HJR 2 and Congressional Redistricting Reform:
Presentation to the Legislative Branch and Executive Branch Committee
Of the Ohio Constitutional Modernization Commission

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Good afternoon, and thank you for this opportunity to share my thoughts concerning the most recent proposal for reforming the process of congressional redistricting in the state of Ohio. I would like to begin by summarizing some of the general points I made about redistricting in my August 8, 2013 testimony before this committee. These observations are relevant in two important ways: First, several of the criteria that I set forth in that presentation have subsequently been incorporated into HJR 12 (now Issue 1), which was passed by the Ohio Senate by a vote of 28 to 1 and by the House of Representatives by a margin of 81 to 7, and if ratified by the voters of Ohio in November will eliminate or at least drastically reduce the gerrymandering of our General Assembly. Secondly, these same principles and procedures have been incorporated into HJR 2, introduced by Representatives Kathleen Clyde and Michael Curtin. I regard that proposal as an excellent vehicle for bringing about congressional redistricting reform as well.

What criteria should be used to evaluate the democratic qualities of legislative and congressional district boundaries? Two criteria derive from the basic notion of *representative* democracy: First, district boundaries should facilitate the representation of the people of Ohio. This country's single member district system emphasizes the importance of representing communities. At a minimum, communities should not be fragmented into separate districts in such a manner as to impede the representation of their interests. And yet that is precisely what has happened with regard to our current congressional district boundaries: there are 54 splits of county boundaries, and seven counties are divided among three or more districts (see "Community Preservation" in the following Appendix)

Neither should the representation of interests and the voting power of citizens be diluted as a result of a community being "swamped" by voters with very different and conflicting interests, and residing in very distant parts of the state. And yet that, too, is sadly reflected in our current congressional map. As can be seen in "Ohio's Gerrymandered U.S. Congressional Districts" in the Appendix, some districts stretch for hundreds of miles, mixing up populations with very different social characteristics and political preferences. A case in point is my home district, the 15th, which used to be a relatively compact combination of parts of Franklin County and neighboring Union and Madison counties. It now includes voters in 12 counties stretching from Athens in the east to Clinton in the west. Neither the suburban population of Franklin County nor the predominantly agricultural Ohioans throughout much of the rest of the district can be adequately represented in such a hideously gerrymandered district. Instead, democracy would be better served by the creation of relatively *compact* districts to reflect real rather than contrived communities.

Representativeness also involves fairness. The preferences of the voters ought to be accurately reflected in the winning of seats. And yet that is clearly not the case with congressional districts in Ohio. In the 2012 election, for example, approximately 52% of Ohio voters cast ballots for Republican candidates for Congress; and yet Republicans won 75% of the

subjective interpretations. Finally, some of the research literature indicates that "consequentialist criteria" of this kind can help to make districts more competitive. Accordingly, even though competitiveness is not one of the stated criteria in this resolution, it is likely to emerge as a byproduct of the strict rules regarding preservation of the geographical boundaries of these governmental units.

The principal second-order criterion is representational fairness. This is stated both generally (in the resolution's language prohibiting the creation of districts primarily intended to favor one party over another) and specifically (in its language requiring that the statewide proportion of districts in the plan correspond closely to the statewide preferences of the voters of Ohio based on statewide partisan general election results over the previous 10 years). In its 2012 ruling on Wilson v. Kasich, the court majority ruled "the Ohio Constitution does not mandate political neutrality in the reapportionment of House and Senate districts." Incorporating language requiring fairness and political neutrality into the Ohio Constitution changes this situation dramatically, to the benefit of the quality of democracy in this state.

Finally, this resolution requires that districts be reasonably compact. In combination with clear language prohibiting excessive splitting of governmental units, this provides an important guarantee of community representation.

