

ORIGINAL

IN THE SUPREME COURT OF OHIO

State ex rel. Ohioans for Fair Districts, et al., :

Relators, :

Case No. 11-1646

vs. :

Original Action in Mandamus

Hon. Jon Husted :

Ohio Secretary of State, et al., :

Respondents. :

REPLY OF INTERVENOR-RESPONDENTS THE OHIO GENERAL ASSEMBLY,
SPEAKER WILLIAM G. BATCHELDER, AND SENATE PRESIDENT THOMAS E.
NIEHAUS TO MERIT BRIEF OF RELATORS

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INTRODUCTION

Relators seek a writ of mandamus to compel Ohio Secretary of State Jon Husted to treat Sections 1 and 2¹ of Substitute House Bill 319 of the 129th General Assembly (“SHB 319” or “the Act”), which redraws Ohio’s Congressional districts, as subject to referendum, to preclude its immediate effect, and to delay the ninety day period to submit the referendum petition to the Secretary of State until this Court renders a decision. But, SHB 319 is not subject to referendum under Section 1d, Article II, Ohio Constitution and R.C. 1.471 because the implementation of Sections 1 and 2 of SHB 319 are dependent upon a \$2,750,000 appropriation in Section 4 of the bill for the implementation of the new Congressional districts.

Additionally, a delay in the effective date of the Act by ninety days would prohibit Ohio from conducting a primary election in March, 2012 as required by R.C. 3513.01(A). Granting the relief Relators seek would mean that Ohio would be without any Congressional districts until at least January, 2012, and possibly later. Thus, candidates running for public office will not be able to file their declaration for candidacy by December 7, 2011 as required by statute because they will not know in which district they reside and even where to file their petitions. Likewise, the Secretary of State will not be able to comply with his statutory obligations to

¹ Section 2 of SHB 319 merely repeals the prior version of the Ohio Revised Code defining Ohio’s Congressional districts. Thus, the section of the bill that Relators really seek to treat as subject to referendum is Section 1, which draws the new Congressional district lines based upon the reduction to 16 Congressional districts.

certify the form of the ballots and the names of the candidates by December 27, 2011, and the county boards of elections will not be able to fulfill their statutorily imposed election duties.

Additionally, Ohio cannot revert back to its old boundaries because the old boundaries are based upon 18 Congressional districts, when Ohio must be reduced to 16 districts. Moreover, the old plans violate the voting rights guarantees of Section 2, Article I, United States Constitution and the Equal Protection Clause. Their use in the upcoming elections is therefore patently unconstitutional. Also, federal law requires representatives to be elected by district. Put simply, Ohio must have Congressional districts drawn well in advance of the December 7, 2011 deadline for candidates to submit their declarations of candidacy. Treating Sections 1 and 2 of SHB 319 as subject to referendum, and delaying their implementation, will prevent that process from occurring, and will prevent Ohio from conducting a primary election in March, 2012. Therefore, even if the Court determines that SHB 319 should be treated as subject to referendum, it either (1) should not stay the implementation of SHB 319; or (2) should adopt the redistricting plan contained in SHB 319 for the 2012 elections to ensure that the elections can proceed according to U.S. Constitutional and Federal statutory requirements.

STATEMENT OF FACTS

A. The Redistricting Process And The 2012 Primary Election.

In March, 2010, the U.S. Census data revealed that Ohio's population had not grown at the equivalent rate of other states. As a result, Ohio's apportioned

U.S. House Congressional representation was reduced from 18 to 16 members.² That reduction, coupled with population shifts within the state, requires Ohio's Congressional districts to be redrawn. Federal law mandates that voters are to be given the opportunity to elect their U.S. Representatives by district. Section 2c, Title 2, U.S.Code. The task of providing for the new redistricting plan is assigned to the Ohio General Assembly by Clause 1, Section 4, Article I, United States Constitution and by Sections 2a and 2c, Title 2, U.S.Code.

While there is no deadline to draft and approve the new districts found in any federal or Ohio statute or regulation, other deadlines related to the conduct of Ohio's elections implicitly require the redistricting process to be complete months prior to a scheduled election. In particular, the Secretary of State must administer a primary election "on the first Tuesday after the first Monday in March of 2000 and every fourth year thereafter," which means that a primary election must be held on March 6, 2012. See R.C. 3513.01(A). The purpose of the March primary is to "nominat[e] persons as candidates of political parties for election to offices to be voted for at the succeeding general election," including candidates for the U.S. House of Representatives. Id.

To be placed on the ballot for the primary election in March, 2012, each candidate must file his or her declaration of candidacy with the proper number of

² See United States Census Bureau map at <http://2010.census.gov/2010census/data/apportionment-data.php>

signatures by December 7, 2011. See R.C. 3513.05. The Secretary of State must then certify the form of the ballots and the names of the candidates by December 27, 2011. Id. Absentee ballots must be finalized and ready for uniformed and oversea voters by January 21, 2012, and for all other voters in Ohio by January 31, 2012. See Sections 1973ff-1973ff-6, Title 42, U.S.Code; R.C. 3509.01.

B. Substitute House Bill 319.

On September 26, 2011, Ohio Governor John R. Kasich signed into law Sub. H.B. No. 319 of the 129th General Assembly, which the House and Senate had previously passed. The Act reapportions Ohio into 16 Congressional districts and appropriates \$2,750,000 to implement the Congressional redistricting plan, including "remapping and reprecincting counties, and reprogramming database systems and voting machines." Sections 1 and 4, SHB 319. The Act directs the Ohio Secretary of State and Director of Budget and Management to expend the appropriated funds to implement redistricting, using the new boundaries described in Section 1 of the Act. Section 4, SHB 319.

Section 1 of the Act defines Ohio's new 16 Congressional districts, while Section 2 repeals the prior version of the code defining Ohio's previous 18 Congressional districts. Section 3 of the Act requires the Secretary of State to mail, at least 35 days prior to the March, 2012 primary election, a notice to each elector of the date of the primary election, the precinct in which the elector is registered to vote, the Congressional district in which the elector's residential address is located and the House and Senate districts in which the elector's residential address is

located. Section 4 appropriates \$2,750,000 to implement the new districts.

Specifically, it states:

The foregoing appropriation item 911404, Mandate Assistance, shall be used in a method prescribed by the Secretary of State and transferred by the Director of Budget and Management to implement this act, which includes remapping and reprecincting counties, and reprogramming database systems and voting machines. At the end of fiscal year 2012, an amount equal to the unexpended, unencumbered portion of appropriation item 911404, Mandate Assistance, is hereby reappropriated in fiscal year 2013 for the same purpose.

Lastly, Sections 6 and 7 provide that the bill takes immediate effect and is not subject to referendum. In particular, those sections state:

It is the intent of the General Assembly that the Congressional districts established by Sections 1 and 2 of this act take immediate effect, to enable the boards of elections to complete their required remapping and reprecincting of this state so that candidates may file their candidacy petitions in the new districts, the boards may properly verify those petitions, the boards may notify electors of their new districts and, if applicable, voting locations, and elections may be conducted in those districts for the 2012 primary election.

The sections and items of law contained in this act are not subject to the referendum under Ohio Constitution, Article II, Section 1d and section 1.471 of the Revised Code and therefore go into immediate effect when this act becomes law.

Sections 6 and 7, SHB 319.

On September 28, 2011, Relators filed the instant action in this Court seeking a writ of mandamus ordering Respondent Ohio Secretary of State Jon Husted to treat Sections 1 and 2 of SHB 319 as subject to the constitutional right of referendum and granting an extension of the ninety (90) day period in which to submit the referendum petition to the Secretary of State from the date this Court issues a decision. (Compl. at prayer ¶ 1, 3). For the reasons discussed below,

Sections 1 and 2 of SHB 319 are not subject to referendum and Relators are not entitled to a writ of mandamus or any other relief.

ARGUMENT

I. **Proposition of Law No. 1 – The Implementation Of Sections One and Two of SHB 319 Are Dependent Upon An Appropriation For The Current Expenses Of The State Contained In Section Four Of The Bill, And, Therefore, They Are Not Subject To Referendum.**

Section 1c, Article II, of the Ohio Constitution confers a right of referendum on the citizens of Ohio: “no law passed by the general assembly shall go into effect until ninety days after it shall have been filed by the governor in the office of the secretary of state, except as herein provided.” But, Section 1d, Article II, of the Ohio Constitution sets forth certain exceptions to that right: “Laws providing for tax levies, appropriations for the current expenses of the state government and state institutions, and emergency laws necessary for the immediate preservation of the public peace, health or safety, shall go into immediate effect. * * * The laws mentioned in this section shall not be subject to referendum.”

“The plain language of Section 1d, Article II of the Ohio Constitution creates three categories of exceptions from referendum: (1) laws providing for tax levies, (2) appropriations for current expenses of the state government and state institutions, and (3) emergency laws necessary for the immediate preservation of the public peace, health or safety.” *State ex rel. LetOhioVote.org v. Brunner* (2009), 123 Ohio St.3d 322, 2009-Ohio-4900, 916 N.E.2d 462, at ¶26. It is the second category, appropriations for current expenses for the state government, that is applicable to Sections 1 and 2 of SHB 319.

An appropriation is “an authorization granted by the general assembly to make expenditures and to incur obligations for specific purposes.” R.C. 131.01(F); see also *State ex rel. Akron Edn. Assn. v. Essex* (1976), 47 Ohio St.2d 47, 49, 1 O.O.3d 28, 351 N.W.2d 118 (an appropriation bill is a “measure before a legislative body which authorizes ‘the expenditure of public moneys and stipulating the amount, manner, and purpose of the various items of expenditure’”) (quoting Webster’s New International Dictionary (2d Ed.)).

In addition, R.C. 1.471 states: “A codified or uncodified section of law contained in an act that contains an appropriation for current expenses is not subject to the referendum and goes into immediate effect if * * * [C] Implementation of the section depends upon an appropriation for current expenses that is contained in the act.” Thus, it is not just the section of the bill providing for an appropriation that is not subject to referendum, but any section of the bill that necessarily depends upon the appropriation for implementation.

In *State ex rel. Taft v. Franklin Cty. Court of Common Pleas*, one of the issues addressed by the Ohio Supreme Court was whether Sub.H.B. 697, which provided for a vote on a tax levy on the state sales tax to raise additional funds for public education, should be subject to referendum under Sections 1c and 1d, Article II, Ohio Constitution. (1998), 82 Ohio St.3d 480, 1998-Ohio-333, 692 N.E.2d 560. The bill contained six sections. The first section levied a set of taxes and provided that half of the proceeds would go to public education. But, Section 2 of the bill stated that Section 1 would only go into effect if Ohio voters approved the taxes at a

special election in May, 1998. Section 3 of the bill directed the Secretary of State to conduct the special election and Section 4 of the bill appropriated funds for the expenses of the special election, in particular, the advertising costs associated with the election. Section 5 indicated that the law took effect immediately. The Ohio Supreme Court held that “implementation of the statewide election is dependent upon the appropriation in Section 4 of Am.Sub. H.B. No. 697,” and, therefore, the provisions in Sections 2, 3, and 5 of SHB 697 that take immediate effect comport with the Ohio Constitution and R.C. 1.471(C). *Id.* at 484.

Likewise, in *State ex rel. Davies Manufacturing Co. v. Donahey*, the question was whether a competitive-bidding requirement in general appropriation legislation was subject to referendum. (1916), 94 Ohio St. 382, 384, 114 N.E. 1037. Even though the competitive bid requirement was not itself an appropriation, the Court held that it was inextricably tied to the appropriation, and, therefore, not subject to referendum. *Id.* at 385.

As in *Taft* and *Davies*, Section 4 of SHB 319 expressly makes an appropriation for the funding of the redistricting efforts. Implementation of Section 1 of SHB 319, which redraws the boundaries for Ohio’s Congressional districts, is entirely dependent upon the appropriation in Section 4. New district maps are not self-executing. Absent the appropriation, the statute would identify new district lines, but the Secretary of State and county boards of elections would have no way to implement the lines or inform voters in which district they reside. As the General Assembly recognized, the appropriation is necessary for the Secretary of

State and county boards of elections to implement the Act including “remapping and reprecincting counties, and reprogramming database systems and voting machines.”
Section 4, SHB 319.

