

My name is Gary Gale and I live in Stark County, which was butchered in the last Congressional redistricting.

Earlier this year I testified at the Redistricting Commission's Akron hearing on a three county map favored by my local Democratic Party leadership. Last week I testified concerning a 15 District map that was drawn in conformance to OSJR 5.

While my earlier testimony in Akron was on behalf of my County Democratic Party, but for last week's and today's testimony I am only representing myself. I would respectfully request that you refer to my testimony from the Akron Commission hearing regarding a Stark-Mahoning-Trumbull Congressional District where all 3 counties are currently partially in the 13th Congressional District, where the counties share common educational levels, economic status, ethnicities, forms of local governance, and both a common economic downturn and its concomitant population loss.

Before I go further I would like to add that while I am not a practicing attorney in Ohio, I continue to maintain an active law license in Illinois; I am rated AV 5.0/50 by Martindale Hubbell, and that earlier this year in anticipation of litigation I took the NAACP's 5 Hour Gerrymandering CLE course, a gerrymandering course offered through the Southern Poverty Law Center, and I attended another CLE where one of the speakers was the General Counsel of the official Michigan Independent Redistricting Commission.

My intent in this endeavor to draw a Congressional map that accurately reflected the partisanship of Ohio and respected the wording of Ohio Senate Joint Resolution 5 (Exhibit 1) and the legislative intent as exemplified by the January 29, 2018 joint announcement by Senate President Huffman and then House Speaker Pro Tempore Kirk Schuring (Exhibit 2).

In doing so I created a map (Exhibit 5) that provides for 6 Republican leaning Districts, 5 Democratic leaning Districts, and 4 Competitive Districts. Two of the Competitive Districts had Republican votes of 51.33% and 52.56% whereas the other two had Democratic votes of 50.44% and 50.29% (Exhibit 3). Dave's Redistricting rated the Proportionality of my proposed statewide Congressional map at 100%.

Respecting the legislative intent I relied on the first 2 sentences on page 2 of Senate President Huffman's release that the reason for OSJR 5, that "Enhancing protections for regions, counties and cities by keeping counties from being split more than twice. In fact, the updated plan calls for at least 65 counties to be kept whole and allows only five counties to be split twice."(Exhibit 2).

The map that I drew split none of Ohio's 65 smallest counties, and only 10 of Ohio's 23 larger counties. In 13 of the 15 Congressional Districts in my map half or more of the counties in them are at present either completely or partially in the same Congressional Districts as other counties in the proposed new districts, lending continuity to the map. My proposed Congressional Map had a 73/100 score on splitting based on having only 10 split counties and just 1 split precinct and that one was inadvertent.

My proposed Congressional Map has a population deviation of 0.56%; and as such is within the threshold allowed by the federal courts (Exhibit 3). Absolute district population equality is not required, according to Exhibit 2 that explicitly states on page 2 that one of the purposes of OSJR 5 was "Eliminating strict equal population requirements for districts".

This is buttressed by the Congressional Research Service's publication of September 10, 2021, less than two months ago, Congressional Redistricting 2021: Legal Framework. (Exhibit 4) which states

In Tennant v. Jefferson County Commission the Court further honed the Population equality standard, upholding a congressional district with a 0.79% maximum population deviation. According to the Court, while precise mathematical equality among congressional districts is not required, the "as nearly as practicable" standard requires states to justify any population deviation among districts with "legitimate state objectives." Emphasizing that the state's burden here is "flexible," the Court explained that it will depend on the size of the population deviation; the importance of the state's interests, how consistently the redistricting plan matches those interests, and whether alternatives exist that might substantially serve those interests while achieving greater population equality. The Court opined that none of the alternative redistricting plans that achieved greater population equality came as close to vindicating the state's legitimate objectives and therefore, upheld the 0.79% maximum population deviation between the largest and smallest congressional districts.

In my view keeping rural districts rural is essential; not just for them but for the people in urban/suburban counties like mine where we were in 2011 treated as a jigsaw puzzle piece to provide population to a rural Congressional District. I am a resident of Ohio's 8th largest county classified by both the U.S. OMB and the State of Ohio as an urban county. Regardless, the substantial majority of our precincts [171/220] and our two largest cities (Canton and Massillon) were gerrymandered in 2011 into a primarily rural district with a Congressman who seemingly neither understood nor cared about the problems of our urban and suburban residents.

I will again implore you not to bury my urban/suburban county and other counties like it in a sea of rural voters who we have nothing in common with and share neither our problems nor our values. Most of the submitted maps I saw were oblivious to the fact that when it comes to redistricting Ohio's rural/urban divide is its greatest political conflict.

My Congressional map followed the dictates of OSJR 5 that, " (a) the general assembly shall not pass a plan that unduly favors or disfavors a political party or its incumbents". Like the Yuko/Sykes map embodied in SB 237 my map does not put its thumb on the scales in the 11th Congressional District in favor of newly elected Congresswoman Shontel Brown and created a level playing field between her and Nina Turner.

