

Redistricting, Gerrymandering and Issue 1

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I. US Law Governing Apportionment (Districting)

A. US Constitution

1. Article I Section. 2.

The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature. . . .

The actual Enumeration shall be made . . . within every subsequent Term of ten Years, in such Manner as they shall by Law direct . . . each State shall have at Least one Representative;

2. 14th Amendment

Section 1.

. . . No State shall make or enforce any law which shall . . . deny to any person within its jurisdiction the equal protection of the laws

Section 2.

Representatives shall be apportioned among the several States according to their respective numbers, . . . excluding Indians not taxed. But when the right to vote . . . is denied to any of the male inhabitants of such State, being twenty-one years of age, (*18) . . . , the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

B. U.S. Congressional Statutes

1. 1929 Apportionment Law limited House membership to 435.

2. 1965 Voting Rights Act Prohibits disenfranchising voters based on race, color or membership in a language minority group. Pre-clearance review.

C. US Supreme Court Constitutional and Statutory Judgments

1. *Gomillion v Lightfoot* 1960. Square district revised to 28 sides.

2. *Baker v Carr*. 1962. 14th Amendment claims are Justiciable

3. Equal protection requires that state legislative districts should be comprised of roughly equal populations if possible, thus barring single

county legislative districts which were used in Ohio

3. Same standard for US House + both houses of a bicameral state legislature
4. Pre clearance review violates equal protection
5. Invidious Racial gerrymanders prohibited, remedial approved
6. political gerrymanders allowed

II. Apportionment in Ohio

A. 1967

1. Ohio General Assembly creates Congressional Districts that take effect two years after each decennial census.

2. An apportionment board made up of the governor, auditor of state, secretary of state, and two legislative appointees, to establish state legislative districts every ten years.

B. Gerrymandering

Enquirer 9/16/24 **Ohio Issue 1 2024: What is it? Would it stop gerrymandering?**

“The term came from a salamander-like district signed into law by Massachusetts Gov. Elbridge Gerry in 1812

One method is called *packing*. Using this technique, mapmakers could cram most of an area's Republicans into one district, which the Republican candidate is guaranteed to win by a large margin while assuring Democrats can win the surrounding districts.

Another method is called *cracking*. Using cracking, mapmakers could divide a Democratic city into two districts with enough Republican voters to dilute the Democrats and ensure two Republicans win those seats.

A third tactic *pits two sitting lawmakers of the same party against one another*, ensuring one will lose. Similar to a game of musical chairs, someone is left without a seat when the music stops.”

(Prof. Tolley noted addition to *Enquirer*: In November 1981, Ohio voters rejected an amendment to the Ohio Constitution creating a commission that would have responsibility for apportioning the 132 legislative districts. The proposed amendment was placed on the ballot by a successful initiative

petition effort undertaken by an organization that was described as being backed largely by Republican-oriented interests. From 1973 to 1994 Democrats had a large majority in the Ohio Senate and elected governors who controlled redistricting)

Equirer

“Ohio voters approved anti-gerrymandering language in 2015 and 2018. What happened?”

Ohio voters overwhelmingly approved anti-gerrymandering measures in 2015 and 2018 to change how [state legislative](#) and [congressional districts](#) were drawn. The new rules created the Ohio Redistricting Commission, a seven-member panel of three statewide elected officials (governor, auditor and secretary of state) and four lawmakers who would draw state House and Senate districts and help with congressional districts.

The new (Constitutional) amendments created rules against splitting counties, municipalities and townships. The commission was also required to try to reflect recent statewide election results. By the end of 2020, Ohio was a red-leaning state, so to meet this requirement, the maps would lean Republican. If the Republican-controlled commission couldn't get approval from at least two Democrats, the maps would last for four years instead of 10. That uncertainty [was supposed to drive compromise](#).