In fact, the Ohio Association of Election Officials (OAE0) sent a letter to Intervenor-Respondents Batchelder and Niehaus explaining the necessity of an appropriation to successfully implement the new Congressional district lines and supporting the inclusion of an appropriation in the bill. (Affidavit of Aaron Ockerman at ¶ 6, attached to Appendix at A-42). The county boards of elections believe that the approximate cost of the task to implement the redistricting plan would be \$2.75 million to \$3 million. (Id. at Ex. 1, A-46). As the Executive Director and Legislative Agent of the OAE0, Mr. Ockerman testified before the Senate Government Oversight and Reform Committee on SHB 319 and spoke to the necessity and uses of the appropriation. (Id. at ¶ 7, A-43).

The county boards of elections must fully implement the new districts in order for voters to correctly and accurately vote for Congressional candidates. (Id. at ¶ 8, A-43). And, the county boards of elections will use the appropriation in Section 4 to implement the new lines. (Id. at ¶ 9, A-43). In particular, they will use the appropriation to hire part time staff to assist in the geographic information systems portion of remapping the Congressional districts, to pay outside vendors to implement the geographic information systems portion of remapping the Congressional districts, to pay full time staff significant overtime to implement the remapping, and to pay for the mailing requirements of the new polling locations

that may result from the remapping, to inform voters of any changes so they can successfully exercise their right to vote for the correct Congressional candidates. (Id. at ¶ 10-13, A-43 to A-44). Thus, the implementation of the new Congressional district lines set forth in Section 1 of SHB 319 is entirely dependent on the appropriation in Section 4 of the bill.

The case of *LetOhioVote.org v. Brunner*, in keeping with the holding in *Taft*, further explicates the principles showing that referendum does not apply here. In *LetOhioVote*, the Court examined whether certain video lottery terminal (“VLT”) provisions in the legislation were an appropriation for the current expenses of the state. 123 Ohio St.3d 322, 2009-Ohio-4900, 915 N.E.2d 462, at ¶1. The legislation at issue authorized VLTs to be placed at each of Ohio’s seven horse-racing tracks. Id. The same day as enacting the legislation related to the VLTs, the General Assembly also enacted legislation providing a line-item appropriation from the profits of the VLTs to the Department of Education. Id. at ¶3. The relators filed an action in mandamus seeking to compel the Ohio Secretary of State to submit the VLT legislation to referendum.

The Court held that “[t]he VLT provisions of H.B. 1 are not themselves appropriations for state expenses because they do not set aside a sum of money for a public purpose; neither R.C. 3770.03 nor 3770.21 as amended by H.B. 1 makes expenditures or incurs obligations. Rather, they authorize the State Lottery Commission to operate VLT games and to promulgate rules relating to the commission’s operations of VLT games * * *” Id. at ¶29. The Court also rejected the

respondents' arguments that the legislation *relates* to an appropriation, finding that the Ohio Constitution "does not expressly include an exception for laws that *relate* to appropriations for the current expenses of the state government." Id. at ¶32.

In *LetOhioVote*, however, it was the appropriation that was dependent upon the legislation, not the legislation that was dependent upon the appropriation. In this case, the implementation of the new Congressional districts as set forth in Section 1 of SHB 319 is dependent upon the appropriations set forth in Section 4 of SHB 319. (See Ockerman Aff. generally, A-42 to A-45). The appropriation does not merely "relate" to Section 1, it is necessary for the implementation of the new Congressional districts.

The fact that the Secretary of State and the county boards of elections, who are the individuals charged with implementing the new Congressional district lines and conducting Ohio's elections, need the funding in SHB 319 to effectuate the new district lines demonstrates how closely tied the appropriation is to Section 1 of the bill. Absent the funding, the new districts would be boundaries with no meaning. Therefore, Sections 1 and 2 of SHB 319 are not subject to referendum under Section 1d, Article II, Ohio Constitution and R.C. 1.471.

II. Proposition of Law No. 2 - Subjecting SHB 319 To Referendum Would Prohibit Ohio From Conducting A Primary Election In March, 2012.

The Ohio General Assembly recognized the inherent problem with subjecting SHB 319 to referendum:

It is the intent of the General Assembly that the Congressional districts established by Sections 1 and 2 of this act take immediate effect, to enable the boards of elections to complete their required

remapping and reprecincting of this state so that candidates may file their candidacy petitions in the new districts, the boards may properly verify those petitions, the boards may notify electors of their new districts and, if applicable, voting locations, and elections may be conducted in those districts for the 2012 primary election.

Section 6, SHB 319. The General Assembly expressly acknowledged that if SHB 319 did not take immediate effect, Ohio would be unable to hold a primary election in March, 2012, as required by R.C. 3513.01.

The deadline for candidates to file declarations of candidacy for the March, 2012 primary is December 7, 2011. R.C. 3513.05. Without the full implementation of the new Congressional district lines by the county boards of elections, it will be impossible for partisan Congressional candidates to file their candidacy petitions by the December 7, 2011 deadline for the March 2012 primary because they will not know in which district they reside. (Ockerman Aff. at ¶ 17, A-44). Likewise, the Secretary of State will not be able to certify the form of the ballot, the names of the candidates, or approve absentee ballots for the March, 2012 primary election as required by R.C. 3513.05. Absent the full implementation of the new Congressional district lines by the county boards of elections, it will be impossible for voters to exercise their right to vote for Congressional candidates in the new Congressional districts in the March, 2012 primary. (Id. at ¶ 18, A-45). In other words, Ohio will not be able to hold its primary election in March, 2012.

Moreover, delaying the implementation of SHB 319 may deny candidates for delegates or alternates to the national convention of a political party access to the ballot for the March, 2012 primary election. There are two methods for delegates

and alternates to achieve access to the primary ballot under Ohio law: (1) by petition, and (2) by the matching funds method. R.C. 3513.12 and R.C. 3513.121. Under the petition method, a candidate for Congressional district delegate or alternate must file a petition of candidacy with the board of elections in the most populous county in the Congressional district. R.C. 3513.12. If no districts are drawn, a candidate does not know where to file.

Likewise, under the matching funds method, though the candidate files with the Secretary of State as opposed to a county board of elections, the candidate must still demonstrate eligibility to receive payments under the Presidential Primary Matching Payment Account Act, 88 Stat. 1297 (1974), 26 U.S.C.A. 9031, et seq. The Ohio Revised Code states that “[t]he candidate shall indicate on the candidate’s declaration of candidacy the Congressional districts in this state where the candidate’s candidacy is to be submitted to the electors.” R.C. 3513.121. Again, if no Congressional districts are drawn, the candidate cannot make such indication.

For all the reasons stated above, treating Sections 1 and 2 of SHB 319 as subject to referendum would prevent Ohio from conducting a primary election in March, 2012, as required by statute. The Secretary of State and county boards of elections would not be able to perform their statutorily prescribed duties related to the primary election, and both candidates for office and for delegate or alternate to their parties’ national convention may be blocked. For this reason, too, SHB 319 should not be subject to referendum.

III. Proposition of Law No. 3 – Even If SHB 319 Is Subject To Referendum, The Redistricting Plan In Section One Should Not Be Stayed Because A Stay Would Conflict With the Voting Rights Guarantees Mandated By The United States Constitution And Federal Law Requiring House Of Representatives To Be Elected By District.

To construe the referendum stay provision so as to delay implementation of Ohio's adopted Congressional redistricting plan would frustrate the requirements of the United States Constitution and Section 2c, Title 2, U.S.Code. A delay in the effective date of the Act by ninety days would prohibit Ohio from conducting its primary election scheduled for March, 2012 because the use of the old districts is prohibited by the United States Constitution and federal statute.

A. Staying SHB 319 Conflicts With Section 2, Article I, United States Constitution And The Equal Protection Clause.

Ohio's current Congressional districts are unequal in population and are therefore unconstitutional. Section 2, Article I, of the United States Constitution and the Equal Protection Clause require that each Congressional district within a state should be equal in population. "[A]s nearly equal as is practicable one man's vote in a congressional election is to be worth as much as another's." *Wesberry v. Sanders* (1964), 376 U.S. 1, 7-8, 84 S.Ct. 526, 11 L.Ed.2d 481. The Supreme Court has explained that, in the context of congressional apportionment, even "*de minimus* population variations" offend the command of Section 2, Article I, of the United States Constitution. *Karcher v. Daggett* (1983), 462 U.S. 725, 734, 103 S.Ct. 2653, 77 L.Ed.2d 133. The Ohio General Assembly has a constitutional obligation, following the receipt of new census data, to redraft the state's Congressional districts in time for the next election. Where a decennial census makes it apparent

that a state's redistricting plan is unconstitutional and no longer enforceable, a state must engage in redistricting or a federal court "will ensure that the districts comply with the one-person, one-vote mandate before the next election." *Georgia v. Ashcroft* (2003), 539 U.S. 461, 488 n.2, 123 S.Ct. 2498, 156 L.Ed.2d 428 (citing *Branch v. Smith* (2003), 538 U.S. 254; *Lawyer v. Dep't of Justice* (1997), 521 U.S. 567; *Grove v. Emison* (1993), 507 U.S. 25); see also *Farnum v. Burns* (D.R.I. 1982), 548 F. Supp 769, 773 ("[O]pinions of the Supreme Court indicate that a state can constitutionally be compelled to reapportion in time for the first election after the census * * *").

The Ohio Constitution's referendum and stay provisions must be interpreted so as not to conflict with the voting rights guarantees provided by the United States Constitution. This outcome is required by the Supremacy Clause, Article VI, United States Constitution. The U.S. Supreme Court has repeatedly declared that regardless of the requirements of state constitutions, "the delay inherent in following [a] state constitutional prescription for approval of [reapportionment measures] cannot be allowed to result in an impermissible deprivation of [the citizens'] right to an adequate voice in the election of legislators to represent them." *Roman v. Sincock* (1964), 377 U.S. 695, 711, 84 S.Ct. 1449, 12 L.Ed.2d 620; *Reynolds v. Sims* (1964), 377 U.S. 533, 584, 84 S.Ct. 1362; 12 L.Ed.2d 506. "Acting under general equitable principles," the court must determine whether circumstances require the immediate effectuation of the federal constitutional right." *Roman*, 377 U.S. at 711-712. When the delay caused by such state

constitutional prescriptions conflicts with a citizen's federal constitutional right to cast an equally weighted vote, "a court has the power to set aside the state constitutional provision." *Assembly of State of Cal. v. Deukmejian* (1982), 30 Cal.3d 638, 659, 639 P.2d 939.

Any remedy imposed by this court must comport with the United States Constitution. Allowing Ohio's 2012 elections to go forward under the old lines would deprive Ohio voters of their right to an equal, fair, and effective opportunity to cast a meaningful ballot for the Ohio delegation to the United States House of Representatives and likely impair their participation in the presidential primary process. Use of the old districts is likewise not feasible because there are too many districts.

Relators' suggestion that a tiny percentage of the voters of the State of Ohio have the power to upend a constitutionally required reapportionment plan by signing a referendum petition must be rejected. Although the Ohio Constitution grants the power to initiate a referendum for some laws, the Supremacy Clause prevents the exercise of such power in any manner that would do serious injury to the conflicting and equally compelling mandates of the United States Constitution. Therefore, even if this Court holds that SHB 319 is subject to referendum, the Court should not stay implementation of SHB 319 and hold elections in 2012 using the current congressional districts, which would be patently unconstitutional.

B. Staying SHB 319 Conflicts With Federal Law Requiring House Of Representatives To Be Elected By District.

Federal law requires representatives to be elected by district, and, thus, Ohio cannot elect members of the House of Representatives at large. Section 2c, Title 2, U.S.Code forbids the use of statewide elections to fill Congressional seats. It provides:

In each State entitled * * * to more than one Representative under an apportionment made [by the President of the total number of Representatives among the several States], there shall be established by law a number of districts equal to the number of Representatives to which such State is so entitled, and Representatives shall be elected only from districts so established * * * .