There was no guidance from the language of the Constitutional Amendments, or other statutory language as to what constituted an Opportunity District. Failing to find instructive language in Ohio; I looked elsewhere. When Julianne Pastula, General Counsel of the Michigan Independent Citizens

Redistricting Commission spoke at an accredited Continuing Legal Education program I attended on September 9, 2021; I asked her what the baseline they were using in Michigan was. Her response was 30% or greater. I used 30% as my baseline and there were 4 Congressional Districts in my proposed Congressional map that contain 32.31% or greater Minority populations. Congressional Black Caucus Chairwoman Joyce Beatty has during the entire 10 year period the present map has been in effect has been elected in the Ohio 3rd District is 34.55% Black, so it is not just an “opportunity” it is a reality. (Exhibit 6) Three of the districts in my proposed district exceed that percentage.

To recapitulate I am asking the legislature to respect the legislative intent of OSJR 5 as enunciated in the Huffman- Schuring release of January 29, 2018 and do to do just five things:

- ❖ To protect the interests of Ohio's 65 smallest counties by keeping them intact;
- ❖ To protect regional interests and not mix urban/suburban counties with rural counties in the same district;
- ❖ Eliminate strict equal population requirements for districts;
- ❖ To adopt the Yuko/Sykes configuration of the 11th Congressional District, or mine, and not gerrymander the District to unduly favor the recently elected incumbent.
- ❖ To not again bury Stark County in a district made up of people who do not share our values, economic status, education level, ethnicities, and most importantly our problems.

Thank you for your time and attention.

A JOINT RESOLUTION

Proposing to amend the version of Section 1 of Article XI that is scheduled to take effect January 1, 2021, and to enact Sections 1, 2, and 3 of Article XIX of the Constitution of the State of Ohio to establish a process for congressional redistricting.

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 a special election to be held on May 8, 2018, a proposal to amend the version of Section 1 of Article XI that is scheduled to take effect January 1, 2021, and to enact Sections 1, 2, and 3 of Article XIX 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 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 or in Article XIX of this constitution, 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 general assembly district plan. For the ~~purpose~~ purposes of this division and of Section 1 of Article XIX of this constitution, 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 and 9 of this article and in Sections 1 and 3 of Article XIX of this constitution, 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 shall draft the proposed plan in the manner prescribed in this article. 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 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 general assembly district plan or a congressional 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 and Article XIX of this constitution.

ARTICLE XIX

Section 1. (A) Except as otherwise provided in this section, the general assembly shall be responsible for the redistricting of this state for congress based on the prescribed number of congressional districts apportioned to the state pursuant to Section 2 of Article I of the Constitution of the United States.

Not later than the last day of September of a year ending in the numeral one, the general assembly shall pass a congressional district plan in the form of a bill by the affirmative vote of three-fifths of the members of each house of the general assembly, including the affirmative vote of at least one-half of the members of each of the two largest political parties represented in that house. A congressional district plan that is passed under this division and becomes law shall remain effective until the next year ending in the numeral one, except as provided in Section 3 of this article.

(B) If a congressional district plan is not passed not later than the last day of September of a year ending in the numeral one and filed with the secretary of state in accordance with Section 16 of

Article II of this constitution, then the Ohio redistricting commission described in Article XI of this constitution shall adopt a congressional district plan not later than the last day of October of that year by 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. 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 3 of this article.

(C)(1) If the Ohio redistricting commission does not adopt a plan not later than the last day of October of a year ending in the numeral one, then the general assembly shall pass a congressional district plan in the form of a bill not later than the last day of November of that year.

(2) If the general assembly passes a congressional district plan under division (C)(1) of this section by the affirmative vote of three-fifths of the members of each house of the general assembly, including the affirmative vote of at least one-third of the members of each of the two largest parties represented in that house, and the plan becomes law, the plan shall remain effective until the next year ending in the numeral one, except as provided in Section 3 of this article.

(3) If the general assembly passes a congressional district plan under division (C)(1) of this section by a simple majority of the members of each house of the general assembly, and not by the vote described in division (C)(2) of this section, all of the following shall apply:

(a) The general assembly shall not pass a plan that unduly favors or disfavors a political party or its incumbents.

(b) The general assembly shall not unduly split governmental units, giving preference to keeping whole, in the order named, counties, then townships and municipal corporations.

(c) Division (B)(2) of Section 2 of this article shall not apply to the plan. The general assembly shall attempt to draw districts that are compact.

(d) The general assembly shall include in the plan an explanation of the plan's compliance with divisions (C)(3)(a) to (c) of this section.

(e) If the plan becomes law, the plan shall remain effective until two general elections for the United States house of representatives have occurred under the plan, except as provided in Section 3 of this article.

(D) Not later than the last day of September of the year after the year in which a plan expires under division (C)(3)(e) of this section, the general assembly shall pass a congressional district plan in the form of a bill by the affirmative vote of three-fifths of the members of each house of the general assembly, including the affirmative vote of at least one-half of the members of each of the two largest political parties represented in that house. A congressional district plan that is passed under this division and becomes law shall remain effective until the next year ending in the numeral one, except as provided in Section 3 of this article.

A congressional district plan passed under this division shall be drawn using the federal decennial census data or other data on which the previous redistricting was based.

