ORIGINAL

Case No. 2011-1646

In The
Supreme Court of Ohio

STATE EX REL. OHIOANS FOR FAIR DISTRICTS, et al.,
Relators,

v.

JON HUSTED, OHIO SECRETARY OF STATE,
Respondent.

Original Action in Mandamus

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TABLE OF CONTENTS

TABLE OF AUTHORITIES.....iii

I. INTRODUCTION.....1

II. ARGUMENT IN RESPONSE.....2

A. The Supremacy Clause Does Not Foreclose a Referendum on Sub.H.B. 319.....2

B. Respondent and Intervenors Have Failed to CarryTheir Burden of Proof that the Reapportionment of Congressional Districts is Dependent on the $2,750,000 Appropriation in Sub.H.B. 319.....8

IV. CONCLUSION.....14

CERTIFICATE OF SERVICE.....15

TABLE OF AUTHORITIES

Case Law

Baker v. Carr (1962),
369 U.S. 186.....4, 5

Branch v. Smith (2003),
538 U.S. 254.....FN1

State ex rel. Cmte. for Charter Amendment,
115 OhioSt.3d 400, 2007 Ohio 5380.....FN5

State ex rel. Davis v. Hildebrant (1916),
241 U.S. 565.....3, 4, 5

State ex rel. Davies Mfg. v. Donahay (1916),
94 Ohio St. 482.....13

State ex rel. LetOhioVote.org v. Brunner,
123 Ohio St.3d 322, 2009 Ohio 4900.....13

State ex rel. Taft v. Franklin County Court of Common Pleas (1998),
81 Ohio St.3d 480.....13

Ohio Constitution, Statutes, Other Sources

Ohio Rev. Code 3519.08.....FN3

Ohio Rev. Code 3501.17.....12

Ohio House Republicans pass new congressional map,
Cleveland Plain Dealer (Sep. 15, 2011).....FN6

House approves redistricting map,
Columbus Dispatch (Sep. 16, 2011).....FN6

I. INTRODUCTION

Respondent and Intervenors devote much of their argument to the parade of horribles that they say would ensue if Sub.H.B. 319 is placed on hold through the filing of a citizens referendum petition, while ignoring the harm to direct democracy that will ensue if the constitutional right of referendum on this most important of legislation is taken away. To be clear, the filing of a referendum petition against SHB 319 does nothing to alter or diminish the power of the General Assembly to provide for Congressional districts in accordance with Federal law. Contrary to the assertions of Respondent and Intervenors, this case does not present the Court with a situation where it must choose between the right of referendum and the implementation of a constitutionally valid process of electing Ohio's delegates to Congress. The question before the Court is a simple one, whether Sections 1 and 2 of Sub.H.B. 319, which alter the permanent law of this state, are subject to referendum. The General Assembly has numerous options, as discussed herein, to provide for the apportionment of Congressional districts in accordance with constitutional and legal requirements.[1] Relators have but one and are entitled to the requested writ.

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1 Further, as Respondent points out, if the State fails to act, then the federal courts have the authority to implement redistricting. [*Branch v. Smith* (2003), 538 U.S. 254, 278; Respondent Br. 13.]

II. ARGUMENT

A. The Supremacy Clause Does Not Foreclose a Referendum on Sub. H. B. 319

The Supremacy Clause of the United States Constitution does not foreclose a referendum on SHB 319. The core of the argument made by Respondent and Intervenors is that the filing of a referendum petition would keep the former districts in place and that those districts do not comply with federal law as to the number of districts or population requirements. They also contend that there is insufficient time to create new districts because of a December 7, 2011 candidate filing deadline and a March 6, 2012 primary election date. They argue that the General Assembly has a legal obligation to enact a constitutionally valid congressional redistricting plan. Indeed, the General Assembly has many legal obligations and duties under both state and Federal law with respect to an array of subjects – yet those obligations and duties have never before been a basis for foreclosing the right of referendum. Further, their argument ignores the fact that the filing of a referendum petition on SHB 319 does not take any power away from the General Assembly to comply with its duties under Federal law. If a referendum petition is filed on the redistricting law, the General Assembly is free to immediately enact another redistricting plan if it can not wait for the results of the vote on the referendum.[2] Sure, it's more work, but a referendum petition on SHB 319 does not preclude the options the General Assembly has

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2 Nothing in the Ohio Constitution prevents the General Assembly from repealing a law, or taking any other action with respect to a law, while a referendum petition is pending.

to enact another redistricting plan in time for the November 6, 2012 general election, which would be eleven months after the filing of the petition.

The supremacy clause does not apply to defeat the right of referendum. There is no conflict between the right of referendum and Federal law. Rather, the conflict is between the former congressional districts and Federal law. Accordingly, in terms of federal supremacy, if a valid referendum petition is filed, the General Assembly would find itself in the same position it was in before it enacted SHB 319, *i.e.*, in a position where it must pass legislation that comports with state and Federal law. No one is stopping the General Assembly from doing so. Nor would the relief sought by Relators herein stop the General Assembly from doing so.[3]

Intervenors attempt to downplay the significance of *State ex rel. Davis v. Hildebrant* (1916), 241 U.S. 565, 36 S.Ct. 708, 60 L.Ed. 1172. [Intervenor Merit Brief, pp. 18-19]. This was a case in which the United States Supreme Court affirmed the ruling of the Ohio Supreme Court in *State, ex rel. Davis v. Hildebrant* (1916), 94 Ohio St. 154, 114 N.E. 55. Neither the passage of time nor developments in election law diminish the core holding in these cases which is that neither the United States Constitution nor federal law prohibit the citizens of Ohio from filing a referendum with respect to a congressional redistricting plan adopted by the General Assembly.

