Testimony Before the Ohio Redistricting Commission

By Richard Gunther, Professor Emeritus of Political Science, Ohio State University

Good afternoon.

I am Richard Gunther, Professor Emeritus of Political Science, Ohio State University. I have been working with various good-government groups on redistricting reform in Ohio for 16 years, and I was one of the five negotiators[1] who produced a draft of what is now Article XI of the Ohio Constitution. These reforms were supported by a vote of 87-10 in the Ohio House, 28-1 in the Senate and by 71 percent of the voters in the constitutional referendum of 2015.

I would like to take this opportunity to highlight some of the provisions in the Ohio constitution and federal law that have an important bearing on the current redistricting process.

First, with the redistricting reforms enacted in 2015, **incumbent protection is no longer** a valid criterion enshrined in the Ohio Constitution.[2] The removal of that criterion was a *sine qua non* for any agreement on state legislative redistricting, since preservation of the previous district boundaries was tantamount to making inevitable the preservation of the previous gerrymander. While I am sure that you will receive special pleading from incumbents hoping to preserve their seats, these appeals no longer have standing in the Ohio constitution.

Second, **representational fairness is** an important requirement for drawing district boundaries. Article 6(A) states that "No General Assembly district plan shall be drawn primarily to favor or disfavor a political party."

The following division, Article 6(B) makes it unequivocally clear what a "fair" map is: "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." In other words, the number of districts leaning toward one party or the other should reflect the preference of the voters as expressed in statewide elections over the previous decade.

In the five general elections that have taken place over the past decade, Republican candidates for President, U.S. Senator, Governor, Secretary of State, Auditor, Attorney General and Treasurer have received 54.3% of the votes cast by Ohio voters, while Democratic candidates for those offices have received 45.7% of the votes cast. To ensure that one political party is not unduly favored over another, the partisan make-up of Ohio's districts should mirror the partisan preferences of Ohio's voters.

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[1] The other members of the negotiating team were former Senator Jeff Jacobson, Representative (now Senator) Vernon Sykes, House Republican Caucus counsel Mike Lenzo and House Democratic Caucus counsel Sarah Cherry. We deliberated over reforms in Ohio's procedures and criteria for drawing General Assembly district boundaries between November 21 through December 4, 2014.

[2] Prior to those 2015 constitutional reforms, Article XI, Section 7(D) stated, "In making a new apportionment, district boundaries established by the preceding apportionment shall be adopted to the extent reasonably consistent with the requirements of Section 3 of this Article."

I have attached an Appendix to this testimony describing in detail how Section 6(B) should be implemented.

Section 9 of Article XI further strengthens this constitutional commitment to representational fairness. It states that "If the [Ohio] Supreme court, in considering a plan passed in the absence of support from at least two members of the Commission from the minority party, determines that both of the following are true, the court shall order the commission to adopt a new general assembly district plan 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 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 hears, favor each political party does not correspond closely to the statewide preferences of the voters of Ohio. [XI (9)(D)(c)(i and ii)]."

Finally, Section 8(C)(2) states that "A final general assembly district plan adopted under division (C)(1)(a) or (b) of this section [i.e., which lacks bipartisan support] 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 of this article."

In short, the Ohio constitution unequivocally supports fair representation of the two major parties in drawing district lines for the General Assembly.

Third, federal law requires that state legislative districts cannot violate the 1965 **Voting Rights Act** (VRA) and they must be drawn in a manner to ensure that voters of color can elect representatives of their choosing.

Minority vote dilution by packing or cracking must be avoided. Packing is when minority voters are concentrated into a small number of districts so that their votes are wasted in a district that their preferred candidate will win by an overwhelming margin. Cracking splits minority communities and spreads minority voters thinly into many districts in which they have little or no chance of electing representatives of their own choice. Both of these kinds of gerrymandering minimize the voting strength of minority communities.

It is important to note that there is no current legal requirement for Ohio to draw majority-minority districts in order to comply with the Voting Rights Act. The United States Supreme Court has ruled that a state (and relevant community) must meet certain preconditions for such a district to be drawn and Ohio does not currently meet those requirements.[3] A legal

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[3] In *Thornburg v. Gingles* (1986), the U.S. Supreme Court held that the requirement that a majority-minority district be drawn to comply with the Voting Rights Act exists only if each of the following preconditions apply: 1) The

opinion rendered by the Ohio Legislative Service Commission on December 11, 2017, concluded that "no judicial decisions currently require Ohio to adopt majority-minority congressional districts. If Ohio did so voluntarily, that action might be challenged as unconstitutional racial gerrymandering."