(E) If a congressional district plan is not passed not later than the last day of September of the year after the year in which a plan expires under division (C)(3)(e) of this section and filed with the secretary of state in accordance with Section 16 of Article II of this constitution, then the Ohio redistricting commission described in Article XI of this constitution shall be reconstituted and reconvene and shall adopt a congressional district plan not later than the last day of October of that year by 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. A congressional district plan adopted under this division 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 3 of this article.
A congressional district plan adopted under this division shall be drawn using the federal decennial census data or other data on which the previous redistricting was based.
(F)(1) If the Ohio redistricting commission does not adopt a congressional district plan not later than the last day of October of the year after the year in which a plan expires under division (C)(3)(e) of this section, then the general assembly shall pass a congressional district plan in the form of a bill not later than the last day of November of that year.
A congressional district plan adopted under this division shall be drawn using the federal decennial census data or other data on which the previous redistricting was based.
(2) If the general assembly passes a congressional district plan under division (F)(1) of this section by the affirmative vote of three-fifths of the members of each house, including the affirmative vote of at least one-third of the members of each of the two largest political parties represented in that house, and the plan becomes law, it shall remain effective until the next year ending in the numeral one, except as provided in Section 3 of this article.
(3) If the general assembly passes a congressional district plan under division (F)(1) of this section by a simple majority vote of the members of each house of the general assembly, and not by the vote described in division (F)(2) of this section, all of the following shall apply:
(a) The general assembly shall not pass a plan that unduly favors or disfavors a political party or its incumbents.
(b) The general assembly shall not unduly split governmental units, giving preference to keeping whole, in the order named, counties, then townships and municipal corporations.
(c) Division (B)(2) of Section 2 of this article shall not apply to the plan. The general assembly shall attempt to draw districts that are compact.
(d) The general assembly shall include in the plan an explanation of the plan's compliance with divisions (F)(3)(a) to (c) of this section.
(e) If the plan becomes law, the plan shall remain effective until the next year ending in the numeral one, except as provided in Section 3 of this article.
(G) Before the general assembly passes a congressional district plan under any division of this section, a joint committee of the general assembly shall hold at least two public hearings on this section, a proposed plan, before the Ohio redistricting commission adopts a congressional district plan under any division of this section, the commission shall hold at least two public hearings concerning a proposed plan.
(H) The general assembly and the Ohio redistricting commission shall facilitate and allow for the submission of proposed congressional district plans by members of the public. The general assembly shall provide by law the manner in which members of the public may do so.
(I) For purposes of filing a congressional district plan with the governor or the secretary of state under this article, a congressional district plan shall include both a legal description of the boundaries of the congressional districts and all electronic data necessary to create a congressional district map for the purpose of holding congressional elections.
(J) When a congressional district plan ceases to be effective under this article, the district boundaries described in that plan shall continue in operation for the purpose of holding elections until a new congressional district plan takes effect in accordance with this article. If a vacancy occurs in a district that was created under the previous district plan, the election to fill the vacancy for the remainder of the unexpired term shall be held using the previous district plan.
Section 2, (A)(1) Each congressional district shall be entitled to a single representative in the United States house of representatives in each congress.

(2) The whole population of the state, as determined by the federal decennial census or, if the federal decennial census is unavailable, another basis as directed by the general assembly, 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 the next ten years.

(3) 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 data from the most recent federal decennial census or from the basis directed by the general assembly, as applicable.

(B) A congressional district plan shall comply with all of the following requirements:

(1) The plan shall comply with all applicable provisions of the constitutions of Ohio and the United States and of federal law, including federal laws protecting racial minority voting rights.

(2) Every congressional district shall be compact.

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

(4) Except as otherwise required by federal law, in a county that contains a population that exceeds the congressional ratio of representation, the authority drawing the districts shall take the first of the following actions that applies to that county:

(a) If a municipal corporation or township located in that county contains a population that exceeds the congressional ratio of representation, the authority shall attempt to include a significant portion of that municipal corporation or township in a single district and may include in that district other municipal corporations or townships that are located in that county and whose residents have similar interests as the residents of the municipal corporation or township that contains a population that exceeds the congressional ratio of representation. In determining whether the population of a municipal corporation or township exceeds the congressional ratio of representation for the purpose of this division, if the territory of that municipal corporation or township completely surrounds the territory of another municipal corporation or township, the territory of the surrounded municipal corporation or township shall be considered part of the territory of the surrounding municipal corporation or township.

(b) If one municipal corporation or township in that county contains a population of not less than one hundred thousand and not more than the congressional ratio of representation, that municipal corporation or township shall not be split. If that county contains two or more such municipal corporations or townships, only the most populous of those municipal corporations or townships shall not be split.

(5) Of the eighty-eight counties in this state, sixty-five counties shall be contained entirely within a district, eighteen counties may be split not more than once, and five counties may be split not more than twice. The authority drawing the districts may determine which counties may be split.

(6) If a congressional district includes only part of the territory of a particular county, the part of that congressional district that lies in that particular county shall be contiguous within the boundaries of the county.

(7) No two congressional districts shall share portions of the territory of more than one county, except for a county whose population exceeds four hundred thousand.

