



# OHIO LEGISLATIVE SERVICE COMMISSION

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## Resolution Analysis

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### **S.J.R. 3**

132nd General Assembly  
(As Introduced)

Sen. LaRose

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### **RESOLUTION SUMMARY**

- Proposes an amendment to the Ohio Constitution to establish standards for congressional redistricting, to allow the General Assembly to adopt a congressional district plan, and to require the Ohio Redistricting Commission to adopt a plan if the General Assembly does not meet the deadline to do so.<sup>1</sup>

### **Method of selecting a district plan**

- Permits the General Assembly to adopt a congressional district plan by a specified vote not later than August 1 of a year ending in the numeral one.
- Requires a plan adopted by the General Assembly to comply with the district standards described below and to be in the form of a joint resolution.
- Requires the Ohio Redistricting Commission to adopt a congressional district plan if the General Assembly does not do so on or before August 1.
- Specifies that no appointed member of the Commission may be a current member of Congress.
- Requires that, if the Commission is responsible for congressional redistricting, the Commission be automatically dissolved four weeks after the adoption of a final congressional district plan or a final General Assembly district plan, whichever is later.

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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.

- 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 congressional district plan not later than September 1 by a specified bipartisan vote of four members.
- Specifies that, if the Commission fails to do so, the Commission must adopt a plan not later than September 15 either by that bipartisan vote or by a simple majority vote.
- Provides generally that if the Commission adopts a plan by a simple majority vote, the Commission must reconvene and redraw the plan after two general elections for the U.S. House of Representatives have occurred under the plan, unless the plan was adopted to replace another plan adopted under the impasse procedure.
- Requires a plan adopted by a simple majority vote of the Commission 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 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.

### **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 or by the General Assembly, as applicable.
- Prohibits a court from ordering the Commission or the General Assembly 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 does not comply with the constitutional district standards.

### **Severability**

- Specifies that the provisions of the resolution are severable.

### **Date of election and effective date**

- Specifies that the proposal is to appear on the ballot on November 7, 2017, and that if adopted by a majority of the electors voting on it, the proposal takes effect January 1, 2021.

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## **TABLE OF CONTENTS**

Method of selecting a district plan .....	4
General Assembly .....	4
Ohio Redistricting Commission .....	4
District standards .....	6
Legal challenges .....	11
Severability .....	12
Date of election and effective date .....	13

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## **CONTENT AND OPERATION**

The joint resolution proposes an amendment to the Ohio Constitution to establish standards for congressional redistricting, to allow the General Assembly to adopt a congressional district plan in the form of a joint resolution by a specified vote, and to require the Ohio Redistricting Commission to adopt a plan if the General Assembly does not meet the deadline to do so. Currently, the General Assembly adopts congressional districts by bill, and no specific procedure applies.

## Method of selecting a district plan

### General Assembly

Under the resolution, the General Assembly may adopt a congressional district plan not later than August 1 of a year ending in the numeral one. Each house of the General Assembly must adopt the plan by one of the following votes:

- The affirmative vote of a majority of the members of that house, including a majority of the members of each of the two largest political parties in that house;
- The affirmative vote of  $\frac{2}{3}$  of the members of that house.

The congressional district plan must comply with the district standards described below and must be in the form of a joint resolution.<sup>2</sup>

### Ohio Redistricting Commission

If the General Assembly does not adopt a congressional district plan on or before August 1 of a year ending in the numeral one, the proposal requires the Ohio Redistricting Commission to adopt a plan. Under the current Constitution, beginning in 2021, the Commission is responsible for drawing General Assembly districts. (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.)

The proposal retains the current organizational requirements for the Commission, except for two provisions. First, it specifies that no appointed member of the Commission may be a current member of Congress. Additionally, if the Commission is required to draw congressional districts, the resolution requires the Commission to be automatically dissolved four weeks after the adoption of a final congressional district plan or a final General Assembly district plan, whichever is later.

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

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

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 that year. 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 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.

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 of the Commission 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 of the Commission 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 General Assembly does not receive an opportunity to adopt a replacement 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>

### District standards

The proposal requires the General Assembly or the Ohio Redistricting Commission, as applicable, 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	LR-132-0010-1 standards for congressional districts
<b>District population requirements</b>	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.  Requires the population of each district to be substantially equal to the applicable ratio of representation, and	Same as the current Constitution, but requires the authority drawing the district map to minimize the extent to which each district's population differs from the applicable ratio of representation, as is practicable, while taking into account other legitimate state objectives in the creation of districts.

<sup>3</sup> Ohio Const., art. XI, secs. 1, 2, and 10.

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



Topic	Current standards for Ohio House of Representatives districts	LR-132-0010-1 standards for congressional districts
	<p>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>	<p>Allows a district plan to include an explanation of the reason that any district contains a population that is not equal to the applicable ratio of representation.<sup>6</sup></p>
<b>Legal requirements for districts</b>	<p>Requires any district plan to comply with all applicable provisions of the constitutions of Ohio and the United States and of federal law.<sup>7</sup></p>	<p>Same as the current Constitution.<sup>8</sup></p>
<b>General requirements for districts</b>	<p>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></p>	<p>Same as the current Constitution.<sup>10</sup></p>
<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>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>

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

<sup>6</sup> Ohio Const., art. XI, secs. 3 and 4.

