

Redistricting in Ohio

Justin Levitt



OHIO
(HJR 15, as introduced, 2010)

KEY POINTS:

The proposed amendment would create a public competition to draw state legislative district lines according to a predetermined formula, emphasizing statewide partisan balance, with a lesser role for competition, and a lesser role still for preservation of municipal boundaries and a particular measure of compactness. Though Ohio's present redistricting commission would still exist, it would essentially become an administrative body, with no discretion to depart from the competition formula.

PROCESS:

Congressional districts would continue to be drawn by the general assembly, subject only to federal constitutional and statutory limitations.

For state legislative districts, the present five-member commission would retain administrative authority, but the district lines would be entirely determined by the winner of a public competition using predetermined criteria. The commission first determines the political makeup of each precinct by taking the three closest Ohio races over the last ten years for President, U.S. Senator, or statewide executive office, and calculating the average two-party vote for each major party, statewide and in each precinct. It then releases this data to the public, any member of whom may submit one plan for state house districts and one plan for state senate districts. The plans are judged by predetermined criteria, described below.

If plans are challenged, they would be reviewed either by an appropriate federal court or a special Ohio tribunal made up of retired Ohio judges: two appointed by the governor, two appointed by a legislative leader of the opposite party, and one tiebreaker appointed by the first four. Either court may review plans, but may not issue a plan of its own unless the plan in question would win the competition described here.

- **Independence from Legislators:** Because the predetermined rules of the competition dictate the result, legislators have no influence over the final plan of state legislative districts other than to the extent that individual legislators submit (or influence) plans that win the competition.
- **Partisan Balance:** The state legislative district competition is open to any member of the public, no matter what party.
- **Minority Participation:** The state legislative district competition is open to any member of the public, minority or not.
- **Public Input:** The commission must make all relevant data available to the public, and any resident may submit a proposed plan to the state legislative district competition for consideration.
- **Timing:** The proposal retains the existing ban on redistricting state legislative lines more than once per decade; it does not add any such prohibition for congressional lines.

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CRITERIA:

Any plan must meet several criteria, including contiguity and compliance with federal law. The proposal also mirrors federal requirements that the population of general assembly districts be substantially equal (within 5% above or below the mean population).

The competition places top priority on a map with districts favoring each party in proportion to the statewide partisan average; if the state is 60% Republican — calculated by the three closest statewide races in the last ten years — then 60% of the districts will lean Republican. The next priority is a map with districts deviating from the statewide average by roughly equal amounts; if the state is 60% Republican, a map with equal numbers of 59% Republican districts and 61% Republican districts will be favored over a map with more of one or the other.

If more than one submitted map “wins” under these criteria, ties are broken by counting, in the following order: the number of extremely competitive districts; the number of undivided municipalities; and the most compact map on average, with a measure most sensitive to twists along a district’s perimeter.

- **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 federal law, without an independent state backstop.
- **Compactness:** If more than one map equally satisfies all of the higher-priority criteria, they will be judged based on a measure of compactness focusing on twists in the district’s perimeter. This means that circular, “smoother” districts will be incrementally preferred to those that follow housing patterns or geographic boundaries.
- **District Competition:** The proposal creates a substantial preference for a certain measure of competition favoring districts that are very closely divided. If Ohio citizens are politically segregated, the need to satisfy particular political criteria, including the focus on competition, could create districts in which the citizens have little in common.
- **Statewide Partisan Balance:** The proposal emphasizes statewide partisan balance above all. If all else is equal in the legislative elections (candidate quality, fundraising, etc.), the legislative delegation should approximately reflect the statewide preferences of the electorate.
- **Preservation of Political Boundaries:** If more than one map equally satisfies all of the higher-priority criteria, they will be judged based on the map that splits the fewest municipalities.
- **Communities of Interest:** There is no provision expressly concerning communities of interest. Indeed, the strong political criteria limit the extent to which it will be possible to keep citizens with common interests within the same district.
- **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, creating politically balanced state house districts may result in state senate districts that are less balanced, or less competitive or compact.
- **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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(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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OHIO
(status quo)

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.