(8) The authority drawing the districts shall attempt to include at least one whole county in each congressional district. This division does not apply to a congressional district that is contained entirely within one county or that cannot be drawn in that manner while complying with federal law.

(C)(1) Except as otherwise provided in division (C)(2) of this section, for purposes of this

article, a county, municipal corporation, or township is considered to be split if, based on the census data used for the purpose of redistricting, any contiguous portion of its territory is not contained entirely within one district.

(2) 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 purposes of this section.

Section 3. (A) The supreme court of Ohio shall have exclusive, original jurisdiction in all cases arising under this article.

(B)(1) In the event that any section of this constitution relating to congressional redistricting, any congressional district plan, or any congressional district or group of congressional districts is challenged and 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 general assembly shall pass a congressional district plan in accordance with the provisions of this constitution that are then valid, to be used until the next time for redistricting under this article in accordance with the provisions of this constitution that are then valid.

The general assembly shall pass that plan not later than the thirtieth day after the last day on which an appeal of the court order could have been filed or, if the order is not appealable, the thirtieth day after the day on which the order is issued.

A congressional district plan passed under this division shall remedy any legal defects in the previous plan identified by the court but shall include no changes to the previous plan other than those made in order to remedy those defects.

(2) If a new congressional district plan is not passed in accordance with division (B)(1) of this section and filed with the secretary of state in accordance with Section 16 of Article II of this constitution, the Ohio redistricting commission shall be reconstituted and reconvene and shall adopt a congressional district plan in accordance with the provisions of this constitution that are then valid, to be used until the next time for redistricting under this article in accordance with the provisions of this constitution that are then valid.

The commission shall adopt that plan not later than the thirtieth day after the deadline described in division (B)(1) of this section.

A congressional district plan adopted under this division shall remedy any legal defects in the previous plan identified by the court but shall include no other changes to the previous plan other than those made in order to remedy those defects.

EFFECTIVE DATE AND REPEAL

If adopted by a majority of the electors voting on this proposal, the version of Section 1 of Article XI amended by this proposal and Sections 1, 2, and 3 of Article XIX of the Constitution of the State of Ohio enacted by this proposal take effect January 1, 2021, and the existing version of Section 1 of Article XI of the Constitution of the State of Ohio that is scheduled to take effect January 1, 2021, is repealed from that effective date.

Speaker _____
of the House of Representatives.

President _____
of the Senate.

Adopted _____, 20

Republicans Announce Significant Changes Made To Congressional Redistricting Plan

January 29, 2018



COLUMBUS – State Senator Matt Huffman (R-Lima) and Ohio House Speaker Pro Tempore Kirk Schuring (R-Canton) today announced updates to Sub. Senate Joint Resolution 5, a proposal to reform the way congressional district lines are drawn in Ohio.

The goals of the plan remain the same: to constitutionalize congressional map drawing standards, to require bipartisan support, and to significantly reduce the splitting of counties and cities. Adjustments made today in the proposal are a result of numerous discussions in hopes of reaching a solution with bipartisan support.

“By defining a process and ensuring bipartisan support, we are proposing a historic change in how Ohio draws its congressional district lines,” said Huffman, sponsor of S.J.R. 5. “As part of our good faith effort to reach a solution, we are making substantial changes today based on our discussions with Democrat leadership and feedback we have heard from coalition leaders and the public. I believe we are providing the people of Ohio with a plan that is both fair and responsible.”

Changes to Sub. Senate Joint Resolution 5 include:

- Increasing the required level of bipartisan support to at least 50% vote of the minority party on a 10-year map passed by the General Assembly.
- Additionally increasing the required level of bipartisan support from a 1/5 to a 1/3 vote of the minority party on ratifying a 4-year map into a 10-year map.



- **Enhancing protections for regions, counties and cities by keeping counties from being split more than twice. In fact, the updated plan calls for at least 65 counties to be kept whole and allows only five counties to be split twice. The proposal also requires the cities of Cleveland and Cincinnati to be kept whole inside districts, and Columbus to be the base of its own district.**
- **Restoring the governor's ability to veto a map.**
- **Maintaining Ohioans' ability to file a referendum against a congressional map.**
- **Clarifying that a court challenge can be brought to an entire map not just individual districts.**
- **Eliminating strict equal population requirements for districts.**

A side-by-side comparison of today's changes can be found here.

The next public hearing on Sub. Senate Joint Resolution 5 is scheduled for 10 a.m. on Tuesday, January 30 in the Senate's Government Oversight and Reform committee.