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[3] In fact, Relators could later withdraw the referendum from the ballot since an election on SHB 319 would be moot if new districts were enacted. See, ORC 3519.08.

Despite the passage of nearly a century, the facts in *Hildebrant* are remarkably similar to the facts in the pending action. The General Assembly passed an act redistricting and apportioning the state into new congressional districts, the Governor approved the law, and it was filed with the Secretary of State. The main factual difference from the pending action is that the electors had the opportunity to vote on the law and disapproved of it. However, the claim was made then, as Respondent claims today, that a referendum petition was void for reason that the referendum provisions comprised in Article II, Section 1(c) of the Ohio Constitution could not apply to an act of the Ohio legislature regarding congressional redistricting. In the Ohio Supreme Court case of *Hildebrant*, the Court denied a writ of mandamus which sought to declare the referendum proceedings to be invalid. In the United States Supreme Court case of *Hildebrant*, the Court agreed with the Ohio Supreme Court that nothing in the federal laws apportioning representation among the States prevent the people of a State from reserving the right of approval or disapproval by referendum of a state act redistricting the State for the purpose of congressional elections.

Fast forward to the present day, neither Respondent nor Intervenor point this Court to any section of the federal redistricting law that prohibits the people of the State of Ohio from pursuing a referendum of the General Assembly's redistricting plan. Intervenor claims that the case of *Baker v. Carr* (1962), 369 U.S. 186, 82 S.Ct. 691, 7 L.Ed. 663, and what Intervenor

terms the "one person, one vote revolution of the 1960s" somehow makes the holdings obsolete in the *Hildebrant* cases. [Intervenor Merit Brief p. 18]. Intervenor theorizes that a referendum equates to an unconstitutional "malapportionment of legislative or congressional districts." [*Id.* at 19]. This is simply not true as the General Assembly's "hands are not tied" when a referendum petition is filed pertaining to a redistricting plan. The referendum petition may stay the implementation of the new districts, but does not force the State to maintain the existing districts. Relator does not dispute that congressional districts must comport with federal statutes and case law; however, that does not change the fact that a referendum is permissible for a redistricting plan. Should malapportionment be an issue, the duty falls back on the General Assembly to adopt a newer redistricting plan. Therefore, Intervenor's argument that the *Hildebrant* rulings are not controlling is unpersuasive. Further, the case law cited by Intervenor, which does not pertain to referendum rights involving redistricting plans, is irrelevant.

There is no deadline to draft or approve new districts found in any Federal or Ohio statute or regulation. Indeed, there is both an opportunity to permit Relators ninety (90) days in which to seek a referendum while still leaving sufficient time to conduct a primary election which provides the political parties with the opportunity to nominate candidates for election to Ohio's sixteen Congressional districts.

Nor does staying the effective date of Sub.H.B. 319 contravene federal law. Indeed, there is no federal law which requires Ohio to hold a primary election in March of 2012 for those seeking nomination for election to Congress, nor is there any federal law that requires that candidates seeking that nomination to file their petitions 90 days before the primary election. Rather, there is the Ohio Constitution, which guarantees the right of referendum.

Although relied upon Respondent and Intevenors as a basis for the denial of constitutional guarantees, these deadlines and dates are no more than artificial deadlines of statutory creation. Just as SHB 319 was passed by a simple majority of the members of the General Assembly, Ohio's statutory election laws can be amended to alter the date of the primary election and filing deadlines to eliminate the horribles which Respondent and Intervenor envision, and to ensure compliance with Federal Constitutional and statutory guarantees. Unfortunately, the same cannot be said for Relators who must vindicate their right of referendum through this Court, or not at all.

The essence of the arguments against the right of referendum rely on a timeline for the primary election of the General Assembly's own creation – a timeline it can change. Succinctly, the Ohio Constitution does not provide a basis for excluding the citizens' right of referendum when it makes the General Assembly's chosen timeline more difficult.

If a sufficient referendum petition is filed on SHB 319, the General Assembly would retain numerous options to apportion new Congressional districts in accordance with Federal law and and provide for an orderly election process:

1. The General Assembly could establish a new primary for Congressional districts only (all remaining offices could move forward in March). Indeed, the General Assembly earlier this year considered separate primary dates for the 2012 presidential primary in March and a primary for other offices in May;
2. A bill, House Bill 318, has already passed the House of Representatives to move the primary to May 8, 2012. If the Senate were to pass this legislation, which it would only need the support of a single party to do, the candidate filing deadline would be February 8, 2012 (assuming the General Assembly retains the 90 day filing deadline, which it need not do). Even if this legislation could not garner enough votes to be passed as an emergency, it would only need to be passed 90 days prior to February 8, 2012 (i.e., November 9, 2011), which would provide enough time for the legislation to take effect and to retain the 90 day filing deadline;
3. The General Assembly could shorten filing deadlines before the primary election. Military ballots must be prepared 45 days prior to the election. Candidate petitions could be due 60 days, rather than 90 days, prior to

the election (as is already the case for a number of different types of candidates and ballot issues);

4. The primary election need not be held in March or in May. It could be held later in 2012, for Federal offices, or for all offices if the state wants to avoid multiple primaries;
5. The state could retain the March 6, 2012 primary election date by enacting new redistricting legislation on or before December 6, 2011, which is 90 days before the primary election.

