



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

Legislative Branch and Executive Branch Committee

Frederick E. Mills, Chair
Hon. Paula Brooks, Vice-chair

Part I

January 14, 2016

Ohio Statehouse
Room 018

OCMC Legislative Branch and Executive Branch Committee

Chair Mr. Fred Mills
Vice-chair Ms. Paula Brooks
 Mr. Herb Asher
 Sen. Bill Coley
 Rep. Michael Curtin
 Ms. Jo Ann Davidson
 Rep. Robert McColley
 Gov. Bob Taft
 Ms. Pierrette Talley
 Sen. Charleta Tavares
 Ms. Kathleen Trafford

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**OHIO CONSTITUTIONAL MODERNIZATION COMMISSION
LEGISLATIVE BRANCH AND EXECUTIVE BRANCH COMMITTEE**

**THURSDAY, JANUARY 14, 2016
2:30 P.M.
OHIO STATEHOUSE ROOM 018**

AGENDA

- I. Call to Order
- II. Roll Call
- III. Approval of Minutes
 - Meeting of November 12, 2015

[Draft Minutes – attached]
- IV. Reports and Recommendations
 - Proposed Amendment to Article XI (Congressional Redistricting)
 - First Presentation
 - Public Comment
 - Discussion
- V. Presentations
 - None scheduled
- VI. Committee Discussion
 - None scheduled

VII. Next Steps

- The chair will lead discussion regarding the next steps the committee wishes to take in preparation for upcoming meetings.

[Planning Worksheet – attached]

VIII. Old Business

IX. New Business

X. Public Comment

XI. Adjourn



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

**MINUTES OF THE
LEGISLATIVE BRANCH AND EXECUTIVE BRANCH COMMITTEE

FOR THE MEETING HELD
THURSDAY, NOVEMBER 12, 2015**

Call to Order:

Chair Fred Mills called the meeting of the Legislative Branch and Executive Branch Committee to order at 2:31 p.m.

Members Present:

A quorum was present with Chair Mills, Vice-chair Brooks, and committee members Asher, Coley, Curtin, Taft, Talley, Tavares, and Trafford in attendance.

Approval of Minutes:

The minutes of the October 8, 2015 meeting of the committee were approved.

Presentations:

Update on Issue 1 Election Results – Legislative Redistricting

*Steven C. Hollon
Executive Director*

Chair Mills first recognized Executive Director Steven C. Hollon, who gave an update on the November 3, 2015 election results for State Issue 1 (“Issue 1”), involving legislative redistricting. Director Hollon briefly described the features of House Joint Resolution 12, adopted in the 130th General Assembly and submitted to voters as Issue 1 on the ballot. Director Hollon indicated that the issue passed, with a vote of 71.64 percent in favor and 28.54 percent against.

Article II, Section 15 (D) – One Subject Rule

*John J. Kulewicz
Partner
Vorys, Sater, Seymour & Pease*

Chair Mills then recognized Attorney John Kulewicz, of the law firm of Vorys, Sater, Seymour & Pease, who presented to the committee on the topic of the one-subject rule contained in Article II, Section 15(D).

Mr. Kulewicz said the rule raises a multitude of issues for consideration. He said Ohio courts originally took a hands-off approach and the legislature enforced the rule itself, adding that, recently, Ohio courts have shown a significant interest in the rule, and it has gained traction outside the legislature. He said courts now invalidate legislation that goes against the rule, and this is a new era for the one-subject rule.

Describing the history of the rule, he said there was little substantive debate about the purpose of it at the 1851 Constitutional Convention. He said the intent of the framers, as discussed by the Ohio Supreme Court in *Pim v. Nicholson* [6 Ohio St. 176 (1856)], is that its purpose is to prevent logrolling. He said the Court in *Pim* held it to be a directory provision only, and that the rule should be enforced by the General Assembly rather than the courts. Mr. Kulewicz described how, in the 1980s, that approach changed, noting that in *State ex rel. Dix v. Celeste* [11 Ohio St.3d 141, 464 N.E.2d 153 (1984)], the Court took the opportunity to analyze whether there was a relationship between the subjects in the legislation. The following year, in *Hoover v. Franklin Cty. Bd. of Commrs.* [19 Ohio St. 3d 1, 482 N.E.2d 575 (1985)], the Court sent the case back to common pleas court for a determination of whether there was more than one subject and, if so, whether the content of the legislation defied rationality.

Mr. Kulewicz described how, in *State ex rel. Hinkle v. Franklin Cty. Bd. of Elections* [62 Ohio St.3d 145, 580 N.E.2d 767 (1991)], the Ohio Supreme Court imposed a remedy, a development that was significant because, in so doing, the Court severed the offending portion of the act. He said former Ohio Supreme Court Justice Andrew Douglas's dissent in that case laid out issues that have been of great significance since then. The Court continued to apply the remedy of severing a portion of the act that it declared invalid in *State ex rel. Ohio AFL-CIO v. Voinovich* [69 Ohio St.3d 225, 631 N.E.2d 582 (1994)], as well as in *Simmons-Harris v. Goff* [86 Ohio St.3d 1, 1999-Ohio-77, 711 N.E.2d 203 (1999)].

Mr. Kulewicz described *State ex rel. Ohio Academy of Trial Lawyers v. Sheward* [86 Ohio St.3d 451, 715 N.E.2d 1062 (1999)] as “a bombshell of a case.” He said in *Sheward*, the Ohio Supreme Court decided that the tort reform bill at issue dealt with so many different topics that the entire bill had to be rejected. He identified the Court’s rationale as being that any attempt to identify a primary subject would constitute a legislative exercise. Suggesting the case of *In re Nowak* [104 Ohio St.3d 466, 2004-Ohio-6777] was the Court’s “tipping point,” Mr. Kulewicz said *Nowak* rejected *Pim*’s declaration that the one-subject rule was directory only, instead concluding the rule is mandatory. He said that decision redefined the interpretation of the one-subject rule, creating a new generation of litigation.

Mr. Kulewicz then mentioned the pending Ohio Supreme Court case of *State ex rel. Ohio Civ. Serv. Emps. Assn. v. State* [2013-Ohio-4505, 2 N.E.3d 304 (10th Dist.), Supreme Court Case Number 2014-0319], in which the Court will decide whether the Tenth District Court of Appeals properly remanded the case to common pleas court for an evidentiary hearing to determine whether the one-subject rule had been violated.

Mr. Kulewicz concluded that the one-subject rule, a long-dormant provision, is now suddenly an active provision. He added that governors have independent authority to enforce the constitution, and there is now constitutional support for a governor using his veto power on that basis.

Mr. Kulewicz identified the various tests courts apply when legislation is challenged as contradicting the one-subject rule, including: (i) whether there is disunity but not a plurality of subject matter; (ii) whether there is a common purpose to the legislation; and (iii) whether the combination of subjects in the challenged bill has a rationality to it. He said the result is that the General Assembly now must consider the breadth of the legislation it is passing.

He also identified that an expressed rationale for the rule is that it is intended to impede logrolling. But, he said, the type of logrolling the rule prevents is more than one subject in a bill. He said the rule doesn't prevent multiple bills that address one problem. He asked whether logrolling is necessarily something to be condemned.

Reviewing national trends regarding one-subject rules, Mr. Kulewicz said Ohio is one of 43 states that have such a rule, but that there are categorical differences. He said Ohio is one of a few states that regarded the rule as directory. He said 14 states, including Ohio, exempt appropriations bills from application of the one-subject rule, while six states confine appropriations bills to appropriations. He said in two states the rule is limited only to the appropriations bill, while 13 states exempt codification and revision bills from application of the rule.

He said the rule, as set out in the provision, has two parts, requiring that no bill shall contain more than one subject, and that the bill's purpose should be expressed in its title. He said 12 state constitutions allow the rule to void legislation only as to subjects not included in the title.

Having concluded his remarks, Mr. Kulewicz then invited questions from the committee.

Representative Michael Curtin asked whether there would be any merit for the General Assembly, through legislation, to attempt to incorporate recent case law into a statute that would provide a road map of what should and should not be done. Mr. Kulewicz answered that idea may have merit, but the risk is that the constitutional provision would still prevail over the statutory provision. He added it also might be hard to avoid a risk that, as in *Sheward*, a court would be concerned that the legislature would be trying to tell the court how to rule.

Rep. Curtin followed up, noting that state constitutions do not contain definitions, and asking how constitutional change might bring more specificity to the rule. Mr. Kulewicz answered that one could embed in the constitution one or the other of these one-subject rule tests, a requirement

of a common purpose or rational relationship, for example. He said that would not end litigation, but would be a step closer to defining what “one subject” is.

Vice-chair Paula Brooks agreed, saying she thinks that clarification would help both the General Assembly and legal practitioners. Mr. Kulewicz said former Ohio Supreme Court Justice Evelyn Stratton, and others, have expressed frustration that it is hard to define what the rule means. He said the rule made sense in 1851. Today, with technology, he said “we have searchable documents and can look right away to see if a different topic is in a bill.” He wondered whether it is worth the time to struggle with this one-subject issue.

Ms. Brooks asked Mr. Kulewicz whether he has a favorite model of interpretation as to the rule. Mr. Kulewicz said no, but that he does like the rational relationship test. He said, however, this does not prevent litigation, as litigation can occur on the issue of whether there is a rational relationship.

Committee member Herb Asher asked, in states that have the rule but do not apply it to appropriations bills, whether there is evidence that appropriations bills have been used to “load up” on subjects in order to get legislation considered. Mr. Asher noted that legislators often have ideas and are looking for a vehicle to attach legislation to, wondering if part of the problem is that the practice of the legislature is such that members themselves are looking for some opportunity or some vehicle. Mr. Kulewicz said he has no evidence that those states are different.

Governor Taft asked whether Mr. Kulewicz thinks the legislature has clear guidance based on the case law, wondering about the impact of *Sheward*. Mr. Kulewicz noted that the majority in *Sheward* said if the one-subject rule was interpreted so broadly as to allow what the General Assembly tried to do with tort reform, one could redo the entirety of state law in two bills. Mr. Kulewicz said the General Assembly has more guidance now than 15 years ago; then there were no consequences for the failure to observe the one-subject rule. He said now the General Assembly knows the courts have rejected rationales that are unsustainable or meaningless as being too broad. So there is some risk involved in enacting legislation that goes too far.

Senator Charleta Tavares asked whether there are any states that have provisions that automatically void legislation that violates the one-subject rule, or whether the determination always requires a court challenge. Mr. Kulewicz answered that there are several states whose constitutions say it shall be void, but that it still is not self-executing, and would require someone to challenge the legislation.

Sen. Tavares followed up, asking whether any states are contemplating revising their constitutional provisions requiring legislation to have only one subject. Mr. Kulewicz said the United States Constitution does not limit Congress in what is included in bills, but there are several efforts underway to attempt to add a one-subject rule.

Committee member Kathleen Trafford offered that one thing the General Assembly could do is to write a very short statute of limitations.

There being no further questions, Chair Mills thanked Mr. Kulewicz for his presentation.

Congressional Redistricting

*Steven C. Hollon
Executive Director*

Chair Mills then recognized Director Hollon, who presented to the committee a draft of a report and recommendation on the subject of Congressional redistricting. Director Hollon indicated that the report and recommendation provides a history of how Congressional districts have been drawn in Ohio, describes two joint resolutions pending in the General Assembly proposing to change the procedure by having a commission undertake drawing district lines, and outlines various presentations that have been made to the committee on the subject of redistricting. Director Hollon indicated that the report and recommendation does not describe the committee's recommendation with regard to whether and how to reform the Congressional redistricting procedure because the committee has not yet given staff guidance on what it would like to do.