###

Press Contacts

**Ohio Senate: John Fortney, 614.995.1280,
John.Fortney@ohiosenate.gov**

Ohio House: Brad Miller, 614.466.8759, Brad.Miller@ohiohouse.gov

ID	Population		Shapes		Partisan Lean	
	Total	+/-			Dem	Rep
Un	0				0.00%	0.00%
0	786,164	-0.06%			46.19%	51.33%
1	786,500	-0.02%			54.92%	42.97%
2	784,300	-0.30%			50.44%	47.05%
3	788,707	0.26%			33.01%	64.42%
4	787,709	0.14%			64.23%	33.46%
5	788,050	0.18%			44.92%	52.56%
6	784,616	-0.26%			50.29%	46.81%
7	787,400	0.10%			25.62%	71.62%
8	786,787	0.02%			33.59%	63.83%
9	786,609	0.00%			59.37%	38.43%
10	786,471	-0.02%			56.60%	40.99%
11	787,399	0.10%			42.99%	54.54%
12	786,552	-0.01%			30.28%	67.42%
13	787,087	0.06%			54.10%	43.65%
14	785,085	-0.20%			31.82%	65.90%
	786,629	0.56%			45.25%	52.31%

Notes

- The 0.56% population deviation is within the 0.75% threshold tolerated by the courts.
- Six districts lean Republican, five lean Democratic, and four fall in the 45–55% competitive range.





Congressional Redistricting 2021: Legal Framework

September 10, 2021

In August 2021, the Census Bureau released the [2020 redistricting data](#), and based on that data, [states](#) have [begun](#) the process of congressional redistricting. Redistricting is the drawing of district boundaries within each state from which voters elect their representatives to the U.S. House of Representatives. In addition to complying with [applicable state laws](#), congressional redistricting must comport with the U.S. Constitution and federal law, as interpreted by the Supreme Court. Since the [1960s](#), the Court has issued a series of rulings that have significantly shaped how congressional districts are drawn. Integrating Court precedent, this Legal Sidebar provides an overview of the legal framework that informs congressional redistricting, focusing on the population equality standard; requirements under the Voting Rights Act (VRA); standards of equal protection; and claims of unconstitutional partisan gerrymandering. The Sidebar concludes by discussing various considerations for Congress.

Population Equality Standard: One Person, One Vote

The Supreme Court has interpreted the Constitution to require that each congressional district within a state contain an approximately equal number of persons. In a 1964 ruling, *Wesberry v. Sanders*, the Supreme Court interpreted [Article I, Section 2](#) of the U.S. Constitution, which provides that Representatives be chosen “by the People of the several States” so that “as nearly as is practicable[,] one man’s vote in a congressional election is to be worth as much as another’s.” This requirement is sometimes called the “[equality standard](#)” or the principle of one person, one vote.

In several cases since 1964, the Supreme Court has described the extent to which deviations from precise or ideal population equality among congressional districts are permissible. Precise or ideal equality is the average population that each district would contain if a state population were evenly distributed across all districts. The total population deviation or “[maximum population deviation](#)” refers to the percentage difference from the ideal population between the most and least populated districts in a state. Notably, the Court has determined that congressional districts are permitted less deviation from precise equality than [state legislative districts](#). For example, in the 1969 case, *Kirkpatrick v. Preisler*, the Court invalidated a congressional redistricting plan with a 5.97% maximum population deviation, where the “most populous district was 3.13 percent above the mathematical ideal, and the least populous was 2.84 percent below.” The Court characterized the variance as too great to comport with the “as nearly as practicable” standard

Congressional Research Service

<https://crsreports.congress.gov>

LSB10639



set forth in *Wesberry*, which requires the government to “make a good faith effort to achieve precise mathematical equality.” Later, in *Karcher v. Daggett*, the Court rejected a 0.6984% maximum population deviation, holding that “absolute” population equality is the standard for congressional districts unless a deviation is necessary to achieve “some legitimate state objective.” According to the Court, these objectives can include “consistently applied legislative policies” such as achieving greater compactness, respecting municipal boundaries, preserving prior districts, and avoiding contests between incumbents. The Court held that the government did not provide sufficient justification for the population deviation in this case. In *Tennant v. Jefferson County Commission* the Court further honed the population equality standard, upholding a congressional district with a 0.79% maximum population deviation. According to the Court, while precise mathematical equality among congressional districts is not required, the “as nearly as practicable” standard requires states to justify any population deviation among districts with “legitimate state objectives.” Emphasizing that the state’s burden here is “flexible,” the Court explained that it will depend on the size of the population deviation, the importance of the state’s interests, how consistently the redistricting plan matches those interests, and whether alternatives exist that might substantially serve those interests while achieving greater population equality. The Court opined that none of the alternative redistricting plans that achieved greater population equality came as close to vindicating the state’s legitimate objectives and therefore, upheld the 0.79% maximum population deviation between the largest and smallest congressional districts.

Section 2 of the Voting Rights Act: Applies Nationwide

Congressional district boundaries in every state are required to comply with Section 2 of the VRA, which is codified at [52 U.S.C. § 10301](#). Section 2 authorizes the federal government and private citizens to challenge discriminatory voting practices or procedures, including minority [vote dilution](#), i.e., the diminishing or weakening of minority voting power. Section 2 prohibits any voting qualification or practice applied or imposed by any state or political subdivision (e.g., a city or county) that results in the denial or abridgement of the right to vote based on race, color, or membership in a language minority. This prohibition includes congressional redistricting maps. Section 2 further provides that a violation is established if, based on the totality of circumstances, electoral processes are not equally open to participation by members of a racial or language minority group in that the group’s members have less opportunity than other members of the electorate to elect representatives of their choice.