The plain language of this provision makes clear that the use of the old districts and an at-large election and would contravene the congressional mandate set forth in Section 2c. Relators may argue that Section 2a, subdivision (c) commands at-large elections. The flaw with this argument is that the legislative history of Section 2c reveals that Congress intended Section 2c to supersede the provisions of Section 2a, subdivision (c). See *Deukmejian*, 30 Cal.3d at 662-663 (discussing legislative history of Section 2c). This interpretation is consistent with the decisions of other state and federal courts. *Whitcomb v. Chavis* (1971), 403 U.S. 124, 158, n.39, 91 S.Ct. 1858; 29 L.Ed.2d 363 (observing that Section 2c reinstated the single-member district requirement in effect prior to Section 2a(c)); *Preisler v. Secretary of State of Missouri* (Preisler III) (W.D.Mo. 1967), 279 F.Supp. 952, 968-969 (observing that when Section 2c became law, the court "was relieved of the prior existing Congressional command [under Section 2a(c)] to order that the 1968 * * *

congressional elections in Missouri be held at large * * * ” were the Missouri Legislature to fail to enact a valid reapportionment statute in time), affirmed 394 U.S. 526, 89 S.Ct. 1225, 22 L.Ed.2d 519; *Simpson v. Mahan* (1971), 212 Va. 416, 185 S.E.2d 47, 48 (holding that the court could not order the state board of elections to certify congressional candidates for election at large).

Furthermore, at least one case decided in the 2010 redistricting cycle, *DeSena v. State of Maine*, reflects an unwillingness to perpetuate out-dated districts for even one more election despite a state constitutional requirement to do so. *DeSena v. State of Maine* (D. Me. June 21, 2011), No 1:11-cv-117, copy attached at A-28). In *DeSena*, the court ordered the redrawing of Maine’s congressional districts prior to the 2012 elections and pursuant to the mandate of Section 2, Article I, of the U.S. Constitution, notwithstanding a provision in the Maine Constitution which delayed redistricting until 2013.³ The court determined that despite this state constitutional provision and the corresponding state statute, the state was obligated under Section 2, Article I, of the United States Constitution to reapportion its congressional districts in time for the net election. *Id.* The decision in *DeSena* is indicative of the rigor with which the federal constitutional standards

³ In 1975, Maine amended its state constitution to require that legislative reapportionment be completed in 1983 and at ten-year intervals thereafter. See Part 2, Section 2, Article IV, Maine Constitution. The legislature subsequently enacted a statute that made the same timeline applicable to congressional redistricting. See Me. Rev. Stat. tit. 21-A, § 1206.

must now be applied, and that conflicting state law cannot justify delay in the implementation of the one-person, one-vote mandate of the federal constitution.⁴

Relators may argue that the controlling precedent on this issue is *State of Ohio v. Hildebrant* (1916), 241 U.S. 565, 36 S.Ct. 708, 60 L.Ed. 1172, where the U.S. Supreme Court determined that an Ohio reapportionment bill was subject to referendum. Since the Court's decision in 1916, the law on reapportionment has changed dramatically, rendering this holding partly obsolete. This case was decided prior to the Supreme Court's decision in *Baker v. Carr* (1962), 369 U.S. 186, 82 S.Ct. 691, 7 L.Ed.2d 663, and the one-person, one-vote revolution of the 1960s. It is clear now that the federal Constitution requires adherence to the one-person, one-vote principle, a dramatic shift in constitutional interpretation from 1916, a period when many states did not redraw representative districts following the decennial census. Further, of course, *Hildebrant* did not involve the appropriation at issue here.

Prior to 1962, the United States Supreme Court consistently refused to consider claims that the malapportionment of legislative or congressional districts deprived voters of a constitutionally protected right to fair representation. See, e.g., *Colegrove v. Green* (1946), 328 U.S. 549, 66 S.Ct. 1198, 90 L.Ed. 1432; *MacDougall v. Green* (1948), 335 U.S. 281, 69 S.Ct. 1, 93 L.Ed. 3; *South v. Peters* (1950), 339

⁴ In contrast to the instant situation in Ohio, Maine did not gain or lose a seat in the congressional apportionment, and the population difference between the two districts was quite minor.

U.S. 276, 70 S.Ct. 641, 94 L.Ed. 834. After *Baker v. Carr*, in the 1960's and 1970's, the standards applicable to reapportionment changed frequently as the United States Supreme Court articulated the constitutional imperatives of increasing population precision. Today, these standards are no longer in flux. The provisions of the federal Constitution are less open to delay and stricter in their requirement of one-person, one-vote. *Kirkpatrick v. Preisler* (1969), 394 U.S. 526, 89 S.Ct. 1225, 22 L.Ed.2d 519; *Karcher v. Daggett* (1983), 462 U.S. 725, 734, 103 S.Ct. 2653, 77 L.Ed.2d 133 ("there are no *de minimis* population variations, which could practicably be avoided, but which nonetheless meet the standard of Art. I, § 2 without justification."). Additionally, as discussed above, Section 2(c), Title 2, U.S.Code, which was passed in 1967, mandates that Congressional representatives be elected in single districts and prohibits the use of at-large elections. Therefore, the factors militating against staying SHB 319 are far stronger today than they were in 1916. The dramatic changes in redistricting law since *State of Ohio v. Hildebrant* effectively moot the holding in that case. The Court must decline to follow this precedent.

IV. Proposition of Law No. 4 – Even If The Court Determines That SHB 319 Is Subject To Referendum, The Court Should Adopt The Redistricting Plan Set Forth In SHB 319 For The March, 2012 Primary Election.

If the Court determines, contrary to the arguments set forth above, that the stay should be granted, there remains the issue as to what districts are to be used for the 2012 elections. This issue requires immediate action. The old districting scheme no longer meets the one-person, one-vote requirement embodied in the U.S. Constitution and is therefore no longer valid. With no valid districts in effect, the

state's election machinery cannot operate. For the 2012 elections to proceed, some temporary districting scheme must be established. This Court should follow the precedent of *Assembly of the State of California v. Deukmejian*, which held that the districts to be utilized in the primary and general elections are those in the challenged reapportionment statutes. 30 Cal.3d at 659.

In *Deukmejian*, the reapportionment plans passed by the legislature and signed by the Governor were stayed and put to referendum. The referendum vote was scheduled to take place during the primary elections for state and federal representatives. The California Supreme Court conducted a thorough analysis of the applicable case law and policy considerations in holding that the challenged reapportionment statute would temporarily be adopted for the upcoming primary election. First, the court determined that given the breadth of its equitable powers in reapportionment cases under federal law, it may indeed consider and adopt reapportionment plans which are not yet in effect and are scheduled to be submitted to a popular vote. *Id.* at 659-661 ("a court may give consideration to any practical alternative which is available"). Next, the court determined that due to the mandate of Section 2c, Title 2, U.S.Code, which prohibits at large elections for congressional representatives, and also because of the imminence of the next election, the only practical alternative is to use a temporary plan for the upcoming election year. *Id.* at 663-664. To satisfy the Equal Protection Clause and Section 2, Article I, United States Constitution, the court determined that it must adopt the

plan “that most nearly meets the constitutional ideal, absent extraordinary circumstances.” Id. at 665.

The court also carefully examined which plan would least disrupt the political process, examining the results under both the old and new districts should the referenda either pass or fail. The court concluded, “giving equal weight to the possibilities that the referenda may succeed or fail, use of the [newly passed] reapportionment statutes minimizes the potential disruption of the electoral process. It eliminates the danger of the worst possible scenario – use of the old, unconstitutional plans * * * despite approval of the new plans at the primary election * * * the use of the [newly passed] plans maximizes the likelihood that there will be no disruption at all.” Id. at 669.

As in *Deukmejian*, this Court must act to protect the rights of Ohio citizens to vote in an orderly and constitutional fashion. If this Court stays enactment of SHB 319 until the referendum vote, the Court must order the temporary use of that plan in the upcoming elections. The temporary use of the lines drawn in SHB 319 would allow the 2012 elections to be held in districts that comply with the constitutional mandate of one-person, one-vote, and if new districts later must be adopted by the General Assembly, there will be no disruption of the electoral process. Moreover, such plans should be adopted temporarily for both the primary and the general elections in 2012. Assuming that Relators are able to satisfy the conditions for a referendum on SHB 319, a process they have not even started as of yesterday, the

earliest date that the referendum could be put to Ohio voters is the November, 2012, general election. Section 1a, Article II, Ohio Constitution.

By contrast, adoption of the old districts is not only unconstitutional, but, as stated in *Deukmejian*, “this would be the most disruptive remedy this court could fashion. The right of the people of this state to equally weighted votes would be denied at both the primary and general elections.” *Id.* at 675. Use of the old districts also “might be construed as an impermissible judicial statement about the success of the referenda.” *Id.* at 674-675. To avoid unnecessary judicial intrusion into the legislative and political process, this Court should defer to the legislature’s enactment of SHB 319 if it chooses to adopt a temporary redistricting plan.

In the face of the U.S. Constitution’s express grant of redistricting power to the state legislatures, and the principles of separation of powers, any court’s role is necessarily a limited one. Deference to legislative redistricting enactments, based upon the doctrine of separation of powers, has been exercised in cases ranging from congressional redistricting to the apportionment of local parish councils. *Upham v. Seamon* (1982), 456 U.S. 37, 102 S.Ct. 1518, 71 L.Ed.2d 725; *Grisbaum v. McKeithen* (E.D. La. 1971), 336 F. Supp. 267. Courts are called upon to take up the “unwelcome task of redistricting” only when a state legislature fails to enact a plan that meets federal constitutional or statutory requirements, or fails to redistrict in a timely manner. *Reynolds*, 377 U.S. at 586; *Growe v. Emison* (1993), 507 U.S. 25, 34, 113 S.Ct. 1075, 122 L.Ed.2d 388 (“Absent evidence that these state branches will fail timely to perform that [redistricting duty], a federal court must neither

affirmatively obstruct state reapportionment nor permit federal litigation to be used to impede it.”); *Upham*, 456 U.S. at 41-42 (“From the beginning, we have recognized that reapportionment is primarily a matter for legislative consideration and determination, and that judicial relief becomes appropriate only when a legislature fails to reapportion according to federal constitutional requisites * * *. In fashioning a reapportionment plan or *in choosing among plans, a district court should not pre-empt the legislative task nor ‘intrude upon state policy more than necessary.’*” (quoting *White v. Weiser* (1973), 412 U.S. 783, 794-95) (emphasis added). Moreover, even in circumstances where a legislature’s plan is determined to be infirm, courts must “afford a reasonable opportunity for the legislature to meet constitutional requirements by adopting a substitute measure rather than for the federal court to devise and order into effect its own plan.” *Vera v. Bush* (S.D.Tex. 1996), 933 F.Supp. 1341, 1345-46. Court-drawn plans are the last resort. Congressional redistricting is primarily the responsibility of the political branches of Ohio’s state government.

SHB 319 represents the state of Ohio’s policy. It survived the political process and was signed into law by the Governor. Although the courts should continue to serve as a forum for resolving legal issues concerning redistricting, they should not, however, allow themselves to become a surrogate for the legislature in this political arena. This court should limit its concern to the requirements of the state and federal Constitutions, the applicable statutes, and the practical impact on the electoral process of its decisions. A thousand signatures on a petition cannot

shift constitutionally-mandated duty of the General Assembly to be transferred to a federal or state court. Accordingly, if the Court determines that SHB 319 is subject to referendum and stayed, the Court should temporarily adopt SHB 319 for use in the upcoming 2012 elections as the plan that would least disrupt the electoral process, which best represents the policies and political will of the State of Ohio, and which best satisfies the requirements of the United States Constitution.

V. CONCLUSION

For the foregoing reasons, Intervenor-Respondent The Ohio General Assembly, Speaker William G. Batchelder, and President Thomas E. Niehaus respectfully request that this Court hold that SHB 319 is not subject to referendum or, in the alternative, is not subject to a stay. As a further alternative, if SHB 319 is subject to referendum and a stay, Intervenor-Respondents respectfully request that this Court adopt SHB 319 as a temporary redistricting plan for purposes of Ohio's 2012 primary and general elections.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon the following
this 12th day of October, 2011 by electronic mail:

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Robert J. Tucker (0082205)

APPENDIX

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AN ACT

To enact new section 3521.01 and to repeal section 3521.01 of the Revised Code and to amend Section 247.10 of Am. Sub. H.B. 153 of the 129th General Assembly to establish Congressional district boundaries for the state based on the 2010 decennial census of Ohio, to require boards of elections to notify electors of their new districts and new precincts for the 2012 primary election, and to make an appropriation.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That new section 3521.01 of the Revised Code be enacted to read as follows:

Sec. 3521.01. (A) For the purpose of election of representatives to congress, the state is apportioned as follows:

(1) The first district contains the following territory:

The following portions of Hamilton County:

Tract: 10

Tract: 100.02

Tract: 100.03

Tract: 100.04

Tract: 100.05

Tract: 101

Tract: 102.01

Tract: 102.02

Tract: 103

Tract: 104

Tract: 105

Tract: 106

Tract: 107

Tract: 109

Tract: 11

Tract: 110

2015 2023 2001 2000 2027 2032 2033 2017 2016 2037 2041 2042
2045 2034 2040 2039 2046 2047 2044 2043 2038 2036 2035 2031
2019 2025 2010 2018 2020 2004 2006 2008 2014 2009 2007

BlockGroup:391535334003

BlockGroup:391535334004

4000 4003 4004 4016 4017 4005 4006 4007 4008 4010 4011 4009
4015 4013 4002

Tract: 5335.01

BlockGroup:391535335011

BlockGroup:391535335012

BlockGroup:391535335013

3014 3017 3000 3023 3018 3005 3006 3007 3013 3004 3010 3003
3002 3001 3012 3008 3011

Tract: 5335.02

Wayne County

(B) Any county or part of a county of the state that has not been described as included in one of the districts described in this section is included within the district that contains the least population according to the 2010 decennial census referred to in this section and that is contiguous to that county or part of that county.