There were no questions for Director Hollon on the report and recommendation.

Committee Discussion

Congressional Redistricting

Chair Mills then indicated that the committee had just received a draft of a new joint resolution drafted by the Legislative Service Commission, identified as "LR 131 0157." He said this draft had been requested by Representatives Kathleen Clyde and Mike Curtin, and was an attempt to reconcile the differences between H.J.R. 2, the House version of a Congressional redistricting resolution, and S.J.R. 2, the Senate version. Chair Mills then invited Rep. Clyde and Rep. Curtin to lead the committee through the differences in the two introduced resolutions and how they have been resolved in the new draft.

Rep. Clyde began by saying "we had a big victory as a Commission and as a state with the success of Issue 1" on the November 2015 ballot. She said the message was clear that voters want to choose their lawmakers, not be chosen by them. She said "We have a mandate from the voters," noting that three-fourths of seats in Congress belong to one party when only half the votes went to that party. She said that makes Ohio one of the most unfair jurisdictions in the world.

She then identified changes in the new draft resolution from the original H.J.R. 2 that she and Rep. Curtin introduced. She said, in the new version, they combined the Congressional redistricting provisions with the legislative provisions, since the same commission will be drawing district lines by using virtually the same rules. She also noted that the result in the U.S. Supreme Court's decision in *Arizona State Legislature v. Arizona Indep. Redistricting Comm.*, 576 U.S. ___, 135 S.Ct. 2652 (2015), means that a commission such as is created by the proposed amendment is constitutionally valid. She said H.J.R. 2 was drafted before the *Arizona State Legislature* decision, and so it has a conditional provision that would have accounted for a

different outcome in the case. She added, now that the case is decided, the new version took those parts out. Rep. Clyde added that the new draft also added a feature of S.J.R. 2 that prevents a sitting member of Congress from being on the commission. In addition, she said the draft removes a provision allowing a county to be split under certain circumstances. She said Congressional districts are larger than state districts, and so that feature is not needed for Congressional redistricting. She added they were concerned about giving the map drawers too much authority to draft alternative rules, and so the new draft is more restrictive in that regard.

Rep. Clyde indicated that the provisions in H.J.R. 2 and S.J.R. 2 are virtually the same regarding the population, but that they chose the language in S.J.R. 2 because they liked it a little better. She said they adopted the S.J.R. 2 provision regarding the court's ability to redraw the lines. In conclusion, Rep. Clyde said they took the best from both the House and Senate versions.

Rep. Curtin thanked the committee for its "yeoman's work" on the issue of redistricting, saying that because Issue 1 was a success at the polls "something good and historic was done." He said this is the moment to act on Congressional redistricting, because "once we get into the 2018 election cycle, and we have a sense of how the winds are blowing, we are going to be immobilized in dealing with this issue. So we have a window; after that we don't have that window for a very long time." He noted an Akron *Beacon Journal* editorial describing that if it isn't done now, it will be 17 years before there is another chance. He said if there is no reform in time for the 2020 Census, there will not be reform until the 2030 Census. He said he would hope the momentum will continue in this committee, and that he wants to keep the bipartisan spirit going for the rest of this year. He said he and Rep. Clyde aren't married to the details in the document, so the real project is not to "make the perfect the enemy of the good."

Chair Mills then opened up the floor for questions.

Gov. Taft asked whether the new draft changes anything approved by voters in state Issue 1. Rep. Clyde and Rep. Curtin said that nothing is changed. Gov. Taft asked whether it included a restriction on a member of Congress being on the proposed commission, recommending that if this is not in the draft it should be added. Rep. Curtin agreed with the point, saying they would be sure it is included.

Sen. Tavares agreed with Rep. Curtin that it is important to keep the bipartisan spirit, saying she would agree a sitting member of the General Assembly should not be on the proposed redistricting commission.

Ms. Trafford asked whether it would be possible for the committee to make a recommendation that left the details to be decided by the General Assembly. Chair Mills said the committee has that option, but that he would prefer the committee to come up with the best language to submit to the General Assembly. He said he would like to see a very thorough, thoughtful product come out of this committee. "We did all the heavy lifting in S.J.R. 1 (introduced in the 130th General Assembly), I would like to get a draft as perfect as we can, knowing the General Assembly would change things."

Rep. Curtin said the legislature has sessions in December, and that if the committee is in agreement, the committee could have the Legislative Service Commission provide a draft.

Ms. Brooks asked about the procedure for approving a report and recommendation. She wondered if the committee would need another special meeting to comply with rules of submitting to the full Commission by the end of the year. Chair Mills said the committee can't do it in that time frame, noting that the General Assembly has until August 2016 to act in time to put it on the ballot. He said he is not sure the committee needs to rush to finish the process by the end of this calendar year, and that he does not intend to call a special meeting in December. But, he said, by the next meeting, the committee should be prepared to discuss these issues. He said they could use the meeting as a drafting session in order to have a thoughtful work product.

Ms. Brooks asked whether the committee could call a special session for the purpose of concluding its work on Congressional redistricting.

Chair Mills said the committee has met as much or more than any other committee, and that he is not in favor of bringing people back to decide something that doesn't need to be decided until August.

Mr. Asher said the committee's goal is to get something finished as early in the new year as possible. He said, if it is January or February, it gives the legislature ample time to work on this.

Chair Mills said that is a fair statement.

Rep. Curtin reiterated with a "personal plea," saying it is important not to wait 17 years to get reform passed.

Sen. Tavares said, in light of the conversation about the time frame, she would agree with Mr. Asher, and that a recommendation should be made sooner rather than later. She said she would rather put it to task as immediately as possible, January or February at the latest. She said otherwise it does not give the General Assembly much time to consider the issue. She said "the longer we wait, the more difficult it becomes, because some members of Congress on both sides of the aisle will be weighing in and will want to do nothing." She said, "If we believe in the voters and what we did with Issue 1, we should be hasty; do it right, but get it on the ballot next year."

Chair Mills agreed that next year is appropriate, but it should be correct. He said "hasty implies sloppy, so let us do it carefully."

Rep. Clyde said she echoes that one way to move quickly is that the committee has a good model in Issue 1, saying she is heartened that "we can come together as a Commission."

Chair Mills then recognized Catherine Turcer, policy analyst for Common Cause Ohio, who addressed the committee on the subject of Congressional redistricting.

Ms. Turcer said, with regard to Issue 1, that “voters changed the quality of democracy,” and that she was encouraged by this result and hopes that the election results will help spur Congressional redistricting reform.

Chair Mills also recognized Richard Gunther, professor emeritus of Political Science with The Ohio State University. Professor Gunther urged the committee to move forward with the proposals by Rep. Clyde and Rep. Curtin. He said he has compared S.J.R. 2 and H.J.R. 2, and that “they are well rooted in Issue 1.” He said he is very concerned that the committee move forward quickly, noting that the negotiations that created Issue 1 were extremely difficult. He emphasized that “it is even more urgent to move forward for Congress than for the state legislature,” noting that the problems with Congressional districts are worse and that the electoral disproportionality is twice as bad as it is for the General Assembly districts. He added that the lack of term limits for Congress means members have a term for life. He concluded that he is “very concerned” about a time line that has an August deadline, because the alternative is a citizen’s initiative. He said if, by January, there is no indication that the legislature will act, there will be a citizen’s initiative that will move forward, so if the committee wants to maintain control over the process, it should keep the process moving forward at a reasonable pace.

Chair Mills clarified his earlier remark, saying he did not mean the committee should wait until August to act, rather, this is the General Assembly’s timeline for placing an issue on the ballot.

Sen. Tavares thanked Professor Gunther, as well as the League of Women Voters and Common Cause for their work on redistricting.

Adjournment:

There being no further business to come before the committee, the meeting was adjourned at 4:05 p.m.

Approval:

The minutes of the November 12, 2015 meeting of the Legislative Branch and Executive Branch Committee were approved at the January 14, 2016 meeting of the committee.

Frederick E. Mills, Chair

Paula Brooks, Vice-chair



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

REPORT AND RECOMMENDATION OF THE LEGISLATIVE BRANCH AND EXECUTIVE BRANCH COMMITTEE

OHIO CONSTITUTION PROPOSED AMENDMENT TO ARTICLE XI

CONGRESSIONAL REDISTRICTING

The Legislative Branch and Executive Branch Committee of the Ohio Constitutional Modernization Commission issues this report and recommendation regarding a proposed amendment to Article XI of the Ohio Constitution that would assign to a redistricting commission the duty of drawing Congressional districts. It is issued pursuant to Rule 8.2 of the Ohio Constitutional Modernization Commission's Rules of Procedure and Conduct.

Recommendation

The committee recommends that Article XI of the Ohio Constitution be amended to allow the redistricting commission created for the purpose of drawing state legislative districts to also draw Congressional districts, to commence following the next United States Census that is set to occur in 2020.

Background

Authority for the drawing of Congressional districts is granted generally to the state legislatures by the United States Constitution, which requires that the representatives be apportioned according to the number of persons in each state without specifying how districts must be drawn.

Under current Ohio statutory law, the state's 16 Congressional districts are subject to review and revision every ten years, in years ending in the numeral "1," based upon United States Census figures. In Ohio, Congressional district plans are enacted by the General Assembly and codified in section 3521.01 of the Revised Code.

The information in this section sets out the procedure for how Ohio draws its Congressional districts as outlined in a 2011 Ohio Legislative Service Commission "Members Only Brief."¹

Timeline

The initiation of the timeline for adopting new Congressional districts, as set out in the Members Only Brief, is as follows:

The federal census determines the population as of April 1, in each year ending in the numeral “0.” Within one week after the opening of Congress the following year, the President reports the census counts, and the number of Congressional representatives to which each state is entitled, to the Clerk of the United States House of Representatives. Within 15 days of receiving that information, the Clerk notifies each state governor of the number of representatives to which the governor’s state is entitled.²

The detailed census reports, along with the apportionment determination delivered by the Clerk of the U.S. House, form the basis for Congressional redistricting.³

The filing deadline for nominations for the office of Congressional representative in the year after census data is released serves as the practical deadline for Congressional redistricting. Thus, the General Assembly generally enacts the Congressional districting plan between April 1 of the year ending in the numeral “1” (when census data is officially released) and the primary filing deadline for the following year, which is the first year elections will be held under the new districts.

Under some circumstances a state may redraw Congressional districts between censuses, such as, if a districting plan is determined to be unconstitutional. For instance, in 2006, the United States Supreme Court permitted the Texas Legislature to redraw, in the middle of the decade, a districting plan that had been adopted by a federal court. However, the Court did not determine whether a legislature may draw a new redistricting plan mid-decade if the prior plan was adopted by the legislature.⁴

Criteria

The U.S. Constitution is silent regarding the specific criteria that Congressional districts must meet. However, the U.S. Supreme Court has identified the necessary criteria for fulfilling the requirements of the Fourteenth and Fifteenth Amendments to the U.S. Constitution. Further, applicable provisions of the Voting Rights Act of 1965 set out additional requirements for drawing districts.

