

# Members Only

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## Adopting General Assembly and Congressional Districts\*

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In Ohio, General Assembly and Congressional districts are adopted using different procedures. This informational brief describes the timelines and procedures for adopting district plans for both.

The Apportionment Board adopts General Assembly districts, and is constitutionally required to adopt those districts between August 1 and October 1, 2011. Congressional districts, which are adopted by the General Assembly, are on a different timeline. Those districts must be adopted prior to February 8, 2012, which is the deadline to file candidacy paperwork for the May 2012 primary election.

### **General Assembly districts**

#### ***Persons responsible***

Article XI of the Ohio Constitution specifies the process for adopting General Assembly districts. According to Section 1 of that Article, the following persons are responsible for apportioning Ohio for members of the General Assembly:

- The Governor;
- The Auditor of State;
- The Secretary of State;
- One person chosen by the Speaker of the House of Representatives and the leader in the Senate of the political party of which the Speaker of the House is a member;

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*The Ohio Constitution designates five officials, commonly referred to as the Apportionment Board, to establish General Assembly districts.*

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\* This *Members Only* brief is an update of an earlier brief on this subject dated December 21, 2010 (Volume 128 Issue 14).



- One person chosen by the legislative leaders in the two houses of the major political party of which the Speaker of the House is not a member.

These persons, or a majority of them, are required to meet and establish boundaries for the 99 House districts and 33 Senate districts.<sup>1</sup> Together, they are commonly referred to as the Apportionment Board.

#### ***Timelines for adopting General Assembly districting plans***

The Apportionment Board is required to meet and establish General Assembly districts on a date designated by the Governor between August 1 and October 1 in each year ending in the numeral “1.” The Governor must give the Board members two weeks’ advance notice of the date, time, and place of the meeting. The General Assembly district plan must be published no later than October 5 of the year in which it is made.<sup>2</sup>

Generally, once district boundaries are established, they cannot be changed until the next federal decennial census and the ensuing apportionment. However, there is one exception. If the Ohio Supreme Court or the U.S. Supreme Court invalidates the General Assembly district plan, the Apportionment Board must meet to determine a new district plan using the provisions of Article XI that remain effective. The Governor must give the Board members two weeks’ advance written notice of the date, time, and place of that meeting.<sup>3</sup>

#### ***Criteria for General Assembly districting***

The Ohio Constitution establishes various requirements that General Assembly district plans must meet. One requirement deals with population equality between districts. Population equality is based on the “ratio of representation.” The ratio of representation is determined by dividing the population of the state by 99 for House districts, and by 33 for Senate districts. The population of each district generally must be between 95% and 105% of the applicable ratio of representation. If a county contains a population of between 90% and 110% of the ratio of representation for the House, reasonable effort must be made to create a House district consisting of the whole county.

In addition to population equality, General Assembly district plans must meet other criteria. House districts must be compact and composed of contiguous territory, and the boundary of each district must be a single, nonintersecting, continuous line. Where possible, the districts must be composed of whole counties. Where districts cannot meet the other requirements and be composed of whole counties, they must be drawn so as to keep government units whole, giving preference, in order, to counties, townships, municipal corporations, and city wards.<sup>4</sup>

Senate districts must be composed of three contiguous House districts. A county with at least one whole Senate ratio of representation must

*Once General Assembly district boundaries are established, they generally cannot be changed until the next census and the ensuing apportionment.*



have as many Senate districts wholly within its borders as it has whole Senate ratios of representation. The population of the districts must be between 95% and 105% of the Senate ratio of representation.<sup>5</sup>

In addition to these specific criteria, the U.S. Supreme Court has stated that the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution applies to both Congressional and state legislative districting plans. Although state legislative plans may have a wider population variance between districts than Congressional plans, the districts still must have substantial equality of population.<sup>6</sup>

### ***Process for establishing General Assembly districting plans***

In the past, the Apportionment Board has established rules for its operation and for the submission of potential district plans by members of the public. On August 3, 2001, for example, the Apportionment Board filed rules specifying the process by which the 2001 General Assembly plans would be considered and adopted. The rules required the Board to conduct its meetings in accordance with the Open Meetings (Sunshine) Act, provided for submission of proposed plans by members of the public, and established times for public comment on proposed plans. A majority of the Board constituted a quorum, and a majority of the quorum generally could act on the Board's behalf, other than for the

purpose of adopting district plans.<sup>7</sup> Constitutionally, a majority of the entire Board, not just a majority of the quorum, is required to adopt a district plan.