(C) As used in this section, "county," "census tract," "census block group," and "census block" have the same meanings and describe the same geographical boundaries as used by the United States department of commerce, bureau of the census, in reporting the 2010 decennial census of Ohio. The official report of the 2010 decennial census of Ohio and all official documents relating to that report of that census are hereby incorporated by reference into this section.

SECTION 2. That section 3521.01 of the Revised Code is hereby repealed.

SECTION 3. Not later than thirty-five days before the day of the March 6, 2012, primary election, the board of elections shall mail a notice to each elector registered to vote in the applicable county notifying the elector of all of the following:

- (1) The date of the 2012 primary election;
- (2) The precinct in which the elector is registered to vote;
- (3) The congressional district in which the elector's residential address is located;

(4) The house of representatives and senate districts in which the elector's residential address is located.

SECTION 4. That Section 247.10 of Am. Sub. H.B. 153 of the 129th General Assembly be amended to read as follows:

Sec. 247.10. CEB CONTROLLING BOARD

General Revenue Fund

GRF 911404	Mandate Assistance	\$	2,750,000	\$	0
GRF 911441	Ballot Advertising Costs	\$	475,000	\$	475,000
TOTAL GRF General Revenue Fund		\$	<u>475,000</u>	\$	<u>3,225,000</u>

General Services Fund Group

5KM0911614	CB Emergency Purposes	\$	10,000,000	\$	10,000,000
TOTAL GSF General Services Fund Group		\$	10,000,000	\$	10,000,000
TOTAL ALL BUDGET FUND GROUPS		\$	<u>10,475,000</u>	\$	<u>10,475,000</u>
			<u>13,225,000</u>		

FEDERAL SHARE

In transferring appropriations to or from appropriation items that have federal shares identified in this act, the Controlling Board shall add or subtract corresponding amounts of federal matching funds at the percentages indicated by the state and federal division of the appropriations in this act. Such changes are hereby appropriated.

REDISTRICTING IMPLEMENTATION

The foregoing appropriation item 911404, Mandate Assistance, shall be used in a method prescribed by the Secretary of State and transferred by the Director of Budget and Management to implement this act, which includes remapping and reprecincting counties, and reprogramming database systems and voting machines. At the end of fiscal year 2012, an amount equal to the unexpended, unencumbered portion of appropriation item 911404, Mandate Assistance, is hereby reappropriated in fiscal year 2013 for the same purpose.

DISASTER SERVICES

Pursuant to requests submitted by the Department of Public Safety, the Controlling Board may approve transfers from the Disaster Services Fund (5E20) to a fund and appropriation item used by the Department of Public Safety to provide for assistance to political subdivisions made necessary by natural disasters or emergencies. These transfers may be requested and approved prior to the occurrence of any specific natural disasters or emergencies in order to facilitate the provision of timely assistance. The Emergency Management Agency of the Department of Public Safety shall use the funding to fund the State Disaster Relief Program for disasters that have been declared by the Governor, and the State Individual Assistance

Program for disasters that have been declared by the Governor and the federal Small Business Administration. The Ohio Emergency Management Agency shall publish and make available application packets outlining procedures for the State Disaster Relief Program and the State Individual Assistance Program.

Fund 5E20 shall be used by the Controlling Board, pursuant to requests submitted by state agencies, to transfer cash and appropriations to any fund and appropriation item for the payment of state agency disaster relief program expenses for disasters declared by the Governor, if the Director of Budget and Management determines that sufficient funds exist.

BALLOT ADVERTISING COSTS

Pursuant to section 3501.17 of the Revised Code, and upon requests submitted by the Secretary of State, the Controlling Board shall approve transfers from the foregoing appropriation item 911441, Ballot Advertising Costs, to appropriation item 050621, Statewide Ballot Advertising, in order to pay for the cost of public notices associated with statewide ballot initiatives.

CAPITAL APPROPRIATION INCREASE FOR FEDERAL STIMULUS ELIGIBILITY

A state agency director shall request that the Controlling Board increase the amount of the agency's capital appropriations if the director determines such an increase is necessary for the agency to receive and use funds under the federal American Recovery and Reinvestment Act of 2009. The Controlling Board may increase the capital appropriations pursuant to the request up to the exact amount necessary under the federal act if the Board determines it is necessary for the agency to receive and use those federal funds.

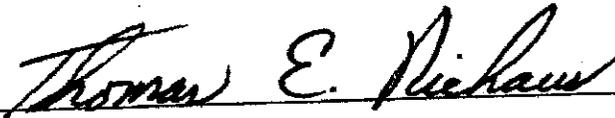
SECTION 5. That existing Section 247.10 of Am. Sub. H.B. 153 of the 129th General Assembly is hereby repealed.

SECTION 6. It is the intent of the General Assembly that the Congressional districts established by Sections 1 and 2 of this act take immediate effect, to enable the boards of elections to complete their required remapping and reprecincting of this state so that candidates may file their candidacy petitions in the new districts, the boards may properly verify those petitions, the boards may notify electors of their new districts and, if applicable, voting locations, and elections may be conducted in those districts for the 2012 primary election.

SECTION 7. The sections and items of law contained in this act are not subject to the referendum under Ohio Constitution, Article II, Section 1d and section 1.471 of the Revised Code and therefore go into immediate effect when this act becomes law.



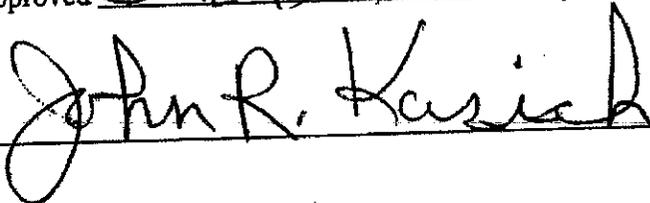
Speaker _____ of the House of Representatives.



President _____ of the Senate.

Passed September 21, 2011

Approved SEPTEMBER 26, 2011



Governor.

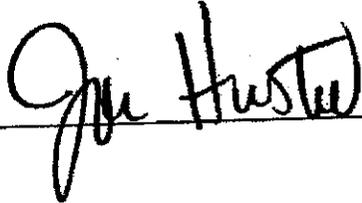
Sub. H. B. No. 319

129th G.A.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the 26th day of September, A. D. 2011.



Secretary of State.

File No. 49

Effective Date 9/26/11

1 of 1 DOCUMENT

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Current through Legislation passed by the 129th Ohio General Assembly
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*** Annotations current through July 22, 2011 ***

CONSTITUTION OF THE STATE OF OHIO
ARTICLE II. LEGISLATIVE

Go to the Ohio Code Archive Directory

Oh. Const. Art. II, § 1c (2011)

§ 1c. Referendum petition; effective date of laws; item of law submitted

The second aforesaid power reserved by the people is designated the referendum, and the signatures of six per centum of the electors shall be required upon a petition to order the submission to the electors of the state for their approval or rejection, of any law, section of any law or any item in any law appropriating money passed by the general assembly. No law passed by the general assembly shall go into effect until ninety days after it shall have been filed by the governor in the office of the secretary of state, except as herein provided. When a petition, signed by six per centum of the electors of the state and verified as herein provided, shall have been filed with the secretary of state within ninety days after any law shall have been filed by the governor in the office of the secretary of state, ordering that such law, section of such law or any item in such law appropriating money be submitted to the electors of the state for their approval or rejection, the secretary of state shall submit to the electors of the state for their approval or rejection such law, section or item, in the manner herein provided, at the next succeeding regular or general election in any year occurring subsequent to one hundred twenty-five days after the filing of such petition, and no such law, section or item shall go into effect until and unless approved by a majority of those voting upon the same. If, however, a referendum petition is filed against any such section or item, the remainder of the law shall not thereby be prevented or delayed from going into effect.

HISTORY:

(Adopted September 3, 1912; amended, effective November 4, 2008.)

1 of 1 DOCUMENT

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CONSTITUTION OF THE STATE OF OHIO
ARTICLE II. LEGISLATIVE

Go to the Ohio Code Archive Directory

Oh. Const. Art. II, § 1d (2011)

§ 1d. Effective date of laws not subject to referendum; emergency laws

Laws providing for tax levies, appropriations for the current expenses of the state government and state institutions, and emergency laws necessary for the immediate preservation of the public peace, health or safety, shall go into immediate effect. Such emergency laws upon a ye and nay vote must receive the vote of two-thirds of all the members elected to each branch of the general assembly, and the reasons for such necessity shall be set forth in one section of the law, which section shall be passed only upon a ye and nay vote, upon a separate roll call thereon. The laws mentioned in this section shall not be subject to the referendum.

HISTORY:

(Adopted September 3, 1912.)

1 of 1 DOCUMENT

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CONSTITUTION OF THE UNITED STATES OF AMERICA
ARTICLE I. LEGISLATIVE DEPARTMENT

Go to the United States Code Service Archive Directory

USCS Const. Art. I, § 2, Cl 1

Sec. 2, Cl 1. House of Representatives--Composition--Electors.

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.

1 of 1 DOCUMENT

UNITED STATES CODE SERVICE
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CONSTITUTION OF THE UNITED STATES OF AMERICA
ARTICLE I. LEGISLATIVE DEPARTMENT

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USCS Const. Art. I, § 4, Cl 1

Sec. 4, Cl 1. Elections.

The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of choosing Senators.

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

This clause is also popularly known as the "Elections Clause".

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Current through Legislation passed by the 129th Ohio General Assembly
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 *** Annotations current through July 22, 2011 ***

TITLE 1. STATE GOVERNMENT
 CHAPTER 131. REVENUES AND FUNDS

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ORC Ann. 131.01 (2011)

§ 131.01. Definitions

As used in Chapters 113., 117., 123., 124., 125., 126., 127., and 131. of the Revised Code, and any statute that uses the terms in connection with state accounting or budgeting:

(A) "Account" means any record, element, or summary in which financial transactions are identified and recorded as debit or credit transactions in order to summarize items of a similar nature or classification.

(B) "Accounting procedure" means the arrangement of all processes which discover, record, and summarize financial information to produce financial statements and reports and to provide internal control.

(C) "Accounting system" means the total structure of records and procedures which discover, record, classify, and report information on the financial position and operations of a governmental unit or any of its funds and organizational components.

(D) "Allocation" means a portion of an appropriation which is designated for expenditure by specific organizational units or for special purposes, activities, or objects that do not relate to a period of time.

(E) "Allotment" means all or part of an appropriation which may be encumbered or expended within a specific period of time.

(F) "Appropriation" means an authorization granted by the general assembly to make expenditures and to incur obligations for specific purposes.

(G) "Assets" means resources owned, controlled, or otherwise used or held by the state which have monetary value.

(H) "Budget" means the plan of financial operation embodying an estimate of proposed expenditures and obligations for a given period and the proposed means of financing them.

(I) "Direct deposit" is a form of electronic funds transfer in which money is electronically deposited into the account of a person or entity at a financial institution.

(J) "Disbursement" means a payment made for any purpose.

(K) "Electronic benefit transfer" means the electronic delivery of benefits through automated teller machines, point of sale terminals, or other electronic media pursuant to *section 5101.33 of the Revised Code*.

(L) "Electronic funds transfer" means the electronic movement of funds via automated clearing house or wire transfer.

(M) "Encumbrancing document" means a document reserving all or part of an appropriation.

