

## Redistricting and the Quality of Democracy in Ohio

Testimony Presented to the 2011 Ohio Reapportionment Board,  
August 26, 2011

by

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I am speaking on behalf of myself and my colleague Richard Gunther. We are faculty at Ohio State University, who have taught classes and conducted research for four decades on democratic institutions, elections, and the core principles underlying the quality of democracy. Over the past four years, Dick has been working with the League of Women Voters, Ohio Citizen Action, leaders of the state legislature including then-Senator Husted to implement these principles through reforms in Ohio's redistricting procedures. I share Dick's views on these issues and have supported his efforts. My brief remarks today focus on the criteria for redistricting recommended in his reform proposal and the core democratic values that underpin them.

Four criteria for the creation of legislative districts are commonly cited as fundamental to democracy: compactness, preservation of political communities, representational fairness, and competitiveness. The first two — geographical compactness and keeping intact natural political communities — are based on the belief that in a democracy representation should be based on real rather than contrived communities, and that this is accomplished best by creating districts that are reasonably compact and politically meaningful geographical jurisdictions. The second principle is enshrined in section 11.07 of the Ohio Constitution, which gives primacy to whole counties as the building blocks for legislative districts and, where this requirement cannot “**feasibly**” be attained, to dividing “only one such unit ... between two districts, giving preference ... to a township, city ward, city, and village in the order named.”

The third and fourth criteria — representational fairness and competitiveness — focus on the outcomes of the apportionment process, the kinds of districts and representative bodies it produces in practice. Fairness quite simply means that the percentage of the votes a party receives across districts should equal as closely as possible the percentage of legislative seats it wins. As the U.S. Supreme Court recognized in landmark cases in the 1960s, it is an especially serious violation of democratic principles when a majority of voters cannot elect a majority of the legislature. The principle of competitiveness is equally important. It is designed to give all voters the sense that their vote can make a difference in the election — that theirs is not a permanently marginalized voice in a sea of voters for the other side. It also is designed to keep our representatives responsive to the public in general, not just a fraction of it.

Some states, including Ohio -- and many of the defective democracies around the world -- follow apportionment practices that violate these principles through the practice known as **gerrymandering**. They draw district lines in an attempt to gain unearned advantages for their party in how votes are translated into seats, thereby diminishing representational fairness. In an effort to protect incumbents and maximize dependable constituencies for their parties, they also create as many noncompetitive districts as possible -- by, as is often observed facetiously, allowing for "legislators to choose voters rather than for voters to choose legislators." To gain this partisan advantage, states inevitably violate the other two principles: They create districts that, in their lack of compactness and their contrived communities, put voters together who are not anything close to being geographical neighbors or members of recognizable political communities. In the United States, both parties engage in gerrymandering when they get the chance -- except of course in the growing number of states where legislative redistricting has been removed from partisan control.

Gerrymandering is accomplished through the familiar strategies of "cracking" and "packing," which have been made even more efficient than ever with the advent of high-speed computers and GIS mapping technologies. "Cracking" entails dividing a natural political community among several districts in order to swamp its voters with those from very different and often distant communities. Franklin County is a prime example of this technique in apportioning representation for the U.S. Congress. "Packing" involves the creation of districts that cobble together huge supermajorities of the supporters of one party, making them noncompetitive for the opposing party, so that districts around them have a better chance of being won by the party controlling the gerrymander. These gerrymandering practices violate the principles of representational fairness and competitiveness that are the cornerstones of democracy. Moreover, they cannot be implemented without violating the Ohio constitutional principles of compactness and preserving natural political communities as well.

The results of the 2010 elections for both the Ohio House and Senate provide a telling example of the lasting effects of the gerrymandering that was done a decade ago. In House contests, Republicans won 60% of the seats with an average district vote of only 51%. In the 2010 Senate contests, they won 59% of the 17 seats being contested with an average district vote of only 48%. Throughout the 2002-2010 decade governed by the 2001 redistricting plan, Republicans averaged 56% of the seats while winning only 52% of the statewide vote, and only in the Democratic landslide of 2008 did the Republicans win a smaller percentage of seats (3.3% less) than their statewide vote total should have earned them. Clearly, the apportionment plan adopted a decade ago did not achieve representational fairness.