Because each new Apportionment Board adopts its own rules, the processes set forth in the 2001 rules may or may not be used in the future.

## ***Congressional districts***

### ***Persons responsible***

The U.S. Constitution requires Congressional representatives to be apportioned according to the number of persons in each state.<sup>8</sup> It does not specify how districts must be drawn. In Ohio, Congressional district plans are enacted by the General Assembly and codified in section 3521.01 of the Revised Code.

### ***Timelines for adopting Congressional districting plans***

The federal census determines the population as of April 1, in each year ending in the numeral "0." Within one week after the opening of Congress the following year, the President must report the census counts, and the number of Congressional representatives to which each state is entitled, to the Clerk of the U.S. House of Representatives. And within 15 days after receiving that information, the Clerk must notify each state governor of the number

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*The process for adopting a General Assembly district plan varies with each Apportionment Board, depending on the rules adopted by the Board.*

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*In Ohio, Congressional district plans are enacted by the General Assembly and codified in the Revised Code.*



*Under current law, the filing deadline for the 2012 Ohio primary election is February 8, 2012. The Congressional districting plan will need to be enacted before that date.*

of representatives to which the governor's state is entitled.<sup>9</sup>

The detailed census reports, which identify the number of people living in each census block, block group, and tract, must be released by April 1 of the year after the census is taken. Those reports, along with the apportionment determination delivered by the Clerk of the U.S. House, form the basis for Congressional redistricting.<sup>10</sup>

There is no statutory deadline for completion of Congressional redistricting. Instead, the filing deadline for nominations for the office of Congressional representative in the year after census data is released serves as the practical deadline. Because candidates are nominated in the district in which they are seeking election, the districts must be drawn prior to the filing deadline for the primary election at which candidates will seek nomination. The General Assembly therefore generally enacts the Congressional districting plan between April 1 of the year ending in the numeral "1" (when census data is officially released) and the primary filing deadline for the following year.

For example, the 2000 census figures were released in March 2001.<sup>11</sup> The first election required to be conducted using those figures was the May 7, 2002, primary election. After the release of the census data in March 2001, the General Assembly had until the February 21, 2002, filing deadline for the 2002 primary election to enact a Congressional districting

plan. The bill enacting those districts was an emergency measure that passed the General Assembly on January 23, 2002, and took effect January 24, 2002.<sup>12</sup>

The timeline will be similar for 2012. The 2012 primary election will be held on May 8.<sup>13</sup> The filing deadline for that election will be 90 days before the day of the primary election,<sup>14</sup> which will be February 8, 2012. Thus, the Congressional districting plan will need to be enacted prior to February 8, 2012, to allow candidates time to obtain signatures and file their candidacy petitions on that date.

### ***Redrawing Congressional districts between censuses***

It is not entirely clear under what circumstances a state may redraw Congressional districts between censuses. Plans must be redrawn if a districting plan is determined to be unconstitutional. And in 2006, the U.S. Supreme Court permitted the Texas Legislature to redraw, in the middle of the decade, a districting plan that had been adopted by a federal court.<sup>15</sup> The Supreme Court did not determine, however, whether a legislature may draw a new redistricting plan mid-decade if the prior plan was adopted by the legislature. Thus, it is uncertain whether states may redraw their own legislatively enacted plans prior to the next census.



### *Criteria for Congressional districting*

The U.S. Constitution does not set forth specific criteria that Congressional districts are required to meet. However, the U.S. Supreme Court has identified various criteria that districts must meet in order to fulfill the requirements of the Fourteenth and Fifteenth Amendments to the U.S. Constitution. Additionally, statutory requirements, such as applicable provisions of the Voting Rights Act of 1965, must be met.