ORC Ann. 131.01

(N) "Expenditure" means a reduction of the balance of an appropriation after legal requirements have been met.

(O) "Fund" means an independent fiscal and accounting entity with a self-balancing set of accounts recording cash or other resources, together with all related liabilities, obligations, reserves, and fund balances which are segregated for the purpose of carrying on specific activities or attaining certain objectives in accordance with special rules, restrictions, or limitations.

(P) "Lapse" means the automatic termination of an appropriation at the end of the fiscal period for which it was appropriated.

(Q) "Reappropriation" means an appropriation of a previous appropriation that is continued in force in a succeeding appropriation period. "Reappropriation" shall be equated with and incorporated in the term "appropriation."

(R) "Voucher" means the document used to transmit a claim for payment and evidentiary matter related to the claim.

(S) "Warrant" means an order drawn upon the treasurer of state by the director of budget and management directing the treasurer of state to pay a specified amount, including an order to make a lump-sum payment to a financial institution for the transfer of funds by direct deposit or the drawdown of funds by electronic benefit transfer, and the resulting electronic transfer to or by the ultimate payees.

The terms defined in this section shall be used, on all accounting forms, reports, formal rules, and budget requests produced by a state agency, only as defined in this section.

HISTORY:

RC § 131.31, 137 v S 221 (Eff 11-23-77); 139 v H 694 (Eff 11-15-81); 139 v S 530 (Eff 6-25-82); *RC § 131.01*, 141 v H 201 (Eff 7-1-85); 141 v H 428 (Eff 12-23-86); 144 v S 359 (Eff 12-22-92); 148 v H 283 (Eff 9-29-99); 149 v H 94. Eff 9-5-2001; 151 v H 530, § 101.01, eff. 12-1-06.

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OHIO REVISED CODE GENERAL PROVISIONS
CHAPTER 1. DEFINITIONS; RULES OF CONSTRUCTION
CONSTRUCTION

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ORC Ann. 1.471 (2011)

§ 1.471. Effective date of provisions of acts containing appropriation for current expenses

As used in this section, "appropriation for current expenses" means an appropriation of money for the current expenses of the state government and state institutions as contemplated by Ohio Constitution, Article II, Section 1d.

This section expresses the general assembly's interpretation of *State, ex rel. Ohio AFL-CIO v. Voinovich* (1994), 69 *Ohio St.3d* 225, 234 to 237, insofar as the case holds with respect to the effective date of sections of law contained in acts that contain an appropriation for current expenses.

A codified or uncodified section of law contained in an act that contains an appropriation for current expenses is not subject to the referendum and goes into immediate effect if any of the following apply:

- (A) The section is an appropriation for current expenses;
- (B) The section is an earmarking of the whole or part of an appropriation for current expenses; or
- (C) Implementation of the section depends upon an appropriation for current expenses that is contained in the

act.

The general assembly shall determine which sections go into immediate effect.

A codified or uncodified section of law contained in an act that contains an appropriation for current expenses that does not go into immediate effect as contemplated by this section is subject to the referendum and goes into effect as provided in Ohio Constitution, Article II, Section 1c.

HISTORY:

145 v H 790. Eff 9-12-94.

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TITLE 35. ELECTIONS
CHAPTER 3513. PRIMARIES; NOMINATIONS

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ORC Ann. 3513.01 (2011)

§ 3513.01. Holding of primary elections; change to or from nonpartisan election

(A) Except as otherwise provided in this section, on the first Tuesday after the first Monday in March of 2000 and every fourth year thereafter, and on the first Tuesday after the first Monday in May of every other year, primary elections shall be held for the purpose of nominating persons as candidates of political parties for election to offices to be voted for at the succeeding general election.

(B) The manner of nominating persons as candidates for election as officers of a municipal corporation having a population of two thousand or more, as ascertained by the most recent federal census, shall be the same as the manner in which candidates were nominated for election as officers in the municipal corporation in 1989 unless the manner of nominating such candidates is changed under division (C), (D), or (E) of this section.

(C) Primary elections shall not be held for the nomination of candidates for election as officers of any township, or any municipal corporation having a population of less than two thousand, unless a majority of the electors of any such township or municipal corporation, as determined by the total number of votes cast in such township or municipal corporation for the office of governor at the most recent regular state election, files with the board of elections of the county within which such township or municipal corporation is located, or within which the major portion of the population thereof is located, if the municipal corporation is situated in more than one county, not later than one hundred twenty days before the day of a primary election, a petition signed by such electors asking that candidates for election as officers of such township or municipal corporation be nominated as candidates of political parties, in which event primary elections shall be held in such township or municipal corporation for the purpose of nominating persons as candidates of political parties for election as officers of such township or municipal corporation to be voted for at the succeeding regular municipal election. In a township or municipal corporation where a majority of the electors have filed a petition asking that candidates for election as officers of the township or municipal corporation be nominated as candidates of political parties, the nomination of candidates for a nonpartisan election may be reestablished in the manner prescribed in division (E) of this section.

(D) (1) The electors in a municipal corporation having a population of two thousand or more, in which municipal officers were nominated in the most recent election by nominating petition and elected by nonpartisan election, may place on the ballot in the manner prescribed in division (D)(2) of this section the question of changing to the primary-election method of nominating persons as candidates for election as officers of the municipal corporation.

(2) The board of elections of the county within which the municipal corporation is located, or, if the municipal corporation is located in more than one county, of the county within which the major portion of the population of the municipal corporation is located, shall, upon receipt of a petition signed by electors of the municipal corporation equal in number to at least ten per cent of the vote cast at the most recent regular municipal election, submit to the electors of the municipal corporation the question of changing to the primary-election method of nominating persons as candidates for election as officers of the municipal corporation. The ballot language shall be substantially as follows:

"Shall candidates for election as officers of (name of municipal corporation) in the county of (name of county) be nominated as candidates of political parties?

- yes
..... no"

The question shall be placed on the ballot at the next general election in an even-numbered year occurring at least ninety days after the petition is filed with the board. If a majority of the electors voting on the question vote in the affirmative, candidates for election as officers of the municipal corporation shall thereafter be nominated as candidates of political parties in primary elections, under division (A) of this section, unless a change in the manner of nominating persons as candidates for election as officers of the municipal corporation is made under division (E) of this section.

(E) (1) The electors in a township or municipal corporation in which the township or municipal officers are nominated as candidates of political parties in a primary election may place on the ballot, in the manner prescribed in division (E)(2) of this section, the question of changing to the nonpartisan method of nominating persons as candidates for election as officers of the township or municipal corporation.

(2) The board of elections of the county within which the township or municipal corporation is located, or, if the municipal corporation is located in more than one county, of the county within which the major portion of the population of the municipal corporation is located, shall, upon receipt of a petition signed by electors of the township or municipal corporation equal in number to at least ten per cent of the vote cast at the most recent regular township or municipal election, as appropriate, submit to the electors of the township or municipal corporation, as appropriate, the question of changing to the nonpartisan method of nominating persons as candidates for election as officers of the township or municipal corporation. The ballot language shall be substantially as follows:

"Shall candidates for election as officers of (name of the township or municipal corporation) in the county of (name of county) be nominated as candidates by nominating petition and be elected only in a nonpartisan election?

- yes
..... no"

The question shall appear on the ballot at the next general election in an even-numbered year occurring at least ninety days after the petition is filed with the board. If a majority of electors voting on the question vote in the affirmative, candidates for officer of the township or municipal corporation shall thereafter be nominated by nominating petition and be elected only in a nonpartisan election, unless a change in the manner of nominating persons as candidates for election as officers of the township or municipal corporation is made under division (C) or (D) of this section.

HISTORY:

GC § 4785-67; 113 v 307(337), § 67; 118 v 223; 121 v 40, § 13; 122 v 325; 123 v 380; Bureau of Code Revision, 10-1-53; 135 v H 662 (Eff 9-27-74); 140 v S 213 (Eff 10-13-83); 144 v S 61 (Eff 7-16-91); 145 v S 150 (Eff 12-29-93); 146 v H 99 (Eff 8-22-95); 148 v H 157. Eff 9-20-99; 153 v H 48, § 1, eff. 7-2-10.

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TITLE 35. ELECTIONS
CHAPTER 3513. PRIMARIES; NOMINATIONS

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ORC Ann. 3513.05 (2011)

§ 3513.05. Filing of declaration of candidacy and petition; protests; certification of ballot forms

(A) Each person desiring to become a candidate for a party nomination or for election to an office or position to be voted for at a primary election, except persons desiring to become joint candidates for the offices of governor and lieutenant governor and except as otherwise provided in *section 3513.051 of the Revised Code*, shall, not later than four p.m. of the ninetieth day before the day of the primary election, file a declaration of candidacy and petition and pay the fees required under divisions (A) and (B) of *section 3513.10 of the Revised Code*. The declaration of candidacy and all separate petition papers shall be filed at the same time as one instrument. When the offices are to be voted for at a primary election, persons desiring to become joint candidates for the offices of governor and lieutenant governor shall, not later than four p.m. of the ninetieth day before the day of the primary election, comply with *section 3513.04 of the Revised Code*. The prospective joint candidates' declaration of candidacy and all separate petition papers of candidacies shall be filed at the same time as one instrument. The secretary of state or a board of elections shall not accept for filing a declaration of candidacy and petition of a person seeking to become a candidate if that person, for the same election, has already filed a declaration of candidacy or a declaration of intent to be a write-in candidate, or has become a candidate by the filling of a vacancy under *section 3513.30 of the Revised Code* for any federal, state, or county office, if the declaration of candidacy is for a state or county office, or for any municipal or township office, if the declaration of candidacy is for a municipal or township office.

(B) (1) If the declaration of candidacy declares a candidacy which is to be submitted to electors throughout the entire state, the petition, including a petition for joint candidates for the offices of governor and lieutenant governor, shall be signed by at least one thousand qualified electors who are members of the same political party as the candidate or joint candidates, and the declaration of candidacy and petition shall be filed with the secretary of state; provided that the secretary of state shall not accept or file any such petition appearing on its face to contain signatures of more than three thousand electors.

(2) Except as otherwise provided in this division, if the declaration of candidacy is of one that is to be submitted only to electors within a district, political subdivision, or portion thereof, the petition shall be signed by not less than fifty qualified electors who are members of the same political party as the political party of which the candidate is a member. If the declaration of candidacy is for party nomination as a candidate for member of the legislative authority of a municipal corporation elected by ward, the petition shall be signed by not less than twenty-five qualified electors who are members of the political party of which the candidate is a member.

(3) No such petition, except the petition for a candidacy that is to be submitted to electors throughout the entire state, shall be accepted for filing if it appears to contain on its face signatures of more than three times the minimum number of signatures. When a petition of a candidate has been accepted for filing by a board of elections, the petition shall not be deemed invalid if, upon verification of signatures contained in the petition, the board of elections finds the number of signatures accepted exceeds three times the minimum number of signatures required. A board of elections

may discontinue verifying signatures on petitions when the number of verified signatures equals the minimum required number of qualified signatures.

(4) If the declaration of candidacy declares a candidacy for party nomination or for election as a candidate of an intermediate or minor party, the minimum number of signatures on such petition is one-half the minimum number provided in this section, except that, when the candidacy is one for election as a member of the state central committee or the county central committee of a political party, the minimum number shall be the same for an intermediate or minor party as for a major party.

(5) If a declaration of candidacy is one for election as a member of the state central committee or the county central committee of a political party, the petition shall be signed by five qualified electors of the district, county, ward, township, or precinct within which electors may vote for such candidate. The electors signing such petition shall be members of the same political party as the political party of which the candidate is a member.

(C) For purposes of signing or circulating a petition of candidacy for party nomination or election, an elector is considered to be a member of a political party if the elector voted in that party's primary election within the preceding two calendar years, or if the elector did not vote in any other party's primary election within the preceding two calendar years. This division does not prohibit a person who holds an elective office for which candidates are nominated at a party primary election from doing any of the following:

(1) If the person voted as a member of a different political party at any primary election within the current year and the immediately preceding two calendar years, being a candidate for nomination at a party primary held during the times specified in division (C)(2) of *section 3513.191 of the Revised Code* provided that the person complies with the requirements of that section;

(2) Circulating the person's own petition of candidacy for party nomination in the primary election.