Beyond the clear statement of these criteria, HJR 2 restructures the reapportionment board as the new Ohio redistricting commission. This is more than a change of name: it broadens the composition of the commission by adding two representatives of the legislature, and it encourages bipartisanship through its requirement that two members of the minority party support a redistricting plan if it is to be valid for a full decade. If this level of bipartisanship cannot be obtained, the aforementioned criteria are to be enforced in a more rigorous manner by the courts. That increased judicial oversight, combined with the shorter validity of the district boundaries of the interim plan (leading to uncertainty for parties and candidates alike) should provide an incentive for the two parties' representatives on the redistricting commission to reach bipartisan agreement.

Finally, in contrast with the current secretive process, redistricting following approval of HJR 2 and its ratification by the voters would be a much more transparent process, in which members of a commission which fails to reach bipartisan agreement must present a detailed accounting for its decision in public. Again, this is likely to serve as an incentive to reach bipartisan agreement.

Overall, I regard HJR 2 as an excellent vehicle for achieving meaningful redistricting reform for the foreseeable future. I strongly urge the legislature to take the same courageous stand it did with regard to reform of General Assembly redistricting through HJR 12 by approving HJR 2.

However, I also recommend that this resolution not be approved until after voter approval of Issue 1 in November. I fear that placing it on the November 2015 ballot will trigger intervention by forces outside of the state of Ohio in opposition to both our reform of state legislative redistricting as well as for Congress. For this reason, I urge delay of this excellent reform proposal.

How Bad is our Current Congressional Map?

According to the standard criteria used to assess electoral systems (representational fairness, community preservation, competitiveness, etc.), our new Congressional district boundaries are about as bad as can be achieved by using standard gerrymandering techniques.

Representational Unfairness:

Political scientists have developed a standard indicator to measure the fairness or unfairness of representation within different kinds of electoral systems around the world. "Electoral Disproportionality" is the difference between the percentage of the seats won by a party and the percentage of the votes cast for that party's candidates. The smaller the number, the more party representation in the legislature reflects the preferences of the voters; larger numbers indicate that the system has been designed to unfairly favor one party over the others. As can be seen below, the new Congressional map for Ohio is one of the worst in the democratic world.

FAIR
1 - The Netherlands
2 - Denmark, Sweden, Austria
3 - Switzerland, Germany, Finland, Belgium, Ireland, Italy
4 - Portugal, Iceland
5 - The United States, Japan, Norway
7 - Russia
8 - Greece, Spain
9 - Australia
10- Britain
12- Canada, France, Florida
14- Wisconsin
19- Michigan
20- North Carolina
23- **Ohio**
24- Pennsylvania
25- Virginia
UNFAIR

Community Preservation:

The new Congressional map fails to respect community boundaries. It has a total of 54 county splits, and seven counties (Cuyahoga, Summit, Portage, Stark, Mercer, Lorain and Franklin) are split into three or more districts. By contrast, the winning plan from the Ohio Redistricting Competition (submitted by a Republican state legislator from Illinois) included just 9 county splits. And the new plan is even less compact than Ohio's previous (2002-2010) map.

Ohio's Gerrymandered U.S. Congressional Districts, 2012

Ashtabula
Lucas
09
Lake
14
Williams
Fulton
11
Ottawa
Geauga
Cuyahoga
Trumbull
Erie
Defiance
Wood
Sandusky
Lorain
Summit
13
Henry
Huron
Portage
Paulding
05
Seneca
Medina
Mahoning
Putnam
Hancock
Richland
Ashland
16
Stark
Van Wert
Wyandot
Crawford
Wayne
Columbiana
Allen
Mercer
Hardin
Marion
Holmes
Carroll
Auglaize
Morrow
Tuscarawas
Jefferson
04
Knox
07
Shelby
Logan
Union
Coshocton
Harrison
Darke
Champaign
Delaware
12
06
Miami
Licking
Guernsey
Belmont
08
Clark
Muskingum
Noble
Montgomery
Madison
03
Franklin
Monroe
Preble
Greene
Fairfield
Perry
Morgan
10
Fayette
Pickaway
Washington
Warren
Hocking
15
Butler
Athens
01
Clinton
Ross
Vinton
Hamilton
Highland
Meigs
Clermont
Pike
Jackson
Brown
02
Gallia
Adams
Scioto
Lawrence