which the prison is located prior to their incarceration.

Columbia County is home to the Columbia Correctional Institute and Columbia Correctional Institution Annex that house adult male state offenders with a current population of 2,328. Census data shows that using the existing districts, the entire prison population is included within District 4.

Although these numbers are not as extreme an example as in the Jefferson County matter, this prison population makes up approximately 3.3 percent of the population of Columbia County. If included in District 4, the prison population would comprise roughly 16.8 percent of the District 4 population. Under Equal Protection principles, their inclusion dilutes the voting and representational rights of voters in other districts.

Though the Federal First Circuit Court of Appeals in Davidson upheld a redistricting plan including prison population after Evenwel, it is important to note that Davidson did not hold that prison populations must be included for purposes of local redistricting. Davidson held only that the decision to include prison populations was properly left to the discretion of the City in that case. Davidson recognizes that while Census population data is the default, some deviations are permissible. Evenwel also recognized that four states adjust total population to exclude incarcerated persons domiciled out of state and leaves the door open to this practice.

In contrast to these states, Florida law does not directly address this issue. Although the 2001 Florida Attorney General Opinion concluded that prison populations should be included in total population for purposes of redistricting, that opinion was ignored in practice by several jurisdictions, and we are unaware of any Florida Court that has addressed this issue under state law. Though an Attorney General Opinion may be persuasive to a court, it is not binding. Additionally, there is also a possibility that the federal district courts in Florida, including the Middle District and the Eleventh Circuit, may agree with Judge

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Walker's analysis of these issues in Calvin even after Evenwel, at least in similar factual circumstances. There is the possibility of a legal challenge based upon the reasoning described in Calvin if the prison population is ultimately included.

Though the law is somewhat unsettled in this area and the facts here are not as extreme as those in Calvin, ultimately, we recommend that the Committee remove the prison population of Columbia County for purposes of redistricting to avoid any potential claim of prison gerrymandering.

Exhibit C
KSA Memorandum



Via Electronic Mail

MEMORANDUM

To: Columbia County Board of County Commissioners

From: Kurt Spitzer

Date: August 26, 2021

Re: Map of Proposed Commissioner Districts

The purpose of this Memorandum is to discuss the recommendations of the Citizens Redistricting Committee ("Committee") to revise the boundaries of the Commission districts in Columbia County. The Committee unanimously adopted Alternative Plan 1.1 on August 25, 2021.

Four maps were presented to the Committee for their review, and possible revision and approval. They are attached hereto. All maps use the 2020 census data but did not include the population of persons incarcerated in prisons within Columbia County. The Committee's recommended redistricting plan (Alternative 1.1) and the map reflecting the "Existing Districts" are also attached.

Redistricting Criteria

There were several criteria used in the redistricting process. They were considered in total and balanced with each other. However, the dominant criterion was population.

1. Equal population. Individual districts should be as nearly equal in population as is possible or practicable. "Population" refers to residents, not registered voters. "Nearly equal" means that the population of individual districts should be as close to the average or "ideal" size as is possible or practicable.

Generally, redistricting plans with district populations of less than 3% over or under the average size are acceptable goals to attain. Plans where the difference between the population of the largest and smallest districts is greater than 10 percentage points (e.g., the largest district population is 7% over ideal and smallest is 4% under) may raise a "red flag" in court.

The "Existing Districts" map shows that the difference between the population of the smallest district (District 4) and that of the largest district (District 5) was more than 24

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percentage points – well beyond the 10-point threshold and therefore necessitating changes to the district boundaries to bring the district populations closer together.

The plan recommended by the Committee has a deviation between the largest and smallest populated district of 6.5 percentage points, well within acceptable tolerances.

1. Preserve minority voting strength. If there is a location where a significant number of minority residents reside, their ability to vote as a block should not be diluted by either dividing that population into two or more districts – termed “cracking.”

The African American population of District 1 under the Existing District plan is approximately 34.6%. That population in the recommended Plan 1.1 is approximately 34.2%.

2. Census blocks. Data from the U.S. Bureau of the Census is updated every 10 years by surveying the population of the United States. Census data is presumed to be correct. The smallest unit within which that information is tabulated and made available are census “blocks.” The proposed and recommended plans use 2020 census block boundaries and data but do not include prison population.
3. Compactness and significant boundaries. Districts should be relatively compact and contiguous. Unusual, “bizarre” or “serpentine” district shapes that are created without furthering a valid underlying public policy purpose must be avoided. Where possible, district boundaries should follow easily recognized or understood boundaries, like major roads, waterbodies or parklands.

The districts in the adopted plan are relatively compact. The recommended plan makes several improvements to district boundaries and shapes, especially as relates to the boundary between Districts 1 and 4: First, US 90 is used as the boundary between the districts moving from the eastern edge of the County in a westerly direction to the intersection with SE Baya Drive. Second, Baya Drive is used as a boundary moving west until it intersects with SW Lakeview Avenue.

4. Recognize existing district boundaries. The boundaries of the new districts may seek to retain their existing boundaries to the extent possible. To the extent possible, the recommended plan has followed existing boundary lines.
5. Avoid splitting communities of interest. Attempts were made to avoid splitting the City of Lake City, which is currently split by four Commission districts.

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The City of Lake City has a population of approximately 12,300; the ideal population of a county commission district for 2021 is 13,474. Thus, it is possible to not split the City but only if significant and far-reaching changes were made to each of the five existing districts. The Committee thus decided to forego this objective in favor of other criteria as discussed above.

Please feel free to contact me if you have questions.