OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

Legislative Branch and Executive Branch Committee

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

Part I

April 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. Mike Curtin
	Ms. Jo Ann Davidson
	Rep. Robert McColley
	Governor Bob Taft
	Ms. Petee Talley
	Sen. Charleta Tavares
	Ms. Kathleen Trafford

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OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

LEGISLATIVE BRANCH AND EXECUTIVE BRANCH COMMITTEE

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

AGENDA

I. Call to Order

II. Roll Call

III. Approval of Minutes

- Meeting of February 4, 2016
- Meeting of Congressional Redistricting Subcommittee of March 9, 2016

[Draft Minutes – attached]

IV. Reports and Recommendations

- Proposed Amendment to Article XI (Congressional Redistricting)
  - Third Presentation
  - Public Comment
  - Discussion
  - **Possible Action Item: Consideration and Adoption**

[Report and Recommendation – attached]

V. Presentations

- "Grouping of Article II Sections"

  Steven C. Hollon
  Executive Director

  [Memorandum by Steven C. Hollon titled "Grouping of Article II Sections by Topic for Review by the Committee," dated April 7, 2016 – attached]

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, FEBRUARY 4, 2016

Call to Order:

Chair Fred Mills called the meeting of the Legislative Branch and Executive Branch Committee to order at 10:10 a.m.

Members Present:

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

Approval of Minutes:

The minutes of the January 14, 2016 meeting of the committee were approved.

Report and Recommendation:

Chair Mills announced the committee would be discussing the Congressional redistricting report and recommendation that first was presented at the January 14, 2016 meeting. He asked if members of the audience desired to provide public comment on the topic. There being none, Chair Mills explained that he had intended to bring the report and recommendation up for a final vote upon this second presentation, but realized that concern had arisen regarding what the proposed constitutional amendment should be. He said that, after reviewing recently-provided written comments by Senator Charleta Tavares and Commission member Jeff Jacobson, he concluded the committee was not prepared to discuss each amendment and render a decision today. He said this decision was not without consternation on his part, but that he did not think it was right to let the full Commission handle the matter, nor is the committee prepared to do it today.

He said, instead, he intends to appoint a four-person subcommittee to negotiate a resolution to the points in contention. He said he plans to serve on the subcommittee, along with Vice-chair

Paula Brooks and Sen. Tavares. He added he will invite Representative Robert McColley to be the fourth person on the subcommittee. He said the subcommittee will discuss and resolve individual points raised by both Sen. Tavares and Mr. Jacobson, with a goal of having a second presentation with an agreed-on proposal for the committee to vote on. Chair Mills then invited comments from committee members.

Sen. Tavares thanked Chair Mills for sharing his thoughts. She explained the original proposal was the result of the discussions legislators have had for several years in the House and the Senate, specifically noting the efforts of Representatives Kathleen Clyde and Michael Curtin, and Senators Frank LaRose and Tom Sawyer. Sen. Tavares noted the success of Issue 1 on the November 2015 ballot, an effort that has resulted in legislative redistricting reform. She said proponents of Congressional redistricting reform were told last year that it was necessary to wait until resolution of the Arizona case, then pending in the United States Supreme Court.[1] She said proponents of reform then were asked to wait until after the November 2015 election to see the vote count on legislative redistricting, so again they waited. She said she was prepared to offer amendments today to the proposal by Rep. Clyde last month, and that is why she sent the memorandum outlining those amendments. However, she added, at this point she is still in favor of moving the original proposal forward as was shared before. She said if the committee does not act now it will not get anything through this body, emphasizing that two hearings are required in the full Commission before the issue is presented to the General Assembly. She said if the proposal does not move this year, it will not pass, and so she would like to move forward with the original proposal.

Senator Bill Coley said it is good to bring forward ideas for Congressional redistricting reform, but urged caution. He said the difference in size between General Assembly House districts and Congressional House districts results in problems with drawing the maps. He asked whether those proposing reform have tried to draw a map using the criteria contained in the new proposal. He said the map drawn in 2012 has been criticized, but that it does comply with the principle of "one person, one vote" as well as with the federal Voting Rights Act (VRA). He noted when Ohio is compared to other states, seven states are not considered because they have only one Congressional district. He said of the remaining 43 states, 37 have maps drawn by state legislatures. He added that all six states that have redistricting panels draw the maps have lawsuits challenging those maps. He said Ohio did not have such a law suit because the map that was drawn complied with the law. He said two states with redistricting commissions, Idaho and Hawaii, have maps that were struck down. He said he would like to see what a map would look like based on the criteria outlined in the current proposal.