Under certain [circumstances](#), Section 2 may require the creation of [one or more “majority-minority” districts](#) in a congressional redistricting map in order to prevent the denial or abridgement of the right to vote based on race, color, or membership in a language minority. A majority-minority district is one in which a racial or language minority group comprises a voting majority. The creation of such districts can avoid minority vote dilution by helping ensure that racial or language minority groups are not submerged into the majority and, thereby, denied an equal opportunity to elect candidates of choice.

In its landmark 1986 decision *Thornburg v. Gingles*, the Supreme Court established a three-pronged test for proving vote dilution under Section 2 of the VRA. Under this test, (1) the minority group must be able to demonstrate that it is sufficiently large and geographically compact to constitute a majority in a single-member district; (2) the minority group must be able to show that it is politically cohesive; and (3) the minority group must be able to demonstrate that the majority group votes sufficiently as a bloc to defeat the minority group’s preferred candidates. The *Thornburg* Court also opined that a violation of Section 2 is established if, based on the “totality of the circumstances” and “as a result of the challenged practice or structure, plaintiffs do not have an equal opportunity to participate in the political processes and to elect candidates of their choice.” In addition, the Court listed the following factors, which originated in the legislative history accompanying enactment of Section 2, as relevant in assessing the totality of the circumstances:

1. the extent of any history of official discrimination in the state or political subdivision that touched the right of the members of the minority group to register, to vote, or otherwise to participate in the democratic process;
2. the extent to which voting in the elections of the state or political subdivisions is racially polarized;
3. the extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, anti-single shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group;
4. if there is a candidate slating process, whether the members of the minority group have been denied access to that process;
5. the extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process;
6. whether political campaigns have been characterized by overt or subtle racial appeals; [and]
7. the extent to which members of the minority group have been elected to public office in the jurisdiction.

In 2009, in *Bartlett v. Strickland*, the Court further interpreted the *Gingles* three-pronged test. In *Bartlett*, the Court ruled that the first prong of the test—requiring a minority group to be geographically compact enough to constitute a majority in a district—can only be satisfied if the minority group would constitute more than 50% of the voting-age population in a single-member district. Therefore, in order to comply with Section 2, a congressional redistricting map may be required to create one or more majority-minority districts, but in such districts, minority voters must comprise a numerical majority.

It is unclear whether the July 2021 Supreme Court ruling in *Brnovich v. Democratic National Committee (DNC)* will affect Section 2 challenges to redistricting maps, as *Brnovich* did not involve a Section 2 vote dilution challenge. Instead, the Court in *Brnovich*—which involved a **vote denial** case—upheld two “generally applicable time, place, or manner voting rules” against a Section 2 challenge.

Section 5 of the Voting Rights Act: Preclearance Inoperable

For the first time since Congress passed the VRA in 1965, the current round of congressional redistricting maps will not be subject to the law’s preclearance requirements. Prior to a 2013 Supreme Court ruling, *Shelby County v. Holder*, the coverage formula in Section 4(b) of the VRA applied to **nine states and jurisdictions within six additional states**, and these covered states and jurisdictions were subject to the preclearance requirement of Section 5 of the VRA. Thus, prior to *Shelby County*, Section 5 required the covered states and jurisdictions to obtain prior approval or “preclearance” before implementing any proposed change to a voting law, including changes to congressional redistricting maps. In order to be granted preclearance, the covered state had the burden of proving that the proposed map would have neither the purpose nor the effect of denying or abridging the right to vote on account of race or color, or membership in a language minority group. A proposed map would not be granted preclearance if it led to a “**retrogression in the position of racial minorities.**” Retrogression means a reduction in “the number of districts in which minority groups could **elect their preferred candidates of choice,**” as compared with the existing map or “benchmark plan.” Covered jurisdictions could seek preclearance from either the **Department of Justice** or the U.S. District Court for the District of Columbia.

In *Shelby County*, the Court invalidated the coverage formula in Section 4(b) of the VRA, thereby rendering the preclearance requirements in Section 5 inoperable. The Court held that applying the

coverage formula to certain states and jurisdictions departed from the “fundamental principle of equal sovereignty” among the states without justification “in light of current conditions.”

Equal Protection Standard and Racial Gerrymandering Claims

Congressional redistricting maps must also conform with standards of equal protection under the [Fourteenth Amendment](#) to the Constitution. According to the Supreme Court, if race is the [predominant factor](#) in the drawing of district lines above other traditional redistricting considerations—including compactness, contiguity, and respect for political subdivision lines—then courts must apply a “[strict scrutiny](#)” standard of review. To withstand strict scrutiny in this context, the state must demonstrate that it had a compelling governmental interest in creating a majority-minority district and the redistricting plan was narrowly tailored to further that compelling interest. These cases are often referred to as “[racial gerrymandering](#)” claims because the challengers argue that race was improperly used in drawing district boundaries. Case law in this area has revealed that there can be tension between complying with the VRA, as previously discussed, and conforming with standards of equal protection.