As the Members Only Brief noted, although state legislative districts may vary by up to five percent, the United States Supreme Court has required much closer population equality in Congressional districts in order to comply with the principle that, “as nearly as is practicable,” each person’s vote is to be worth as much as another’s. *Wesberry v. Sanders*, 376 U.S. 1, 7-8 (1964). As the Court recently explained, “[*Karcher [v. Daggett*, 462 U.S. 725 (1983)] set out a two-prong test to determine whether a State’s congressional redistricting plan meets this [one-person, one-vote] standard.” *Tenant v. Jefferson Cty. Comm.*, 567 U.S. ___, 133 S.Ct. 3, 5 (2012). First, the “parties challenging apportionment legislation * * * bear the burden” of

proving “the population differences among districts could have been reduced or eliminated altogether by a good-faith effort to draw districts of equal population.” *Karcher*, 462 U.S. at 730-31. If “the plaintiffs can establish that the population differences were not the result of a good-faith effort to achieve equality, the State must bear the burden of proving that each significant variance between districts was necessary to achieve some legitimate goal.” *Id.* at 731. In *Tenant*, the Supreme Court recognized that avoiding contests between incumbents, not splitting political subdivisions, and minimizing population shifts between districts were legitimate state objectives that justified very small population differences of less than one percent. 567 U.S. at ___, 133 S.Ct. at 7-8.

Other criteria are set by the Voting Rights Act of 1965.⁵ As noted in the Members Only Brief:

Section 2 of the act applies to all jurisdictions, prohibiting any state or political subdivision from imposing a voting qualification or a standard, practice, or procedure that results in a denial or abridgment of the right to vote on account of race, color, or status as a member of a language minority group. Under this section, Congressional districting plans cannot dilute the voting strength of certain minorities. Some practices that have been questioned under the section include multimember districts, the packing of minority voters into a limited number of districts, and the fracturing of minority voting strength by dividing minority voters into a large number of districts.⁶

In addition to the criteria noted above, the courts have recognized several goals as traditional redistricting principles, including compactness; contiguity; the preservation of political subdivisions, communities of interest and cores of prior districts; protection of incumbents; and compliance with Section 2 of the Voting Rights Act.

Process

The Members Only Brief makes note of the lack of a specific process for creating districts when it states:

Although some states have enacted a statutory process for adopting Congressional district plans, such as having those districts determined by a board or commission, existing Ohio law does not specify a particular process for adopting Congressional districts. Traditionally, those districts have been adopted by a statutory enactment of the General Assembly. The bill establishing those districts is enacted according to the same process as other bills are enacted by the General Assembly and is subject to gubernatorial veto in the same manner as other bills.

Recent Legislative Activity

In January 2011, General Assembly members were appointed to redistricting committees for the purpose of drawing district lines following the 2010 Census. At that time, the House redistricting committee was comprised of three Republicans and two Democrats, while the corresponding Senate committee was comprised of three Republicans and two Democrats.

These committees were aided by the Ohio Legislative Task Force on Redistricting, Reapportionment, and Demographic Research, a six-member body that was created under the authority of R.C. 103.51. The statute indicates that three members each are appointed to the task force by the president of the Senate and by the speaker of the House. The statute further requires the president and speaker each to appoint no more than two members who belong to the same political party, and to appoint one member each who is not a member of the General Assembly. Among its other duties, the task force is charged with providing “such assistance to the general assembly and its committees as requested in order to help the general assembly fulfill its duty to establish districts for the election of representatives to congress.” R.C. 103.51(C)(1).

In 2012, a citizen initiative was placed on the ballot as Issue 2, proposing to create a 12-person citizen commission to draw legislative and Congressional district maps.⁷ Arguments submitted by proponents of the measure included that the existing system was not balanced or transparent, and was too tied to political interests.⁸ Opponents asserted the measure would create an unelected commission that would be unaccountable to voters and would have access to unlimited funding.⁹ Opponents also criticized that the measure required judges to make political decisions, and that it ignored separation of powers considerations.¹⁰ Issue 2 ultimately failed at the polls, by a vote of 64.73 percent to 37.73 percent.¹¹

The 130th General Assembly (2013-2014) saw the introduction of two joint resolutions that, if approved, would have altered Ohio’s method of drawing Congressional districts. Both Senate Joint Resolution 1, introduced by Senators Tom Sawyer and Frank LaRose (with co-sponsors Senators Nina Turner, Keith Faber, and Joe Uecker), and H.J.R. 11, sponsored by Representative Matt Huffman, if adopted, would have created a redistricting commission to draw district lines.¹² In addition, at least one other proposed resolution, prepared by Representative Vernon Sykes but not introduced, would have created a redistricting commission for the purpose of drawing both legislative and Congressional lines.¹³

Although the subject of Congressional redistricting received considerable attention in the last months of the 2013-2014 session, it was H.J.R. 12, reforming the procedure for legislative apportionment, that successfully made it to the November 2015 ballot as Issue 1. Official results from the November 3, 2015 general election indicate that Issue 1 passed by a margin of 71.47 percent to 28.53 percent.¹⁴

H.J.R. 12, Issue 1 on the November 3, 2015 ballot, amended Article XI to create a bipartisan process for drawing legislative district lines. Its key feature is the creation of a bipartisan commission, known as the “Ohio Redistricting Commission,” to which is assigned the responsibility of drawing legislative districts. The new plan also describes specific criteria to be used in drawing maps, procedures for resolving an impasse, and rules for adjudicating legal challenges.

As summarized in the ballot language adopted for Issue 1, the amendment approved by voters is intended to end the partisan process for drawing Ohio House and Senate districts, replacing it with a bipartisan process with the goal of more compact and politically competitive district boundaries. The amendment also was conceived as a way to “ensure a transparent process by requiring public meetings, public display of maps, and a public letter explaining any plan the

Commission adopts by a simple majority vote.” Most significantly, the amendment establishes a “bipartisan Ohio Redistricting Commission, composed of seven members including the Governor, the Auditor of State, the Secretary of State, and four members appointed by the majority and minority leaders of the General Assembly.” The amendment requires a “bipartisan majority vote of four members in order to adopt any final district plan, and prevents deadlock by limiting the length of time any plan adopted without bipartisan support is effective.”¹⁵

Amendments, Proposed Amendments, and Other Review

Ohio Constitutional Revision Commission

The 1970s Constitutional Revision Commission (“1970s Commission”) considered whether to recommend a change to Ohio’s method for drawing legislative and Congressional districts. In its final report, the 1970s Commission stated as follows:

The What’s Left Committee, after considerable study of the methods used in Ohio and other states, and the advantages and disadvantages of each, and after lengthy discussion of the problems of drawing legislative districts, concluded that the standards set forth in the Ohio Constitution for drawing districts need not be altered, that congressional districts should be drawn by the same commission that draws legislative districts, and only once every 10 years, and that the composition of Ohio’s present apportionment body should be changed. * * *

The apportioning persons are considered of primary importance in the apportionment provision. One of the first conclusions reached by the committee was that the three elected executive officials presently designated by the Constitution should not be on the apportionment board. The committee proposal provided for a five member apportionment commission, with four members appointed by the legislative leaders of both parties in the General Assembly. The fifth member, who would be chairman, and would be a key person, would be selected by a majority agreement of the four; if they fail to agree, the secretary of state would select the chairman by lot from nominees submitted by the commission. All meetings, including those to nominate a chairman and draw the apportionment plan, would be open to the public, and at least four weeks would be provided for public inspection of a tentative plan, in order to provide for public comment and input before final adoption of the plan. Under the present constitutional language, the public does not see the plan until after it is approved by the apportioning persons. Elected or appointed public officers other than members of the General Assembly could serve as members of the apportionment commission, which, in addition to redistricting for state legislators every 10 years, would be responsible for districting for the election of United States congressional delegates. The proposal was defeated by the Commission by a vote of 13 in favor, 13 opposed, and 2 passes.¹⁶

Dissenting members of the 1970s Commission’s What’s Left Committee filed a Minority Report in which they asserted a change in the makeup of the apportionment board was necessary in

order to “lessen the influence of partisan politics as much as possible.”¹⁷ The minority summarized its recommendations as follows:

1. The Apportionment Commission replaces persons designated by the present constitutional provision: Governor, Auditor, Secretary of State, and two persons chosen by the House and Senate minority and majority leadership. The proposed Commission consists of five persons: the majority and minority leaders in the House and Senate each select one, and a fifth member, who shall be chairman, is selected by the four members. If they cannot agree on a chairman, the Secretary of State will select the chairman by lot from names of persons previously nominated submitted by the four members prior to the lottery meeting.
2. Elected or appointed public officers other than members of the General Assembly may serve as members of the Commission.
3. The Commission will be assisted in the preparation of an apportionment plan by staff, and the General Assembly is required to appropriate funds to support the work of the Commission.
4. The first plan published by the Apportionment Commission is a tentative plan. At least four weeks are provided during which the Commission shall consider comments, criticisms, and alternate proposals submitted by any person or group to the tentative plan.
5. All meetings of the Apportionment Commission are open to the public. Communications to the Commission, criticisms, plans, alternate proposals, etc., relating to the adoption of the tentative and final plans are open to public inspection and must be retained for 180 days after the completion of the Commission's work.
6. The Apportionment Commission shall be responsible for dividing the state into districts for the election of representatives to the United States Congress.¹⁸

The Minority Report concluded:

The recourse of the lottery, for the selection of the chairman if the four members cannot agree, is intended to provide strong incentive for the members of both parties to come to some agreement on a fair and competent person to be chairman, rather than leave that important position to chance. The extensive requirements dealing with publication and public inspection of both the tentative and final plans, as well as the opportunity for public input, are intended to make the process as open as possible. As it is presently done, apportionment is a very closed process giving the public the opportunity to comment only after the plan is adopted.¹⁹

House Joint Resolution 2 (131st General Assembly)

At the beginning of the 131st General Assembly, Representatives Kathleen Clyde and Michael Curtin introduced House Joint Resolution 2, a proposal for Congressional redistricting reform that mirrors the content of H.J.R. 12 from the 130th General Assembly.

Presenting to the Legislative Branch and Executive Branch Committee in April 2015, Rep. Clyde identified key points of H.J.R. 2's redistricting proposal as being that it:

- Creates a seven-member bipartisan panel with at least two members from the minority party;
- Indicates the panel is comprised of four legislative members – two of whom are members of the minority party in each chamber – the governor, the auditor of state, and the secretary of state;
- Requires two minority votes to adopt the legislative boundaries for a 10-year period;
- If the panel cannot agree, requires the maps to be drawn after four years, during which time, elections could bring new members to the panel;
- If the panel cannot agree a second time, requires the new map to go into effect for the remaining six years, but the map must adhere to tougher standards;
- Gives the Ohio Supreme Court guidance on how to determine if the maps are drawn properly;
- Requires the panel to draw the maps that minimize the number of splits of counties, municipalities, and contiguous townships; and
- Explicitly states that “No General Assembly district plan shall be drawn primarily to favor or disfavor a political party.”

Also presenting remarks to the committee, Rep. Curtin, as co-sponsor of the resolution, expressed that the bipartisan support for H.J.R. 12 in the 130th General Assembly was the impetus for the current effort to apply the same principles to Congressional redistricting, and encouraged reform to continue.

Senate Joint Resolution 2 (131st General Assembly)

Also introduced in the 131st General Assembly is Senate Joint Resolution 2, a proposal for Congressional redistricting reform sponsored by Senators Frank LaRose and Tom Sawyer.

As described by the senators, S.J.R. 2 is modeled off of H.J.R. 12 with some minor differences. S.J.R. 2 would require Congressional districts to be drawn by the seven-member Ohio Redistricting Commission, established in H.J.R. 12 and approved by voters as Issue 1 in the November 2015 election.

This commission would consist of the governor, auditor of state, secretary of state, and one person each appointed from the speaker and minority leader in the House and the president and minority leader in the Senate. S.J.R. 2 further indicates that approval of the map requires the

votes of four members of the commission, including two votes from the minority party. If a bipartisan map is passed, the legislative districts would be in effect for 10 years, until the next census. If the map is not approved by the necessary threshold of four votes – including two from the minority party – an “impasse” provision is triggered by which the map is effective for only four years, after which the commission would reconvene to redraw and pass a new map effective for the remaining six years. S.J.R. 2 indicates that maps drawn under the impasse procedure would be subjected to more stringent standards, with the aim of constraining possible partisan excesses.

