

**Redistricting in Ohio**

Justin Levitt



**OHIO**  
**(SJR 5, as passed by the Senate, 2009)**

**KEY POINTS:**

The proposed amendment would expand Ohio's present redistricting commission by two incumbents, and place congressional districts as well as state legislative districts under the commission's authority. The commission would emphasize preservation of whole political units and, to a lesser extent, competition between the major parties.

**PROCESS:**

Redistricting authority would be vested in a seven-member commission, adding the minority- and majority-party legislative leadership to the Governor, Secretary of State, and State Auditor. Any final plan must be approved by five votes, including two votes from members from a party with the minority of the commission's members.

The proposal requires that meetings of the commission be open to the public. Plans must be adopted by October 1, 2011. The State Supreme Court or an appropriate federal court may review adopted plans, but may not issue a plan of its own; in the event that a plan is declared invalid, a commission must be constituted anew, on an accelerated timeframe, to make another attempt.

- **Independence from Legislators:** Three commissioners are independent from legislators only in that they are separately elected, but may well accede to legislators' wishes. The other four commissioners are themselves legislators.
- **Partisan Balance:** By requiring the vote of two commissioners from the minority party on the commission, the process is designed to produce a bipartisan balance.
- **Minority Participation:** Because the identities of the commissioners are fixed based on the offices they hold, it will be impossible to ensure diverse membership on the commission if the statewide elected officials and legislative leadership are not themselves diverse.
- **Public Input:** The commission must make all relevant data available to the public, and any resident may submit a proposed plan for consideration. All meetings of the commission must be open to the public, and the commission must submit a report at the end of the process, explaining its decision.
- **Timing:** The proposal extends to congressional districts the existing ban on redistricting more than once per decade for general assembly districts.

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**CRITERIA:**

Any plan must meet several criteria, including contiguity and compactness. The proposal mirrors federal requirements that congressional districts be as equally populated as practicable, and that the population of general assembly districts be substantially equal (usually within 5% above or below the mean).

The proposal extends to congressional districts the existing preference for preserving whole political units — counties, townships, municipalities, and wards, in that order — where feasible. It also extends to congressional districts the existing requirement that in counties sufficiently populous to contain entire districts, such districts must be created wholly within the county, and any remaining territory in the county must be contained in only one district. The proposal adds a requirement that where it is not possible to preserve contiguous political units whole, no more than two units (for state house districts) or no more units than necessary (for congressional districts) may be divided per district.

Where doing so would not conflict with the criteria above, the commission shall “make its best efforts” to maximize competitiveness, by a particular formula. The formula is easiest to explain by assuming that the closest statewide races are between Democrats and Republicans, with a limited third-party vote. In the three most recent general elections, find the three closest races in Ohio for President, U.S. Senator, or statewide executive office, and calculate the average two-party vote in the district for Democrats and for Republicans; if the difference between the averages is no more than 5%, the district is “competitive.” The proposal prefers competitive districts rather than districts that mirror the voting patterns of the state as a whole; that is, it prefers individual districts where statewide races were close, whether the statewide races themselves were close or runaway victories.

- **Population Equality:** The proposal allows substantial population disparity; some residents’ votes may be more valuable than others. It also retains the existing preference for the count conducted by the federal census (which counts incarcerated persons where they are incarcerated), though if census data is “unavailable,” the general assembly may choose another basis for determining the population.
- **Minority Rights:** The proposal ties minority rights to existing state and federal law, without an independent state backstop.
- **Compactness:** Other than the requirement that districts be wholly contained within a single county where possible, there is a general requirement that districts be compact. This requirement, however, is not further defined and may be difficult to enforce.
- **District Competition:** The proposal creates a mild preference for a certain measure of competition favoring districts that are closely divided, whether the state as a whole is closely divided or not — the proposal would still favor close districts if, for example, Ohio looked like Utah. If Ohio citizens are politically segregated, the focus on competition could create districts in which the citizens have little in common, though this is mitigated by the requirement for preserving whole political units.
- **Statewide Partisan Balance:** Compared to the status quo, the proposal improves the potential for a statewide partisan balance through its voting rule. Research suggests, however, that the existing preference for minimal county splits may cause statewide partisan imbalance in Ohio, generally favoring the Republican party.
- **Preservation of Political Boundaries:** The proposal emphasizes the preservation of political units, and particularly the minimal division of counties, with a drawing rule governing the order of operations that substantially constrains other choices. To the extent that communities of common interest bridge political boundaries, this may limit the opportunity to accommodate such communities. Moreover, research suggests that in Ohio, minimizing the division of counties may create a partisan imbalance statewide.