The above options are offered only to counter the assertion that there is no way to preserve Relators' right of referendum without causing chaos. The General Assembly, now a party to this case, has multiple options to avert the harms it has described. The General Assembly singularly holds the power to prevent the results of which it complains. Whether the General Assembly chooses to take action to avoid those harms is up to it, but its failure to do so cannot come at the expense of the citizens' right of referendum as guaranteed by the Ohio Constitution. This is not an action for injunctive relief, where the Court balances the harms, or potential harms, to the parties. Rather, there is either a right of referendum or there is not.

B. Respondent and Intervenors Have Failed to Carry Their Burden of Proof that the Reapportionment of Congressional Districts is Dependent on the $2,750,000 Appropriation in Sub. H. B. 319

It cannot be true that but for the $2,750,000 appropriated for remapping of districts and reprogramming of voting machines, Ohio could not reapportion Ohio's congressional districts and Ohio would have sent eighteen

members, representing Ohio's existing districts, to fill Ohio's sixteen Congressional seats. It is simply not plausible to suggest that Ohio's compliance with the Federal Constitution, Federal law, and Ohio Constitution, hinges on the appropriation of less than $3 million contained in Section 4 of SHB 319. Ohio's reapportionment of Congressional districts was not, and is not, dependent upon the relatively small appropriation contained in Section 4.

Respondent and Intervernors have failed to meet their burden of proof under what they concede is the correct standard when seeking to bar the constitutionally guaranteed right of referendum. According to the Secretary of State, "[b]ecause implementation of the apportionment provisions in H.B. 319 is entirely dependent on an appropriation in the same Act, the provisions are not subject to referendum. [Respondent Br. 6.] Intervenors make the same assertion, that "[i]mplementation of Section 1 of SHB 319, which redraws the boundaries for Ohio's Congressional Districts, is entirely dependent upon the appropriation in Section 4." [I-R Br. 8.] Two affidavits have been offered in support.

Intervenors offer the Affidavit of Aaron Ockerman, the registered lobbyist for the Ohio Association of Elections Officials, who is compensated to lobby the Intervenors in this case on an ongoing basis on a variety of matters of interest to his client. One of those items was the very appropriation

contained in Section 4 of SHB 319.[4] Clearly, he is not an impartial source in providing evidence regarding whether the implementation of new congressional districts is dependent on the appropriation. His affidavit is mostly devoted to stating how boards of elections are expected to spend the appropriated funds. This is of course hearsay testimony; but more importantly it does not answer the bottom line question whether the implementation of the new districts is dependent on this appropriation. Only in paragraph 16 of his affidavit does he state that without the appropriation in SHB 319, "it will be difficult, if not impossible" for the boards of elections to successfully implement the new congressional district lines. But difficult is not the same as impossible and he qualifies "impossible" with "if not," meaning he can not say for certain. Further, this is also only an opinion offered by an advocate. No evidence has been provided by any board of elections official regarding the whether their board will or will not be able to implement the new congressional district lines without an appropriation from the State. Finally, Mr. Ockerman's opinion in paragraph 16 is undermined by his September 21, 2011 letter to Intervenors Batchelder and Niehaus, in which acknowledges that "[w]ithout some financial support from the state, our members are likely to seek additional appropriations from county commissioners to comply with our statutory duties." Indeed, the General Assembly has promulgated Ohio Rev. Code 3501.17, whereby county boards

[4] Mr. Ockerman's status as a registered lobbyist for the Ohio Association of Elections Officials and paid testimony in support of SHB 319 speaks to the weight this Court should give his opinion testimony made on behalf of those he is paid to lobby.

of elections must be appropriated their necessary and proper expenses from county funds by the board of county commissioners of their county and provides for an action in the court of common pleas where the commissioners fail to do so. In other words, the funding scheme for the expenses of the county boards is by the counties, not the state. This raises a question as to whether implementation expenses are in fact current expenses of the state under Art. II, 1d of the Ohio Constitution. Regardless, Mr. Ockerman's affidavit offers no real evidence that the county boards of elections would be unable to implement congressional redistricting absent the $2.75 million appropriated statewide in Section 4 of SHB 319, or that the statutory process for requesting additional funds promulgated by the General Assembly would not be sufficient in this instance.

Nor does the non-lobbyist affidavit of Matthew Damschroder offered by Respondent directly aver that the implementation of the new congressional district boundaries is dependent, completely or otherwise, on the appropriation contained in Section 4 of SHB 319.[5] Rather, Mr. Damschroder avers that "[g]iven the limited financial resources at the county government level, an appropriation form the state is necessary to pay for the implementation of the new congressional districts." [Damschroder Aff. ¶ 11.] Mr. Damschroder does not state why the statutory process for seeking

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5 Mr. Damschroder's affidavit is not made upon personal knowledge, but upon his "knowledge, information, and belief." [Damschroder Aff. ¶ 12.] It is thus impossible to know which averments are based on personal knowledge and which are based upon belief. [*State ex rel. Cmte. for Charter Amendment*, 115 OhioSt.3d 400, 2007 Ohio 5380, ¶ 13.]

additional funds from the county contained in Ohio Rev. Code 3501.17 is insufficient. Nor is any evidence offered as to the budgets of any county board of elections, the amount of expected expenses for implementing new congressional district lines, or attempts to obtain funding from county commissioners. Further, the boards of elections would have known before they submitted their budget proposals for 2011 to their county commissioners that there would be additional expenses in 2011 not only for new congressional district lines, but also new Ohio House and Senate district lines. No evidence has been provided as to how the $2.75 million figure was computed. Was it pulled out of the air or is there an actual calculation supported by underlying financial records of expected expenses. Some actual budgetary information would be useful here before the right of referendum is taken away. It also strains credulity to suggest that the state's boards of county commissioners could not have appropriated an aggregate $2.75 million if that is all that is required to implement new congressional districts, particularly since they are required to fund the necessary and proper expenses of the board of elections pursuant to Ohio Rev. Code 3501.17. $2.75 million is an average of only $31,250 per county.