Proposed House Joint Resolution LR 131 0157

On November 12, 2015, Representatives Kathleen Clyde and Mike Curtin appeared before the committee to present a draft of a joint resolution identified as “LR 131 0157.” The draft proposes that the same state redistricting commission created for the purpose of drawing state legislative districts would draw Congressional district lines by using virtually the same rules. The draft incorporates a feature of S.J.R. 2 that prevents a sitting member of Congress from serving on the commission. In addition, the draft specifies that, when drawing Congressional districts, the commission may not split a county under certain circumstances for the reason that Congressional districts are larger than state districts, and so that feature is not needed for Congressional redistricting.

As described by Rep. Clyde, the provisions in H.J.R. 2 and S.J.R. 2 are virtually the same regarding the population, but LR 131 0157 incorporates the language used in S.J.R. 2. In addition, S.J.R. 2’s provision regarding the court’s ability to redraw the lines was preferred. In conclusion, Rep. Clyde said LR 131 0157 incorporated the best features of both the H.J.R. 2 and S.J.R. 2.

Comparison of the Joint Resolutions

As compared by the Legislative Service Commission, S.J.R. 2 and H.J.R. 2 are similar in many ways.²⁰ Both proposed joint resolutions describe a redistricting commission that would be comprised of the governor, auditor of state, secretary of state, one person appointed by the speaker of the House, one person appointed by that president of the Senate, and one person each appointed by the minority leaders of the House and the Senate, for a total of seven members. Both proposals indicate that the House and Senate legislative leaders of the two largest parties in the General Assembly, acting jointly by political party, would appoint a co-chairperson of the commission. The two joint resolutions also propose an identical timeline that would have the commission meet in a year ending with the numeral one unless the commission is judicially required to reconstitute and reconvene to redraw judicially invalidated districts following the expiration of a plan adopted under the impasse procedure. Both plans require the commission to adopt a final district plan no later than September 1 of a year ending in “1,” or, if that does not occur, by September 15 of that year using the impasse procedure.

Relating to the organizational procedures of the commission, both proposals would have the meetings be open to the public, would have the commission adopt procedural rules, and would require a simple majority of members for any action by the commission. However, the two

proposals differ in that S.J.R. 2 specifies that if voters approve a redistricting commission for the purpose of drawing legislative districts, the commission is to be dissolved four weeks after the adoption of a final Congressional district plan or a final General Assembly district plan, whichever is later.

The two proposals are identical in their descriptions of the method of selecting district plans, including the requirements for bipartisan support, as well as the procedure for breaking an impasse. The proposals also are the same with regard to district population requirements, although S.J.R. 2 requires the commission to minimize the extent to which each district's population differs from the ratio of representation, as is practicable, while taking into account other legitimate state objectives, as well as allowing the commission to include an explanation of the reason that a district contains a population that is not equal to the ratio of representation. By comparison, H.J.R. 2 only requires the population of each district to be as equal to the congressional ratio of representation as practicable.

Both proposals specify that each district meet various requirements for Congressional districts, including that the plan comply with applicable provisions of the U.S. and Ohio Constitutions, as well as with federal law. The two proposals do differ with regard to specific requirements for contiguity in relation to the boundaries of counties, municipal corporations, and townships. The two proposals identically require that a congressional district plan should not be drawn primarily to favor or disfavor a political party, that the statewide proportion of districts whose voters favor each political party must correspond closely to the statewide preferences of Ohio voters, and that Congressional districts be compact.

The proposals also both require the commission to create boundaries by using political subdivision boundaries as they exist at the time of the census.

With regard to the judicial resolution of disputes, while both proposals specify that the Ohio Supreme Court has exclusive, original jurisdiction of all cases arising under the article, S.J.R. 2 has the additional requirement that if the court finds it necessary to amend not fewer than two congressional districts to correct violations of the listed requirements, the court must declare the plan invalid and order the commission to adopt a new plan.

H.J.R. 2 differs from S.J.R. 2 in that it contemplates that if a court issues an unappealed final order that the General Assembly must be responsible for congressional redistricting, then the General Assembly would be constitutionally bound by the same requirements set forth in the proposed article.

The two proposals also identically address changes to district plans between censuses, provide for appropriations to the commission to allow it to operate, and have a severability provision that indicates that the invalidity of one or more of the provisions does not affect the rest. Finally, both proposals have an effective date of January, 2021.

Comparing the two introduced joint resolutions with the more-recent draft resolution, LR 131 0157, the most obvious difference is that LR 131 0157 does not create a new article in the constitution, but, rather, amends Article XI, as that article was amended by passage of Issue 1 on

November 3, 2015, to include Congressional redistricting as part of the duties of the newly-created redistricting commission. In addition, LR 131 0157, like S.J.R. 2, prohibits members of Congress from serving on the redistricting commission. LR 131 0157 also follows S.J.R. 2 in requiring the commission to minimize the extent to which each Congressional district's population differs from the Congressional ratio of representation, while considering other legitimate state objectives, and allowing the commission to include an explanation for why a district's population is not equal to the Congressional ratio of representation. As noted by Rep. Clyde, LR 131 0157 also eliminates the requirement from S.J.R. 2 that counties not be split more than once, for the reason that the size of Congressional districts renders that requirement unnecessary. Finally, like S.J.R. 2, LR 131 0157 eliminates language intended to resolve what would occur upon a ruling that a redistricting commission may not draw Congressional districts. For the reasons noted in the following section, this language proved unnecessary and so was not included in LR 131 0157.

Litigation Involving Congressional Redistricting

On June 29, 2015, the U.S. Supreme Court decided *Arizona State Legislature v. Arizona Indep. Redistricting Comm.*, 576 U.S. ___, 135 S.Ct. 2652 (2015), upholding the use of an independent redistricting commission to draw boundaries for congressional districts. The case involved a challenge by Arizona state legislators to an initiated constitutional amendment that transferred responsibility for congressional redistricting from the state legislature to a five-member commission.

The suit alleged that the use of a congressional redistricting commission, which was adopted in Arizona in 2000 by an initiative, violated the Elections Clause of the U.S. Constitution, Article I, Section 4, which provides: “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.”

The decision in the case turned, in part, on whether the word “Legislature” in the Elections Clause refers literally to the representative body that makes the laws, or more broadly to the legislative process. In upholding the use of the initiative to create the redistricting commission, the Court ruled that the delegation of congressional redistricting to an independent commission did not violate the Elections Clause.

The Court relied on three of its decisions involving the relationship between state legislatures and the U.S. Constitution, two of which arose in Ohio.

In *Davis v. Hildebrant*, 241 U.S. 565 (1915), a 1915 case involving the use of Ohio’s newly-minted referendum, the Court agreed with the decision of the Ohio Supreme Court that the referendum “was a part of the legislative power of the State,” and held that “[f]or redistricting purposes, *** ‘the Legislature’ did not mean the representative body alone. Rather, the word encompassed a veto power lodged in the people.” *Arizona State Legislature*, 576 U.S. at ___, 135 S.Ct. at 2666 (quoting *Davis*, 241 U.S. at 569).

In *Hawke v. Smith*, 253 U.S. 221 (1920), which also involved the Ohio referendum, the issue

involved Ohio's ratification of the Eighteenth Amendment (Prohibition). In holding that the referendum could not be used to reject the ratification, the Court ruled that Article V, governing ratification, had lodged in "the legislatures of three-fourths of the several States" the sole authority to assent to a proposed amendment. *Id.* at 226. The Court contrasted the ratifying function, exercisable exclusively by a state's legislature, with "the ordinary business of legislation." *Id.* at 229. *Davis v. Hildebrant*, the *Hawke* decision explained, involved the enactment of legislation, *i.e.*, a redistricting plan, and properly held that "the referendum [was] part of the legislative authority of the State for [that] purpose." *Id.* at 230.

Finally, in *Smiley v. Holm*, 285 U.S. 355 (1932), the Court addressed whether legislation that redistricted Minnesota's Congressional districts was subject to the governor's veto. The Minnesota Supreme Court ruled that it was not, but the U.S. Supreme Court disagreed and held that the Elections Clause did not place redistricting authority exclusively in the hands of the state's legislature. Thus, the Court held that under the Elections Clause "Legislature" was not limited to the two houses of the legislature but also included the Governor. In so holding, *Smiley* pointed out that state legislatures performed an "electoral" function "in the choice of United States Senators under Article I, section 3, prior to the adoption of the Seventeenth Amendment," a "ratifying" function for "proposed amendments to the Constitution under Article V," *** and a "consenting" function "in relation to the acquisition of lands by the United States under Article I, section 8, paragraph 17." *Smiley*, 285 U.S. at 365-66 (footnotes omitted).

In *Arizona State Legislature*, the Court determined that state legislatures do not have exclusive authority for adopting policies concerning federal elections, including policies governing Congressional redistricting. In holding that the Elections Clause did not bar the use of the initiative to set up a commission-based procedure for drawing district lines, the Court pointed to the implications a contrary decision would have on other aspects of election laws:

Banning lawmaking by initiative to direct a State's method of apportioning congressional districts would do more than stymie attempts to curb partisan gerrymandering, by which the majority in the legislature draws district lines to their party's advantage. It would also cast doubt on numerous other election laws adopted by the initiative method of legislating.

Arizona State Legislature, 576 U.S. at ___, 135 S.Ct. at 2676.

Presentations and Resources Considered

Beck, Foley, and Stebenne Panel Discussion

In July 2013, three professors from The Ohio State University, Paul A. Beck, Edward B. Foley, and David Stebenne, participated in a panel discussion regarding the history of gerrymandering and redistricting, both generally and in Ohio.

Paul A. Beck, who is professor emeritus of political science, identified the three basic problems of gerrymandering. First, he said, gerrymandering results in a distorted translation of popular votes in terms of legislative seats. He described that modern computer technology has allowed

specialists to get better and better at gerrymandering, and the problem with a distortion is that voters become more alienated from the political system and can conclude the system is not responsive to their political wishes. Second, he said gerrymandering protects incumbents by making the districts uncompetitive, with the unfortunate effect being that incumbents are more fearful of the primary than the general election, are driven more to the extreme of their party, and become more vulnerable to outside money and interest group influence. The third problem Professor Beck described is gerrymandering's destruction of political communities, creating artificial communities that lack any commonality. He said these problems are not party-specific and occur regardless of who gerrymanders the lines. Professor Beck recommended that any new redistricting plan should "minimize self-interested redistricting by people who are political insiders." He said a specialized redistricting commission is best, and, if it is partisan, it must require enough bipartisan support for a plan so as to avoid a situation in which incumbents protect seats and the majority party gets its way. He emphasized that the procedure needs to have an unattractive alternative if the commission fails to come up with a plan. He added the commission needs to have guidelines under which to operate when drawing the lines. He concluded that whatever plan is implemented, Ohio citizens are not served if representational fairness and competitiveness are not the results of a new redistricting commission's work.

Professor David Stebenne of the Moritz College of Law at The Ohio State University then addressed the committee, emphasizing that there is no "gold standard" regarding redistricting. He said adding four "neutrals" chosen by the seven members of the redistricting commission would assist in creating a more fair system for drawing the district lines. He identified a system used in Iowa as being the closest to the ideal.

Professor Edward B. Foley of the Moritz College of Law at The Ohio State University encouraged the committee to take a long-term approach to changes made regarding reapportionment and redistricting, recommending changes to the seven-member reapportionment board as well recommending its replacement with a new singular body.²¹ He said the key is to develop a redistricting institution that cannot be controlled by one political party.

