



# Ohio Redistricting

By Ann Henkener

In December 2014, the 130th Ohio General Assembly passed House Joint Resolution 12. The resolution authorizes placement of an amendment to the Ohio Constitution on the November 2015 ballot, changing the way Ohio draws districts for the Ohio General Assembly.

## Current method

Article XI of the Ohio Constitution addresses redistricting and current provisions have been used to draw districts every 10 years since 1971. An Apportionment Board consisting of the Ohio Governor, Auditor, Secretary of State and a person chosen by the Speaker of the House and the leader of the Senate of the same political party, and another person chosen by the House and Senate leaders of the other major political party draw the districts. Districts must be single-member, compact, contiguous, and comply with federal laws such as the Voting Rights Act. Senate districts are composed of 3 House districts. As a general rule districts must have equal population with a variance of 95% to 105% permitted. Any single county with population in that range must be made into a House district. A county with population between 90% and 110% of the ideal may be made into a single district. Then, going from largest to smallest, the remaining counties are divided into districts. They are formed by combining counties, townships, municipalities, and city wards, in that order. Prior districts boundaries are to be adopted to the extent reasonably consistent with the other requirements.

## Need for Change

Because the political party that controls 2 or 3 of the offices of Governor, Auditor, and Secretary of State can get a majority of votes on the Apportionment Board, the current method was immediately used to gerrymander the districts to benefit a single political party. In 1971 and 1981 the Democrats controlled those offices, gerrymandered to favor their party, and held majorities in the Ohio House and Senate for most of those decades. In 1991, and 2001, the Republicans controlled those offices, gerrymandered to favor their party, and held majorities in the Ohio House and Senate for most of the rest of those decades. To date, the gerrymander of 2011 appears to be equally effective. Whichever party was in the minority was more favorable to reform, while the majority party believed the voters subscribed to the theory of “to the victor go the spoils.” In 1981, when the Democrats held sway, the Republicans supported a reform measure that lost at the ballot box. When the Republicans were in charge in 2005 and 2012, the Democrats were more supportive of reform. But again, the measures lost at the ballot box.

Voters, members of the legislature, and both political parties have criticized our current system, and pointed

out many problems. The number of votes candidates receive in the aggregate do not translate into proportional representation for each political party. The current system produces “safe seats” with little to be decided by voters in the general elections. While the Ohio Constitution requires that districts be “compact,” a quick look at the maps shows that requirement hasn’t been followed.

An appeal to the Ohio Supreme Court did not prove effective in resolving perceived deficiencies in the General Assembly district maps approved by the Apportionment Board in 2011. In *Wilson v. Kasich*, 134 Ohio St. 3d 221, 225, 2012-Ohio-5367 (2102), the Ohio Supreme Court decided that:

The words used in Article XI do not explicitly require political neutrality, or for that matter, politically competitive districts or representational fairness, in the apportionment board’s creation of state legislative districts. Unlike Ohio, some states specify in either constitutional or statutory language that no apportionment plan shall be drawn with the intent of favoring or disfavoring a political party.

Relators also argued that the maps approved by the apportionment board did not comply with the criteria set out of Article XI, Sections 7 and 10. In particular, Section 7 sets out four specific substantive criteria for drawing maps. Section 7(A) provides that districts shall be compact, composed of contiguous territory, and delineate an area containing one or more whole counties. Section 7(B) provides that when districts cannot be formed from a whole county or counties, they will be formed by combining areas of government units giving preference to counties, townships, municipalities and city wards, in that order. Section 7(C) provides that if it is not feasible to combine areas of governmental units, only one may be divided between two districts. Section 7(D) provides that district boundaries established by the prior apportionment should be adopted to the extent reasonably consistent with the equal population requirements of Article XI. Relators argued that maps could be drawn that more closely met the requirements of Sections 7(A) through (C). The Court decided that Sections 7(A) through (D) were coequal and to the extent they were irreconcilable, the apportionment board must choose how best to reconcile the provisions and that the Court would not intervene. This case confirmed the broad discretion of the Apportionment Board to gerrymander without Court interference. If the basic aim of legislative apportionment is to achieve fair and effective representation for all citizens (*Reynolds v. Sims*, 377 U.S. 533, 565-566 84 S.Ct. 1362, 12 L.Ed.2d 506 (1964)) the gerrymandered districts sanctioned under the Ohio Constitution fall short of the ideal.

## Recent efforts

Recent attempts to correct the problems of redistricting have failed. A voter-initiated Constitutional amendment on the ballot in 2005 proposed the use of an objective measurement of competitiveness. It also permitted members of the public to submit plans, promising that the plan with

the most competitive districts would be used. The initiative lost at the ballot, getting just over 30% of the votes.

