

July 31, 2013

To: Frederick E. Mills, Committee Chair  
Paula Brooks, Committee Vice Chair

Cc: Members, Committee on Legislative Branch and Executive Branch  
Steven H. Steinglass, Consultant

From: Paul A. Beck  
Edward B. Foley  
David Stebenne

Re: The selection of impartial members of a redistricting body

Thank you again for giving the three of us the opportunity to appear before your committee on July 10.

We understand from the discussion that day that your committee is especially interested in how it might be possible to design a redistricting authority for which the balance of power is held by members who are “neutrals” in the sense that, in deciding what redistricting map to adopt, they do not act on behalf of any political party or candidate but endeavor in good faith to apply constitutionally appropriate redistricting criteria impartially, in the best interest of Ohio as a whole.

In addressing this point, we hasten to clarify that in using the term “neutrals” to describe these impartial members of the redistricting authority, we in no way mean to suggest that these persons should be political neophytes, with little or no understanding of how redistricting specifically or politics generally works. The key attribute of these “neutrals” is that they can be expected by both major political parties to act fairly and impartially in their role on the redistricting panel. Knowing that they are chosen to be an honest broker between the two parties, they can reasonably be expected to be trustworthy stewards of the public interest and may be required to take a specific oath to act accordingly.

Having thus described the kind of character that we have in mind when we use the shorthand term “neutral,” we need to acknowledge that there is no single magic method of guaranteeing the selection of such neutrals. Nor is there an accepted “best practice” formula among the states that use such redistricting panel members. Instead, there is (we believe) a guiding principle that might be applied in different specific approaches.

The guiding principle is that the two major political parties must be able to participate equally in the selection of these neutrals, so that each party can veto any nominee it finds objectionable, with the result that any individual equally acceptable to both parties is someone that by virtue of this selection method deemed equally trustworthy by both parties.

One way to implement this guiding principle would be to have a redistricting panel made up of four partisan members, two from each party, and then to have these four members agree upon the selection of one, three, or some other odd number of additional members. From a conceptual standpoint, this approach is probably the most straightforward way to implement the principle of equal “bilateral” input into the selection of neutrals.

But it may also be possible to achieve a similar neutrality in the design of a redistricting authority by starting with an approach closer to Ohio’s recent history. If it is considered important to continue to have three statewide officeholders on the redistricting panel, then one could add to them two designated partisans from each major party and require these four partisans to agree upon four neutrals—for a total of eleven members on the redistricting panel. Among the three of us, there are varying degrees of confidence concerning how successful the selection of neutrals would be using this particular method, especially when all three statewide officeholders are from the same party. This particular method, however, may have the advantage of being more similar to Ohio’s current arrangement.\*

Whatever particular method is used to select the neutrals, we believe that it would be beneficial to establish a process whereby members of the public could nominate individuals to be considered for this role. We do not think that there should be any constraint on who may be chosen as a neutral. As long as the process is designed so that both major political parties equally believe that a particular person is trustworthy enough to serve in this impartial capacity, that single qualification should be sufficient to make the individual an acceptable choice. But the virtue of an open nomination process is to bring to the attention of the partisans on the redistricting board names that they might have overlooked or otherwise failed to consider.

We envision that the process of developing redistricting plans will rely on assistants who have technical expertise with redistricting software and other details of the map-drawing process to respond to instructions provided by the redistricting panel. The impartiality of its neutral members will increase the likelihood that the resulting map will be equally fair to both major parties as well as making good sense in terms of the overall demographics and geography of the state. Beyond that, however, it is crucial to give the members of the redistricting panel some guidance on what are appropriate criteria to rely upon when deciding what maps to draw. The appropriate criteria are familiar to those knowledgeable about the redistricting process: compliance with federal law (including

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\* There may be a temptation to add a supermajority requirement to offset a perceived risk that putative neutrals may become “captured” by one side or the other. The danger, however, of any such supermajority requirement is that it significantly increases the likelihood that the board will end up deadlocked and incapable of approving any map. While any constitutional amendment proposed by the Commission should provide for what is to happen in the event of a deadlock (a point we discussed at length at the July 10 meeting), it is generally preferable to design the body in such a way as to reduce the risk of a deadlock. Moreover, because it is usually harder to achieve bipartisan agreement over specific maps than over specific individuals to serve as neutrals, we suggest avoiding a supermajority requirement to approve a map, and instead design a fallback procedure in case the two parties deadlock over the selection of the neutrals who will hold the balance of power on the redistricting board.

one-person-one-vote and the Voting Rights Act), compactness, respect for the boundaries of political subdivisions, and (to give voters choice in legislative elections) competitiveness. We do not believe that the state's constitution should contain any specific mathematical formula with respect to these criteria, but we do think the redistricting panel should be charged with the obligation to balance these criteria as it chooses among alternative maps. Likewise, we think it important that the constitution specifically prohibit the redistricting panel, when deciding what maps to adopt, from allowing a decided advantage to any political party or candidate to be a guiding factor. The oath that at least the neutral members of the panel take should explicitly include a statement that they will not let partisan favoritism influence their decisions.