In follow-up correspondence, the professors addressed committee members' questions about how to design a redistricting authority for which the balance of power is held by members who do not act on behalf of any political party or candidate but endeavor in good faith to apply constitutionally appropriate redistricting criteria impartially. The professors clarified that the key attribute of "neutrals" is that they can be expected by both parties to act fairly and impartially. The professors further advocated for a process whereby members of the public could nominate individuals to be considered for the role of neutrals on a redistricting commission. They also noted that it is crucial to give the members of the redistricting panel guidance on the appropriate criteria for drawing the maps. They noted those criteria include compliance with federal law, compactness, respect for the boundaries of political subdivisions, and competitiveness.

Henkener Presentations

Ann Henkener, First Vice President of the League of Women Voters of Ohio ("League"), presented to the committee on several occasions.

In August 2013, Ms. Henkener appeared before the committee to advocate a set of standards that she said would result in competitive districts and fair representation. She asserted that Ohio's districts should be representative of its population, and that gerrymandering had produced unfair districts.

In November 2014, Ms. Henkener again presented to the committee on behalf of both the League and Catherine Turcer of Common Cause Ohio, emphasizing the importance of the redistricting issue to these organizations and to Ohio voters.

In June 2015, Ms. Henkener presented on the topic of H.J.R. 2, Congressional Redistricting, the joint resolution introduced in the House by Representatives Clyde and Curtin. In her remarks, Ms. Henkener commented that current Congressional districts are more highly gerrymandered than the state legislative districts. She said that a good reform proposal should provide for strong input from both political parties when drawing maps, with the goal of having Ohio's General Assembly and Congressional delegations reflect the even split between the parties in Ohio. She added that the districts also should be drawn to provide voters choices in general elections, and to have geographical shapes and boundaries that make sense to voters. Ms. Henkener expressed her support for H.J.R. 2, saying that the proposed resolution meets these goals, and urged the committee to approve the plan set forth in H.J.R. 2.

Ms. Henkener again appeared before the committee in October 2015 to express her support for Congressional redistricting reform. Ms. Henkener complimented the bipartisan effort that had resulted in Issue 1 on the November 2015 ballot, as well as S.J.R. 2 that was introduced by senators from both sides of the aisle. Ms. Henkener urged the committee to act soon on Congressional redistricting because "voters are getting educated about this topic from Issue 1."

Gunther Presentations

The committee heard presentations from Richard Gunther, professor emeritus of political science at The Ohio State University, on several occasions.

In August 2013, Professor Gunther spoke to the committee regarding gerrymandering and the benefits of competitive districts. He emphasized the goals of competitiveness, community representation, and representational fairness, noting distortions in Ohio's map that have the effect of "rig[ging] the election in favor of one set of candidates over the others, and deny[ing] the voters of Ohio a real choice." Professor Gunther noted that a process that allows gerrymandering is detrimental to both parties because "gerrymandering is an equal-opportunity abuse of the democratic system." He added that the "2011 redistricting process in Ohio may have been under the control of Republicans, and this enabled that party to secure major advantages for its candidates at both the state and federal levels. But what goes around comes around: if Democrats win two of three statewide offices in 2018 – governor, auditor, or secretary of state – it is virtually certain that they will do unto Republicans in the 2021 redistricting process what was done to them over the previous decade. The pendulum will swing to the opposite extreme with equally negative consequences, not only for the candidates of that party, but for the voters of Ohio."

Professor Gunther appeared again before the committee in November 2014, at which time he commented further regarding the legislative redistricting plan in H.J.R. 12.

In June 2015, Professor Gunther expressed his support for the Congressional redistricting plan described in H.J.R. 2, describing the problems he sees with the current district lines, such as communities fragmented into separate districts, and the dilution of voting power of citizens by the creation of districts that are not compact. He also described that the current map does not satisfy the interests of fairness, and noted that Ohio's map "reflects a flagrant disregard of the core principle of representative fairness."

According to Professor Gunther, H.J.R. 2 meets the goals he described because it uses much of the same criteria as was applied in H.J.R. 12. Professor Gunther concluded by stating that he regards H.J.R. 2 as "an excellent vehicle for achieving meaningful redistricting reform for the foreseeable future."

Professor Gunther again spoke to the committee in November 2015, urging the committee to move forward with the proposals by Rep. Clyde and Rep. Curtin. He said his comparison of the proposed joint resolutions indicates they are "well-rooted" in the successful amendment to Article XI that created a redistricting commission to draw legislative districts. Professor Gunther expressed that the problems with Congressional districts actually are worse than the problems with legislative districts that had prompted the reforms described in Issue 1.

Jacobsen Presentation

In October 2013, Attorney Lynda J. Jacobsen, a division chief with the Legislative Service Commission, presented to the committee on "Guiding Principles of Redistricting and Re-Apportionment." Ms. Jacobsen described Ohio's method for Congressional redistricting, indicating that the districts are adopted by the General Assembly by the adoption of a bill that is subject to the Governor's veto, and the resulting districts are codified in R.C. 3521.01 using census geographical data. She said a new plan, adopted every 10 years, must be in place by the filing deadline for the primary election. Ms. Jacobson said the plan is drawn with a goal of achieving population equality between districts as well as to comply with Section 2 of the Voting Rights Act of 1965. She then described the practices of "packing" and "cracking," identifying several districts in other parts of the United States whose unusual configurations suggest an attempt to gerrymander by concentrating widespread minority populations into one oddly-shaped district. Ms. Jacobsen identified the traditional redistricting principles as being compactness, contiguity, the preservation of political subdivisions, communities of interest, and cores of prior districts, as well as the protection of incumbents.

Brunell Presentation

In February 2013, the committee heard a presentation by Thomas L. Brunell, professor of political science at the School of Economic, Political and Policy Sciences at the University of Texas at Dallas. Professor Brunell provided an analysis of the unsuccessful redistricting initiative that had been placed on the ballot in November of 2012, comparing it with a proposed legislative joint resolution that also would have created a commission to redraw district lines.

Professor Brunell indicated his preference for maps that match the partisanship of the state, as well as maps that do not strictly follow county or city boundaries, indicating that partisan fairness is more important than keeping counties or cities whole. He said he prefers a smaller redistricting commission that would be made up of partisans, rather than independent members. He recommended lowering the allowable level of population deviations for state legislative districts to either zero, or as close to zero as the commission feels comfortable with, because population deviations are often used for partisan purposes.

With regard to competitiveness, Professor Brunell recommended against adopting a provision that would encourage more competitive districts because he believes the costs associated with using redistricting to induce electoral competition are higher than the alleged benefits that competition might bring. He explained that competitive elections waste votes because an election won by a single vote means that just less than half the voters have wasted their vote, and losing voters are less likely to trust in government. He said a district that is won by a single vote maximizes the number of losing voters, which, in his thinking, is not a democratic “good.” He said competition also works against partisan fairness because, in times where there are “macro partisan tides,” the existence of many competitive districts makes it likely that one party’s candidates can dominate, leading to “very lopsided state delegations that are far from representative of the underlying partisanship of the state.”

Professor Brunell did support allowing primary elections to be competitive because, regardless of who wins, at least most of the voters will have someone from their preferred party representing them. He said, “the key feature of elections is for a representative to have at least a small sense of worry about getting re-elected and that sense can be generated at the primary stage just as well as in the general election.”

Steinglass Presentation

In September 2015, Senior Policy Advisor Steven H. Steinglass presented to the committee on the U.S. Supreme Court decision in the *Arizona State Legislature* case, indicating that the Court’s decision signaled that a Congressional redistricting panel need not be part of a state legislature or comprised of legislative members, but could operate apart from the state legislature without violating the U.S. Constitution’s Elections Clause.

Wimbish Presentation

In October 2015, Camille Wimbish, a representative of the Ohio Voter Rights Coalition, testified in support of Congressional redistricting reform, saying her organization works to make voting easy and convenient in Ohio, and that it regularly hears from community members who do not vote and do not believe that elected officials represent their interests. She said that the perception is that one’s vote does not count and that the process is rigged against voters. Ms. Wimbish urged the committee to support efforts to create fair districts and fair elections for both state and federal legislatures.

Turcer Presentation

In November 2015, Catherine Turcer, policy analyst for Common Cause Ohio, addressed the committee on the subject of Congressional redistricting. She advocated for a constitutional amendment that would allow the redistricting commission to draw Congressional districts. Ms. Turcer said, with regard to the November 3, 2015 passage of Issue 1, “voters changed the quality of democracy,” expressing her hope that the election results would spur Congressional redistricting reform.

Discussion and Consideration

The committee began its work in 2013 with discussions regarding both legislative and Congressional redistricting. In 2013 and 2014, the committee heard presentations and considered several proposed joint resolutions introduced in the 130th General Assembly, including S.J.R. 1, sponsored by Senators Tom Sawyer and Frank LaRose (with co-sponsors Senators Nina Turner, Keith Faber, and Joe Uecker), and H.J.R. 11, sponsored by Representative Matt Huffman. The committee also considered a draft resolution by Representative Vernon Sykes (LSC 130 1364-1) that was not introduced. These legislative efforts at the end of the 130th General Assembly to place a Congressional redistricting measure on the November 2015 ballot concluded without results. At the beginning of 2015, there was support in the committee for waiting for the results of the *Arizona State Legislature* case before again addressing Congressional redistricting, and the committee turned its attention to other matters.

In April 2015, the committee heard from Representatives Clyde and Curtin regarding H.J.R. 2, as well as hearing in June, October, and November 2015 from interested parties on the subject (see presentations by Ann Henkener, Camille Wimbish, Catherine Turcer, and Professor Richard Gunther, described *supra*). When the U.S. Supreme Court issued its decision in the *Arizona State Legislature* case at the end of June 2015, upholding the constitutionality of Congressional redistricting commissions such as are contemplated by H.J.R. 2 and S.J.R. 2, members of the committee expressed an interest in returning to the topic of Congressional redistricting, and discussions continued. In November 2015, after the passage of Issue 1, the committee again took up the topic of redistricting, this time hearing from Representatives Clyde and Curtin regarding LR 131 0157, a draft of a joint resolution incorporating key aspects of H.J.R. 2 and S.J.R. 2.

In addressing the question of whether the Ohio Constitution should include a provision requiring Congressional redistricting to be undertaken by a redistricting commission, the committee reviewed and compared multiple proposed joint resolutions, including H.J.R. 12 from the 130th General Assembly, the legislative redistricting commission amendment now enacted as Article XI; H.J.R. 2 and S.J.R. 2 as introduced in the 130th General Assembly, both resolutions that add Congressional redistricting to the duties of the legislative redistricting commission; and LR 131 0157, a draft of a joint resolution incorporating many features of the other proposals.

A majority of the committee preferred LR 131 0157 as the recommended vehicle for proposing a constitutional amendment that would assign to the redistricting commission the task of drawing both legislative and Congressional districts. The rationale for this conclusion is that, as the most recent of the proposals, LR 131 0157 most completely describes the requisite factors for creating

and authorizing a redistricting commission, as well as for drawing district lines. LR 131 0157 also provides a comprehensive scheme for resolving impasses, adjudicating disputes, and imposing remedies.

Conclusion

The Legislative Branch and Executive Branch Committee concludes that Article XI should be amended to include Congressional redistricting as an additional duty of the redistricting commission assigned to draw legislative district lines commencing after the 2020 federal Census. The committee recommends the proposed joint resolution titled “LR 131 0157” (as attached), or a substantially-similar proposed joint resolution, be adopted as the method by which the committee’s recommendation is fulfilled.

