



# Ohio Legislative Service Commission

## Resolution Analysis

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### H.J.R. 2

131st General Assembly  
(As Introduced)

**Reps.** Clyde and Curtin, Antonio, K. Smith, Stinziano, Leland, Driehaus, Bishoff, G. Johnson, Celebrezze, Ashford, Fedor, Lepore-Hagan, Sheehy

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## RESOLUTION SUMMARY

### Ohio Redistricting Commission

- Proposes an amendment to the Ohio Constitution to make the Ohio Redistricting Commission responsible for drawing congressional districts.
- Duplicates, but does not change, the language in the Constitution that creates the Commission and specifies its organizational procedures.<sup>1</sup>

### Method of selecting a district plan

- Requires the Commission to follow the same procedure in selecting a congressional district plan as the Constitution currently requires in adopting a General Assembly district plan.
- Requires the Commission to adopt a district plan by a specified bipartisan vote of four members.
- Specifies that, if the Commission fails to adopt a final district plan not later than September 1, the Commission must introduce a district plan by a simple majority vote and must hold a public hearing on the plan.
- Requires the Commission, not later than September 15, to adopt a final district plan, either by the bipartisan vote described above or by a simple majority vote.

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<sup>1</sup> The provisions of the Constitution that create the Ohio Redistricting Commission and specify the process for adopting General Assembly districts take effect January 1, 2021. For the sake of brevity, this analysis refers to those provisions as part of the current Constitution.

- Specifies that if the Commission adopts a plan by that bipartisan vote, the plan remains effective until the next year ending in the numeral one, unless a court convenes the Commission to redraw judicially invalidated districts.
- Provides generally that if the Commission adopts a plan by a simple majority vote, the plan remains effective until two general elections for the U.S. House of Representatives have occurred under the plan.
- Specifies that if, before a year ending in the numeral one, the Commission adopts another plan by a simple majority vote to replace a plan adopted under the impasse procedure, the newly adopted plan remains effective until a year ending in the numeral one, unless the Commission is reconstituted and convened by a court to draw judicially invalidated districts.
- Requires a plan adopted by a simple majority vote to 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 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.
- Allows a Commission member who does not vote in favor of the plan to submit a declaration of the member's opinion concerning that statement.
- Requires, after a plan adopted by a simple majority vote ceases to be effective after two general elections for the U.S. House of Representatives, that the Commission convene not earlier than July 1 of the following year to adopt a new congressional district plan using the same population and political subdivision boundary data as were used to draw the previous plan.

### **District standards**

- Establishes constitutional standards for the drawing of congressional districts that are similar, but not identical, to the current standards for Ohio House of Representatives districts.

### **Legal challenges**

- Specifies procedures for a legal challenge of a congressional district plan that are similar to the procedures that currently apply to a challenge of a General Assembly district plan.
- Requires that, if any section of the Constitution relating to redistricting, any congressional district plan, or any district is determined to be invalid by an



unappealed final order of a court of competent jurisdiction, the Commission must be reconstituted and convene to adopt a district plan that conforms with the provisions of the Constitution that are then valid.

- Prohibits a court, in any circumstance, from ordering the implementation or enforcement of any plan that has not been approved by the Commission.
- Prohibits a court from ordering the Commission to adopt a particular congressional district plan or to draw a particular district.
- Prescribes the available remedies if the Ohio Supreme Court determines that a congressional district plan adopted by the Commission does not comply with the constitutional district standards.
- Specifies that if a court of competent jurisdiction issues an unappealed final order that the General Assembly must be responsible for congressional redistricting, then the proposal's timeline, district standards, and provisions concerning legal challenges apply to a plan adopted by the General Assembly.

### **Severability**

- Specifies that the provisions of the resolution are severable.

### **Effective date**

- Specifies that the proposal is to appear on the ballot on November 3, 2015, and that if adopted by a majority of the electors voting on it, the proposal takes effect January 1, 2021.