Finally, the appropriation in Section 4 of SHB 319 was added to the bill after it was passed by the House of Representatives and not until the very day it was passed by the Senate. If the implementation of the whole

redistricting was dependent upon an appropriation, why was it added at the last minute.[6]

As in LetOhioVote, "the changes to the permanent law of this state [i.e., Ohio Rev. Code 3521.01] distinguish it from *Taft* and *Davies Mfg.* in which temporary measures were enacted to effectuate an appropriation." [*LetOhioVote v. Brunner*, 123 Ohio St.3d 322, 2009 Ohio 4900, ¶ 47; *see also, State ex rel. Taft v. Franklin Cty. Court of Common Pleas* (1998), 81 Ohio St.3d 480; *State ex rel. Davies Mfg. v. Donahay* (1916), 94 Ohio St. 482.] "The provisions at issue here constitute permanent changes that will be effective well after the biennium ends and are thus subject to referendum." [Id.]

Respondent and Intervenors bear the burden of proof to support their assertion that the implementation of the new congressional district lines is dependent upon the rather meager appropriation included in the bill at the last minute. The General Assembly chose to explicitly exclude SHB 319 from the right of citizen referendum by including a small appropriation and by declaring in the bill that the new congressional districts were not subject to referendum. However, the Ohio Constitution does not permit the right of

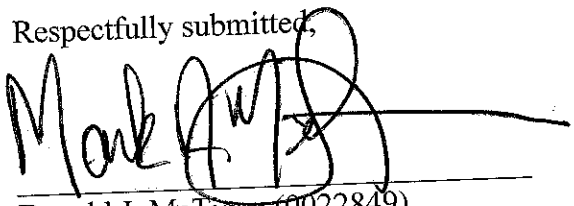
[6] Intervener Speaker Batchelder stated publicly the intent of the appropriation was to thwart the possibility of referendum. [See, e.g., Ohio House Republicans pass new congressional map, Cleveland Plain Dealer (Sep. 15, 2011)("Batchelder said lawmakers could attach a small appropriation to the congressional map as an attempt around a possible referendum"); House approves redistricting map, Columbus Dispatch (Sep. 16, 2011) ("Batchelder said adding a 'properly done' budget appropriation to the map bill , House Bill 319, could cause it to become effective immediately, blocking a referendum effort.")

referendum to be taken away by mere fiat. Only if the State can demonstrate through admissible evidence that the permanent law change in the bill is "dependent" upon the appropriation in the bill and that the appropriation is for current expenses of the state can the State successfully invoke the exception in Art. II, 1d of the Constitution. Respondent and Intervenors have utterly failed to so in this action.

III. CONCLUSION

Accordingly, for the reasons set forth above, Relators respectfully request that this Court issue the requested relief.

Respectfully submitted,



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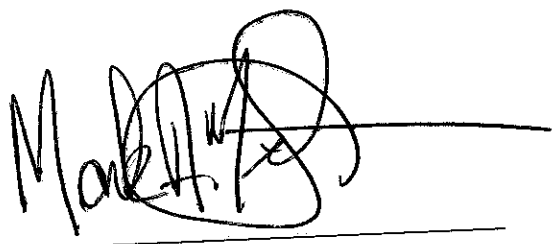

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APPENDIX OF CITED SOURCES

Current through Legislation passed by the 129th Ohio General Assembly
and filed with the Secretary of State through file 47
*** Annotations current through July 22, 2011 ***

TITLE 35. ELECTIONS
CHAPTER 3519. INITIATIVE; REFERENDUM

Go to the Ohio Code Archive Directory

ORC Ann. 3519.08 (2011)

§ 3519.08. Procedure for withdrawal of petition; resubmission prohibited

(A) Notwithstanding division (I)(2) of *section 3501.38 of the Revised Code*, at any time prior to the seventieth day before the day of an election at which an initiative or referendum is scheduled to appear on the ballot, a majority of the members of the committee named to represent the petitioners in the petition proposing that initiative or referendum under *section 3519.02 of the Revised Code* may withdraw the petition by giving written notice of the withdrawal to the secretary of state.

(B) After a majority of the members of the committee named to represent the petitioners gives notice to the secretary of state that the petition proposing the initiative or referendum is withdrawn under division (A) of this section, all of the following shall apply:

(1) If the Ohio ballot board has not already certified the ballot language at the time a majority of the members of the committee gives the written notice of withdrawal, the board shall not certify ballot language for that proposed initiative or referendum to the secretary of state.

(2) The secretary of state shall not certify a ballot form or wording to the boards of elections under *sections 3501.05* and *3505.01 of the Revised Code* that includes ballot language for that proposed initiative or referendum.

(3) The proposed initiative or referendum shall not appear on the ballot.

(C) No petition that has been filed, and subsequently withdrawn under this section, may be resubmitted.

HISTORY:

151 v H 312, § 1, eff. 8-22-06; 153 v H 48, § 1, eff. 7-2-10.

NOTES:

Section Notes

Not analogous to former RC § 3519.08 (GC § 4785-175b, 4785-176a, 4785-176b; 119 v 140; 122 v 325(364); Bureau of Code Revision, 10-1-53), repealed 135 v S 238, § 2, eff 5-15-74.

