

Testimony Before the Ohio Redistricting Commission, September 12, 2021

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 am also one of the five negotiators¹ who produced a draft of what is now Article XI of the Ohio Constitution, as ratified by over 71% of the voters of Ohio in 2015. I am here in my capacity as a political scientist with considerable experience in redistricting, as well as a co-author of the constitutional provisions that must be followed in drawing new House and Senate district lines

I will address several of the criteria set forth in the Ohio constitution by the 2015 reforms, and the extent to which the map proposed by Ray DiRossi and the Republican House and Senate caucuses meets those criteria.

The criteria set forth in the constitution are (1) that districts have roughly equal population size, (2) conformity with the Section 3 rules concerning the splitting of counties, municipalities and townships, (3) compliance with the rules set forth in Section 6(A) and (B), commonly referred to as “representational fairness,” (4) compliance with the Voting Rights Act, and (5) compactness. All of them are important, but I will focus my attention on compliance with the VRA and the rules included in Section 6(A) and (B).

Let me begin with what are commonly referred to as the “representational fairness” criteria—set forth in Section 6(A) and 6(B) of Article XI. Section 6 begins by stating that “the Ohio redistricting commission shall attempt to draw a general assembly district plan that meets all of the following standards...”

Note that the constitution does not state that the Redistricting Commission *can, may* or *might* attempt to meet these criteria—it says that it *shall* attempt to draw district boundaries that meet these criteria. This is not an option. ***Shall means shall.*** And in light of the discussion last Thursday of the status of Section 6, it should be pointed out that the word “aspirational” does not appear anywhere in the Ohio constitution, nor is it implied.² It is required that the rules in Section

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 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 years, favors 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

6 be adhered to.³ These rules are not optional, to be ignored according to the whims or partisan interests of the Ohio Redistricting Commission.

And what are these Additional District Standards? 6(A) states that “No general assembly district plan shall be drawn primarily to favor or disfavor a political party.” And 6(B) makes it quite clear what not favoring a party means: “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 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 54.2% of the votes cast by Ohio voters, while Democratic candidates for those offices have received 45.8% 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 make-up of Ohio's voters—that is, for the House, the statewide map should include approximately 54 districts that whose voters lean towards the Republican party (54.5%), and 45 that lean Democratic (45.5%), and for the Senate, there should be approximately 18 districts leaning Republican (54.5%) and 15 democratic. (45.5%).

How does the DiRossi proposal stack up against this constitutional standard? The widely used website Dave’s Redistricting App estimates that it would create 67 Republican districts and just 32 Democratic-leaning districts. That is even worse than our current gerrymandered map. And the Senate map is worse still—it would create 25 Republican districts and only 8 Democratic leaners. In short, it unduly favors one political party and is flagrantly unconstitutional.

The shortcomings of the DiRossi plan go beyond these highly biased, partisan outcomes. In response to a question from a member of the Commission, DiRossi stated that the drawing of this map did not include an assessment of the extent to which the partisan tilt of the districts did or did not “correspond closely to the statewide preferences of the voters of Ohio” since it did not even examine data concerning the partisan orientation of the districts. In short, it paid no attention to Section 6’s requirement that the commission “shall attempt” to draw a representative map that does not favor or disfavor a political party.

What about compliance with the Voting Rights Act? At this point, we don’t know, since DiRossi admitted that in drawing these maps no demographic information was included in the data used to draw district boundaries. 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. Accordingly, no judgment concerning the legality of this map can be made in the absence of such information. In the meantime, we must reassert the basic principles regarding the VRA: Minority vote dilution by packing or cracking must be avoided. Both of these kinds of gerrymandering minimize the voting strength of minority communities.

By completely ignoring the VRA and the requirements of Section 6(A) and 6(B), the DiRossi maps are simply unconstitutional. How could they be the maps chosen by the Ohio Redistricting

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.”

³ In doing so, it must avoid violating other sections of Article XI. As stated in Section 6, “Nothing in this section permits the commission to violate the district standards described in Section 2, 3, 4, 5 or 7 of this article.”

Commission as its nominees for adoption as the framework for electoral competition over the next decade?

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 hopeful that the Ohio Redistricting Commission will reach a bipartisan consensus and adopt district boundaries for the Ohio House and Senate in a manner that respects both the letter and the spirit of those reforms.

APPENDIX: Article XI, Section 6(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.”

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	2,358,508	
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: **30,737,400**

Republican Candidates	2012	2014	2016	2018	2020
President	2,593,779		2,841,005		3,154,834
Senator	2,371,230		3,118,567	2,057,559	
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		1,711,927		2,152,769	
Treasurer		1,724,060		2,304,444	

GRAND TOTAL of votes cast for Republican candidates 2012-2020: **36,379,803**

Democratic share of votes cast for statewide offices $(30,737,400 \div 67,117,203) = 45.8\%$

Republican share of votes cast for statewide offices $(36,379,803 \div 67,117,203) = 54.2\%$

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 54.2% vs. 45.8%.

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 54.2% as possible, while 45.8% 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 approximately 54% of the districts have a pro-Republican partisan index and 46% 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.