Date Issued

After formal consideration by the Legislative Branch and Executive Branch Committee on January 14, 2016, and _____, the committee voted to issue this report and recommendation on _____.

Endnotes

¹ Legislative Service Commission, “Adopting General Assembly and Congressional Districts,” Members Only Brief, v. 129, Issue 1 – Revised (July 15, 2011), <http://www.lsc.ohio.gov/membersonly/129congressionaldistricts.pdf> (last visited Nov. 10, 2015).

² 2 U.S.C. Section 2a.

³ National Conference of State Legislatures, *Redistricting Law 2010* (2009): pp. 7-10, <http://www.ncsl.org/research/elections-and-campaigns/redistricting-law-2010742.aspx> (last visited Nov. 10, 2015).

⁴ *League of United Latin American Citizens v. Perry*, 548 U.S. 399 (2006).

⁵ Public Law No. 89-110 (codified as amended at 42 U.S.C. Sections 1971, 1973 to 1973bb-1).

⁶ National Conference of State Legislatures, *Redistricting Law 2010* (2009): pp. 54-55.

⁷ State Issue 2 on the 2012 General Election ballot read as follows:

State Issue 2
To create a state-funded commission to draw legislative and congressional districts
Proposed Constitutional Amendment

Proposed by Initiative Petition To add and repeal language in Sections 1, 3, 4, 6, 7, 9 and 13 of Article XI, repeal Sections 8 and 14 of Article XI, and add a new Section 16 to Article XI of the Constitution of the State of Ohio

A majority yes vote is necessary for the amendment to pass.

The proposed amendment would:

1. Remove the authority of elected representatives and grant new authority to appointed officials to establish congressional and state legislative district lines.

2. Create a state funded commission of appointed officials from a limited pool of applicants to replace the aforementioned. The Commission will consist of 12 members (4 affiliated with the largest political party, 4 affiliated with the second largest political party, and 4 not affiliated with either of the two largest political parties) who will be chosen as follows:

A. On or before January 1 of the year that the decennial census is conducted, the Chief Justice of the Supreme Court of Ohio shall select by lot a panel consisting of eight judges of the courts of appeals of Ohio, no more than four of whom may be members of the same political party. This panel of judges shall be responsible for selecting potential members of the Commission. On or before April 1 of the year that the decennial census is conducted, this panel of judges shall appoint an independent auditor who shall assist the judges in determining the eligibility of potential members of the Commission.

B. Eligible persons may submit applications for membership on the Commission to the Secretary of State by May 1 of the year that the decennial census is conducted. The Secretary of State shall make available an appropriate application form designed to help determine the eligibility and qualifications of applicants and shall publicize the application process. The Secretary of State shall provide the panel of judges with the applications and any other records necessary to determine eligibility of the applicants.

C. On or before August 1 of the year that the decennial census is conducted, the panel of eight judges described in subparagraph A shall select from the applicants forty-two individuals to serve as potential members of the Commission. The judges, after adopting a selection procedure, shall select applicants who have the relevant skills and abilities, including a capacity for impartiality, and who reflect the diversity of Ohio. These shall include the fourteen most qualified applicants affiliated with each of the two largest political parties, and the fourteen most qualified applicants who have been unaffiliated with either of these political parties during the prior five years. The selection of potential members shall require the affirmative vote of at least five of the eight judges. The two largest political parties shall be determined based on the votes received by the candidates for Governor in the most recent gubernatorial election.

D. On or before August 15 of the year that the decennial census is conducted, the speaker of the Ohio House of Representatives and the highest ranking member of the House not of the same political party as the speaker may each respectively eliminate up to three of the fourteen potential members affiliated with the largest political party, up to three of the fourteen potential members affiliated with the second largest political party, and up to three of the fourteen potential members not affiliated with either of these parties. This shall result in a final pool of not less than twenty-four potential members of the Commission.

E. From the final pool of potential members, the panel of eight judges, or their designee, shall choose by lot, and in public, three individuals affiliated with each of the two largest political parties and three individuals not affiliated with either of these parties to serve as members of the Commission. On or before October 1 of the year that the decennial census is conducted, these nine members shall meet to select from the final pool of potential members three additional members, which shall include one member affiliated with the largest political party, one member affiliated with the second largest political party, and one member not affiliated with either of these parties. In selecting the final three members, the members of the Commission shall seek a total commission membership that reflects the diversity of Ohio and that has the relevant skills and abilities, including a capacity for impartiality, which will allow the Commission to fulfill its responsibilities. The nine members selected by lot and the three additional members selected by the original nine members shall comprise the full Commission.

F. No member of the Commission shall be subject to removal by the general assembly or any member of the executive branch.

3. Require new legislative and congressional districts be immediately established by the Commission to replace the most recent districts adopted by elected representatives, which districts shall not be challenged except by court order until the next federal decennial census and apportionment. Affirmative votes of 7 of 12 Commission members are needed to select a plan. In the event the Commission is not able to determine a plan by October 1, the Ohio Supreme Court would need to adopt a plan from all the plans submitted to the Commission.

4. Repeals current constitutional requirements for drawing legislative districts that avoid splits to counties, townships, municipalities and city wards where possible, and when not possible, limiting such divisions to only one division per governmental unit, and also repeals requirements to form as many whole legislative districts solely within a county as possible. The foregoing would be replaced and require the Commission to adopt a plan that complies with all applicable federal and state constitutional provisions, federal statutory provisions, and the contiguity requirement and that most closely meets the factors of community preservation, competitiveness, representational fairness, and compactness. The Commission would also be required not to draw or adopt a plan with an intent to favor or disfavor a political party, incumbent, or potential candidate.

5. Mandate the General Assembly to appropriate all funds necessary to adequately fund the activities of the Commission including, but not be limited to, compensating:

- A. Staff
- B. Consultants
- C. Legal counsel
- D. Commission members

If approved, the amendment will be effective thirty days after the election.

⁸ “Argument and Explanation in Favor of State Issue 2,” available at: <http://www.sos.state.oh.us/sos/upload/ballotboard/2012/2-for.pdf> (last visited Nov. 6, 2015).

⁹ “Vote NO on Issue 2,” available at: <http://www.sos.state.oh.us/sos/upload/ballotboard/2012/2-against.pdf> (last visited Nov. 6, 2015).

¹⁰ *Id.*

¹¹ Source: Secretary of State’s website; State Issue 2: November 6, 2012 (Official Results); <http://www.sos.state.oh.us/SOS/elections/Research/electResultsMain/2012Results.aspx> (last visited Nov. 6, 2015).

¹² http://archives.legislature.state.oh.us/res.cfm?ID=130_S.J.R. 1 (last visited Nov. 6, 2015); http://archives.legislature.state.oh.us/res.cfm?ID=130_H.J.R. 11 (last visited Nov. 6, 2015).

¹³ See <http://www.gongwer-oh.com/public/130/redistproposal.pdf> (last visited Nov. 6, 2015), as referenced by Representative Vernon Sykes at the August 8, 2013 meeting of the Legislative Branch and Executive Branch Committee of the Ohio Constitutional Modernization Commission, http://ocmc.ohio.gov/ocmc/committees/leg_exec_branch (last visited Nov. 6, 2015).

¹⁴ Source: Secretary of State’s website; State Issue 1: November 3, 2015 (Official Results); <http://www.sos.state.oh.us/SOS/elections/Research/electResultsMain/2015Results.aspx> (last visited Jan. 7, 2016).

¹⁵ Source: Secretary of State’s website; State Issue 1: November 3, 2015 (Ballot Language); <http://www.sos.state.oh.us/sos/upload/ballotboard/2015/1-Language.pdf> (last visited Jan. 7, 2016).

¹⁶ Ohio Constitutional Revision Commission, Recommendations for Amendments to the Ohio Constitution, Vol. 11, Final Report, Index to Proceedings and Research, Article XI, 74, 78 (June 30, 1977),

<http://www.lsc.ohio.gov/ocrc/final%20report%20index%20to%20proceedings%20and%20research.pdf> (last visited Nov. 6, 2015).

¹⁷ *Id.* at 81.

¹⁸ *Id.* at 80.

¹⁹ *Id.* at 81.

²⁰ Legislative Service Commission, Memorandum, “Comparison of Congressional Redistricting Reform Proposals,” R-131-2022 (Oct. 7, 2015).

²¹ A video of the meeting, including the panel discussion, is available online at:
<http://www.ohiochannel.org/MediaLibrary/Media.aspx?fileId=139489> (last visited Nov. 6, 2015).

Reviewed As To Form By
Legislative Service Commission

LR 131 0157

131st General Assembly
Regular Session
2015-2016

J. R. No.

JOINT RESOLUTION

Proposing to amend the versions of Sections 1, 2, 3,
4, 6, 8, and 9 of Article XI that are scheduled to
take effect January 1, 2021; to amend, for the
purpose of adopting new section numbers as
indicated in parentheses, the versions of Sections
3 (4), 4 (5), 5 (6), 6 (7), 7 (8), 8 (9), 9 (10),
and 10 (11) of Article XI that are scheduled to
take effect January 1, 2021; and to enact new
Section 3 of Article XI of the Constitution of the
State of Ohio to revise the redistricting process
for congressional districts.

Be it resolved by the General Assembly of the State of Ohio,
three-fifths of the members elected to each house concurring
herein, that there shall be submitted to the electors of the
state, in the manner prescribed by law at the special election to
be held on March 15, 2016, a proposal to amend the versions of
Sections 1, 2, 3, 4, 6, 8, and 9 of Article XI that are scheduled
to take effect January 1, 2021; to amend, for the purpose of
adopting new section numbers as indicated in parentheses, the
versions of Sections 3 (4), 4 (5), 5 (6), 6 (7), 7 (8), 8 (9), 9
(10), and 10 (11) of Article XI that are scheduled to take effect
January 1, 2021; and to enact new Section 3 of Article XI of the
Constitution of the State of Ohio to read as follows:

ARTICLE XI	24
Section 1. (A) The Ohio redistricting commission shall be responsible for the redistricting of this state <u>for congress and</u> for the general assembly. The commission shall consist of the following seven members:	25 26 27 28
(1) The governor;	29
(2) The auditor of state;	30
(3) The secretary of state;	31
(4) One person appointed by the speaker of the house of representatives;	32 33
(5) One person appointed by the legislative leader of the largest political party in the house of representatives of which the speaker of the house of representatives is not a member;	34 35 36
(6) One person appointed by the president of the senate; and	37
(7) One person appointed by the legislative leader of the largest political party in the senate of which the president of the senate is not a member.	38 39 40
<u>No appointed member of the commission shall be a current member of congress.</u>	41 42
The legislative leaders in the senate and the house of representatives of each of the two largest political parties represented in the general assembly, acting jointly by political party, shall appoint a member of the commission to serve as a co-chairperson of the commission.	43 44 45 46 47
(B) (1) Unless otherwise specified in this article, a simple majority of the commission members shall be required for any action by the commission.	48 49 50
(2) (a) Except as otherwise provided in division (B) (2) (b) of this section, a majority vote of the members of the commission, including at least one member of the commission who is a member of	51 52 53

each of the two largest political parties represented in the general assembly, shall be required to do any of the following:	54 55
(i) Adopt rules of the commission;	56
(ii) Hire staff for the commission;	57
(iii) Expend funds.	58
(b) If the commission is unable to agree, by the vote required under division (B) (2) (a) of this section, on the manner in which funds should be expended, each co-chairperson of the commission shall have the authority to expend one-half of the funds that have been appropriated to the commission.	59 60 61 62 63
(3) The affirmative vote of four members of the commission, including at least two members of the commission who represent each of the two largest political parties represented in the general assembly shall be required to adopt any <u>congressional or</u> general assembly district plan. For the purpose of this division, a member of the commission shall be considered to represent a political party if the member was appointed to the commission by a member of that political party or if, in the case of the governor, the auditor of state, or the secretary of state, the member is a member of that political party.	64 65 66 67 68 69 70 71 72 73
(C) At the first meeting of the commission, which the governor shall convene only in a year ending in the numeral one, except as provided in Sections & <u>9</u> and <u>9</u> <u>10</u> of this article, the commission shall set a schedule for the adoption of procedural rules for the operation of the commission.	74 75 76 77 78
The commission shall release to the public a proposed general assembly district plan for the boundaries for each of the ninety-nine house of representatives districts and the thirty-three senate districts. <u>The commission also shall release to the public a proposed congressional district plan for the boundaries for the prescribed number of congressional districts as</u>	79 80 81 82 83 84