The provisions of § 3 of 151 v H 312 read as follows:

SECTION 3. (A) The amendments to sections 3501.05, 3501.38, and 3505.01 and the enactment of *section 3519.08 of the Revised Code* relating to the withdrawal of statewide initiative and referendum petitions shall be considered to be purely remedial in operation and shall be applied to any statewide initiative or referendum petition for which the Secretary of State has not yet certified a ballot form or wording to the boards of elections regardless of when the statewide initiative or referendum petition was filed with the Secretary of State and regardless of whether the statewide initiative or referendum petition has been verified by the Secretary of State.

(B) The amendments to *sections 3501.05* and *3501.38 of the Revised Code* relating to the withdrawal of initiative and referendum petitions filed for a municipal corporation, county, township, other political subdivision, or other statutory body exercising governmental authority shall be considered to be purely remedial in operation and shall be applied to any initiative or referendum petition for which the applicable board of elections has not yet given approval to or submitted to the Secretary of State ballot language and for which the Secretary of State has not yet given final approval to ballot language, regardless of when the initiative or referendum petition was filed and regardless of whether the initiative or referendum petition has been verified.

EFFECT OF AMENDMENTS

153 v H 48, effective July 2, 2010, substituted "seventieth day" for "sixtieth day" in (A).

LexisNexis 50 State Surveys, Legislation & Regulations

Ballot Access

Current through Legislation passed by the 129th Ohio General Assembly
and filed with the Secretary of State through file 47
*** Annotations current through July 22, 2011 ***

TITLE 35. ELECTIONS
CHAPTER 3501. ELECTION PROCEDURE; ELECTION OFFICIALS
SUPERVISION OF ELECTIONS

Go to the Ohio Code Archive Directory

ORC Ann. 3501.17 (2011)

§ 3501.17. Expenses and apportionment of costs; elections revenue fund; statewide ballot advertising fund

(A) The expenses of the board of elections shall be paid from the county treasury, in pursuance of appropriations by the board of county commissioners, in the same manner as other county expenses are paid. If the board of county commissioners fails to appropriate an amount sufficient to provide for the necessary and proper expenses of the board of elections pertaining to the conduct of elections, the board of elections may apply to the court of common pleas within the county, which shall fix the amount necessary to be appropriated and the amount shall be appropriated. Payments shall be made upon vouchers of the board of elections certified to by its chairperson or acting chairperson and the director or deputy director, upon warrants of the county auditor.

The board of elections shall not incur any obligation involving the expenditure of money unless there are moneys sufficient in the funds appropriated therefor to meet the obligation. If the board of elections requests a transfer of funds from one of its appropriation items to another, the board of county commissioners shall adopt a resolution providing for the transfer except as otherwise provided in *section 5705.40 of the Revised Code*. The expenses of the board of elections shall be apportioned among the county and the various subdivisions as provided in this section, and the amount chargeable to each subdivision shall be paid as provided in division (J) of this section or withheld by the county auditor from the moneys payable thereto at the time of the next tax settlement. At the time of submitting budget estimates in each year, the board of elections shall submit to the taxing authority of each subdivision, upon the request of the subdivision, an estimate of the amount to be paid or withheld from the subdivision during the current or next fiscal year.

A board of township trustees may, by resolution, request that the county auditor withhold expenses charged to the township from a specified township fund that is to be credited with revenue at a tax settlement. The resolution shall specify the tax levy ballot issue, the date of the election on the levy issue, and the township fund from which the expenses the board of elections incurs related to that ballot issue shall be withheld.

(B) Except as otherwise provided in division (F) of this section, the compensation of the members of the board of elections and of the director, deputy director, and regular employees in the board's offices, other than compensation for overtime worked; the expenditures for the rental, furnishing, and equipping of the office of the board and for the necessary office supplies for the use of the board; the expenditures for the acquisition, repair, care, and custody of the polling places, booths, guardrails, and other equipment for polling places; the cost of tally sheets, maps, flags, ballot boxes, and all other permanent records and equipment; the cost of all elections held in and for the state and county; and all other expenses of the board which are not chargeable to a political subdivision in accordance with this section shall

be paid in the same manner as other county expenses are paid.

(C) The compensation of precinct election officials and intermittent employees in the board's offices; the cost of renting, moving, heating, and lighting polling places and of placing and removing ballot boxes and other fixtures and equipment thereof, including voting machines, marking devices, and automatic tabulating equipment; the cost of printing and delivering ballots, cards of instructions, registration lists required under *section 3503.23 of the Revised Code*, and other election supplies, including the supplies required to comply with division (H) of *section 3506.01 of the Revised Code*; the cost of contractors engaged by the board to prepare, program, test, and operate voting machines, marking devices, and automatic tabulating equipment; and all other expenses of conducting primaries and elections in the odd-numbered years shall be charged to the subdivisions in and for which such primaries or elections are held. The charge for each primary or general election in odd-numbered years for each subdivision shall be determined in the following manner: first, the total cost of all chargeable items used in conducting such elections shall be ascertained; second, the total charge shall be divided by the number of precincts participating in such election, in order to fix the cost per precinct; third, the cost per precinct shall be prorated by the board of elections to the subdivisions conducting elections for the nomination or election of offices in such precinct; fourth, the total cost for each subdivision shall be determined by adding the charges prorated to it in each precinct within the subdivision.

(D) The entire cost of special elections held on a day other than the day of a primary or general election, both in odd-numbered or in even-numbered years, shall be charged to the subdivision. Where a special election is held on the same day as a primary or general election in an even-numbered year, the subdivision submitting the special election shall be charged only for the cost of ballots and advertising. Where a special election is held on the same day as a primary or general election in an odd-numbered year, the subdivision submitting the special election shall be charged for the cost of ballots and advertising for such special election, in addition to the charges prorated to such subdivision for the election or nomination of candidates in each precinct within the subdivision, as set forth in the preceding paragraph.