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## CONTENT AND OPERATION

The joint resolution proposes an amendment to the Ohio Constitution to make the Ohio Redistricting Commission responsible for drawing congressional districts. Currently, the General Assembly adopts congressional districts by bill.

### Ohio Redistricting Commission

The resolution duplicates, but does not change, the language in the Constitution that creates the Ohio Redistricting Commission and specifies its organizational procedures. Under the current Constitution, beginning in 2021, the Commission is responsible for drawing General Assembly districts. Since H.J.R. 2 was introduced before the voters approved the proposal that created the Commission, the resolution repeats much of the language from the previous proposal.<sup>2</sup>

### Method of selecting a district plan

The resolution requires the Commission to follow the same procedure in selecting a congressional district plan as the Constitution currently requires to adopt a General Assembly district plan. First, the Commission must release a proposed congressional district plan to the public. The proposed plan must be drafted according to the constitutional requirements. After introducing a congressional district plan but before adopting a final plan, the Commission must conduct a minimum of three public hearings across Ohio to present the proposed plan and to seek public input regarding the proposed plan.

In order to adopt a final congressional district plan, the resolution requires the affirmative vote of four Commission members, including at least two Commission members who represent each of the two largest political parties represented in the General Assembly. A Commission member is considered to represent a political party if the member was appointed to the Commission by a member of that party or if, in the case of the Governor, the Auditor, or the Secretary of State, the person is a member of that party.

The Commission must adopt a final congressional district plan not later than September 1 of a year ending in the numeral one. The plan becomes effective upon filing with the Secretary of State, which the Commission must do promptly.

If the Commission fails to adopt a final congressional district plan by that deadline, the Commission must introduce a district plan by a simple majority vote of

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<sup>2</sup> Ohio Const., art. XIX, sec. 1.



the Commission. Then, the Commission must hold a public hearing concerning the introduced plan. Members of the Commission should attend the hearing; however, only a quorum of the members of the Commission is required to conduct the hearing. At the hearing, the public may offer testimony, and the Commission may adopt amendments to the introduced plan.

After that hearing is held, and not later than September 15 of that year, the Commission must adopt a final congressional district plan, either by the bipartisan vote described above or by a simple majority vote. If the Commission adopts a plan by that bipartisan vote, the plan remains effective until the next year ending in the numeral one, unless a court convenes the Commission to redraw judicially invalidated districts. Four weeks after the adoption of a congressional district plan, the Commission is automatically dissolved.

If the Commission adopts a plan by a simple majority vote, the plan remains effective until two general elections for the U.S. House of Representatives have occurred under the plan. However, if, before a year ending in the numeral one, the Commission adopts another plan by a simple majority vote to replace a plan adopted under the impasse procedure, the newly adopted plan remains effective until a year ending in the numeral one, unless the Commission is reconstituted and convened by a court to draw judicially invalidated districts.

A plan adopted by a simple majority vote must include a statement explaining what the Commission determined to be the statewide preferences of the Ohio voters and the manner in which 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, favor each political party corresponds closely to those preferences, as described in the procedure for drawing districts (see "**District standards**," below). At the time the plan is adopted, a Commission member who does not vote in favor of the plan may submit a declaration of the member's opinion concerning that statement.

When a plan adopted by a simple majority vote ceases to be effective before a year ending in the numeral one, not earlier than July 1 of the year following the year in which the plan ceased to be effective, the Commission must be reconstituted, convene, and adopt a new congressional district plan. The Commission must draw the new plan using the same population and political subdivision boundary data as were used to draw the previous plan.<sup>3</sup>

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<sup>3</sup> Ohio Const., art. XI, secs. 1 and 6.



## District standards

The proposal requires the Commission to follow similar, but not identical, standards for drawing congressional districts as the Commission must use in drawing Ohio House of Representatives districts under the current Constitution. The table below compares the Ohio Constitution's current requirements for drawing Ohio House districts with the congressional district requirements proposed by the resolution.