Congressional districts must be as equal in population as practicable. Unlike General Assembly districts, which may vary in population by up to 5% above or below the ideal population, Congressional districts must be as equal as possible. The Supreme Court has required that “absolute population equality be the paramount objective of apportionment” in establishing Congressional districts.<sup>16</sup>

In addition to strict population equality, Congressional districts also must meet statutory requirements arising from the Voting Rights Act of 1965.<sup>17</sup> Depending upon the particular state, different parts of that act may apply. Section 2 of the act applies to all jurisdictions. It prohibits any state or political subdivision from imposing a voting qualification or a standard, practice, or procedure that results in a denial or abridgment of the right to vote on account of race, color, or status as a member of a

language minority group. Under this section, Congressional districting plans cannot dilute the voting strength of certain minorities. Some practices that have been questioned under the section include multimember districts, the packing of minority voters into a limited number of districts, and the fracturing of minority voting strength by dividing minority voters into a large number of districts.<sup>18</sup> After a Congressional redistricting plan is established, it is often challenged on Section 2 grounds. As a result, federal courts often determine whether Congressional redistricting plans meet the requirements of the Voting Rights Act.

Courts have recognized several policies or goals as traditional redistricting principles. These principles include:<sup>19</sup>

- Compactness;
- Contiguity;
- Preservation of political subdivisions;
- Preservation of communities of interest;
- Preservation of cores of prior districts;
- Protection of incumbents; and
- Compliance with Section 2 of the Voting Rights Act.

The persons responsible for drawing Congressional district maps determine which of these principles will be considered, and how much consideration each will receive, in establishing the districts.

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*Congressional districts must be as equal in population as practicable. Congressional districts also must satisfy requirements of the Voting Rights Act of 1965.*


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*Courts have recognized seven policies or goals as traditional redistricting principles, including compactness, contiguity, and preservation of communities of interest.*



### **Process for adopting Congressional districts**

Although some states have enacted a statutory process for adopting Congressional district plans, such as having those districts determined by a board or commission, nothing in Ohio law specifies a particular process for adopting Congressional

districts. Traditionally, those districts have been adopted by statutory enactment of the General Assembly. The bill establishing those districts is enacted according to the same process as other bills are enacted by the General Assembly and is subject to gubernatorial veto in the same manner as other bills. 

### **Endnotes**

- <sup>1</sup> Ohio Constitution Article XI, Section 1.
- <sup>2</sup> Ohio Constitution Article XI, Section 1.
- <sup>3</sup> Ohio Constitution Article XI, Sections 6 and 13.
- <sup>4</sup> Ohio Constitution Article XI, Sections 2, 3, 7, 8, and 9.
- <sup>5</sup> Ohio Constitution Article XI, Sections 4 and 11.
- <sup>6</sup> *Reynolds v. Sims*, 377 U.S. 533, 568 (1964).
- <sup>7</sup> Rules and Procedures for the 2001 Apportionment Board, Ohio Administrative Code rules 011-1-01 through 011-1-12.
- <sup>8</sup> United States Constitution Article I, Section 2.
- <sup>9</sup> 2 United States Code (U.S.C.) § 2a.
- <sup>10</sup> National Conference of State Legislatures. *Redistricting Law 2010* (2009): pp. 7-10.
- <sup>11</sup> <http://www.census.gov/population/www/censusdata/c2kproducts.html>.
- <sup>12</sup> Am. Sub. H.B. 471 of the 124th General Assembly.
- <sup>13</sup> R.C. 3501.01, as amended by Am. Sub. H.B. 194 of the 129th General Assembly.
- <sup>14</sup> R.C. 3513.05, as amended by Am. Sub. H.B. 48 of the 128th General Assembly.
- <sup>15</sup> *League of United Latin American Citizens v. Perry*, 548 U.S. 399 (2006).
- <sup>16</sup> *Karcher v. Daggett*, 462 U.S. 725, 732 (1983).
- <sup>17</sup> Public Law No. 89-110 (codified as amended at 42 U.S.C. §§ 1971, 1973 to 1973bb-1).
- <sup>18</sup> National Conference of State Legislatures. *Redistricting Law 2010* (2009): pp. 54-55.
- <sup>19</sup> National Conference of State Legislatures. *Redistricting Law 2010* (2009): p. 105.

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