In the past few weeks, Republican legislators have attacked the Fair Districts Initiative with spurious Constitutional objections and with misrepresentations of its concept of “representational fairness.” At the same time, the legislators’ own Senate Joint Resolution 5 would enshrine partisan bias in Ohio’s Constitution.

First, proponents of SJR 5 have spent much time challenging the concept of “representational fairness.” Sen. Huffman, sometimes joined by colleagues, has repeatedly mischaracterized the representational fairness clauses in the Fair Districts Initiative.

Representational fairness is already in Ohio’s constitution as it applies to General Assembly redistricting, approved by over 71% of Ohio voters of both parties in 2015 State Issue 1. Article XI, §6 states:

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

(A) No 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.

Similar language was contained in Article XI, §5, of 2014 House Joint Resolution 12, that after reconciliation resulted in the above language. Tellingly, one of the two sponsors of 2014 HJR 12 was then-Rep. Matt Huffman – who now claims that the concept of representational fairness is vague, undefined and anti-democratic.

The language of the Fair Districts Amendment is slightly different, but the concept and the clear intent are the same. Rather than attacking the entire concept of representational fairness, it would behoove the General Assembly to adopt a proposal that incorporates either version of this language – either the clauses proposed by the Fair Districts Coalition, or the language contained in the Resolution co-sponsored by then-Rep. Huffman in 2014.

Second, members of the Senate Government Oversight and Reform Committee have raised two purported Constitutional objections. The US Supreme Court has already held that both of these objections are invalid.

The first Constitutional question raised by committee members is whether the US Constitution gives state legislatures the exclusive authority to draw Congressional districts. The Supreme Court in Arizona State Legislature vs Arizona Independent Redistricting Commission, 576 US \_\_\_ (2015), held that the federal Constitution indeed does allow independent commissions.

Proponents of SJR 5 also insist that the population of each Congressional district must be equal to within one voter. In Karcher v. Daggett , 462 U. S. 725 (1983), the US Supreme Court held that they do not, as long as the State can demonstrate a legitimate reason for small deviations in population. As recently as 2012, they reaffirmed this holding in the case of Tennant v Jefferson County Commission, 567 US \_\_\_ . In that case, they upheld a redistricting plan in which district populations varied by 4,871 persons, or 0.79%.

Aside from the attacks on the Fair Districts Initiative, SJR 5 contains at least two clauses that demonstrate clear partisan intent. Much attention has been focused on SJR 5’s provision that maps would be introduced into the General Assembly as a Resolution, and therefore not subject to veto nor citizen referendum. Although the Committee has hinted that this provision may be withdrawn, it bears noting that this clause demonstrates partisan intent, while having little to no practical effect. Under SJR 5, maps could be approved only with a 3/5 vote of the General Assembly – by definition, a veto-proof supermajority. While the right to citizen referendum would be preserved, this is not an instantaneous process, nor would it stay implementation of the map. The best citizens could hope for would be that, after an arduous signature gathering process, they could vote on repeal of the map at the SAME general election in which the map would first be used.

On a more technical note, SJR 5 – even with the rumored amendments, not yet published as of this writing – still fails to minimize splits of counties. If districts can snake around municipal boundaries (boundaries that are, themselves, often highly irregular as outlying areas are annexed), and divide counties among as many as three districts, legislators’ ability to draw gerrymandered districts would be unimpeded. Though voters often identify more closely with their municipality than they do with their county of residence, it is the mandate that counties be kept whole wherever possible, that preserves citizens’ right to be represented by legislators who share their communities’ interests.

Finally, Sen. Huffman stated in committee that he inadvertently drafted SJR 5 to allow members of the GA who are not affiliated with either of the two largest political parties, to join with the majority in overriding the will of the party with the second largest representation in the GA. Since both SJR 5 and the Constitution as it presently exists, explicitly give the second largest party a voice in redistricting, it strains credulity to think that deviating from this language in SJR 5 was an accident.

In sum, there can be no question that SJR 5 is a blatant attempt to consolidate unchallengeable power in the hands of a party that holds only a slim majority among Ohio voters. The attacks on the Fair Districts Initiative mischaracterize the proposed Amendment, and misstate settled Constitutional law.

For the Indivisible: OH12 East Fair Districts Subcommittee

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