<u>apportioned to the state pursuant to Section 2 of Article I of the Constitution of the United States.</u>	85
The commission shall draft the proposed <u>plan</u> <u>plans</u> in the manner prescribed in this article.	86
<u>Before</u>	87
Before adopting, but after introducing, a proposed plan, the commission shall conduct a minimum of three public hearings across the state to present the proposed plan and shall seek public input regarding the proposed plan. All meetings of the commission shall be open to the public. Meetings shall be broadcast by electronic means of transmission using a medium readily accessible by the general public.	88
The commission shall adopt <u>a final congressional district plan</u> and a final general assembly district plan not later than the first day of September of a year ending in the numeral one. After the commission adopts a final plan, the commission shall promptly file the plan with the secretary of state. Upon filing with the secretary of state, the plan shall become effective.	89
Four weeks after the adoption of <u>a congressional district plan or</u> a general assembly district plan, <u>whichever is later,</u> the commission shall be automatically dissolved.	90
(D) The general assembly shall be responsible for making the appropriations it determines necessary in order for the commission to perform its duties under this article.	91
<u>Section 2. Each congressional district shall be entitled to a single representative in the United States house of representatives in each congress.</u> Each house of representatives district shall be entitled to a single representative in each general assembly. Each senate district shall be entitled to a single senator in each general assembly.	92
<u>Section 3. (A) The whole population of the state, as determined by the federal decennial census or, if such is</u>	93
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<u>unavailable, such other basis as the general assembly may direct,</u>	116
<u>shall be divided by the number of congressional districts</u>	117
<u>apportioned to the state pursuant to Section 2 of Article I of the</u>	118
<u>Constitution of the United States, and the quotient shall be the</u>	119
<u>congressional ratio of representation for ten years next</u>	120
<u>succeeding such redistricting.</u>	121
<u>(B) A congressional district plan shall comply with all of</u>	122
<u>the requirements of division (B) of this section.</u>	123
<u>(1) The commission shall minimize the extent to which each</u>	124
<u>congressional district's population differs from the congressional</u>	125
<u>ratio of representation, as is practicable, while taking into</u>	126
<u>account other legitimate state objectives in the creation of</u>	127
<u>congressional districts. The commission may include in a</u>	128
<u>congressional district plan an explanation of the reason that any</u>	129
<u>district contains a population that is not equal to the</u>	130
<u>congressional ratio of representation.</u>	131
<u>(2) Any congressional district plan adopted by the commission</u>	132
<u>shall comply with all applicable provisions of the constitutions</u>	133
<u>of Ohio and the United States and of federal law.</u>	134
<u>(3) Every congressional district shall be composed of</u>	135
<u>contiguous territory, and the boundary of each district shall be a</u>	136
<u>single nonintersecting continuous line.</u>	137
<u>(C) Congressional districts shall be created and numbered in</u>	138
<u>the following order of priority, to the extent that such order is</u>	139
<u>consistent with the foregoing standards:</u>	140
<u>(1) Proceeding in succession from the largest to the</u>	141
<u>smallest, each county containing population greater than one</u>	142
<u>congressional ratio of representation shall be divided into as</u>	143
<u>many congressional districts as it has whole ratios of</u>	144
<u>representation. Any fraction of the population in excess of a</u>	145
<u>whole ratio shall be a part of only one adjoining congressional</u>	146

<u>district.</u>	147
(2) <u>Proceeding in succession from the largest to the smallest, each county containing a population of more than fifty per cent, but less than one hundred per cent, of one congressional ratio of representation shall be included in only one congressional district.</u>	148 149 150 151 152
(3) <u>The remaining territory of the state shall be divided into congressional districts by combining the areas of whole municipal corporations and townships.</u>	153 154 155
(D) (1) (a) <u>Except as otherwise provided in divisions (D) (1) (b) and (c) of this section, a county, municipal corporation, or township is considered to be split if any contiguous portion of its territory is not contained entirely within one district.</u>	156 157 158 159
(b) <u>If a municipal corporation or township has territory in more than one county, the contiguous portion of that municipal corporation or township that lies in each county shall be considered to be a separate municipal corporation or township for the purposes of this section.</u>	160 161 162 163 164
(c) <u>If a municipal corporation or township that is located in a county that contains a municipal corporation or township that has a population of more than one ratio of representation is split for the purpose of complying with division (E) (1) (a) of this section, each portion of that municipal corporation or township shall be considered to be a separate municipal corporation or township for the purposes of this section.</u>	165 166 167 168 169 170 171
(2) <u>Congressional districts shall be drawn so as to split the smallest possible number of municipal corporations and townships whose contiguous portions contain a population of more than fifty per cent, but less than one hundred per cent, of one ratio of representation.</u>	172 173 174 175 176
(3) <u>Where the requirements of divisions (B), (C), and (D) of</u>	177

this section cannot feasibly be attained by forming a congressional district from whole municipal corporations and townships, not more than one municipal corporation or township may be split per congressional district. 178
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(E) (1) If it is not possible for the commission to comply with all of the requirements of divisions (B), (C), and (D) of this section in drawing a particular congressional district, the commission shall take the first action listed below that makes it possible for the commission to draw that district: 182
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(a) Notwithstanding division (D) (3) of this section, the commission shall create the district by splitting two municipal corporations or townships. If the commission must choose between more than two municipal corporations or townships, the commission shall split the municipal corporations or townships in order of population, proceeding from the smallest to the largest. 187
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(b) Notwithstanding division (C) (2) of this section, the commission shall create the district by splitting, once, a single county that contains a population of more than fifty per cent, but less than one hundred per cent, of one congressional ratio of representation. 193
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(c) Notwithstanding division (C) (1) of this section, the commission shall create the district by including in two districts portions of the territory that remains after a county that contains a population equal to more than one congressional ratio of representation has been divided into as many congressional districts as it has whole ratios of representation. 198
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(2) If the commission draws a congressional district in accordance with division (E) (1) of this section, the commission shall include in the congressional district plan a statement explaining the action or actions the commission took and the reason the commission did so. 204
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<u>(3) If the commission complies with divisions (E)(1) and (2) of this section in drawing a district, the commission shall not be considered to have violated division (C)(1), (C)(2), or (D)(3) of this section, as applicable, in drawing that district, for the purpose of an analysis under division (D) of Section 10 of this article.</u>	209 210 211 212 213 214
Section 3 4. (A) The whole population of the state, as determined by the federal decennial census or, if such is unavailable, such other basis as the general assembly may direct, shall be divided by the number "ninety-nine" and by the number "thirty-three" and the quotients shall be the ratio of representation in the house of representatives and in the senate, respectively, for ten years next succeeding such redistricting.	215 216 217 218 219 220 221
(B) A general assembly district plan shall comply with all of the requirements of division (B) of this section.	222 223
(1) The population of each house of representatives district shall be substantially equal to the ratio of representation in the house of representatives, and the population of each senate district shall be substantially equal to the ratio of representation in the senate, as provided in division (A) of this section. In no event shall any district contain a population of less than ninety-five per cent nor more than one hundred five per cent of the applicable ratio of representation.	224 225 226 227 228 229 230 231
(2) Any general assembly district plan adopted by the commission shall comply with all applicable provisions of the constitutions of Ohio and the United States and of federal law.	232 233 234
(3) Every general assembly district shall be composed of contiguous territory, and the boundary of each district shall be a single nonintersecting continuous line.	235 236 237
(C) House of representatives districts shall be created and numbered in the following order of priority, to the extent that	238 239

such order is consistent with the foregoing standards:	240
(1) Proceeding in succession from the largest to the smallest, each county containing population greater than one hundred five per cent of the ratio of representation in the house of representatives shall be divided into as many house of representatives districts as it has whole ratios of representation. Any fraction of the population in excess of a whole ratio shall be a part of only one adjoining house of representatives district.	241 242 243 244 245 246 247 248
(2) Each county containing population of not less than ninety-five per cent of the ratio of representation in the house of representatives nor more than one hundred five per cent of the ratio shall be designated a representative district.	249 250 251 252
(3) The remaining territory of the state shall be divided into representative districts by combining the areas of counties, municipal corporations, and townships. Where feasible, no county shall be split more than once.	253 254 255 256
(D) (1) (a) Except as otherwise provided in divisions (D) (1) (b) and (c) of this section, a county, municipal corporation, or township is considered to be split if any contiguous portion of its territory is not contained entirely within one district.	257 258 259 260
(b) If a municipal corporation or township has territory in more than one county, the contiguous portion of that municipal corporation or township that lies in each county shall be considered to be a separate municipal corporation or township for the purposes of this section.	261 262 263 264 265
(c) If a municipal corporation or township that is located in a county that contains a municipal corporation or township that has a population of more than one ratio of representation is split for the purpose of complying with division (E) (1) (a) or (b) of this section, each portion of that municipal corporation or	266 267 268 269 270

township shall be considered to be a separate municipal corporation or township for the purposes of this section.	271 272
(2) Representative districts shall be drawn so as to split the smallest possible number of municipal corporations and townships whose contiguous portions contain a population of more than fifty per cent, but less than one hundred per cent, of one ratio of representation.	273 274 275 276 277
(3) Where the requirements of divisions (B), (C), and (D) of this section cannot feasibly be attained by forming a representative district from whole municipal corporations and townships, not more than one municipal corporation or township may be split per representative district.	278 279 280 281 282
(E) (1) If it is not possible for the commission to comply with all of the requirements of divisions (B), (C), and (D) of this section in drawing a particular representative district, the commission shall take the first action listed below that makes it possible for the commission to draw that district:	283 284 285 286 287
(a) Notwithstanding division (D) (3) of this section, the commission shall create the district by splitting two municipal corporations or townships whose contiguous portions do not contain a population of more than fifty per cent, but less than one hundred per cent, of one ratio of representation.	288 289 290 291 292
(b) Notwithstanding division (D) (2) of this section, the commission shall create the district by splitting a municipal corporation or township whose contiguous portions contain a population of more than fifty per cent, but less than one hundred per cent, of one ratio of representation.	293 294 295 296 297
(c) Notwithstanding division (C) (2) of this section, the commission shall create the district by splitting, once, a single county that contains a population of not less than ninety-five per cent of the ratio of representation, but not more than one hundred	298 299 300 301

five per cent of the ratio of representation.	302
(d) Notwithstanding division (C)(1) of this section, the commission shall create the district by including in two districts portions of the territory that remains after a county that contains a population of more than one hundred five per cent of the ratio of representation has been divided into as many house of representatives districts as it has whole ratios of representation.	303 304 305 306 307 308 309
(2) If the commission takes an action under division (E)(1) of this section, the commission shall include in the general assembly district plan a statement explaining which action the commission took under that division and the reason the commission took that action.	310 311 312 313 314
(3) If the commission complies with divisions (E)(1) and (2) of this section in drawing a district, the commission shall not be considered to have violated division (C)(1), (C)(2), (D)(2), or (D)(3) of this section, as applicable, in drawing that district, for the purpose of an analysis under division (D) of Section <u>9</u> <u>10</u> of this article.	315 316 317 318 319 320
Section 4 5. (A) Senate districts shall be composed of three contiguous house of representatives districts.	321 322
(B)(1) A county having at least one whole senate ratio of representation shall have as many senate districts wholly within the boundaries of the county as it has whole senate ratios of representation. Any fraction of the population in excess of a whole ratio shall be a part of only one adjoining senate district.	323 324 325 326 327
(2) Counties having less than one senate ratio of representation, but at least one house of representatives ratio of representation, shall be part of only one senate district.	328 329 330
(3) If it is not possible for the commission to draw representative districts that comply with all of the requirements	331 332

of this article and that make it possible for the commission to 333
 comply with all of the requirements of divisions (B) (1) and (2) of 334
 this section, the commission shall draw senate districts so as to 335
 commit the fewest possible violations of those divisions. If the 336
 commission complies with this division in drawing senate 337
 districts, the commission shall not be considered to have violated 338
 division (B) (1) or (2) of this section, as applicable, in drawing 339
 those districts, for the purpose of an analysis under division (D) 340
 of Section 9 10 of this article. 341

