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**Analysis of Ohio Redistricting Reform Proposals**

Justin Levitt

**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.

**PROCESS:**

Congressional districts are currently drawn by the general assembly, subject only to federal constitutional and statutory limitations.

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. 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 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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**STATUS QUO**

**CRITERIA:**

Congressional districts are currently drawn by the general assembly, 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.
- **Preservation of Political Boundaries:** The current criteria emphasize the preservation of political units, and particularly the minimal division of counties. 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 be a combination of 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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**SENATE JOINT RESOLUTION 6 (2008)**

**KEY POINTS:**

SJR 6 proposes a referendum to change the way congressional and state legislative districts are drawn. The proposal would expand the existing five-person commission to seven, and allow it to draw congressional as well as state legislative districts. The criteria for drawing districts would remain essentially the same as the status quo.

**PROCESS:**

Currently, congressional districts are drawn by the general assembly, and state legislative districts are drawn by a five-member commission composed of the Governor, Secretary of State, State Auditor, and representatives of the legislative leadership. The proposal would expand the five-member commission to include the Governor, Secretary of State, State Auditor, and the four legislative leaders themselves, and would grant this seven-person commission authority to draw both congressional and state legislative lines. A supermajority of five votes would be required to adopt a plan. The Ohio Supreme Court (or federal courts) would have the authority to review adopted plans, but not issue plans of its own; in the event that a plan were declared invalid, the commission would have 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:** With an odd number of commissioners, each with partisan affiliation, the process is designed to allow one party a majority on the commission, though the five-vote supermajority requirement means that some bipartisan cooperation will be required in at least some circumstances. If the Governor, Secretary of State, and State Auditor are all members of the same party, that party will control the redistricting process absolutely.
- **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:** The proposal extends to congressional districts the existing ban on redistricting more than once per decade for general assembly districts.

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**SENATE JOINT RESOLUTION 6 (2008)**

**CRITERIA:**

The criteria for drawing districts remain essentially the same as the status quo. 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. Moreover, the proposal preserves the existing requirement for state legislative districts (only) 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. Where it is not possible to preserve political units whole, only one unit may be divided between two districts.

- **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 federal law, without a 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:** There is no provision encouraging or discouraging competition within a district.
- **Statewide Partisan Balance:** In some circumstances, the proposal fosters a rough statewide partisan balance through the supermajority voting requirement, but if one party controls the three non-legislative commissioners, there will be an incentive to generate statewide results favorable to the party controlling the commission. There are no provisions for partisan balance through other districting criteria.
- **Preservation of Political Boundaries:** The proposal emphasizes the preservation of political units, and particularly the minimal division of counties. To the extent that communities of common interest bridge political boundaries, this may limit the opportunity to accommodate such communities. In addition, Ohio has many noncontiguous townships derived from annexation battles; the bill does not account for these townships, which may create unintended results.
- **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 with respect to population disparities, or compactness, or minority representation. For example, depending on the concentration of Ohio's population, minimizing county divisions within particular state house districts may lead to state senate districts with 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.