

Testimony to Ohio Redistricting Commission

Cleveland State University Hearing

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Thank you, members of the State Government committee, for holding this important discussion around congressional redistricting.

Tens of thousands of Ohioans and their representatives in this General Assembly have committed an unprecedented amount of time and resources preparing for the upcoming redistricting cycle. As has been documented extensively, the data and computing power available in 2010 dramatically exacerbated the dangers of gerrymandering for partisan and political gain. We saw the results in the maps and in the litigation that followed.

With regard to the imminent congressional redistricting process, the division of power between the legislative and executive branches should do everything under their power to mitigate the risks of gerrymandering lines. I and my fellow Ohioans remain seriously concerned about both this cycle and future cycles if permanent reforms are not enacted. Unfortunately, there is no longer time to create an independent commission to draw federal districts this year, though hopefully at the state level some semblance of reasonable voting representation can be achieved.

As redistricting is a complicated feature of our democracy, it should be acknowledged that there are multiple, valid perspectives on how a map-drawing process can be constructed. There is no public debate around the principle that political districts should be drawn to achieve a degree of fairness in representation and with voters in mind rather than incumbents or parties.

Making districts compact, contiguous and of equal population should be priority one.

All districts should be compact and contiguous, both of which are common in law in other states, and bluntly, that is just common sense. Contiguity can be defined as simply meaning that districts may not be separated from themselves at any point. Compactness is sometimes quantified, and there are several respected mathematical calculations for the compactness of a district. Polsby-Popper is most frequently cited in recent case law, measuring the ratio of the total area of the district to the area of a circle whose circumference is equal to the perimeter of the district. Ohio is subject to the same federal standard as other states for population equality among districts.

Minimizing the division of political districts should also be a high priority.

Of the many comments I have heard from my peers, the splitting of counties or municipalities among multiple political districts is by far the most frequently named grievance. This seemed to be the case for two reasons: First, any Ohioan can see plainly the division of their county or municipality on a map; and second, as residents of that community they likely had a sense of whether a certain division was justified by some straightforward consideration of geographic boundaries, the protection of racial or language minorities, or some other local community objective. Without any such justification, they assumed jurisdictional splits were due to a partisan or political factor.

We need to protect racial and language minorities, though not to their own detriment.

In our diverse Commonwealth, it will remain critically important that minority communities are protected in the map-making process. The Voting Rights Act's Section 2 continues to apply to congressional redistricting in every state and prevents district lines that would deny minority voters an equal opportunity "to participate in the political process and to elect representatives of their choice." We are fortunate that this federal provision is still in effect, safeguarding minority communities from being "cracked" or "packed" with a discriminatory outcome regardless of intentionality.

But beyond any baseline protection provided in state or federal law, it should be stressed that a meaningful and accessible public engagement process is especially critical to hear from racial, ethnic, and language communities during the map-making process. This will ensure the final mapping plan best reflects these communities—far preferable to having to correct a potential violation in court.

Mitigating the risk of partisan manipulation should be fundamental; this should be about equally representing all Ohioans, regardless of race, gender, or creed.

On that basis, it should be considered that the following not be used when drawing districts:

- Addresses of any individual;
- Political affiliation of registered voters; or
- Previous election results, unless required by Federal law.
- It would also make sense to support a prohibition on the use of such data, none of which should inform decisions by map-makers.

A more robust barrier to partisan gerrymandering and incumbent advantage (or disadvantage) would be to ban these political objectives explicitly by law, which a growing number of states are doing for congressional and state legislative districts. According to resources from national redistricting expert Justin Levitt, 17 states now have statutory or constitutional guards against partisan, congressional gerrymandering—more than double the number of states that had such law in 2010. Given Ohio's past experience with partisan gerrymandering, I would recommend a rule against "unduly" favoring or disfavoring a candidate or political party.

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(1) The division of voting precincts should also be prohibited.

(2) 52 U.S. Code § 10301 - Denial or abridgement of right to vote on account of race or color through voting qualifications or prerequisites; establishment of violation

(3) This testimony has been adapted from the Committee of Seventy's testimony to the State Government of Pennsylvania