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- **Communities of Interest:** There is no provision expressly concerning communities of interest.
- **Nesting:** The proposal preserves the requirement that each state Senate district be a combination of three House of Representatives districts. This ties each house's districts to the other, but may produce unintended consequences. For example, depending on the concentration of Ohio's population, minimizing county divisions within a particular set of state house districts may lead to state senate districts that are less compact or competitive, or that have fairly substantial population disparities.
- **Incumbent Residence:** The proposal does not prohibit commissioners from considering the residences of incumbents, allowing intentional harm (or benefit) to individual legislators, but also reducing the likelihood of unintentional impact on incumbents.

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**OHIO**  
**(status quo)**

**KEY POINTS:**

The general assembly currently draws congressional districts, subject only to federal constitutional and statutory limitations. State legislative districts are drawn by a five-person partisan commission created in 1967, with few constraints other than an emphasis on preserving whole political units.

Article XI of the Ohio Constitution governs redistricting. In the 2001 cycle, the process was subject to Republican control for both congressional and state legislative districts, although delays in the congressional districting process forced the legislature to pass a plan with a 2/3 supermajority.

**PROCESS:**

Congressional districts are currently drawn by the general assembly, subject only to federal constitutional and statutory limitations. A six-person advisory commission advises the general assembly in this process; the House and Senate majority leaders each choose two legislators and one non-legislator to serve. No more than two of the three advisors chosen by each majority leader may be members of the same party.

For state legislative districts, redistricting authority is vested in a five-member commission. The Governor, Secretary of State, and State Auditor are members of the commission. The remaining two appointments are selected jointly: one by the speaker of the House in concert with his party's leader in the Senate; the other by the House minority leader along with his party's leader in the Senate. A majority vote is required to adopt a plan. Plans must be adopted by October 1, 2011. The Ohio Supreme Court may review adopted plans, but may not issue plans of its own; in the event that a plan is declared invalid, the commission must make another attempt.

- **Independence from Legislators:** Three commissioners are independent from legislators only in that they are separately elected, but may well accede to legislators' wishes. The other two commissioners are directly selected by legislators.
- **Partisan Balance:** With an odd number of commissioners, each with partisan affiliation, the process is designed to allow one party a majority, and therefore control of the redistricting process.
- **Minority Participation:** There are no specific provisions for reflecting diversity in the commission's membership, and the commission's small size makes such diversity difficult to ensure.
- **Public Input:** There are no specific provisions for the public to present or comment on plans.
- **Timing:** General assembly districts may not be drawn more than once per decade; there is no similar prohibition on redrawing congressional districts.

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**CRITERIA:**

Congressional districts are subject only to federal constitutional and statutory limitations.

State legislative districts must be contiguous and compact, and follow the federal standard of “substantially equal” population (which in any event must be within 5% above or below the mean population).

Districts must preserve whole political units -- counties, townships, municipalities, and wards, in that order – where feasible. For counties sufficiently populous to contain entire districts, such districts must be created wholly within the county, and any remaining territory in the county must be contained in only one district. Where it is not possible to preserve political units whole, only one unit may be divided between two districts.

- **Population Equality:** The current criteria allow substantial population disparity; some residents’ votes may be more valuable than others. There is also a preference for the count conducted by the federal census (which counts incarcerated persons where they are incarcerated), though if census data is “unavailable,” the general assembly may choose another basis for determining the population.
- **Minority Rights:** There are no provisions for minority rights other than federal law.
- **Compactness:** Other than the requirement that districts be wholly contained within a single county where possible, there is a general requirement that districts be compact. This requirement, however, is not further defined and may be difficult to enforce.
- **District Competition:** There is no provision encouraging or discouraging competition within a district.
- **Statewide Partisan Balance:** The partisan structure creates an incentive to generate statewide results favorable to the party controlling the commission. Also, research suggests that minimizing the division of counties may result in Ohio in a statewide partisan imbalance favoring Republicans.
- **Preservation of Political Boundaries:** The current criteria emphasize the preservation of political units, and particularly the minimal division of counties. Research suggests that this emphasis may result in Ohio in a statewide partisan imbalance. Moreover, to the extent that communities of common interest bridge political boundaries, this may limit the opportunity to accommodate such communities.
- **Communities of Interest:** There is no provision expressly concerning communities of interest.
- **Nesting:** Each state Senate district must comprise three House of Representatives districts. This ties each house’s districts to the other, but may produce unintended consequences with respect to population disparities. For example, depending on the concentration of Ohio’s population, minimizing county divisions within a particular state senate district may lead to state house districts with fairly substantial population disparities.
- **Incumbent Residence:** The current criteria do not prohibit commissioners from considering the residences of incumbents, allowing intentional harm (or benefit) to individual legislators, but also reducing the likelihood of unintentional impact on incumbents.