He further cautioned that, as soon as that map is drawn, the question arises about how the map will look in 2022, because Ohioans move out of their districts or out of state so that the population is changing. He said he applauds the subcommittee idea and the selection of persons to serve on the subcommittee. But, he said, "hand me the map when you hand me the proposal."

Committee member Herb Asher said when he came to the meeting he was prepared to vote for the original proposal, and complimented the chairman for getting the committee to this point. He continued that he was surprised to see amendments at the last minute, and had read the

[1] *Arizona State Legislature v. Arizona Indep. Redistricting Comm.*, 576 U.S. ___, 135 S.Ct. 2652 (2015).

comments by Sen. Tavares and Mr. Jacobson. He said he has no objection to Chair Mills' plan to have a subcommittee, but it would be helpful to get a better sense of what really motivated these later amendments, and whether these amendments are being pushed by other groups. He wondered what the amendments are accomplishing that merits slowing down the process.

Rep. Curtin commended the work of Chair Mills in bringing this proposal before the committee and the Commission, expressing the hope that it would ultimately come before the electorate. He said he cannot disagree with the subcommittee idea for the purpose of working through the details. He said it seemed to him the broad principles the committee agrees on have been broadly embraced, and that there is agreement that if there is no new plan in place soon, there will be no reform until 2022. He said that outcome is not serving Ohio well, and that most Ohioans believe the current map to be very bad. He noted there are 54 county splits, and a district known as "the snake on the lake," with other districts that stretch "hither and yon." He said "it is not that difficult for well-intentioned people on both sides to draw a map that meets the requirements of case law or the VRA," adding that nothing requires drawing a snakelike district along the lake to create a super-majority district. He said "we can draw a map that is fair, balanced, that respects voting rights, and that does not look like a Rorschach test." He expressed his hope that the committee would engage in expeditious work, requesting that there be a time frame for receiving a work product back from the subcommittee. He also disagreed that it was necessary to see a map before deciding whether the proposal was a good one, stating "the redistricting commission just supported by a majority of Ohioans is entrusted with coming up with a bipartisan map." He added, "if we are mandating someone come up with a map before we push this forward we are going to fail."

Committee member Kathleen Trafford commented that she is one of only two people on the committee who has never held public office or run for office. She said she is purely a member of the public. She said she shares some concerns raised initially, but when she read through the comments of Sen. Tavares and Mr. Jacobson, it made her consider the role of the Commission versus the rule of the legislature. She said the role of the committee is to reach a consensus that something needs to be done, and to conclude that a particular course of action is a good thing to recommend. She said the committee is getting bogged down in too much detail. She said, moving forward, there will be a subcommittee and some "legislative horse-trading," which she understands, but that she disagrees that a committee of the Commission is the place for working out details. She said the committee's role is to forward a proposal, and that if there is fine tuning it should be done by the legislative body. She said "we are not that body, we recommend; they have the final say, they handle the details." She said she would move that the committee move this forward and let it go to the legislature to worry about details. She then made a formal motion that the committee forward the original proposal, and if the legislature wants to provide or change details, that is their prerogative.

Chair Mills stated the motion would be ruled out of order due to its timing, and asked if other committee members had further comments.

Sen. Tavares said she agrees with Ms. Trafford that this is a public body, even though it was appointed and designed by the legislature. She said the legislature will have an opportunity to address the specific details of the proposal, but that the Commission is supposed to promulgate

ideas for amending the Ohio constitution, and is supposed to represent the voices of the people of Ohio, not just the legislators.

Sen. Coley said the proposal takes the drawing of the map away from the legislature, so the legislature cannot fix problems with the map if the proposal is enacted. He said he is not saying draw the map, he is saying prove you can draw a map and not violate the principles. He said he does not believe it can be done. He said if this is a better proposal than what Ohio currently has, "let us see what the 2012 map would look like if this proposal were in place." He added, "until you show me the map can be done, you are just talking about aspirational goals."

