

November 8, 2021

Testimony - Unconstitutional Ohio Redistricting Congressional Maps

I am a lawyer licensed in Ohio, and have been an Ohio resident for more than 50 years. I hereby provide this written testimony in opposition to the proposed Senate Congressional redistricting map, and submitting it for consideration by the Local Government and Elections Committee, of which you are Chair.

The Congressional district maps proposed by the GOP controlled Ohio Senate and House treat with arrogance and disdain the 70% of Ohio voters who approved the Ohio constitutional amendment intended to produce fair Congressional districts. They have refused to act in good faith, and instead have chosen to act solely in their self-interests to preserve their own reelections. And the Ohio Redistricting Commission, in an extraordinary display of dereliction of duty, failure to act in good faith, and political cowardice, has not bothered to do ANYTHING to produce ANY map.

Constitutional Requirements

The Ohio Constitution provides that, if the General Assembly passes a congressional district map by a simple majority of the members of each house, and without the vote of at least one-third of the members of each party, then the map must not:

- “unduly” favor or disfavor a political party or its incumbents; [Article XIX(1)(C)(3)(a)]
- “unduly” split governmental units, giving preference to keeping whole, in the order named, counties, then townships and municipal corporations. Article XIX(1)(C)(3)(b)]

Unduly is not a defined term in Article XIX. Its dictionary definition is “to an unwarranted degree; inordinately,” “more than necessary, not proper”, “excessive, beyond what is expected or required”. The maps proposed by the Republicans fail to meet both of these constitutional requirements, and are therefore invalid.

Unduly Favoring Political Party

A map would “unduly” favor or disfavor a political party, if it likely would result in a proportion of the districts favoring one party that does not closely correspond to the statewide proportion of votes received by that party, much as is the case in Article XI pertaining to General Assembly district maps. The primary reason why Article XIX was adopted was because there was not such close correspondence. Statewide voting patterns over the past 10 years show that approximately 54% voted Republican, and 46% voted Democratic. As described below, none of the maps proposed by Republican or Democratic parties would result in a proportion of districts for either party that closely corresponds with this statewide voting pattern, and would therefore not satisfy the constitutional requirement.

Republicans argue that the proportion of General Assembly districts favoring each party should closely correspond to the proportion of statewide elections WON by each party. That is NOT what voters were told in the campaign seeking their approval of Article XIX. No one was making the specific case then that a political party should have a proportion of seats that would closely correspond numerically to the proportion of statewide seats WON by that party. Further, the argument makes little sense because it does not address the fundamental problem as explained to voters. That problem was the disparity in

the proportion of seats won by each party to the proportion of votes for each party. Finally, if the Republican argument would have been made to voters when they approved Article XIX, they likely would not have approved it, because it would have provided insufficient relief from the status quo of unfair gerrymandering.

House Republican Proposal

The House GOP proposed map, as described by its proponent, would result in a breakdown of 8-5-2, where Republicans would have eight safe seats, Democrats would have two and five would be competitive, which is essentially 80% - 20% split. And the competitive range is broad, with one party having as much as 55% of the likely vote share and the other having at least 45%. And the five competitive districts favor Republican candidates.

Senate Republican Proposal

The Senate GOP proposed map would result in a breakdown of 6-7-2, where Republicans would have six safe seats, Democrats would have two and seven would be competitive, which is essentially a 75%-25% split, with the seven competitive districts generally favoring Republican candidates.

Democratic Proposal

Democrats in the Ohio House put forward a congressional map that would likely result in a breakdown of 6-5-4, where Republicans would have six safe seats, Democrats would have four and five would be competitive, which is essentially a 60% - 40% split. It would likely would give Republicans a 9-6 advantage, which is also a 60% - 40% split.

Unduly Splitting Government Units

A separate provision of Article XIX contains specific requirements for the splitting of Congressional districts, including the provision that 18 counties may be split not more than once and 5 counties may be split not more than twice. Article XIX (2)(B). That provision, however, does not mean, for example, that any splitting of not more than 5 counties more than twice would be constitutionally permitted. Otherwise, Article XIX(1)(C)(3)(b), above, would be unnecessary. Why prohibit “undue” splitting if the Article already includes provisions setting the maximum number of splits?

And the GOP maps unduly split the most populous counties. The House map splits Hamilton, Franklin, Cuyahoga and Summit counties all into three districts. In Summit, one stretches up to Lake Erie communities such as Ashtabula, and another stretches down to the Hocking Hills area of Southeastern Ohio. In Hamilton County, Democratic Cincinnati is slimly connected to the entirety of Republican Warren County.

The Senate map also splits Hamilton, Franklin and Cuyahoga counties into three districts, with Democrats holding the advantage in the city centers and Republicans having the advantage in the respective other two districts including parts of each county. GOP Senate plan splits Summit into two districts. It makes little sense to group parts of the state’s fourth largest county with quaint Holmes County unless you only care about muting Democratic votes by including slices of larger cities in largely rural districts.

In the Democratic map, only 11 counties were split, with the splits only occurring once in each county. No counties were split more than once. The map's four safe Democratic seats are in Franklin, Hamilton, Lucas and Cuyahoga counties. The map creates two Democratic-leaning districts: one with the northern half of Franklin County, Delaware County, Morrow County and a sliver of Marion County and the other with Summit County and northwestern Stark County.

Burden of Proof

The burden of proof should be on Republicans to establish that their map does not unduly favor a political party and unduly split counties. That is because their proposed map failed to be adopted by each of the three earlier steps in the Article XIX approval process. Failed to achieve approval by 60% of each house and majority of Democrats. Failed to achieve approval by Ohio Redistricting Commission. Failed to achieve approval by 60% of each house and one-third of Democrats. Approval at any of those earlier stages would have been convincing evidence that the map did not unduly favor a political party or unduly split counties. Failure to obtain that approval is persuasive evidence that the map does unduly favor a political party and does unduly split counties. The GOP would therefore need to meet that burden in litigation before the Ohio Supreme Court and before Ohio voters.

Joseph Mark Hennessey

Pepper Pike, Ohio 44124

C:\Users\Joseph\Documents\Political\Redistricting\Testimony regarding GOP Maps November 7 2021.docx