In 2009, the then Republican controlled Ohio Senate passed a redistricting reform measure (128<sup>th</sup> GA, SJR 5), keeping similar requirements for drawing maps for both the General Assembly and Congressional Districts, but requiring votes from both of the two largest political parties in order to approve maps. In 2010 the then Democratically controlled Ohio House passed a separate reform measure (128<sup>th</sup>GA, HJR15) using strict, objective criteria to draw maps. The House and Senate were not able to reach a compromise before the 2010 general election. After that election, which elected the members of the 2011 Apportionment Board, the Republicans were going to control the General Assembly redistricting process in 2011, and were no longer interested in reform. Following the path of majority Democrats and majority Republicans before them, the Apportionment Board drew districts favorable to their party, this time the Republican party. Now both the Ohio House and Senate are dominated by Republicans. In 2012, the Ohio Senate again revisited reforming the redistricting process and passed a proposal similar to the 2009 proposal, keeping many aspects of the current system intact, but requiring approval by members of both of the largest political parties. In 2013 and 2014, a subcommittee of the Ohio Constitutional Modernization Commission studied various redistricting proposals but could not reach a consensus.

Agreement was finally achieved during the lame duck session after the general election in November of 2014, when the Ohio House and Ohio Senate overwhelmingly passed HJR 12, which will be placed before the voters in November of 2015.

### Proposed reform

The amendment would create a 7 person Ohio Redistricting Commission. It retains the Governor, Auditor, and Secretary of state as members and adds 4 legislative appointees, two from the both the largest and second largest political parties. The new proposal requires bi-partisan support to adopt 10-year maps for General Assembly districts. It strengthens the requirement that counties, municipalities, townships and wards not be split into more than one district, and provides strict direction on how to divide them if necessary, limiting the discretion of the Redistricting Commission members. It eliminates the criteria that new district lines follow those of the prior apportionment as much as possible, removing one of the irreconcilable clauses in the current Constitution. It requires more public input –three public hearings must be held after proposed maps are introduced. The Commission also has a set of secondary criteria. It won't draw a plan primarily to favor one political party, the partisan composition of districts should correspond to the statewide preferences of voters, and the districts should be compact.

It also provides an impasse resolution mechanism if bi-partisan support cannot be achieved. If the impasse mechanism is used, a simple majority of the Apportionment Board could approve maps, thus allowing all of the necessary votes to be provided by members of one political party. However, other provision are included to protect the minority party and provide incentive to get votes from members of both major parties to approve maps. If the impasse mechanism is used, the maps would be effective for only 4 years. During that time, another election would be held for Governor, Auditor, and Secretary of State, and that might change the

political composition of the redistricting commission. The newly elected and appointed Commission would then draw maps that would be used for the rest of the decade. The amendment would also give additional direction to the Ohio Supreme Court if a plan were appealed. One criteria they would need to consider is the degree to which the political composition of the districts in the aggregate corresponding to the statewide preferences of the voters.

### What the Amendment doesn't do

The proposal addresses only General Assembly districts, not Congressional districts. Currently the Ohio legislature passes a joint resolution adopting district boundaries. Like a bill, the resolution is subject to the veto of the Governor, and subject to referendum by the voters. There are very few requirements for Congressional districts. They must be contiguous, of equal population, and follow federal laws, such as the Voting Rights Act. Gerrymandering of the Congressional Districts seems more extreme that gerrymandering of the General Assembly. The districts look less compact, and they are less representationally fair, i.e. the difference between the aggregate number of votes candidates of a political party get and the number of seats that party wins is greater.

Members of the majority party in the General Assembly were willing to address only General Assembly maps at this time. They want to wait until the United States Supreme Court addresses the constitutionality of the independent commission Arizona has been using since 2001. *Arizona State Legislature v. Arizona Independent Redistricting Commission* is set for oral argument on March 2, 2015. The argument centers around the interpretation of Article 1, section 4, clause 1 of the United States Constitution which says that "The times, places and manner of holding elections for Senators and Representatives, shall be prescribed in each state by the Legislature thereof; but the Congress may at any time by law make or alter such regulations ...." Under the process in Arizona, a commission on appointments proposes names, then officials of the legislature choose two Republicans and two Democrats to serve. These two then select an independent to serve as chair. The governor can remove a member for neglect of duty or misconduct. The Arizona legislature is arguing that only the Arizona legislature is permitted to draw Congressional districts under the US Constitution, and that the Arizona Independent Redistricting Commission is unconstitutional.

### Conclusion

The complexity of HJR 12 certainly indicates there were hard found negotiations to come to a resolution satisfactory to both major political parties. Amendments placed on the ballot by the legislature have had a better track record for passage than amendments placed on the ballot by voters' initiative. In November, the voters will determine if this is the reform that meets their approval.



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