Mr. Asher said he does not have a sufficient appreciation of the proposed amendments, and does not know if they have technical, substantive, or partisan implications. He said his ultimate goal is to get an amendment on the ballot to be approved by the voters that will improve Congressional redistricting. He concluded that he is uncomfortable with letting the legislature work it out because that could be very divisive. He said he thinks, in the long term, the committee might be better off trying to resolve it first, with the ideal result of having a strong bipartisan recommendation.

Committee member JoAnn Davidson said the success with Issue 1 is informative. She said in that instance there was no animosity when the issue went to the ballot, and not even much debate, and that the measure passed by a large margin. She said that is a good recommendation for taking a little more time to work out a compromise that will guarantee what goes on the ballot has a chance of passing. She said she fully supports Congressional redistricting reform, but agrees with the chair that a subcommittee could negotiate how that will be accomplished.

Rep. Curtin agreed with Ms. Davidson, saying the committee should be endeavoring to put a bipartisan plan in front of the full Commission and the General Assembly. He said he would like to do that by a date certain. He said the committee should have an expectation of when that will occur.

Ms. Trafford said she defers to Mr. Asher, saying she agrees this procedure of having a subcommittee work on the issue makes sense, but she is concerned that the committee is confusing its role with that of the General Assembly.

Ms. Brooks moved that, over the next three weeks, the subcommittee, as proposed by the chair, would meet and come back for the committee's next meeting prepared with a product that can be discussed, and placed before the committee for a vote. Governor Bob Taft seconded the motion.

Ms. Davidson moved to amend the motion to have the subcommittee act within six weeks for the reason that three weeks is too short. Ms. Brooks agreed to accept Ms. Davidson's motion as a friendly amendment.

Chair Mills then summarized that the motion on floor is to allow a subcommittee to meet and report back with a work product in a six-week time frame. Mr. Asher clarified that the subcommittee would have "up to" six weeks to perform its task.

Rep. Curtin asked whether the committee is endeavoring to have a work product ready for a vote at the committee's April meeting. Chair Mills answered affirmatively.

Chair Mills asked if there were any objections to the motion. Noting none, he announced that the motion was approved.

With regard to the subcommittee's meeting, Chair Mills said he would provide notice when the meeting is scheduled so that those who would like to attend may do so. He noted that some interested individuals likely would attend, such as Mr. Jacobson and Rep. Clyde, but that the only official voting would come from the subcommittee members.

Chair Mills then recognized Ms. Brooks, who commented that the phrase "justice delayed is justice denied," applies to the issue of Congressional redistricting. She said "we need to get this done now," adding "this last-minute flurry of activity [with regard to the details of the proposal] was very concerning to a lot of people." She expressed the hope that there would not be further delays because "we need to assure the citizens of Ohio that they have a democracy."

Adjournment:

There being no further business to come before the committee, the meeting was adjourned at 10:56 a.m.

Approval:

The minutes of the February 4, 2016 meeting of the Legislative Branch and Executive Branch Committee were approved at the April 14, 2016 meeting of the committee.

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Frederick E. Mills, Chair

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Paula Brooks, Vice-chair

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OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MINUTES OF THE
LEGISLATIVE BRANCH AND EXECUTIVE BRANCH
SUBCOMMITTEE ON CONGRESSIONAL REDISTRICTING

FOR THE MEETING HELD
WEDNESDAY, MARCH 9, 2016

Call to Order:

Chair Fred Mills called the meeting of the Legislative Branch and Executive Branch Subcommittee on Congressional Redistricting to order at 3:18 p.m.

Members Present:

A quorum was present with Chair Mills, and Vice-chair Brooks participating by telephone, and subcommittee members Tavares and McColley attending.

Presentations:

Chair Mills began the meeting by announcing that the subcommittee, consisting of himself, Vice-chair Paula Brooks, Senator Charleta Tavares, and Representative Robert McColley, was created after the last meeting of the full Legislative Branch and Executive Branch Committee on January 14, 2016. He said the purpose of the subcommittee is to discuss possible amendments to a proposal for Congressional redistricting reform that he said the committee was not yet ready to vote on. He said over the last weeks various individuals worked on crafting amendments to the proposal, including Bethany Sanders, legal counsel for the Ohio Senate Democratic Caucus, and Jeff Jacobson, a member of the Commission.