(E) Where a special election is held on the day specified by division (E) of *section 3501.01 of the Revised Code* for the holding of a primary election, for the purpose of submitting to the voters of the state constitutional amendments proposed by the general assembly, and a subdivision conducts a special election on the same day, the entire cost of the special election shall be divided proportionally between the state and the subdivision based upon a ratio determined by the number of issues placed on the ballot by each, except as otherwise provided in division (G) of this section. Such proportional division of cost shall be made only to the extent funds are available for such purpose from amounts appropriated by the general assembly to the secretary of state. If a primary election is also being conducted in the subdivision, the costs shall be apportioned as otherwise provided in this section.

(F) When a precinct is open during a general, primary, or special election solely for the purpose of submitting to the voters a statewide ballot issue, the state shall bear the entire cost of the election in that precinct and shall reimburse the county for all expenses incurred in opening the precinct.

(G) (1) The state shall bear the entire cost of advertising in newspapers statewide ballot issues, explanations of those issues, and arguments for or against those issues, as required by Section 1g of Article II and Section 1 of Article XVI, Ohio Constitution, and any other section of law. Appropriations made to the controlling board shall be used to reimburse the secretary of state for all expenses the secretary of state incurs for such advertising under division (G) of *section 3505.062 of the Revised Code*.

(2) There is hereby created in the state treasury the statewide ballot advertising fund. The fund shall receive transfers approved by the controlling board, and shall be used by the secretary of state to pay the costs of advertising state ballot issues as required under division (G)(1) of this section. Any such transfers may be requested from and approved by the controlling board prior to placing the advertising, in order to facilitate timely provision of the required advertising.

(H) The cost of renting, heating, and lighting registration places; the cost of the necessary books, forms, and supplies for the conduct of registration; and the cost of printing and posting precinct registration lists shall be charged to the subdivision in which such registration is held.

(I) At the request of a majority of the members of the board of elections, the board of county commissioners may, by resolution, establish an elections revenue fund. Except as otherwise provided in this division, the purpose of the fund shall be to accumulate revenue withheld by or paid to the county under this section for the payment of any expense related to the duties of the board of elections specified in *section 3501.11 of the Revised Code*, upon approval of a majority of the members of the board of elections. The fund shall not accumulate any revenue withheld by or paid to the county under this section for the compensation of the members of the board of elections or of the director, deputy director, or other regular employees in the board's offices, other than compensation for overtime worked.

Notwithstanding *sections 5705.14, 5705.15*, and *5705.16 of the Revised Code*, the board of county commissioners may, by resolution, transfer money to the elections revenue fund from any other fund of the political subdivision from which such payments lawfully may be made. Following an affirmative vote of a majority of the members of the board of elections, the board of county commissioners may, by resolution, rescind an elections revenue fund established under this division. If an elections revenue fund is rescinded, money that has accumulated in the fund shall be transferred to the county general fund.

(J) (1) Not less than fifteen business days before the deadline for submitting a question or issue for placement on the ballot at a special election, the board of elections shall prepare and file with the board of county commissioners and the office of the secretary of state the estimated cost, based on the factors enumerated in this section, for preparing for and conducting an election on one question or issue, one nomination for office, or one election to office in each precinct in the county at that special election and shall divide that cost by the number of registered voters in the county.

(2) The board of elections shall provide to a political subdivision seeking to submit a question or issue, a nomination for office, or an election to office for placement on the ballot at a special election with the estimated cost for preparing for and conducting that election, which shall be calculated either by multiplying the number of registered voters in the political subdivision with the cost calculated under division (J)(1) of this section or by multiplying the cost per precinct with the number or precincts in the political subdivision. A political subdivision submitting a question or issue, a nomination for office, or an election to office for placement on the ballot at that special election shall pay to the county elections revenue fund sixty-five per cent of the estimated cost of the election not less than ten business days after the deadline for submitting a question or issue for placement on the ballot for that special election.

(3) Not later than sixty days after the date of a special election, the board of elections shall provide to each political subdivision the true and accurate cost for the question or issue, nomination for office, or election to office that the subdivision submitted to the voters on the special election ballots. If the board of elections determines that a subdivision paid less for the cost of preparing and conducting a special election under division (J)(2) of this section than the actual cost calculated under this division, the subdivision shall remit to the county elections revenue fund the difference between the payment made under division (J)(2) of this section and the final cost calculated under this division within thirty days after being notified of the final cost. If the board of elections determines that a subdivision paid more for the cost of preparing and conducting a special election under division (J)(2) of this section than the actual cost calculated under this division, the board of elections promptly shall notify the board of county commissioners of that difference. The board of county commissioners shall remit from the county elections revenue fund to the political subdivision the difference between the payment made under division (J)(2) of this section and the final cost calculated under this division within thirty days after receiving that notification.

(K) As used in this section:

(1) "Political subdivision" and "subdivision" mean any board of county commissioners, board of township trustees, legislative authority of a municipal corporation, board of education, or any other board, commission, district, or

authority that is empowered to levy taxes or permitted to receive the proceeds of a tax levy, regardless of whether the entity receives tax settlement moneys as described in division (A) of this section;

(2) "Statewide ballot issue" means any ballot issue, whether proposed by the general assembly or by initiative or referendum, that is submitted to the voters throughout the state.