The results of the 2001 plan are even more disconcerting when it comes to competitiveness. About two-thirds of state House and Senate seats (70% and 65%, respectively) filled in 2010 were won by the lop-sided landslide margins of 20% or more of the two-party vote. An additional 8% of House seats and 18% of Senate seats were won by margins of 10-19%, also comfortable victories by conventional standards. By contrast, only 12% of House and 6% of

Senate districts were competitive within a 5% spread between the major party candidates. However it is measured, competitiveness was a casualty of the districting plan that prevailed in 2010, as it had been in earlier years of the decade, lending credence to the observation that in Ohio the parties had chosen the voters rather than the voters were choosing the parties.

Without detailed knowledge of local areas, it is difficult to discern how much compactness and the preservation of political communities were comprised by the districting plan of the last decade. The odd shapes of many House districts and the fact that 35 of the state's counties, many of them small town and rural counties, contained at least two state House districts strongly suggests that these criteria were sacrificed in partisan gerrymandering too. And, for those urban areas that I know, it is clear that natural political communities often were ignored in the quest of partisan advantage.

The effects of gerrymandering themselves are corrosive enough of the principles of democracy to have led some states and many of the world's democracies to remove a single political party from control of the reapportionment process. But, in contemporary times, partisan gerrymandering has two additional effects that are very corrosive to the quality of democracy in America.

While differences between parties are vital elements of democratic politics, the hyper partisan polarization that we have seen in recent years has few defenders among either politicians or public. Many political analysts believe that the absence of competitiveness in American legislative elections escalates partisan polarization well beyond what would naturally appear. How does this work? Candidates generally must appeal to their party base to gain nominations in primaries (and even more so in caucuses). Those who regularly vote in primary elections tend to be more partisan and ideological than the average voter, so in order to be nominated candidates must appeal to those kinds of voters by moving towards the ideological extremes. If candidates face a competitive general election, however, they cannot stray too far from the center, where the majority of voters reside, or they risk losing support from swing voters — typically moderates or independents who are not ideologically motivated. If general elections take place in safe districts, however, there is no need to move back towards the center. Accordingly, the real selection of candidates takes place in the primaries, whose outcomes are determined by the more extreme, ideologically oriented voters. In short, when the outcome of the general election is a foregone conclusion, there is no reason for the dominant party to choose candidates who can appeal to voters near the center of the political spectrum. Over time, this has meant that both parties have moved away from the moderate center and towards divisive, ideological extremes, as is reflected in the polarization of legislative politics today, most visibly in the U.S. Congress.

Today's hyper-polarization also is eroding Americans' confidence in our democracy. The approval ratings of Congress and state legislatures, of many governors around the country, and of our political institutions have sunk to the lowest levels that we have seen in the over

60-year history of public opinion polling. The problems we face as a nation are daunting. They alone are challenging enough to our governmental institutions and their leaders. Our leaders need public support, and the sense of legitimacy it confers, to solve with them. Under these conditions, we should not be adopting political practices consciously that undermine public confidence further by eroding the fundamental principles of democracy and calling into question the fairness of our electoral process.

It is for these reasons that I join with my colleague Dick Gunther and others to ask the Apportionment Board to move away from the traditional practice of gerrymandering in creating Ohio legislative districts for the next decade. I know it will not be easy to withstand the partisan pressures that you will face to maximize electoral prospects for your party and to protect party candidates from unsettling electoral competition. As you move forward with your redistricting decisions, though, I urge to be guided by the four core democratic principles I have stressed rather than by partisan self-interest. To repeat, they are:

- **geographical compactness and the preservation of political communities** – in order to follow the Ohio Constitution in facilitating the representation of voters and their collective interests
- **competitiveness** – to make it possible for voters to have genuine choices in legislative elections, thereby holding their elected representatives accountable and providing greater incentives for elected representatives to appeal to the majority of voters rather than to an ideological fringe
- **fairness in representation** – to make the party balance in the legislature reflective of voter preferences as expressed state-wide in elections

It is challenging to reconcile all four principles simultaneously in any redistricting plan, which is why we entrust our leaders to make the decisions rather than someone's computer program. You surely can do better than your predecessors have done and, in so doing, will benefit Ohio's voters and improve the quality of our democratic system.