Chair Mills then recognized Sen. Tavares to provide an overview of activities that had occurred since the last full committee meeting. Sen. Tavares indicated that a working group held a meeting earlier in the week, identifying participants as including Chair Mills, Rep. McColley, Ms. Sanders, Mr. Jacobson, Representative Michael Curtin, Ohio State University Professor Richard Gunther, and staff from some of the legislative offices. She said the group reviewed amendments that she had proffered on behalf of her colleagues as well as amendments or concerns that Mr. Jacobson had. She said Ms. Sanders and Mr. Jacobson would be providing more information on the discussions that had occurred.

Ms. Sanders then addressed the subcommittee, describing that the working group discussion started with the draft joint resolution identified as "LR 131 0157," as well as subsequent amendments by Sen. Tavares and a largely-new-but-based-on-the-same-principles proposal by Mr. Jacobson about how parameters are set for the districts, making sure the districts are always possible to be drawn, but also creating sufficient barriers against gerrymandering by either party. She said all parties agreed there needed to be further details worked out, and that they need to see the entirety of the plan before a final agreement could be reached.

Ms. Sanders then highlighted areas that received significant attention.

First, she said the group had a good discussion regarding considerations inherent in attempting to balance counties and cities, and that the group recognized an interest in having the district entirely within that city. She acknowledged a good suggestion by Mr. Jacobson had assisted in the group's discussion of this issue.

She said the group also had a significant discussion on which no resolution was reached regarding whether to retain language that had been adopted as part of the legislative redistricting joint resolution [Issue 1 on the November 2015 ballot, now Article XI, Sections 1-10]. Specifically, she said the language in question related to the definition of a split between noncontiguous portions of cities and townships. She said the line-drawing restriction is an important check on gerrymandering, and that further discussion is needed.

Ms. Sanders continued that the primary new suggestion from Mr. Jacobson's proposal, when measuring if too many splits have occurred in any particular district, is to look at the percentage of population from whole political subdivisions, as opposed to the percentage coming from split political subdivisions. She said that is in contrast to Issue 1, which used a number of splits per district framework. As a new proposal, she said this received significant consideration. The current number the working group is considering would be a requirement that no more than 25 percent of a population of a district can come from political subdivisions that are split. She said that is an important primary means of drawing districts outside the larger counties that receive explicit protection, but in the case of smaller counties the issue is percentage splits.

Ms. Sanders added, to complement that, the working group will consider whether an individual political subdivision is to be split between too many districts.

The subcommittee then heard from Mr. Jacobson, who began by acknowledging the work of Professor Gunther as being indispensable in helping the group consider legislative districting reform issues, and now has provided assistance in this effort.

Mr. Jacobson said there are several important principles involved in the discussion. He said one of these involves what happened to the rules that were in the constitution prior to 2014, noting a United States Supreme Court case in 2012 in which the Court acknowledged the lines that were drawn in that case may have violated the rules, but failed to enforce the rules. He said he is not a critic of the decision itself but is a critic of the fact there were so many rules for drawing districts that some were impossible to follow. He said, essentially, the Court only said it was important to try to follow the rules. He said that is not a good system, in which there are rules that cannot be

enforced, and that it would be better not to write unenforceable rules. He said his other point is that it is important to ensure there are consequences to breaking the rules.

He continued that his concern is that he does not want another situation where, because of well-intentioned rules, "we draw ourselves into a corner, and can't draw districts that meet constitutional requirements." He noted a situation could result in which district populations do not work out to exact numbers. As a consequence, he said, it is important to look at what kind of leeway the map drawing body has in drawing lines. He said, with legislative districts there is a smaller number, but there could be a ten percent variation from high to low on how many people are in a district.

He noted that, in this case, unlike a ten percent deviation, "we are down to a 1.5 percent deviation, roughly." He said his concern is that there could be a situation in which litigation results because it is impossible to simultaneously follow all of the rules.

Mr. Jacobson said his goal was to be certain that a legal map can be drawn. He said it is possible to just look at the number of splits, but the question arises whether it is better to split a city or to split two small townships. He asked "which does more violence to the idea that you are trying to recognize communities of interest?" He suggested it is better to look at the percentage number, adding that 25 percent was unnecessarily high, and if the number were reduced it would not take away the ability to draw a valid map even if the population distribution in the state does not cooperate.

He observed one of the things having leeway allows is the ability to prioritize, and that, in drawing a map, one must start with the concept that very big counties having a big city have a more recognizable community of interest. He noted the higher principle is to try to keep that community intact.