Currently, Ohio has no written standards for congressional redistricting, although congressional districts must have sufficiently equal populations to comply with the "one person, one vote" principle of the Fourteenth Amendment of the U.S. Constitution, and districts must not be drawn in a way that discriminates against minority groups in violation of the federal Voting Rights Act of 1965.<sup>4</sup>

Topic	Current standards for Ohio House of Representatives districts	H.J.R. 2 standards for congressional districts
<b>District population requirements</b>	<p>Permits the General Assembly to designate a method for determining the population of the state for purposes of calculating the ratios of representation, if the federal decennial census is unavailable.</p> <p>Requires the population of each district to be substantially equal to the applicable ratio of representation, and prohibits a district from containing a population of less than 95% or more than 105% of the ratio of representation.</p> <p>Specifies that each district is entitled to a single representative.<sup>5</sup></p>	Same as the current Constitution, but requires the population of each district to be as equal to the applicable ratio of representation as practicable. <sup>6</sup>

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<sup>4</sup> See *Baker v. Carr*, 369 U.S. 186 (1962) and *Thornburg v. Gingles*, 478 U.S. 30 (1986).

<sup>5</sup> Ohio Const., art. XI, secs. 2 and 3.

<sup>6</sup> Ohio Const., art. XIX, secs. 2 and 3.



Topic	Current standards for Ohio House of Representatives districts	H.J.R. 2 standards for congressional districts
<b>Legal requirements for districts</b>	Requires any plan adopted by the Commission to comply with all applicable provisions of the constitutions of Ohio and the United States and of federal law. <sup>7</sup>	Same as the current Constitution. <sup>8</sup>
<b>General requirements for districts</b>	Requires every district to be composed of contiguous territory, and the boundary of each district to be a single nonintersecting continuous line. <sup>9</sup>	Same as the current Constitution. <sup>10</sup>
<b>Procedure for drawing districts</b>	<p>Requires districts to be created and numbered in the following order of priority, to the extent that such order is consistent with the foregoing standards:<sup>11</sup></p> <p>(1) Proceeding in succession from the largest to the smallest, each county containing population greater than 105% of the ratio of representation must be divided into as many districts as it has whole ratios of representation. Any fraction of the population in excess of a whole ratio must be a part of only one adjoining district.</p> <p>(2) Each county containing population of not less than 95% nor more than 105% of the ratio of representation must be designated a district.</p> <p>(3) The remaining territory of the state must be divided into districts by combining the areas of counties,</p>	<p>Requires districts to be created and numbered in the following order of priority, to the extent that such order is consistent with the foregoing standards:<sup>12</sup></p> <p>(1) Proceeding in succession from the largest to the smallest, each county containing population greater than the ratio of representation must be divided into as many districts as it has whole ratios of representation. Any fraction of the population in excess of a whole ratio must be a part of only one adjoining district.</p> <p>(2) Each county containing population equal to the ratio of representation must be designated a district.</p> <p>(3) The remaining territory of the state must be divided into districts by combining the areas of counties, municipal corporations, and townships.</p>

<sup>7</sup> Ohio Const., art. XI, sec. 3(B).

<sup>8</sup> Ohio Const., art. XIX, sec. 3(B).

<sup>9</sup> Ohio Const., art. XI, sec. 3(B).

<sup>10</sup> Ohio Const., art. XIX, sec. 3(B).

<sup>11</sup> Ohio Const., art. XI, sec. 3(C).

<sup>12</sup> Ohio Const., art. XIX, sec. 3(C).