(D) If the declaration of candidacy is of one that is to be submitted only to electors within a county, or within a district or subdivision or part thereof smaller than a county, the petition shall be filed with the board of elections of the county. If the declaration of candidacy is of one that is to be submitted only to electors of a district or subdivision or part thereof that is situated in more than one county, the petition shall be filed with the board of elections of the county within which the major portion of the population thereof, as ascertained by the next preceding federal census, is located.

(E) A petition shall consist of separate petition papers, each of which shall contain signatures of electors of only one county. Petitions or separate petition papers containing signatures of electors of more than one county shall not thereby be declared invalid. In case petitions or separate petition papers containing signatures of electors of more than one county are filed, the board shall determine the county from which the majority of signatures came, and only signatures from such county shall be counted. Signatures from any other county shall be invalid.

Each separate petition paper shall be circulated by one person only, who shall be the candidate or a joint candidate or a member of the same political party as the candidate or joint candidates, and each separate petition paper shall be governed by the rules set forth in *section 3501.38 of the Revised Code*.

(F) The secretary of state shall promptly transmit to each board such separate petition papers of each petition accompanying a declaration of candidacy filed with the secretary of state as purport to contain signatures of electors of the county of such board. The board of the most populous county of a district shall promptly transmit to each board within such district such separate petition papers of each petition accompanying a declaration of candidacy filed with it as purport to contain signatures of electors of the county of each such board. The board of a county within which the major portion of the population of a subdivision, situated in more than one county, is located, shall promptly transmit to the board of each other county within which a portion of such subdivision is located such separate petition papers of each petition accompanying a declaration of candidacy filed with it as purport to contain signatures of electors of the portion of such subdivision in the county of each such board.

All petition papers so transmitted to a board and all petitions accompanying declarations of candidacy filed with a board shall, under proper regulations, be open to public inspection until four p.m. of the eightieth day before the day of the next primary election. Each board shall, not later than the seventy-eighth day before the day of that primary election, examine and determine the validity or invalidity of the signatures on the petition papers so transmitted to or filed with it and shall return to the secretary of state all petition papers transmitted to it by the secretary of state, together with its certification of its determination as to the validity or invalidity of signatures thereon, and shall return to each other board all petition papers transmitted to it by such board, together with its certification of its determination as to the va-

lidity or invalidity of the signatures thereon. All other matters affecting the validity or invalidity of such petition papers shall be determined by the secretary of state or the board with whom such petition papers were filed.

(G) Protests against the candidacy of any person filing a declaration of candidacy for party nomination or for election to an office or position, as provided in this section, may be filed by any qualified elector who is a member of the same political party as the candidate and who is eligible to vote at the primary election for the candidate whose declaration of candidacy the elector objects to, or by the controlling committee of that political party. The protest shall be in writing, and shall be filed not later than four p.m. of the seventy-fourth day before the day of the primary election. The protest shall be filed with the election officials with whom the declaration of candidacy and petition was filed. Upon the filing of the protest, the election officials with whom it is filed shall promptly fix the time for hearing it, and shall forthwith mail notice of the filing of the protest and the time fixed for hearing to the person whose candidacy is so protested. They shall also forthwith mail notice of the time fixed for such hearing to the person who filed the protest. At the time fixed, such election officials shall hear the protest and determine the validity or invalidity of the declaration of candidacy and petition. If they find that such candidate is not an elector of the state, district, county, or political subdivision in which the candidate seeks a party nomination or election to an office or position, or has not fully complied with this chapter, the candidate's declaration of candidacy and petition shall be determined to be invalid and shall be rejected; otherwise, it shall be determined to be valid. That determination shall be final.

A protest against the candidacy of any persons filing a declaration of candidacy for joint party nomination to the offices of governor and lieutenant governor shall be filed, heard, and determined in the same manner as a protest against the candidacy of any person filing a declaration of candidacy singly.

(H) (1) The secretary of state shall, on the seventieth day before the day of a primary election, certify to each board in the state the forms of the official ballots to be used at the primary election, together with the names of the candidates to be printed on the ballots whose nomination or election is to be determined by electors throughout the entire state and who filed valid declarations of candidacy and petitions.

(2) The board of the most populous county in a district comprised of more than one county but less than all of the counties of the state shall, on the seventieth day before the day of a primary election, certify to the board of each county in the district the names of the candidates to be printed on the official ballots to be used at the primary election, whose nomination or election is to be determined only by electors within the district and who filed valid declarations of candidacy and petitions.

(3) The board of a county within which the major portion of the population of a subdivision smaller than the county and situated in more than one county is located shall, on the seventieth day before the day of a primary election, certify to the board of each county in which a portion of that subdivision is located the names of the candidates to be printed on the official ballots to be used at the primary election, whose nomination or election is to be determined only by electors within that subdivision and who filed valid declarations of candidacy and petitions.

HISTORY:

134 v S 460 (Eff 3-23-72); 135 v H 662 (Eff 9-27-74); 137 v S 115 (Eff 3-10-78); 138 v H 142 (Eff 10-26-79); 138 v H 1062 (Eff 3-23-81); 140 v S 358, §§ 1, 3 (Eff 4-3-84); 141 v H 160, §§ 1, 3 (Eff 7-12-85); 141 v S 45, §§ 1, 3 (Eff 5-2-86); 143 v H 36, §§ 1, 3 (Eff 1-1-90); 143 v H 237, § 1 (Eff 7-27-90); 143 v H 237, § 3 (Eff 5-31-92); 144 v H 700, § 9 (Eff 4-1-92); 145 v S 150 (Eff 12-29-93); 146 v S 9 (Eff 8-24-95); 148 v H 157 (Eff 9-20-99); 149 v H 445. Eff 12-23-2002; 151 v H 66, § 101.01, eff. 9-29-05; 151 v H 3, § 1, eff. 5-2-06; 153 v H 48, § 1, eff. 7-2-10; 2011 HB 194, § 1, eff. Sept. 30, 2011.

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TITLE 35. ELECTIONS
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ORC Ann. 3513.12 (2011)

§ 3513.12. National convention delegates

At a presidential primary election, delegates and alternates to the national conventions of the different major political parties shall be chosen by direct vote of the electors as provided in this chapter. Candidates for delegate and alternate shall be qualified and the election shall be conducted in the manner prescribed in this chapter for the nomination of candidates for state and district offices, except as provided in *section 3513.151 of the Revised Code* and except that whenever any group of candidates for delegate at large or alternate at large, or any group of candidates for delegates or alternates from districts, file with the secretary of state statements as provided by this section, designating the same persons as their first and second choices for president of the United States, such a group of candidates may submit a group petition containing a declaration of candidacy for each of such candidates. The group petition need be signed only by the number of electors required for the petition of a single candidate. No group petition shall be submitted except by a group of candidates equal in number to the whole number of delegates at large or alternates at large to be elected or equal in number to the whole number of delegates or alternates from a district to be elected.

Each person seeking to be elected as delegate or alternate to the national convention of the person's political party shall file with the person's declaration of candidacy and certificate a statement in writing signed by the person in which the person shall state the person's first and second choices for nomination as the candidate of the person's party for the presidency of the United States. The secretary of state shall not permit any declaration of candidacy and certificate of a candidate for election as such delegate or alternate to be filed unless accompanied by such statement in writing. The name of a candidate for the presidency shall not be so used without the candidate's written consent.

A person who is a first choice for president of candidates seeking election as delegates and alternates shall file with the secretary of state, prior to the day of the election, a list indicating the order in which certificates of election are to be issued to delegate or alternate candidates to whose candidacy the person has consented, if fewer than all of such candidates are entitled under party rules to be certified as elected. Each candidate for election as such delegate or alternate may also file along with the candidate's declaration of candidacy and certificate a statement in writing signed by the candidate in the following form:

"Statement of Candidate

For Election as (Delegate)(Alternate) to the (name
 of political party) National Convention "

I hereby declare to the voters of my political party in the State of Ohio that, if elected as (delegate)(alternate) to their national party convention, I shall, to the best of my judgment and ability, support that candidate for President of the United States who shall have been selected at this primary by the voters of my party in the manner provided in Chapter 3513. of the Ohio Revised Code, as their candidate for such office.

..... (name), Candidate for
 (Delegate)(Alternate) "

The procedures for the selection of candidates for delegate and alternate to the national convention of a political party set forth in this section and in *section 3513.121 [3513.12.1] of the Revised Code* are alternative procedures, and if the procedures of this section are followed, the procedures of *section 3513.121 [3513.12.1] of the Revised Code* need not be followed.

HISTORY:

GC § 4785-75; 113 v 307(341), § 75; 123 v 380; Bureau of Code Revision, 10-1-53; 131 v 873 (Eff 10-13-65); 134 v S 460 (Eff 3-23-72); 135 v H 662 (Eff 9-27-74); 136 v H 1165 (Eff 4-5-76); 140 v S 213 (Eff 10-13-83); 141 v S 185 (Eff 3-23-87); 142 v H 231 (Eff 10-5-87); 144 v S 286 (Eff 2-5-92); 145 v S 150 (Eff 12-29-93); 148 v H 157. Eff 9-20-99; 2011 HB 194, § 1, eff. Sept. 30, 2011.

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TITLE 35. ELECTIONS
CHAPTER 3513. PRIMARIES; NOMINATIONS

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ORC Ann. 3513.121 (2011)

§ 3513.121. Alternative procedures for selection of delegates and alternates to national convention

(A) Any candidate for the presidency of the United States who is eligible to receive payments under the "Presidential Primary Matching Payment Account Act," 88 Stat. 1297 (1974), 26 U.S.C.A. 9031, et seq., as amended, may file with the secretary of state a declaration of candidacy not later than four p.m. of the ninetieth day before the presidential primary election held in the same year the candidate is eligible to receive such payments. The candidate shall indicate on the candidate's declaration of candidacy the congressional districts in this state where the candidate's candidacy is to be submitted to the electors. Any candidate who files a declaration of candidacy pursuant to this division shall also file, or shall cause to be filed by a person authorized in writing to represent the candidate, not later than four p.m. of the ninetieth day before the same primary election, a list of candidates for district delegate and alternate to the national convention of the candidate's political party who have been selected in accordance with rules adopted by the state central committee of the candidate's political party. The candidates for district delegate and alternate whose names appear on this list shall be represented on the ballot in accordance with *section 3513.151 [3513.15.1] of the Revised Code* in every congressional district that the presidential candidate named in the presidential candidate's declaration of candidacy, provided that such candidates meet the other requirements of this section.

(B) Candidates for delegate at large and alternate at large to the national convention of a political party for a presidential candidate who submits a declaration of candidacy in accordance with division (A) of this section shall be selected in accordance with rules adopted by the state central committee of the presidential candidate's political party.

(C) Each candidate for district delegate and alternate to the national convention of a political party selected pursuant to division (A) of this section shall file or shall cause to be filed with the secretary of state, not later than four p.m. of the ninetieth day before the presidential primary election in which the person is a candidate, both of the following:

(1) A declaration of candidacy in the form prescribed in *section 3513.07 of the Revised Code*, but not the petition prescribed in that section;

(2) A statement in writing signed by the candidate in which the candidate states the candidate's first and second choices for nomination as the candidate of the candidate's party for the presidency of the United States.

(D) A declaration of candidacy filed pursuant to division (A) of this section shall be in substantially the form prescribed in *section 3513.07 of the Revised Code* except that the secretary of state shall modify that form to include spaces for a presidential candidate to indicate in which congressional districts the candidate wishes the candidate's candidacy to be submitted to the electors and shall modify it in any other ways necessary to adapt it to use by presidential candidates. A candidate who files a declaration of candidacy pursuant to division (A) of this section shall not file the petition prescribed in *section 3513.07 of the Revised Code*.

(E) *Section 3513.151 [3513.15.1] of the Revised Code* applies in regard to candidates for delegate and alternate to the national convention of a political party selected pursuant to this section. The state central committee of the political

party of any presidential candidate who files a declaration of candidacy pursuant to division (A) of this section shall file with the secretary of state the rules of its political party in accordance with division (E) of *section 3513.151 [3513.15.1] of the Revised Code*.

(F) The procedures for the selection of candidates for delegate and alternate to the national convention of a political party set forth in this section and in *section 3513.12 of the Revised Code* are alternative procedures, and if the procedures of this section are followed, the procedures of *section 3513.12 of the Revised Code* need not be followed.

HISTORY:

144 v S 286 (Eff 2-5-92); 145 v S 150. Eff 12-29-93; 153 v H 48, § 1, eff. 7-2-10.