<sup>7</sup> Ohio Const., art. XI, sec. 5(B).

<sup>8</sup> Ohio Const., art. XI, sec. 4(B).

<sup>9</sup> Ohio Const., art. XI, sec. 5(B).

<sup>10</sup> Ohio Const., art. XI, sec. 4(B).

<sup>11</sup> Ohio Const., art. XI, sec. 5(C).

<sup>12</sup> Ohio Const., art. XI, sec. 4(C).



Topic	Current standards for Ohio House of Representatives districts	LR-132-0010-1 standards for congressional districts
	<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, municipal corporations, and townships.</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>
<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 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</p>	<p>Same as the current Constitution, except:</p> <p>Excludes the current provision specifying that where feasible, no county may be split more than once.</p> <p>Specifies that if the district requirements cannot feasibly be attained by forming a district from whole counties, municipal corporations, and townships, the district must be formed by splitting not more than one county and not more than one municipal corporation or township.<sup>14</sup></p>

<sup>14</sup> Ohio Const., art. XI, sec. 4(D).





Topic	Current standards for Ohio House of Representatives districts	LR-132-0010-1 standards for congressional districts
	<p>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 if the district 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></p>	
<p><b>Procedure where it is not possible to follow all of the district standards</b></p>	<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) 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) 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) 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) Create the district by including in two districts portions of the territory that remains after a county that</p>	<p>Requires the authority drawing the district map, if it is not possible 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 to draw that district:</p> <p>(1) Create the district by splitting two municipal corporations or townships. If it is necessary to choose between more than two municipal corporations or townships, the municipal corporations or townships must be split in order of population, proceeding from the smallest to the largest.</p> <p>(2) Create the district by splitting two counties.</p> <p>(3) Create the district by splitting, once, a single county that contains a population equal to the ratio of representation.</p> <p>(4) 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</p>

<sup>13</sup> Ohio Const., art. XI, sec. 5(C) and (D).



Topic	Current standards for Ohio House of Representatives districts	LR-132-0010-1 standards for congressional districts
	<p>contains a 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>	<p>whole ratios of representation.</p> <p>Requires the authority drawing the district map, if it is not possible to take one of the actions listed immediately above in drawing the district, to take the first action listed below that makes it possible to draw the district:</p> <p>(1) Create the district by taking two of the actions listed immediately above.</p> <p>(2) Create the district by taking three of the actions listed immediately above.</p> <p>(3) Create the district by taking all four of the actions listed immediately above.</p> <p>Specifies that if the authority drawing the district map takes an action listed above, the district plan must include a statement explaining which action was taken and the reason that action was taken.</p> <p>Specifies that if the authority drawing the district map takes an action listed above in drawing a district and includes the required statement in the district plan, the authority must not be considered to have violated the applicable requirement for that district, for the purpose of a court's analysis.<sup>16</sup></p>
<b>Additional district standards</b>	<p>Requires the authority drawing the district map 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> </ul>	Same as the current Constitution.

<sup>15</sup> Ohio Const., art. XI, sec. 5(E).

<sup>16</sup> Ohio Const., art. XI, sec. 4(E).



Topic	Current standards for Ohio House of Representatives districts	LR-132-0010-1 standards for congressional districts
	<ul style="list-style-type: none"> <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 a violation of the other constitutional district standards.<sup>17</sup></p>	
<b>Political subdivision boundaries to be used</b>	<p>Notwithstanding the fact that the boundaries of political subdivisions within a district may be changed, requires the authority drawing the district map 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>18</sup></p>	Same as the current Constitution.

## 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 General Assembly does not receive an opportunity to adopt a replacement plan.)

<sup>17</sup> Ohio Const., art. XI, sec. 8.

<sup>18</sup> Ohio Const., art. XI, sec. 9.



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 or by the General Assembly, as applicable. And, the resolution prohibits a court from ordering the Commission or the General Assembly 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 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 to correct the violations. If the Court finds that it is necessary to amend not fewer than two congressional districts to correct violations of those requirements, the Court must order the Commission to adopt a new congressional district plan.

Finally, if, in considering a district plan adopted by a simple majority of the Commission under the 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>19</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.

## Severability

Under the proposal, the severability clause that currently applies to the provisions governing General Assembly redistricting also applies to the proposal's congressional redistricting provisions. That clause specifies that the provisions of Article XI of the Ohio Constitution are intended to be severable, and the invalidity of

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<sup>19</sup> Ohio Const., art. XI, sec. 11.



one or more of those provisions does not affect the validity of the remaining provisions.<sup>20</sup>

### **Date of election and effective date**

The resolution specifies that the proposal is to appear on the ballot on November 7, 2017. If adopted by a majority of electors voting on it, the proposal takes effect January 1, 2021, which is the effective date of the previously approved General Assembly redistricting provisions.

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## **HISTORY**

<b>ACTION</b>	<b>DATE</b>
Introduced	03-02-17

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<sup>20</sup> Ohio Const., art. IX, sec. 12.