(C) The number of whole ratios of representation for a county 342
 shall be determined by dividing the population of the county by 343
 the ratio of representation in the senate determined under 344
 division (A) of Section 3 4 of this article. 345

(D) Senate districts shall be numbered from one through 346
 thirty-three and as provided in Section 5 6 of this article. 347

Section 5 6. At any time the boundaries of senate districts 348
 are changed in any general assembly district plan made pursuant to 349
 any provision of this article, a senator whose term will not 350
 expire within two years of the time the plan becomes effective 351
 shall represent, for the remainder of the term for which the 352
 senator was elected, the senate district that contains the largest 353
 portion of the population of the district from which the senator 354
 was elected, and the district shall be given the number of the 355
 district from which the senator was elected. If more than one 356
 senator whose term will not so expire would represent the same 357
 district by following the provisions of this section, the plan 358
 shall designate which senator shall represent the district and 359
 shall designate which district the other senator or senators shall 360
 represent for the balance of their term or terms. 361

Section 6 7. The Ohio redistricting commission shall attempt 362
 to draw a congressional district plan and a general assembly 363
 district plan that meets meet all of the following standards: 364

(A) No <u>congressional district plan or general assembly</u>	365
district plan shall be drawn primarily to favor or disfavor a	366
political party.	367
(B) The statewide proportion of districts whose voters, based	368
on statewide state and federal partisan general election results	369
during the last ten years, favor each political party shall	370
correspond closely to the statewide preferences of the voters of	371
Ohio.	372
(C) <u>General Congressional districts and general assembly</u>	373
districts shall be compact.	374
Nothing in this section permits the commission to violate the	375
district standards described in Section 2, 3, 4, 5, <u>6,</u> or <u>7 8</u> of	376
this article.	377
Section 7 8. Notwithstanding the fact that boundaries of	378
counties, municipal corporations, and townships within a district	379
may be changed, district boundaries shall be created by using the	380
boundaries of counties, municipal corporations, and townships as	381
they exist at the time of the federal decennial census on which	382
the redistricting is based, or, if unavailable, on such other	383
basis as the general assembly has directed.	384
Section 8 9. (A) (1) If the Ohio redistricting commission	385
fails to adopt a <u>final congressional district plan or</u> a final	386
general assembly district plan not later than the first day of	387
September of a year ending in the numeral one, in accordance with	388
Section 1 of this article, the commission shall introduce a	389
proposed <u>general assembly</u> district plan <u>of the applicable type</u> by	390
a simple majority vote of the commission.	391
(2) After introducing a proposed <u>general assembly</u> district	392
plan under division (A) (1) of this section, the commission shall	393
hold a public hearing concerning the proposed plan, at which the	394
public may offer testimony and at which the commission may adopt	395

amendments to the proposed plan. Members of the commission should	396
attend the hearing; however, only a quorum of the members of the	397
commission is required to conduct the hearing.	398
(3) After the hearing described in division (A) (2) of this	399
section is held, and not later than the fifteenth day of September	400
of a year ending in the numeral one, the commission shall adopt a	401
final general assembly district plan <u>of the applicable type</u> ,	402
either by the vote required to adopt a plan under division (B) (3)	403
of Section 1 of this article or by a simple majority vote of the	404
commission.	405
(B) If the commission adopts a final general assembly	406
district plan in accordance with division (A) (3) of this section	407
by the vote required to adopt a plan under division (B) (3) of	408
Section 1 of this article, the plan shall take effect upon filing	409
with the secretary of state and shall remain effective until the	410
next year ending in the numeral one, except as provided in Section	411
<u>§ 10</u> of this article.	412
(C) (1) (a) Except <u>as otherwise provided in division (C) (1) (b)</u>	413
<u>of this section, if the commission adopts a final congressional</u>	414
<u>district plan in accordance with division (A) (3) of this section</u>	415
<u>by a simple majority vote of the commission, and not by the vote</u>	416
<u>required to adopt a plan under division (B) (3) of Section 1 of</u>	417
<u>this article, the plan shall take effect upon filing with the</u>	418
<u>secretary of state and shall remain effective until two general</u>	419
<u>elections for the United States house of representatives have</u>	420
<u>occurred under the plan.</u>	421
Except as otherwise provided in division (C) (1) (b) of this	422
section, if the commission adopts a final general assembly	423
district plan in accordance with division (A) (3) of this section	424
by a simple majority vote of the commission, and not by the vote	425
required to adopt a plan under division (B) (3) of Section 1 of	426
this article, the plan shall take effect upon filing with the	427

secretary of state and shall remain effective until two general elections for the house of representatives have occurred under the plan.	428 429 430
(b) If the commission adopts a final general assembly district plan in accordance with division (A)(3) of this section by a simple majority vote of the commission, and not by the vote required to adopt a plan under division (B) of Section 1 of this article, and that plan is adopted to replace a plan that ceased to be effective under division (C)(1)(a) of this section before a year ending in the numeral one, the plan adopted under this division shall take effect upon filing with the secretary of state and shall remain effective until a year ending in the numeral one, except as provided in Section 9 <u>10</u> of this article.	431 432 433 434 435 436 437 438 439 440
(2) A final general assembly district plan adopted under division (C)(1)(a) or (b) of this section shall include a statement explaining what the commission determined to be the statewide preferences of the voters of Ohio and the manner in which the statewide proportion of districts in the plan whose voters, based on statewide state and federal partisan general election results during the last ten years, favor each political party corresponds closely to those preferences, as described in division (B) of Section 6 <u>7</u> of this article. At the time the plan is adopted, a member of the commission who does not vote in favor of the plan may submit a declaration of the member's opinion concerning the statement included with the plan.	441 442 443 444 445 446 447 448 449 450 451 452
(D) After a general assembly district plan adopted under division (C)(1)(a) of this section ceases to be effective, and not earlier than the first day of July of the year following the year in which the plan ceased to be effective, the commission shall be reconstituted as provided in Section 1 of this article, convene, and adopt a new general assembly district plan <u>of the applicable type</u> in accordance with this article, to be used until the next	453 454 455 456 457 458 459

time for redistricting under this article. The commission shall draw the new general assembly district plan using the same population and county, municipal corporation, and township boundary data as were used to draw the previous plan adopted under division (C) of this section.	460 461 462 463 464
Section 9 10. (A) The supreme court of Ohio shall have exclusive, original jurisdiction in all cases arising under this article.	465 466 467
(B) In the event that any section of this constitution relating to redistricting, any <u>congressional or</u> general assembly district plan made by the Ohio redistricting commission, or any district is determined to be invalid by an unappealed final order of a court of competent jurisdiction then, notwithstanding any other provisions of this constitution, the commission shall be reconstituted as provided in Section 1 of this article, convene, and ascertain and determine a general assembly district plan <u>of</u> <u>the applicable type</u> in conformity with such provisions of this constitution as are then valid, including, <u>if applicable,</u> establishing terms of office and election of members of the general assembly from districts designated in the plan, to be used until the next time for redistricting under this article in conformity with such provisions of this constitution as are then valid.	468 469 470 471 472 473 474 475 476 477 478 479 480 481 482
(C) Notwithstanding any provision of this constitution or any law regarding the residence of senators and representatives, a general assembly district plan made pursuant to this section shall allow thirty days for persons to change residence in order to be eligible for election.	483 484 485 486 487
(D) (1) No court shall order, in any circumstance, the implementation or enforcement of any <u>congressional or</u> general assembly district plan that has not been approved by the commission in the manner prescribed by this article.	488 489 490 491

(2) No court shall order the commission to adopt a particular <u>congressional or general assembly district plan or to draw a</u> particular district.	492 493 494
(3) If the supreme court of Ohio determines that a <u>congressional or general assembly district plan adopted by the</u> commission does not comply with the requirements of Section 2, 3, 4, 5, 6, or 7 <u>8</u> of this article, the available remedies shall be as follows:	495 496 497 498 499
(a) If the court finds that the plan contains one or more isolated violations of those requirements, the court shall order the commission to amend the plan to correct the violation.	500 501 502
(b) <u>If In the case of a congressional district plan, if the</u> <u>court finds that it is necessary to amend not fewer than two</u> <u>congressional districts to correct violations of those</u> <u>requirements, the court shall declare the plan invalid and shall</u> <u>order the commission to adopt a new congressional district plan in</u> <u>accordance with this article.</u>	503 504 505 506 507 508
<u>In the case of a general assembly district plan, if the court</u> finds that it is necessary to amend not fewer than six house of representatives districts to correct violations of those requirements, to amend not fewer than two senate districts to correct violations of those requirements, or both, the court shall declare the plan invalid and shall order the commission to adopt a new general assembly district plan in accordance with this article.	509 510 511 512 513 514 515 516
(c) If, in considering a plan adopted under division (C) of Section 8 <u>9</u> of this article, the court determines that both of the following are true, the court shall order the commission to adopt a new <u>congressional or general assembly district plan, as</u> <u>applicable,</u> in accordance with this article:	517 518 519 520 521
(i) The plan significantly violates those requirements in a	522

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manner that materially affects the ability of the plan to contain districts whose voters favor political parties in an overall proportion that corresponds closely to the statewide political party preferences of the voters of Ohio, as described in division (B) of Section 6 <u>7</u> of this article.	523 524 525 526 527
(ii) The statewide proportion of districts in the plan whose voters, based on statewide state and federal partisan general election results during the last ten years, favor each political party does not correspond closely to the statewide preferences of the voters of Ohio.	528 529 530 531 532
Section 10 <u>11</u>. The various provisions of this article are intended to be severable, and the invalidity of one or more of such provisions shall not affect the validity of the remaining provisions.	533 534 535 536
EFFECTIVE DATE AND REPEAL	537
If adopted by a majority of the electors voting on this proposal, Sections 1, 2, 3 (4), 4 (5), 5 (6), 6 (7), 7 (8), 8 (9), 9 (10), and 10 (11) of Article XI amended by this proposal and Section 3 of Article XI enacted by this proposal take effect January 1, 2021, and the existing versions of Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10 of Article XI of the Constitution of the State of Ohio that were scheduled to take effect January 1, 2021, are repealed from that effective date.	538 539 540 541 542 543 544 545

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OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

2016 Meeting Dates

February 11

March 10

April 14

May 12

June 9

July 14

August 11

September 8

October 13

November 10

December 8