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*** CURRENT THROUGH PL 112-31, APPROVED 9/23/2011 ***

TITLE 2. THE CONGRESS
 CHAPTER 1. ELECTION OF SENATORS AND REPRESENTATIVES

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2 USCS § 2a

§ 2a. Reapportionment of Representatives; time and manner; existing decennial census figures as basis; statement by President; duty of clerk

(a) On the first day, or within one week thereafter, of the first regular session of the Eighty-second Congress and of each fifth Congress thereafter, the President shall transmit to the Congress a statement showing the whole number of persons in each State, excluding Indians not taxed, as ascertained under the seventeenth and each subsequent decennial census of the population, and the number of Representatives to which each State would be entitled under an apportionment of the then existing number of Representatives by the method known as the method of equal proportions, no State to receive less than one Member.

(b) Each State shall be entitled, in the Eighty-third Congress and in each Congress thereafter until the taking effect of a reapportionment under this section or subsequent statute, to the number of Representatives shown in the statement required by subsection (a) of this section, no State to receive less than one Member. It shall be the duty of the Clerk of the House of Representatives, within fifteen calendar days after the receipt of such statement, to send to the executive of each State a certificate of the number of Representatives to which such State is entitled under this section. In case of a vacancy in the office of Clerk, or of his absence or inability to discharge this duty, then such duty shall devolve upon the Sergeant at Arms of the House of Representatives.

(c) Until a State is redistricted in the manner provided by the law thereof after any apportionment, the Representatives to which such State is entitled under such apportionment shall be elected in the following manner: (1) If there is no change in the number of Representatives, they shall be elected from the districts then prescribed by the law of such State, and if any of them are elected from the State at large they shall continue to be so elected; (2) if there is an increase in the number of Representatives, such additional Representative or Representatives shall be elected from the State at large and the other Representatives from the districts then prescribed by the law of such State; (3) if there is a decrease in the number of Representatives but the number of districts in such State is equal to such decreased number of Representatives, they shall be elected from the districts then prescribed by the law of such State; (4) if there is a decrease in the number of Representatives but the number of districts in such State is less than such number of Representatives, the number of Representatives by which such number of districts is exceeded shall be elected from the State at large and the other Representatives from the districts then prescribed by the law of such State; or (5) if there is a decrease in the number of Representatives and the number of districts in such State exceeds such decreased number of Representatives, they shall be elected from the State at large.

HISTORY:

(June 18, 1929, ch 28, § 22, 46 Stat. 26; Apr. 25, 1940, ch 152, §§ 1, 2, 54 Stat. 162; Nov. 15, 1941, ch 470, § 1, 55 Stat. 761.)

(As amended Aug. 20, 1996, P.L. 104-186, Title II, § 201, 110 Stat. 1724.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

With respect to the Clerk of the House of Representatives, referred to in this section, § 2(1) of Act June 3, 1995, P.L. 104-14, which appears as a note preceding 2 USCS § 21, provides that any reference to a function, duty, or authority of such officer in any provision of law enacted before January 4, 1995, shall be treated as referring, with respect to that function, duty, or authority, to the officer of the House of Representatives exercising that function, duty, or authority, as determined by the Committee on House Oversight of the House of Representatives.

Amendments:

1940. Act Apr. 25, 1940, in subsec. (a), in the preliminary matter, substituted "first regular session of the Seventy-seventh" for "second regular session of the Seventy-first", and substituted "sixteenth" for "fifteenth"; and, in subsec. (b), substituted the sentence beginning "If the Congress . . ." for one which read: "If the Congress to which the statement required by subdivision (a) of this section is transmitted, fails to enact a law apportioning Representatives among the several States, then each State shall be entitled, in the second succeeding Congress and in each Congress thereafter until the taking effect of a reapportionment under this Act or subsequent statute, to the number of Representatives shown in the statement based upon the method used in the last preceding apportionment."

1941. Act Nov. 15, 1941 substituted this section for one which read:

"(a) On the first day, or within one week thereafter, of the first regular session of the Seventy-seventh Congress and of each fifth Congress thereafter, the President shall transmit to the Congress a statement showing the whole number of persons in each State, excluding Indians not taxed, as ascertained under the sixteenth and each subsequent decennial census of the population, and the number of Representatives to which each State would be entitled under an apportionment of the then existing number of Representatives made in each of the following manners:

"(1) By apportioning the then existing number of Representatives among the several States according to the respective numbers of the several States as ascertained under such census, by the method used in the last preceding apportionment, no State to receive less than one Member;

"(2) By apportioning the then existing number of Representatives among the several States according to the respective numbers of the several States as ascertained under such census, by the method known as the method of major fractions, no State to receive less than one Member; and

"(3) By apportioning the then existing number of Representatives among the several States according to the respective numbers of the several States as ascertained under such census, by the method known as the method of equal proportions, no State to receive less than one Member.

"(b) If the Congress to which the statement required by subdivision (a) of this section is transmitted has not, within sixty calendar days after such statement is transmitted, enacted a law apportioning Representatives among the several States, then each State shall be entitled, in the next Congress and in each Congress thereafter until the taking effect of a reapportionment under this Act or subsequent statute, to the number of Representatives shown in the statement based upon the method used in the last preceding apportionment. It shall be the duty of the Clerk of the last House of Representatives forthwith to send to the executive of each State a certificate of the number of Representatives to which such State is entitled under this section. In case of a vacancy in the office of Clerk, or of his absence or inability to discharge this duty, then such duty shall devolve upon the officer who, under section 32 or 33 of the Revised Statutes, is charged with the preparation of the roll of Representatives-elect.

"(c) This section shall have no force and effect in respect of the apportionment to be made under any decennial census unless the statement required by subdivision (a) of this section in respect of such census is transmitted to the Congress within the time prescribed in subdivision (a)."

1996. Act Aug. 20, 1996, in subsec. (b), substituted the concluding period for "; and in case of vacancies in the offices of both the Clerk and the Sergeant at Arms, or the absence or inability of both to act, such duty shall devolve upon the Doorkeeper of the House of Representatives."

Other provisions:

Termination of reporting requirements. For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103-7 (in which the report required by subsec. (a) of this section is listed on page 17), see § 3003 of Act Dec. 21, 1995, P.L. 104-66, which appears as *31 USCS § 1113* note.

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*** CURRENT THROUGH PL 112-31, APPROVED 9/23/2011 ***

TITLE 2. THE CONGRESS
CHAPTER 1. ELECTION OF SENATORS AND REPRESENTATIVES

Go to the United States Code Service Archive Directory

2 USCS § 2c

§ 2c. Number of Congressional Districts; number of Representatives from each District

In each State entitled in the Ninety-first Congress or in any subsequent Congress thereafter to more than one Representative under an apportionment made pursuant to the provisions of subsection (a) of section 22 of the Act of June 18, 1929, entitled "An Act to provide for apportionment of Representatives" (46 Stat. 26), as amended [*2 USCS § 2a(a)*], there shall be established by law a number of districts equal to the number of Representatives to which such State is so entitled, and Representatives shall be elected only from districts so established, no district to elect more than one Representative (except that a State which is entitled to more than one Representative and which has in all previous elections elected its Representatives at Large may elect its Representatives at Large to the Ninety-first Congress).

HISTORY:

(Dec. 14, 1967, P.L. 90-196, 81 Stat. 581.)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

CIVIL ACTION NO. 1:11-cv-117

WILLIAM DESENA AND
SANDRA W. DUNHAM,

Plaintiffs,

v.

STATE OF MAINE ET AL.,

Defendants.

Before Selya,* Circuit Judge,
Hornby and Singal, District Judges.

MEMORANDUM AND ORDER

June 21, 2011

SELYA, Circuit Judge. This case, brought in the aftermath of the 2010 decennial census, posits that population shifts have made Maine's two congressional districts unequal and that, given Maine's redistricting format, the disparity will not be rectified before the 2012 election. The upshot, the plaintiffs say, is unconstitutional vote dilution.

* Hon. Bruce M. Selya, of the United States Court of Appeals for the First Circuit, sitting by designation.

To put this claim in perspective, we begin with an overview of Maine's approach to congressional apportionment. Following each federal decennial census, Maine (like every other state) receives population data and an allotment of congressional seats from the federal government. See 2 U.S.C. § 2a(a)-(b). For many years, Maine traveled a well-worn path, see Nat'l Conf. of State Legis., Redist. Law 2010 180-86 (2009), and redrew district lines in the interlude between the release of the official census data and the next congressional election. See Opinion of the Justices, 283 A.2d 234, 235 (Me. 1971).

In 1975, Maine veered from this path. The genesis of this deviation can be traced to an amendment to the state constitution requiring that state legislative reapportionment be completed in 1983 and at ten-year intervals thereafter. See Me. Const. art. IV, pt. 2, § 2; see also In re 1983 Legis. Apport. of House, Senate, and Cong. Dists., 469 A.2d 819, 822-24 (Me. 1983). The legislature subsequently enacted a statute that made the same time line applicable to congressional redistricting. See Me. Rev. Stat. tit. 21-A, § 1206.

Under this blueprint, the legislature convening in the third year after each decennial census is tasked with establishing a bipartisan apportionment commission (the Commission). Id. § 1206(1). The Commission is charged with reviewing the census data and submitting a recommended redistricting plan. Id. If the

legislature fails to adopt either the Commission's plan or a surrogate within a prescribed time frame, the obligation to reapportion becomes the responsibility of the Maine Supreme Judicial Court. Id. § 1206(2). In either event the redrawn districts take effect for use in the election cycle that occurs in the fourth calendar year following the census year. For example, when the results of the 2000 census were received, reapportionment took place in 2003; and the new district lines (congressional and legislative) were first used in the 2004 election cycle.

At all times material hereto, Maine has been allotted two seats in the United States House of Representatives. According to the 2000 census, it had 1,274,923 residents. After a legislative stalemate, the Supreme Judicial Court drew the district lines. See In re 2003 Apport. of the State Senate and U.S. Cong. Dists., 827 A.2d 844, 845 (Me. 2003). As apportioned, the first congressional district contained 637,450 residents and the second district contained 637,473 residents. These districts were used for the 2004, 2006, 2008, and 2010 congressional elections.

In March of 2011, Maine received the 2010 decennial census data from the federal government. These figures revealed that the state's population had swelled to a total of 1,328,361 residents. The population of the first district had grown to 668,515, whereas the population of the second district had only

increased to 659,846. Thus, the population differential between the two districts had widened from 23 residents to 8,669 residents.

The next regularly scheduled congressional election will occur in November of 2012. Pursuant to Maine law, the lines demarcating its two districts will not be redrawn until 2013.

The plaintiffs, William Desena and Sandra Dunham, are residents of, and registered voters in, Cape Elizabeth (a community that lies wholly within Maine's first congressional district). Four days after Maine received the 2010 census data, they sued the state, a state agency, and a coterie of state officials.¹ They challenge the constitutionality of Maine's congressional redistricting scheme on its face and as applied. The district court found the constitutional challenge colorable and, upon its certification to that effect, the Chief Judge of the United States Court of Appeals for the First Circuit convened a three-judge court. See 28 U.S.C. § 2284(a). The court allowed the Maine Democratic Party to intervene as a defendant.

Following a preliminary hearing, the parties stipulated to the facts and engaged in extensive briefing. On June 9, 2011, the court heard oral arguments and, at the conclusion of the hearing, ruled ore tenus that Maine's current congressional

¹ With a view toward Eleventh Amendment immunity, see U.S. Const. amend. XI, the plaintiffs subsequently dropped both the state and the state agency as defendants, and are proceeding only against the individual defendants. See Ex parte Young, 209 U.S. 123, 155-56 (1908).

apportionment is unconstitutional and that the 2012 congressional election cannot go forward under that apportionment. The court informed the parties that it would issue an explicative opinion at a later date. This rescript is intended as the fulfillment of that promise.²

Refined to bare essence, the plaintiffs claim that the Maine legislature has a constitutional obligation, following the receipt of new decennial census data, to reapportion the state's congressional districts in time for the next election (the facial challenge) and that, in all events, the legislature has an obligation to reapportion the current congressional districts in light of received data from the 2010 census showing a significant inter-district disparity in population (the as-applied challenge). The state defendants concede the force of the as-applied challenge, but the intervenor insists that Maine's scheme passes constitutional muster both on its face and as applied. Because we conclude, on the facts of this case, that the state's failure to redraw the district lines in time for the 2012 election violates Article I, Section 2 of the Constitution, we need not address the plaintiffs' facial challenge.