Topic	Current standards for Ohio House of Representatives districts	H.J.R. 2 standards for congressional districts
	municipal corporations, and townships.	
<b>Split political subdivisions</b>	<p>Specifies that where feasible, no county may be split more than once.</p> <p>Provides that in general, a county, municipal corporation, or township is considered to be split if any contiguous portion of its territory is not contained entirely within one district.</p> <p>Specifies that 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 must be considered to be a separate municipal corporation or township for the purposes of drawing districts.</p> <p>Provides that if a municipal corporation or township that is located in a county that contains a municipal corporation or township that has a population of more than one ratio of representation is split because it is not possible for the Commission to comply with all of the requirements for drawing districts, the municipal corporation or township must be considered to be a separate municipal corporation or township for the purposes of drawing districts.</p> <p>Requires districts to be drawn so as to split the smallest possible number of municipal corporations and townships whose contiguous portions contain a population of more than 50%, but less than 100%, of one ratio of representation.</p>	<p>Specifies that where feasible, no county may be split more than once.</p> <p>Provides that a county, municipal corporation, or township is considered to be split if any contiguous portion of its territory is not contained entirely within one district.</p> <p>Specifies that if the district requirements cannot feasibly be attained by forming a district from whole municipal corporations and townships, the district must be formed by splitting not more than one municipal corporation or township. If the Commission must choose between multiple municipal corporations or townships for the purpose of splitting a municipal corporation or township, the municipal corporation or township with the smallest population must be split.<sup>14</sup></p>

<sup>14</sup> Ohio Const., art. XIX, sec. 3(C)(3) and (D).





Topic	Current standards for Ohio House of Representatives districts	H.J.R. 2 standards for congressional districts
	Specifies that where the above requirements cannot feasibly be attained by forming a district from whole municipal corporations and townships, not more than one municipal corporation or township may be split per district. <sup>13</sup>	
<b>Procedure where it is not possible to follow all of the district standards</b>	<p>Requires the Commission, if it is not possible for the Commission to comply with all of the requirements for drawing districts in drawing a particular district, to take the first action listed below that makes it possible for the Commission to draw that district:</p> <p>(1) The Commission must create the district by splitting two municipal corporations or townships whose contiguous portions do not contain a population of more than 50%, but less than 100%, of one ratio of representation.</p> <p>(2) The Commission must create the district by splitting a municipal corporation or township whose contiguous portions contain a population of more than 50%, but less than 100%, of one ratio of representation.</p> <p>(3) The Commission must create the district by splitting, once, a single county that contains a population of not less than 95%, but not more than 105%, of the ratio of representation.</p> <p>(4) The Commission must create the district by including in two districts portions of the territory that remains after a county that contains a</p>	<p>Same as the current Constitution, but requires the Commission to take the first action listed below that makes it possible for the Commission to draw that district.<sup>16</sup></p> <p>(1) The Commission must create the district by splitting two municipal corporations or townships. If the Commission must choose between more than two municipal corporations or townships for that purpose, the municipal corporations or townships must be split in order of population, proceeding from the smallest to the largest.</p> <p>(2) The Commission must create the district by splitting, once, a single county that contains a population equal to the ratio of representation.</p> <p>(3) The Commission must create the district by including in two districts portions of the territory that remains after a county that contains a population of more than one ratio of representation has been divided into as many districts as it has whole ratios of representation.</p>

<sup>13</sup> Ohio Const., art. XI, sec. 3(C) and (D).

<sup>16</sup> Ohio Const., art. XIX, sec. 3(E).



Topic	Current standards for Ohio House of Representatives districts	H.J.R. 2 standards for congressional districts
	<p>population of more than 105% of the ratio of representation has been divided into as many districts as it has whole ratios of representation.</p> <p>Specifies that if the Commission takes an action listed immediately above, the Commission must include in the district plan a statement explaining which action the Commission took and the reason the Commission took that action.</p> <p>Specifies that if the Commission takes an action listed immediately above in drawing a district and includes the required statement in the district plan, the Commission must not be considered to have violated the applicable requirement for that district, for the purpose of a court's analysis.<sup>15</sup></p>	
<b>Additional district standards</b>	<p>Requires the Commission to attempt to draw a district plan that meets all of the following standards:</p> <ul style="list-style-type: none"> <li>• No district plan shall be drawn primarily to favor or disfavor a political party.</li> <li>• 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 must correspond closely to the statewide preferences of the voters of Ohio.</li> <li>• Districts must be compact.</li> </ul> <p>Specifies that nothing in those provisions permits the Commission to</p>	Same as the current Constitution. <sup>18</sup>

<sup>15</sup> Ohio Const., art. XI, sec. 3(E).