HISTORY:

GC § 4785-20; 113 v 307, § 20; 114 v 679; Bureau of Code Revision, 10-1-53; 125 v 713(737); 126 v 205; 127 v 741 (Eff 1-1-58); 132 v H 934 (Eff 5-31-68); 133 v H 1 (Eff 3-18-69); 135 v H 662 (Eff 9-27-74); 136 v S 158 (Eff 11-25-75); 138 v H 1062 (Eff 3-23-81); 140 v S 213 (Eff 10-13-83); 141 v H 555 (Eff 2-26-86); 141 v S 185 (Eff 3-23-87); 142 v H 231 (Eff 10-5-87); 145 v S 150 (Eff 12-29-93); 147 v H 215. Eff 6-30-97; 151 v H 66, § 101.01, eff. 9-29-05; 151 v H 234, § 1, eff. 1-27-06; 151 v H 3, § 1, eff. 5-2-06; 152 v H 119, § 101.01, eff. 9-29-07; 152 v H 562, § 101.01, eff. 6-24-08; 153 v H 1, § 101.01, eff. 10-16-09; 2011 HB 153, § 101.01, eff. Sept. 29, 2011; 2011 HB 194, § 1, eff. Sept. 30, 2011.

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Ohio House Republicans pass new congressional map, but future of plan is unclear

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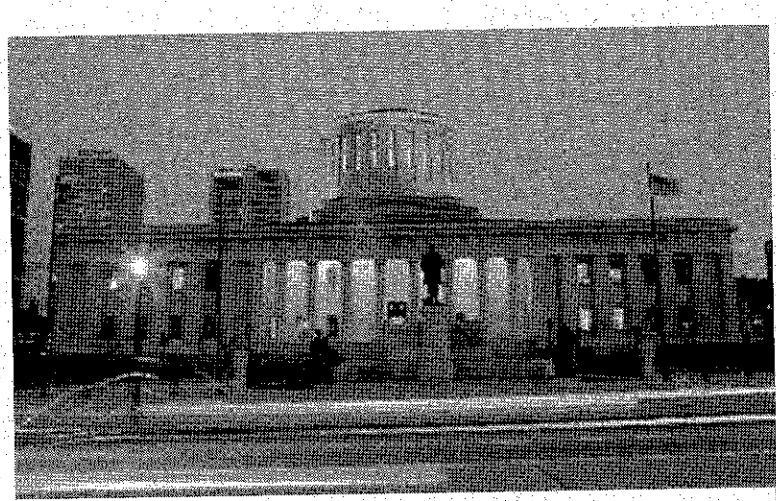
By **Aaron Marshall, The Plain Dealer**



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The Ohio Statehouse.

COLUMBUS, Ohio - This much was clear Thursday about Ohio's congressional redistricting process: House Republicans pushed through their new map, sending the freshly drawn 16 districts to majority-party Senate Republicans for consideration.

Little else was clear, including whether Ohio Democrats would act on a threat to try to block the redistricting plan at the ballot box or the courtroom. Also complicating the process is a separate bill approved Thursday pushing back the 2012 primary from March to May.

Another question is how united Democrats are in opposition to the new map, given that a trio of black Cleveland Democrats -- Reps. Sandra Williams, William Patmon and John Barnes -- joined GOP forces in voting for the measure. It passed by a vote of 56 to 36, as three Republicans hopped the fence to join Democrats in opposition.

The plan eliminates one Republican seat and one Democratic seat, creating a likely future delegation of 12 Republicans and four Democrats for the next decade. Ohio needs to drop two seats, from 18 to 16, because of slow population growth.

Williams, who heads the Ohio Legislative Black Caucus, said she was pleased with the majority black district drawn in Cuyahoga and Summit counties where Congresswoman Marcia Fudge would likely run as an incumbent.

"I voted for the plan because of the 11th Congressional District seat," she said. "I believe that minority representation in the Ohio delegation is very difficult absent the 11th District."

However, Williams said her vote doesn't mean she would oppose a possible rebellion against the new map led by state Democratic Party Chairman Chris Redfern. "It might not be a bad idea to do a referendum," said Williams.

She called the other districts "horrible," although she said she liked that a majority Democrat district drawn in Franklin County has a 29 percent black voting age population, giving black candidates an opportunity to hold the seat. In a floor speech, Barnes also said his "yes" vote was largely because of the makeup of Fudge's potential district.

At a news conference Thursday morning, Redfern told reporters that Democrats hadn't yet decided on a course of action.

House Speaker William G. Batchelder

"I am here today to tell you that we are prepared to use every tool at our disposal to fight this unfair, anti-voter congressional map," Redfern said. " We are weighing our options for a legal challenge and a referendum campaign."

In an interview after the House approved the bill with support from the three Cleveland Democrats, Redfern said "nothing has changed" and that a referendum or a court challenge, based on Democrats being "packed" into four districts, were still options.

Also approved Thursday, in a 63-29 vote, was a bill moving next year's primary from March to May. However, the legislation can't go into effect immediately because an emergency clause failed to attract the seven House Democratic votes needed for the two-thirds threshold.

That means it won't be in effect on Dec. 7, the filing deadline for the March primary. That throws into disarray exactly when candidates would have to file and what district map they would use. However, Republicans sought to prevent problems by adding an amendment requiring boards of election to honor petitions filed for either the current or new districts.

"It's a mess," House Speaker William G. Batchelder told reporters after the floor session. "The truth is we might end up with a federal primary and a state primary."

Batchelder, a former judge, said the threatened referendum could end up with a federal court drawing the congressional map, or deciding what to do while the map was put on ice for voters to decide.

There was a possible escape hatch from legal chaos still available to Republicans. Batchelder said lawmakers could attach a small appropriation to the congressional

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map bill as an attempt around a possible referendum.

