

Redistricting in Ohio

Justin Levitt

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.

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**OHIO
(SJR 5: 2009)**

KEY POINTS:

The proposed amendment would establish a seven-person bipartisan commission to draw both congressional and state legislative districts; any plan must be approved by commissioners selected by both major parties. 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 bipartisan commission; though commissioners may not be partisan elected candidates or officials while serving on the commission, and may not run for the state legislature in the districts they draw, there is no restriction on former officials, party officials, lobbyists, or staff. The House and Senate majority and minority leaders would each choose one member, and those four would unanimously choose their three colleagues. If the four initial appointees cannot agree on three colleagues, they each submit a nominee to the governor, who will randomly choose three commissioners from the four submitted nominees.

Any final plan must be approved by five votes, including one member selected by the legislative leadership of each party, and one member of the three consensus nominees. If the commission cannot agree on a plan, and the consensus appointees were chosen unanimously (and in bipartisan fashion), the final plan is selected by Borda count: ranking all of the plans, and choosing the point-winner, which should achieve broad consensus. If the consensus appointees were chosen randomly (and with a presumed partisan tilt), three new appointees are selected randomly (again, with a presumed partisan tilt), and the final plan is selected by the same ranking method.

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:** Although no commissioner may contemporaneously be a legislator, and despite an oath to place commission duties above other loyalties, the general assembly leadership may still appoint commissioners beholden to particular legislators. Though commissioners may not run for state legislature from the districts they draw, they appear to be able to run for Congress in those districts. Given each legislative appointee's veto power over the selection of a consensus appointee, there is some incentive to select individuals who will yield to whatever deal the legislative appointees may broker.
- **Partisan Balance:** By requiring the vote of a commissioner selected by each major party's legislative leadership to pass a final plan, the process is designed to produce a bipartisan balance.
- **Minority Participation:** The proposal requires the initial four commissioners to "give due consideration to the diversity of the state" in appointing their three colleagues, but the commission's small size makes such diversity difficult to ensure.
- **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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**OHIO
(SJR 5: 2009)****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 both its structure and 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.