Topic	Current standards for Ohio House of Representatives districts	H.J.R. 2 standards for congressional districts
	violate the other constitutional district standards. <sup>17</sup>	
<b>Political subdivision boundaries to be used</b>	Notwithstanding the fact that the boundaries of political subdivisions within a district may be changed, requires the Commission to create district boundaries by using the boundaries of political subdivisions as they exist at the time of the federal decennial census on which the redistricting is based, or if the census is unavailable, on a basis the General Assembly specifies. <sup>19</sup>	Same as the current Constitution. <sup>20</sup>

## Legal challenges

The resolution applies similar requirements to any legal challenges to a congressional district plan as the current Constitution applies to legal challenges to a General Assembly district plan. Under the resolution, if any section of the Constitution relating to redistricting, any congressional district plan, or any district is determined to be invalid by an unappealed final order of a court of competent jurisdiction, then the Commission must be reconstituted and convene to adopt a district plan that conforms with the provisions of the Constitution that are then valid.

The proposal prohibits a court, in any circumstance, from ordering the implementation or enforcement of any plan that has not been approved by the Commission. And, the resolution prohibits a court from ordering the Commission to adopt a particular congressional district plan or to draw a particular district.

The resolution also prescribes the available remedies in the event that the Ohio Supreme Court determines that a congressional district plan adopted by the Commission does not comply with the constitutional district standards, other than the standards concerning political parties, party preferences, and compactness.

If the Court determines that a district plan contains one or more isolated violations of those standards, the court must order the Commission to amend the plan

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<sup>18</sup> Ohio Const., art. XIX, sec. 4.

<sup>17</sup> Ohio Const., art. XI, sec. 6.

<sup>19</sup> Ohio Const., art. XI, sec. 7.

<sup>20</sup> Ohio Const., art. XIX, sec. 5.

to correct the violations.<sup>21</sup> If, in considering a district plan adopted by a simple majority of the Commission under the proposal's impasse procedure (see "**Method of selecting district plans**," above), the Court determines that both of the following are true, the Court must order the Commission to adopt a new district plan:<sup>22</sup>

- The plan significantly violates those standards 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 the procedure for drawing districts (see "**District standards**," above).
- 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, favor each political party does not correspond closely to the statewide preferences of the voters of Ohio.

The proposal also specifies that if a court of competent jurisdiction issues an unappealed final order that the General Assembly must be responsible for congressional redistricting, then the General Assembly must adopt a final plan using the same district standards not later than September 1 of a year ending in the numeral one, and the provisions described above concerning legal challenges apply to the plan. (The U.S. Supreme Court has ruled that a state may use an independent commission to adopt congressional districts.)<sup>23</sup>

## **Severability**

The proposal specifies that its provisions are intended to be severable, and the invalidity of one or more of those provisions does not affect the validity of the remaining provisions. The Constitution's current redistricting provisions also include this language.<sup>24</sup>

## **Effective date**

The resolution specifies that the proposal is to appear on the ballot on November 3, 2015. (The resolution would need to be amended to place the proposal on the ballot at a future election.) If adopted by a majority of electors voting on it, the

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<sup>21</sup> Ohio Const., art. XIX, sec. 7.

<sup>22</sup> Ohio Const., art. XIX, sec. 7.

<sup>23</sup> Ohio Const., art. XIX, sec. 8 and *Arizona State Legislature v. Arizona Independent Redistricting Commission*, 135 S.Ct. 2652 (2015).

<sup>24</sup> Ohio Const., art. IX, sec. 10 and art. XIX, sec. 9.



proposal takes effect January 1, 2021, which is the effective date of the previously approved General Assembly redistricting provisions.

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## HISTORY

ACTION	DATE
Introduced	03-02-15

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