Under the Ohio Constitution, legislation with appropriations included isn't subject to voter referendum. However, a recent Ohio Supreme Court decision that a video-lottery terminal bill could be subject to a vote of the people casts doubt on whether that tactic would work.

"I don't know what the best way (out) is to tell you then truth," Batchelder said. "I would rather that we all produced maps and participate."

House Republicans repeatedly criticized Democrats during Thursday's debate over the mapping bill for failing to produce their own map, suggesting they were using delay tactics hoping to get the GOP plan tied up in court.

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"The goal isn't public participation," said Rep. Matt Huffman, a Lima Republican who sponsored the legislation. "The goal is we don't want the guys and gals across the aisle to draw the map -- we want three people in Cincinnati to draw the lines," he said, referring to the federal judges on the Sixth Circuit Court.

Democrats stuck to the message they have had since the map was rolled out Tuesday: slow down the process and consider changes to a map they consider overly partisan and textbook gerrymandering. Minority Leader Armond Budish, a Beachwood Democrat, said Republicans were "raising the specter of the judicial bogeyman as a scare tactic."

Democratic chief Redfern said that Senate Democrats will offer an alternative plan crafted by Illinois Republican state Rep. Mike Fortner, which was the winning entry in a public contest sponsored by a nonprofit coalition called the Ohio Campaign for Accountable Redistricting.

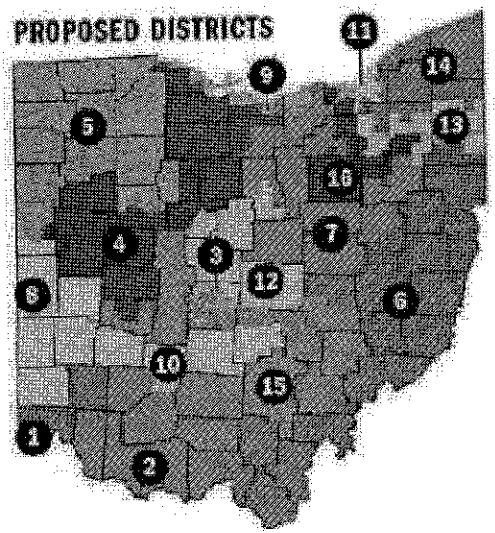
Senate Democratic caucus spokesman Mike Rowe would say only that an alternative plan was being considered.

House approves redistricting map

Democrats vow to fight 'unfair' plan

By Jim Siegel

The Columbus Dispatch Friday September 16, 2011 8:41 AM



Enlarge Image

A Republican-drawn congressional map that gives the GOP a good chance to win 12 of the 16 new districts passed the House yesterday and moved to the Senate, with support from three black Cleveland-area Democrats.

The Senate is likely to move quickly, with a vote as soon as Wednesday on both the new map and a separate bill to change the 2012 primary from March to May.

However, the state is still potentially facing uncharted legal territory on the timing of the 2012 primary and when the new congressional maps will take effect. House Speaker William G. Batchelder, R-Medina, said there is still a possibility of holding two primaries next year — one for state candidates and one for federal.

House Democrats, protesting the fact that House Republicans were passing the new congressional map 48 hours after unveiling it, would not vote to let the May 2012 primary bill take effect immediately. So that bill, and the new congressional map, are not scheduled to take effect until late December, weeks after the Dec. 7 filing deadline for the March primary.

Republicans tried to fix the problem with an amendment to allow county elections boards to accept congressional and presidential candidate petitions based on the new districts if they are filed by Dec. 7.

But even then, Ohio Democratic Chairman Chris Redfern said yesterday, "We are prepared to use every tool, every constitutional resource at our disposal, to fight this unfair, anti-voter congressional map."

He said that includes legal challenges and an attempt to overturn the maps with a referendum on the 2012 ballot that would hold up implementation of the new districts for another year.

Delaying the map, Redfern said, "would compel the speaker to sit down and compromise with the minority on maps that find bipartisan support."

Batchelder said adding a "properly done" budget appropriation to the map bill, House Bill 319, could cause it to become effective immediately, blocking a referendum effort.

"We have discussed that. The matter is on the way to the (Senate). Stuff happens," Batchelder said.

John McClelland, spokesman for Senate President Tom Niehaus, R-New Richmond, said adding an appropriation is "an option," but nothing has been decided. McClelland said he did not expect the Senate to alter the lines on the House-passed map.

Democrats said a referendum on congressional maps happened once before in Ohio, in 1915.

Rep. John Patrick Carney, D-Columbus, said if people are unhappy with polarized ideologues in Congress who can't work together, they should oppose the map, which creates a number of safe seats for both parties.

"In the end, we'll end up with a Congress that's even worse than we have right now because there will be no willingness to come up with pragmatic solutions for fear that when you go back to your district, someone will out-right you or out-left you," he said.

Rep. Matt Huffman, R-Lima, the chairman of the House State Government and Elections Committee, said that "ultimately what we all want is what's fair," but not everyone shares that definition.

"I believe wholeheartedly that this plan complies with all of the facets, both legally and traditional redistricting principles," he said.

Rep. Sandra Williams, D-Cleveland, the president of the Ohio Legislative Black Caucus, voted for the map. Before the House session, she called the full map an "insult to the citizens of Ohio" because of its 12-4 GOP makeup, but she also expressed support for the minority 11th district and the new Columbus district that is about 28 percent black.

"I think it's far past the time for there to be more than one minority (representative) in the state of Ohio," she said.

Five Republicans voted against the map, including Rep. Jarrod Martin, R-Beavercreek, whom the speaker recently asked to step down from his seat after a series of alcohol-related incidents.

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