Describing the status of discussions on the issue, Mr. Jacobson said there is general agreement that the goal should be to protect the intactness of relatively large political subdivisions. He said, if any city or township gets to the point where it is in the range of five to 15 percent of a whole district all by itself, it deserves protection against being split for no good reason. He said that goal provides the opportunity to ensure the ability to draw a legal map. He noted, "let's protect the communities of interest that are large enough that they need to be taken into account."

Finally, Mr. Jacobson said it is important to avoid a situation in which the courts intervene. He concluded that "it feels as if we are close, and that hopefully one more meeting will conclude the discussion."

Sen. Tavares asked if there were any questions for Ms. Sanders and Mr. Jacobson. There being none, she thanked them for their summaries.

Chair Mills then indicated that the next step is for the subcommittee to come together when a work product is finished. He said he is not sure that date can be set at this time. He said his intention is to do it as soon as there is consensus in the work group.

Sen. Tavares agreed with the plan described by Chair Mills. She said she believes there will be a work group effort in the coming week, and is hoping to have a consensus to bring back to the subcommittee.

Chair Mills then invited public comment, of which there was none.

Chair Mills concluded by saying it had been a quick meeting but very helpful. Chair Mills said he appreciates the summaries provided by Ms. Sanders and Mr. Jacobson, and is encouraged about the progress made on the issue.

Adjournment:

There being no further business to come before the subcommittee, the meeting was adjourned at 3:41 p.m.

Approval:

The minutes of the March 9, 2016 meeting of the Legislative Branch and Executive Branch Subcommittee on Congressional Redistricting were approved by the members of the subcommittee at the April 14, 2016 meeting of the Legislative Branch and Executive Branch Committee.

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Frederick E. Mills, Chair

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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. The committee recommends the proposed joint resolution titled "LR 131 0157" (provided as Attachment A), or a substantially-similar proposed joint resolution, be adopted as the method by which the committee's recommendation is fulfilled.

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." *Tennant 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 *Tennant*, 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 a 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 ten 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.

On January 14, 2016, Rep. Clyde appeared before the committee to describe two changes she proposes to the initial draft of LR 131 0157. Rep. Clyde said the draft joint resolution should be revised to reflect the removal of the word "contiguous" because Congressional districts are larger than state legislative districts. She said that requirement, which had been incorporated in the amendment relating to legislative districts, does not need to be a part of Congressional redistricting reform. Rep. Clyde added that the draft also should be revised to indicate the goal of preserving political subdivisions that are at least 30 percent of the size of Congressional districts, rather than 50 percent. She said the 30 percent figure is a better fit, given the larger size of Congressional districts. Rep. Clyde continued that most of the proposed amendment described in LR 131 0157 mirrors what voters chose to support in Issue 1, but because of the difference in size between legislative districts and Congressional districts, it is necessary to make minor changes in the criteria. She said experts and advocates were consulted prior to her recommending these changes.

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 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 ten 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.

Davis, Kass, and Craig Presentations

In January 2016, three representatives of Democratic Voices of Ohio presented to the committee regarding the impact of gerrymandering on voter turnout for the millennial generation. Natalie Davis, policy director, identified a 2012 study indicating that leaving home at age 18 for college or work negatively impacts the likelihood of voting, and that issues surrounding voter identification, residency status of out-of-state students, transportation to polls, and transitioning from dorm life to an off-campus apartment are all challenges that affect student voter turnout.

Alex Kass, executive director, said that her organization's goal is to "move our state forward, unencumbered by the divisive partisanship that too often sets Ohio back." She said the polarization of Congress has cultivated feelings of apathy for many voters, particularly young voters. Ms. Kass suggested that, because millennials occupy a pivotal seat in the electorate, they should have a greater political voice. Ms. Kass said, "fixing our redistricting process is one of the most fundamental ways to move this state and country forward, and the people know it."

Colleen Craig, communications manager, provided her perspective as a third-year undergraduate studying public affairs at the Ohio State University. Ms. Craig identified statistics indicating that although 40 percent of Ohio voters identify as Republicans and 46 percent identify as

Democrats, Congressional Democrats from Ohio are outnumbered three-to-one. Ms. Craig said "Despite our reputation for being a swing-state, the gerrymandered map of Ohio's Congressional districts has made Ohio a practically inhospitable place" for those "whose politics don't align with the party in power." Ms. Craig added that many of the issues facing her generation, such as student loan debt, accessible healthcare, social acceptance of minorities, and environmental security, are issues that Congress should be considering. She expressed hope that Congressional redistricting reform would help engage her generation in the political process as well as help find bipartisan solutions to issues that concern millennials.