The 2015 amendments to the Ohio constitution were endorsed by overwhelming majorities of both houses of the General Assembly and by over 70 percent of Ohio's voters. I am confident that the Ohio Redistricting Commission will adopt district boundaries for the Ohio House and Senate in a manner that respects both the letter and the spirit of those reforms.

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racial minority population is geographically compact enough to create their own district, 2) the minority population votes as a bloc, and 3) there is racially-polarized voting – that is, the white voters also vote as a bloc but do so in a manner that keeps the minority voters from being able to elect representatives of their choosing. The election throughout the past decade of two Black members of Congress (out of a Democratic congressional delegation of four) did not require the creation of majority-minority districts. The 3rd Congressional district has an electorate that is 33% Black, while Joyce Beatty won this district with 73.6% and 70.8% of the vote in 2018 and 2020. The 11th Congressional district is a majority-minority district (54% Black), but the 82.2% and 80.1% of the vote cast for Marcia Fudge in those two elections clearly indicate that her electoral victories were not dependent on packing this district with Black voters. Indeed, it can be argued that excessive packing of minority voters into these two districts has actually *reduced* their voting strength overall and played a key role in manufacturing an artificial supermajority for the opposing party among Ohio's congressional delegation.

"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."

How Section 6(B) is Intended to Work

The first step is to calculate the statewide preferences of the voters of Ohio as reflected in ballots cast for the candidates of each major party for President, United States Senator, Governor, Secretary of State, Attorney General, Auditor and Treasurer over the past decade. That calculation (based on the official election results as published by the Ohio Secretary of State) is presented in the following table.

Votes for Statewide Offices over the Past Decade

Democratic Candidates	2012	2014	2016	2018	2020
President	2,697,260		2,394,164		2,679,165
Senator	2,645,901		1,996,908		
Governor		1,009,359		2,067,847	
Sec of State		1,074,475		2,049,944	
Attorney General		1,178,426		2,084,593	
Auditor		1,149,305		2,006,204	
Treasurer		1,323,325		2,022,016	

GRAND TOTAL of votes cast for Democratic candidates 2012-2020: **28,378,892**

Republican Candidates	2012	2014	2016	2018	2020
President	2,593,779		2,841,005		3,154,834
Senator	2,371,230		3,118,567		
Governor		1,944,848		2,231,917	
Sec. of State		1,811,020		2,210,356	
Attorney General		1,882,048		2,272,440	
Auditor		1,149,305		2,152,769	
Treasurer		1,724,060		2,304,444	

GRAND TOTAL of votes cast for Republican candidates 2012-2020: **33,759,622**

Democratic share of votes cast for statewide offices (28,378,892÷62,141,514) = **45.7%**

Republican share of votes cast for statewide offices (33,762,622÷62,141,514) = **54.3%**

Thus, the grand total of votes for Republican and Democratic candidates for statewide offices over the past decade indicates that Ohio voters supported Republican candidates over Democratic candidates by a margin of 54.3% vs. 45.7%.

Accordingly, for the map to be representationally fair, that is, not gerrymandered, the share of Ohio House of Representatives districts whose voters lean toward Republican candidates should be as close to 54.3% as possible, while 45.7% of these districts should lean toward Democratic candidates.

The second step is to create a partisan index for each of the districts that have been drawn based on the same statewide election results. This involves aggregating those same data for each of the districts in the map. This step determines the likely partisan lean in each district.

This seems like a lot of work, but computer programs used to draw district maps can easily accomplish this task.

Then simply count the number of districts that lean toward one party or the other.

After this has been done, it will be easily possible to determine which maps most closely correspond to the partisan preferences of Ohio's voters over the previous decade.

Using these data, the goal should be to create a map in which 54% of the districts have a pro-Republican partisan index and 45.7% have a pro-Democratic partisan index based on the last decade's election results.

Note that Section 6(B) of Article XI does not imply that each individual district should internally mirror this statewide ratio, which cannot occur because of how Republican and Democratic voters are unevenly distributed across the state.

Instead, it is the *statewide* share of districts leaning toward one party or another (based upon previous voting behavior over the previous decade) that should correspond to this statewide pattern of partisan preferences.