But Ohio's new redistricting process was mired in political fights, missed deadlines, last-minute votes and squabbles about seemingly basic decisions, . . . Then came the protracted legal battles. A divided Ohio Supreme Court rejected [statehouse maps five times](#) and [congressional district plans twice](#) as unconstitutional gerrymandering. The Ohio Supreme Court almost held [Ohio's top officials in contempt of court](#), and lawmakers [considered impeaching then-Chief Justice Maureen O'Connor](#). Ultimately, federal judges forced Ohio to use statehouse maps that they called "[the best of our bad options](#)" for a costly August 2022 primary with abysmal turnout. And [the U.S. Supreme Court got involved](#), sending the issue back to an Ohio Supreme Court after O'Connor left the bench. In the end, [Democrats agreed to GOP-crafted statehouse maps out of concern](#) that the next proposal would be even worse.”

3 Maps. (Links added by Professor Tolley)

15 congressional seats, 2022-2026 3/22 (down from 24, 1963-1973)
https://www.ohiosos.gov/globalassets/publications/maps/2022-2026/congressional_current2023-01_adopted_2022-03-02.pdf

33 Ohio Senate Districts. 2024-2032. 9/23
https://www.ohiosos.gov/globalassets/publications/maps/2024-2032/ohiosenate__adopted2023-09-26.pdf

99 Ohio House Districts 2024-2032. 9/29/23
https://www.ohiosos.gov/globalassets/publications/maps/2024-2032/ohiohouseofrepresentatives__adopted2023-09-26.pdf

“What would Ohio Issue 1 do?”

In response, O'Connor and a group called Citizens Not Politicians crafted a new way to draw districts. It's on Ohio's fall ballot as Issue 1. The proposal would replace the current politician-run commission with a 15-member citizen commission of five independents and five members each from the top two political parties, currently the Republicans and Democrats. Members couldn't be elected officials, lobbyists or political consultants. Opponents of the measure say elected officials should retain redistricting powers because they are more accountable to the people. Retired judges would narrow down citizen applicants and randomly choose six of the 15 members. Then, those six would pick the remaining nine. If voters approve these changes, the citizen commission will draw new maps next year. Commission members would have to follow certain rules:

- Craft districts that comply with federal laws, including a ban on disenfranchising minority voters.
- Create maps that closely correspond to recent statewide election results. That means if Republicans are winning statewide races by about 60% of the vote, they would be favored to win in about 60% of the districts.
- Not consider where current lawmakers live.
- Count prisoners at their home addresses instead of where they are incarcerated.
- Keep "communities of interest" together. These could be cities or counties, but they could also be neighborhoods with similar "ethnic, racial, social, cultural, geographic, environmental, socioeconomic or

historic" identities or concerns. There is no ban on splitting cities or limit on how often they can be divided.

The proposal has rules to keep the public in the loop and prevent last-minute votes on maps no one has scrutinized. For example, the citizen commission must seek input from Ohioans at multiple public hearings across the state announced at least 14 days in advance. After revisions, the commission must hold at least two public hearings with three days' notice. To approve new districts, the commission would need nine votes, including two Republicans, two Democrats and two independents. If they can't agree on a plan, each member would rank proposed maps from their most to least favorite. The least popular plan would be eliminated until only one plan remains.

The Ohio Supreme Court would review any lawsuits challenging the approved districts. The justices would use two redistricting experts, called special masters, to determine if mapmakers made mistakes and give the commission a week to fix them. If the commission doesn't fix its mistakes, the special masters would fix them instead.

Who supports Issue 1?

The Ohio Democratic Party, multiple unions, the League of Women Voters of Ohio, American Civil Liberties Union of Ohio, Ohio NAACP, Planned Parenthood Advocates of Ohio and [dozens of other organizations](#) support Issue 1.

Who opposes Issue 1?

The Ohio Republican Party, [Ohio Gov. Mike DeWine](#), [U.S. Speaker Mike Johnson](#), Ohio Senate President Matt Huffman and others oppose Issue 1.”

Final Note from Professor Tolley

The Ohio Ballot Board drafted language summarizing Issue 1 challenged by the proponents as misrepresenting the Amendment. In a partisan 4-3 vote the Ohio Supreme Court required the Board to make minor changes while upholding the language found most deceptive by the proponents.