Hagerty Presentation

In January 2016, Renée Hagerty of the Ohio Student Association appeared before the committee to provide her perspective on the relationship of gerrymandering to the concerns of the millennial generation. Ms. Hagerty stated that, as a voter registration organizer with the Ohio Student Association, she registered more than 1,000 voters in less than two months, and heard from many young people who "feel disenfranchised by a system they see as 'dirty,' 'rigged,' and impossibly large." Ms. Hagerty urged the committee to support 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 131st 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" (provided as Attachment A), 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 February 4, 2016, 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).

Attachment A

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

Section 1. (A) The Ohio redistricting commission shall be responsible for the redistricting of this state for congress and for the general assembly. The commission shall consist of the following seven members:

(1) The governor;

(2) The auditor of state;

(3) The secretary of state;

(4) One person appointed by the speaker of the house of representatives;

(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;

(6) One person appointed by the president of the senate; and

(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.

No appointed member of the commission shall be a current member of congress.

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.

(B)(1) Unless otherwise specified in this article, a simple majority of the commission members shall be required for any action by the commission.

(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

each of the two largest political parties represented in the general assembly, shall be required to do any of the following:

(i) Adopt rules of the commission;

(ii) Hire staff for the commission;

(iii) Expend funds.

(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.

(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 congressional or 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.

(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 ~~8~~ 9 and ~~9~~ 10 of this article, the commission shall set a schedule for the adoption of procedural rules for the operation of the commission.

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. The commission also shall release to the public a proposed congressional district plan for the boundaries for the prescribed number of congressional districts as

apportioned to the state pursuant to Section 2 of Article I of the Constitution of the United States. The commission shall draft the proposed ~~plan~~ plans in the manner prescribed in this article. ~~Before~~

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.

The commission shall adopt a final congressional district plan 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.

Four weeks after the adoption of a congressional district plan or a general assembly district plan, whichever is later, the commission shall be automatically dissolved.

(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.

Section 2. Each congressional district shall be entitled to a single representative in the United States house of representatives in each congress. 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.

Section 3. (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 of congressional districts apportioned to the state pursuant to Section 2 of Article I of the Constitution of the United States, and the quotient shall be the congressional ratio of representation for ten years next succeeding such redistricting.

(B) A congressional district plan shall comply with all of the requirements of division (B) of this section.

(1) The commission shall minimize the extent to which each congressional district's population differs from the congressional ratio of representation, as is practicable, while taking into account other legitimate state objectives in the creation of congressional districts. The commission may include in a congressional district plan an explanation of the reason that any district contains a population that is not equal to the congressional ratio of representation.

(2) Any congressional 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.

(3) Every congressional district shall be composed of contiguous territory, and the boundary of each district shall be a single nonintersecting continuous line.

(C) Congressional districts shall be created and numbered in the following order of priority, to the extent that such order is consistent with the foregoing standards:

(1) Proceeding in succession from the largest to the smallest, each county containing population greater than one congressional ratio of representation shall be divided into as many congressional 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 congressional

district.

(2) 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.

(3) The remaining territory of the state shall be divided into congressional districts by combining the areas of whole municipal corporations and townships.

(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.

(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.

(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) 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.

(2) 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.

(3) Where the requirements of divisions (B), (C), and (D) of

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.

(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:

(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.

(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.

(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.

(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.

(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.

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.

(B) A general assembly district plan shall comply with all of the requirements of division (B) of this section.

(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.

(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.

(3) Every general assembly district shall be composed of contiguous territory, and the boundary of each district shall be a single nonintersecting continuous line.

(C) House of representatives districts shall be created and numbered in the following order of priority, to the extent that

such order is consistent with the foregoing standards:

(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.

(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.

(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.

(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.

(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.

(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

township shall be considered to be a separate municipal corporation or township for the purposes of this section.

(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.

(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.

(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:

(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.

(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.

(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

five per cent of the ratio of representation.

(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.

(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.

(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 ~~9~~ 10 of this article.

Section 4 5. (A) Senate districts shall be composed of three contiguous house of representatives districts.

(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.

(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.

(3) If it is not possible for the commission to draw representative districts that comply with all of the requirements

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

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

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

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

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

(A) No congressional district plan or general assembly district plan shall be drawn primarily to favor or disfavor a political party.