According to the Supreme Court, the constitutional requirement of equal population among districts is not a “traditional” redistricting principle, and therefore, should not be considered in determining whether race impermissibly predominated in drawing a redistricting map. In [Alabama Legislative Black Caucus v. Alabama](#), the Court explained that if a redistricting map moves additional voters into a particular district to achieve equal population, a court should ascertain the predominance of race by examining which voters were moved and whether the legislature based its decision on race, instead of traditional redistricting factors.

The Supreme Court further clarified the standard for determining racial predominance in a racial gerrymandering claim in [Bethune-Hill v. Virginia State Board of Elections](#). In *Bethune-Hill*, the Court held that challengers to a redistricting map on racial gerrymandering grounds need not prove, as a threshold matter, that the plan conflicts with traditional redistricting criteria. Although acknowledging that such a conflict or inconsistency may be “persuasive circumstantial evidence” of racial predominance, the Court held that such a showing is not required. In so doing, the Court rejected the state’s argument that if an identical redistricting map could have been drawn in accordance with traditional redistricting criteria, then racial predominance has not been proven. According to the Court, in determining racial predominance, courts must examine the “actual considerations” involved in crafting the redistricting map, not “post hoc justifications” that the legislature could theoretically have used in crafting the map.

Partisan Gerrymandering Claims Not Reviewable in Federal Courts

In 2019, the Supreme Court determined that claims of unconstitutional partisan gerrymandering [are not subject to federal court review](#). Partisan gerrymandering is “[the drawing of legislative district lines to subordinate adherents of one political party and entrench a rival party in power.](#)” In [Rucho v. Common Cause](#), the Supreme Court ruled that claims of unconstitutional partisan gerrymandering are not subject to federal court review because they present non-justiciable political questions. The Court viewed the Elections Clause of the Constitution as solely assigning disputes about partisan gerrymandering to the state legislatures, subject to a check by Congress. Moreover, in contrast to [one-person, one-vote](#) and racial gerrymandering claims, as previously discussed, the Court determined that no test exists for adjudicating partisan gerrymandering claims that is both judicially discernible and manageable. Instead of the federal

courts, the Court suggested that Congress and the state legislatures could play a role in regulating partisan gerrymandering.

In at least two instances, challengers have successfully brought claims of unconstitutional partisan gerrymandering under relevant *state* constitutional provisions. For example, in 2015, the [Florida Supreme Court invalidated](#) a Florida congressional redistricting map as violating a state constitutional provision addressing partisan gerrymandering. Similarly, in 2018, the [Pennsylvania Supreme Court struck down](#) the state's congressional redistricting map under a Pennsylvania constitutional provision. Going forward, excessive partisan influence in congressional redistricting will be addressed by relevant state constitutional and statutory provisions, as interpreted by state courts, along with any action that Congress might decide to take, as discussed below.

Considerations for Congress

As discussed, the U.S. Constitution and the VRA, as construed by the Supreme Court, provide standards for congressional redistricting. Federal law generally does not establish additional guidance to the states as they draw new district boundaries, with the exception of laws addressing [single-member districts](#) and the [timing of apportionment](#). **Apportionment** is the allocating of 435 seats in the U.S. House of Representatives among the 50 states based on state population, with each state entitled to at least one representative. During the [19th and 20th centuries](#), federal apportionment laws with limited duration established requirements for congressional districts such as [contiguity and compactness](#). With the [permanent 1929 apportionment law](#), Congress omitted those standards.

Congressional and state authority in this area stems from Article I, Section 4 of the Constitution, the Elections Clause. The Elections Clause provides to states the initial and principal authority to administer elections within their jurisdictions, but provides Congress with the authority to “[override](#)” state laws in order to regulate federal elections. Any legislation proposing to regulate congressional redistricting would need to comport with the Elections Clause, as interpreted by the Supreme Court.

Over the past several Congresses, legislation has been introduced, although never enacted, that would establish additional federal statutory standards for congressional redistricting. Continuing that trend, in the 117th Congress, several bills have been introduced that take various approaches. For example, legislation addressing partisan gerrymandering, H.R. 1 (which passed the House of Representatives on March 3, 2021), H.R. 80, H.R. 3863, H.R. 4307, S. 1, S. 2093, and S. 2670, include provisions that would eliminate legislatures from the redistricting process and require each state to establish a nonpartisan, independent congressional [redistricting commission](#), in accordance with certain criteria. The proposed bills would also establish criteria for court-ordered redistricting maps and prohibit states from carrying out more than one congressional redistricting following a decennial census, i.e., mid-decade redistricting. Similarly, H.R. 134 would prohibit states from carrying out mid-decade redistricting. At least one [scholar has argued](#) that limiting redistricting to once per decade renders it “less likely that redistricting will occur under conditions favoring partisan gerrymandering.” In that same vein, H.R. 81, based on the view that public oversight of redistricting may lessen partisan influence in the process, would require state congressional redistricting entities to establish and maintain a public Internet site and conduct redistricting under procedures that provide opportunities for public participation.

Pending legislation would also address relevant Supreme Court decisions. For example, H.R. 4, which passed the House of Representatives on August 24, 2021, responds to the *Shelby County v. Holder* ruling. The bill proposes to amend Section 4(b) of the VRA to establish a new, rolling coverage formula for Section 5 preclearance based primarily on court-determined voting rights violations and would establish a new preclearance process based on specified voting practices, including changes to redistricting maps. In addition, H.R. 4 would generally codify the *Thornburg v. Gingles* ruling by establishing threshold conditions for challenges to redistricting maps based on vote dilution claims and providing a

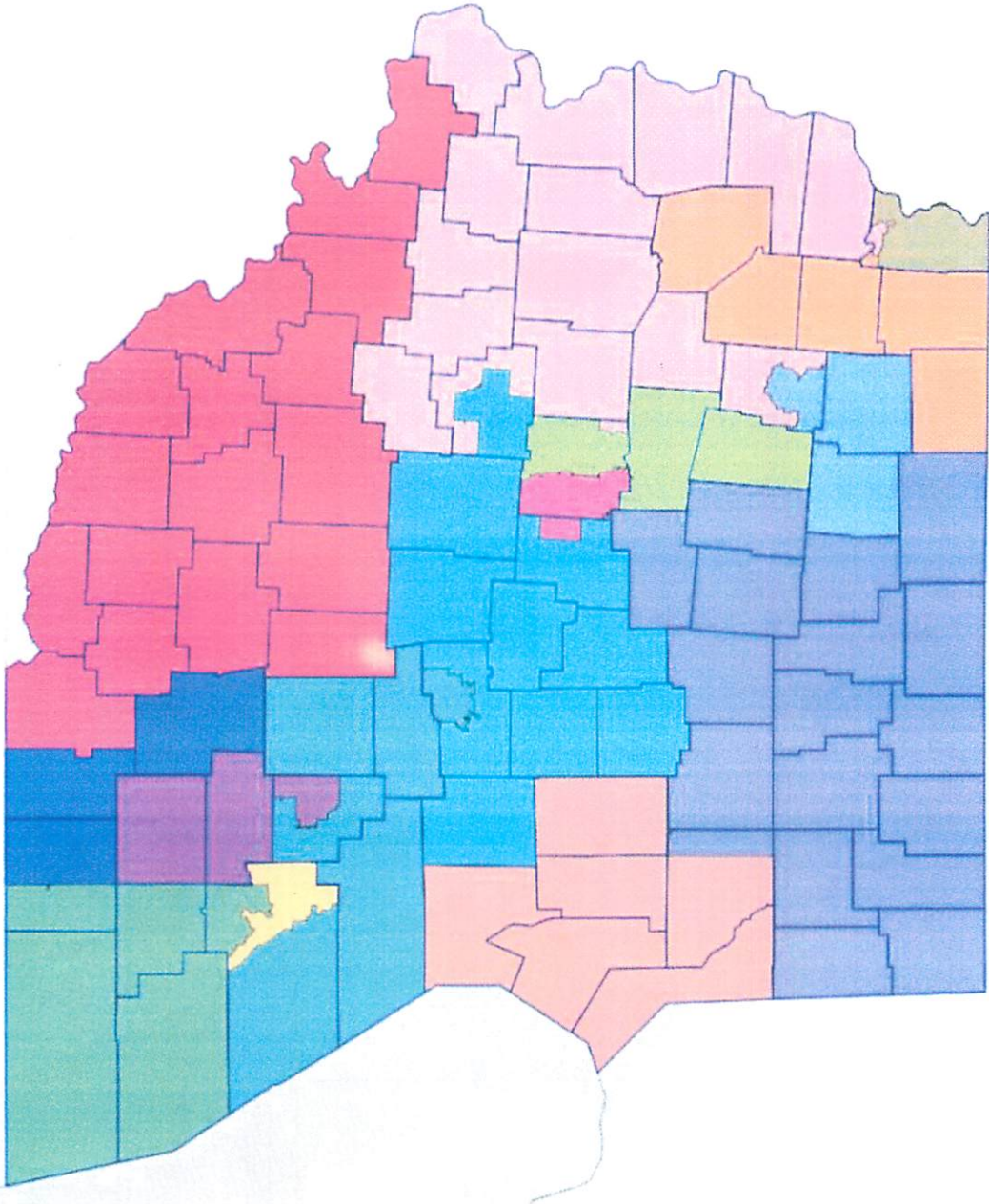
[list of factors](#), which originated in the legislative history of VRA Section 2, relevant to assessing the totality of circumstances.

Author Information

L. Paige Whitaker
Legislative Attorney

Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS's institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.



Congressional District 3 (117th Congress), Ohio

Source: 2019 American Community Survey 1-Year Estimates

<https://www.census.gov/mycd/?st=39&cd=03>

Sex and Age Estimate

Total population 813,890

Male 396,686

Race Estimate

Total population 813,890

One race 776,024

White 430,038

Black or African American 281,245

American Indian and Alaska Native 2,007

Asian 35,864

Native Hawaiian and Other Pacific Islander 463

Some other race 26,407

Two or more races 37,866

Hispanic or Latino and Race Estimate

Total population 813,890

Hispanic or Latino (of any race) 58,824

Mexican 32,168

Puerto Rican 5,760

Cuban 997

Other Hispanic or Latino 19,899

Not Hispanic or Latino 755,066