(B) The statewide proportion of districts whose voters, based on statewide state and federal partisan general election results during the last ten years, favor each political party shall correspond closely to the statewide preferences of the voters of Ohio.

(C) ~~General~~ Congressional districts and general assembly districts shall be compact.

Nothing in this section permits the commission to violate the district standards described in Section 2, 3, 4, 5, 6, or ~~7~~ 8 of this article.

Section ~~7~~ 8. Notwithstanding the fact that boundaries of counties, municipal corporations, and townships within a district may be changed, district boundaries shall be created by using the boundaries of counties, municipal corporations, and townships as they exist at the time of the federal decennial census on which the redistricting is based, or, if unavailable, on such other basis as the general assembly has directed.

Section ~~8~~ 9. (A)(1) If the Ohio redistricting commission fails to adopt a final congressional district plan or a final general assembly district plan not later than the first day of September of a year ending in the numeral one, in accordance with Section 1 of this article, the commission shall introduce a proposed ~~general assembly~~ district plan of the applicable type by a simple majority vote of the commission.

(2) After introducing a proposed ~~general assembly~~ district plan under division (A)(1) of this section, the commission shall hold a public hearing concerning the proposed plan, at which the public may offer testimony and at which the commission may adopt

amendments to the proposed plan. Members of the commission should attend the hearing; however, only a quorum of the members of the commission is required to conduct the hearing.

(3) After the hearing described in division (A)(2) of this section is held, and not later than the fifteenth day of September of a year ending in the numeral one, the commission shall adopt a final ~~general assembly~~ district plan of the applicable type, either by the vote required to adopt a plan under division (B)(3) of Section 1 of this article or by a simple majority vote of the commission.

(B) If the commission adopts a final ~~general assembly~~ district plan in accordance with division (A)(3) of this section by the vote required to adopt a plan under division (B)(3) of Section 1 of this article, the plan shall take effect upon filing with the secretary of state and shall remain effective until the next year ending in the numeral one, except as provided in Section ~~9~~ 10 of this article.

(C)(1)(a) Except as otherwise provided in division (C)(1)(b) of this section, if the commission adopts a final congressional 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)(3) of Section 1 of this article, the plan shall take effect upon filing with the secretary of state and shall remain effective until two general elections for the United States house of representatives have occurred under the plan.

Except as otherwise provided in division (C)(1)(b) of this section, 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)(3) of Section 1 of this article, the plan shall take effect upon filing with the

secretary of state and shall remain effective until two general elections for the house of representatives have occurred under the plan.

(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~~ 10 of this article.

(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~~ 7 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.

(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 of the applicable type in accordance with this article, to be used until the next

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.

Section ~~9~~ 10. (A) The supreme court of Ohio shall have exclusive, original jurisdiction in all cases arising under this article.

(B) In the event that any section of this constitution relating to redistricting, any congressional or 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 of the applicable type in conformity with such provisions of this constitution as are then valid, including, if applicable, 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.

(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.

(D)(1) No court shall order, in any circumstance, the implementation or enforcement of any congressional or general assembly district plan that has not been approved by the commission in the manner prescribed by this article.

(2) No court shall order the commission to adopt a particular congressional or general assembly district plan or to draw a particular district.

(3) If the supreme court of Ohio determines that a congressional or general assembly district plan adopted by the commission does not comply with the requirements of Section 2, 3, 4, 5, 6, or ~~7~~ 8 of this article, the available remedies shall be as follows:

(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.

(b) ~~If~~ In the case of a congressional district plan, if the court finds that it is necessary to amend not fewer than two congressional districts to correct violations of those requirements, the court shall declare the plan invalid and shall order the commission to adopt a new congressional district plan in accordance with this article.

In the case of a general assembly district plan, if the court 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.

(c) If, in considering a plan adopted under division (C) of Section ~~8~~ 9 of this article, the court determines that both of the following are true, the court shall order the commission to adopt a new congressional or general assembly district plan, as applicable, in accordance with this article:

(i) The plan significantly violates those requirements in a

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~~ 7 of this article.

(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.

Section ~~10~~ 11. 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.

EFFECTIVE DATE AND REPEAL

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.

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OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

2016 Meeting Dates

May 12

June 9

July 14

August 11

September 8

October 13

November 10

December 8