Congressional apportionment demands an exacting balance. The Constitution requires that each congressional district within

² The court solicited, on a tight time line, submissions addressing how best to remedy the constitutional infirmity. That aspect of the case is currently in progress.

a state should be equal in population. U.S. Const. art. I, § 2; see id. amend. XIV, § 2. While absolute equality is not required — the command of Article I, Section 2 is aspirational rather than literal — the state must seek "to achieve precise mathematical equality." Kirkpatrick v. Preisler, 394 U.S. 526, 530-31 (1969). The goal is that "as nearly as is practicable one man's vote in a congressional election is to be worth as much as another's." Wesberry v. Sanders, 376 U.S. 1, 7-8 (1964). The goal, then, is to make congressional districts within the state as nearly equal as is practicable under all the circumstances.

The Supreme Court has choreographed a two-step pavane for demonstrating that a state's congressional districts do not achieve this goal. First, a challenger must show that a population disparity exists, which "could have been reduced or eliminated altogether by a good-faith effort to draw districts of equal population." Karcher v. Daggett, 462 U.S. 725, 730 (1983). Once the challenger makes that showing, the *devoir* of persuasion shifts to the party defending the apportionment to justify the population differential. Kirkpatrick, 394 U.S. at 531-32. If no such showing is made, the apportionment fails. We follow this burden-shifting model here.

The initial question is whether a significant population disparity exists. The plaintiffs have the burden of proof on this issue. Karcher, 462 U.S. at 730-31. Where, as here, a numerical

disparity exists, the plaintiffs' burden is not a heavy one: the Supreme Court has explained that, in the context of congressional apportionment, even "de minimis population variations" offend the command of Article I, Section 2. Id. at 734.

The existence of a numerical disparity is beyond question. According to the 2010 census, Maine's first congressional district has 8,669 more residents than Maine's second congressional district. This amounts to a deviation of 0.6526 percent.³ This variation is significant; it is greater, in both absolute and percentage terms, than variances previously deemed unconstitutional by the Supreme Court in congressional apportionment cases. See, e.g., Karcher, 462 U.S. at 728, 734 (rejecting disparity of 3,674 residents and deviation from ideal of 0.1384 percent); Kirkpatrick, 394 U.S. at 529-30 & n.1 (rejecting deviation from ideal of 0.19 percent as not per se de minimis).

In an effort to blunt the force of this reasoning, the intervenor argues that the disparity here falls within acceptable limits because the Court occasionally has approved larger variances. See, e.g., White v. Regester, 412 U.S. 755, 764 (1973); Gaffney v. Cummings, 412 U.S. 735, 740-41 (1973). This argument

³ This "deviation from the ideal" represents the percentage variation of Maine's current districts from the ideal population (664,180.5) that a district in the state would have based on the 2010 census figures. This calculation serves as a typical basis for comparison in vote dilution cases. See, e.g., White v. Weiser, 412 U.S. 783, 785 (1973); Mahan v. Howell, 410 U.S. 315, 323-24 (1973).

rests on quicksand. The cases to which the intervenor adverts are, without exception, cases dealing with the reapportionment of state legislative districts, not congressional districts. This difference renders those cases inapropos. States enjoy materially greater latitude in apportioning state legislative districts – a process vetted under the general provisions of the Equal Protection Clause – than they do in apportioning congressional districts – a process vetted under the specific provisions of Article I, Section 2. See White v. Regester, 412 U.S. at 763; see also Brown v. Thomson, 462 U.S. 835, 850 n.2 (1983) (O'Connor, J., concurring).

In yet another effort to lessen the impact of the numerical disparity, the intervenor seeks to contrast the size of Maine's congressional districts with the size of congressional districts elsewhere (say Montana, which boasts a single congressional district of nearly 1,000,000 residents). This is a red herring. In an Article I, Section 2 analysis, interstate comparisons are irrelevant. No less an authority than the Supreme Court has declared that "the Constitution itself, by guaranteeing a minimum of one representative for each State, made it virtually impossible in interstate apportionment to achieve the standard imposed by Wesberry." Wisconsin v. City of New York, 517 U.S. 1, 14-15 (1996). That impediment has no bearing on a state's ability to make its own congressional districts uniform in size (or as near thereto as may be practicable).

To be sure, showing a significant numerical disparity, without more, does not satisfy the plaintiffs' burden. At the first step of the pavane, the plaintiffs also must show that the disparity was not "unavoidable despite a good-faith effort to achieve absolute equality." Kirkpatrick, 394 U.S. at 531.

In the circumstances at hand, this showing is child's play. The 2010 census figures were made available to Maine in March of 2011 – more than nineteen months before the 2012 election. Notwithstanding the availability of these new figures, Maine has not undertaken any effort to ameliorate the evident inequality in population between its two congressional districts. The only barriers to such remedial action are self-imposed. It follows from these facts that the plaintiffs have carried their burden of showing that the disparity is not unavoidable. Simply put, Maine's congressional districts, as they presently stand, do not achieve "the paramount objective" of population equality with respect to the upcoming 2012 election cycle. Karcher, 462 U.S. at 732.

The plaintiffs' "success in proving that the [current apportionment] was not the product of a good-faith effort to achieve population equality means only that the burden shift[s] to the State to prove that the population deviations in its plan were necessary to achieve some legitimate state objective." Id. at 740; see White v. Weiser, 412 U.S. 783, 795 (1973). The Supreme Court has not spelled out the full range of justifications that might

suffice to dodge this bullet. It has, however, noted that "[a]ny number of consistently applied legislative policies might justify some variance, including, for instance, making districts compact, respecting municipal boundaries, preserving the cores of prior districts, and avoiding contests between incumbent Representatives." Karcher, 462 U.S. at 740. Even so, only small deviations may be justified and the greater the deviation, the more compelling the justification must be. Id. at 740-41.

For their part, the state defendants concede the absence of any constitutionally adequate justification. The intervenor, however, advances several reasons for concluding that the disparity, though significant and easily avoidable, is nevertheless justified. All of these reasons lack force.

The intervenor's most bruited claim is that the bona fides of the process undertaken in 2003 deserve respect. This claim is unavailing. Although we do not question the legitimacy of the state's earlier process, the origins of the existing district lines are immaterial here. What counts is that the available 2010 census figures show conclusively that the two congressional districts are now malapportioned and that sufficient time exists to correct that malapportionment.

Next, the intervenor suggests that a delay in rectifying the newly emergent malapportionment is acceptable (and, thus, justifies the use of the current districts in 2012) because natural

population shifts inevitably result in vote dilution from election to election. Cf. Gaffney, 412 U.S. at 746 ("District populations are constantly changing, often at different rates in either direction, up or down."). We disagree. The phenomenon of a continually shifting population is omnipresent and, thus, could always be used to justify a delay in reapportionment. Such a result would eviscerate the promise of Article 1, Section 2. We hold, therefore, that the ebb and flow of population in the years between decennial censuses cannot justify a state in ignoring updated census figures that, if used, would enable it to approach more closely the ideal of mathematical equality.

The case law is consistent with this view. See Karcher, 462 U.S. at 732; see also Georgia v. Ashcroft, 539 U.S. 461, 488 n.2 (2003) ("When the decennial census numbers are released, States must redistrict to account for any changes or shifts in population."). Where, as here, there is ample time to ameliorate a significant population disparity between congressional districts revealed by a new decennial census, the Constitution obliges a state to act in time for the next election. Maine has not fulfilled this obligation.

Finally, the intervenor insists that, notwithstanding the existence of a significant disparity, there is no authority for the proposition that a state must redraw congressional district lines in the interval between the release of decennial census data and

the next election. Rather, the policies supporting Maine's carefully constructed redistricting process, laudably designed to prevent partisan gerrymandering, are worthy of deference and, therefore, justify the state in using the 2010 census figures more deliberately in revamping its congressional district lines (with the result that reapportionment will be delayed until after the 2012 election). This thesis is unpersuasive.

It is true that no Supreme Court case has squarely addressed the question of how long a state may delay congressional reapportionment after it receives decennial census data. But certain propositions follow inexorably from the Court's interpretation of the mandate that Article I, Section 2 imposes — and framing the issue solely as a matter of timing distorts that interpretation. Once a court finds a violation of the right to equal voting power, it must order the state to redress the violation by promptly redrawing the congressional district lines to achieve the equality that the Constitution demands. See, e.g., Farnum v. Burns, 548 F. Supp. 769, 773 (D.R.I. 1982) (three-judge court) ("[O]pinions of the Supreme Court indicate that a state can constitutionally be compelled to reapportion in time for the first election after a census, even where the existing reapportionment scheme is less than ten years old."); Flateau v. Anderson, 537 F. Supp. 257, 265 (S.D.N.Y. 1982) (three-judge court) (similar); see also Ashcroft, 539 U.S. at 488 n.2 ("[I]f the State has not

redistricted in response to the new census figures, a federal court will ensure that the districts comply with the one-person, one-vote mandate before the next election."). Constitutional violations, once apparent, should not be permitted to fester; they should be cured at the earliest practicable date.

So it is here: the current apportionment reflects a variance that is both avoidable and unjustified by legitimate state concerns. Given its statutory time line, Maine will default on its constitutional obligation to remedy that disparity as expeditiously as practicable unless this court orders otherwise. That is a default that we cannot allow to occur. See Grove v. Emison, 507 U.S. 25, 34 (1993); Wesberry, 376 U.S. at 18; Black Political Task Force v. Galvin, 300 F. Supp. 2d 291, 316 (D. Mass. 2004) (three-judge court).

The short of it is that no party has advanced a compelling reason for permitting the 2012 congressional election to proceed despite a significant, unjustified, and easily correctable population variance between the two congressional districts. Consequently, the state must undertake, here and now, a good-faith effort to achieve numerical equality, as nearly as may be practicable, between the districts in time for the next election.

We need go no further. Maine's congressional districts, as they stand, are malapportioned and violate Article I, Section 2

of the Constitution.⁴ The district lines must be redrawn prior to, and for the purpose of, the 2012 congressional elections. We will, by separate order, approve a plan and timetable for accomplishing this objective; and we will retain jurisdiction for that purpose.

Settle Order on Notice.

/s/ Bruce M. Selya
U.S. Circuit Judge

/s/ D. Brock Hornby
U.S. District Judge

/s/ George Z. Singal
U.S. District Judge

Dated this 21st day of June, 2011.

⁴ We take no view on the question of how (if at all) our finding that Maine's congressional districts violate Article I, Section 2 affects Maine's statutory scheme for reapportionment of the state legislature. Legislative redistricting must be analyzed under a different standard, see Reynolds v. Sims, 377 U.S. 533, 577-78 (1964); see also U.S. Const. amend. XIV, § 2, and no challenge to the apportionment of legislative districts is before us.

IN THE SUPREME COURT OF OHIO

State ex rel. Ohioans for Fair Districts, et al., :

Relators, :

vs. :

Hon. Jon Husted, :
Ohio Secretary of State, et al., :

Respondents. :

Case No. 11-1646

Original Action in Mandamus

AFFIDAVIT OF AARON OCKERMAN

STATE OF OHIO :
COUNTY OF FRANKLIN : SS.

I, Aaron Ockerman, having been duly sworn and cautioned according to law, hereby state I am over the age of eighteen years and am competent to testify as to the facts set forth below based on my personal knowledge and having personally examined all records herein, and further state as follows:

1. I am the Executive Director and Legislative Agent of the Ohio Association of Election Officials ("OAE0").
2. I have worked with the OAE0 for ten (10) years as the OAE0's Legislative Agent and later as Executive Director.
3. As Executive Director of the OAE0, I manage the day to day operations of the OAE0, and serve on its various standing and ad hoc committees. I am involved with conference and event planning, and spend considerable time developing and advancing the OAE0's legislative agenda.

4. The OAE0 is a non-partisan, 501(c)(3) organization that represents all eighty-eight (88) of Ohio's county Boards of Elections.

5. Each county Board of Elections is a bipartisan entity that is comprised of two Democrat and two Republican board members.

6. On September 21, 2011, I sent a letter on behalf of the OAE0 to William G. Batchelder, the Speaker of the Ohio House of Representatives and Thomas E. Niehaus, the President of the Ohio Senate, explaining the necessity of an appropriation to successfully implement the new Congressional District lines created in Substitute House Bill 319 and supporting inclusion of an appropriation in Substitute House Bill 319 ("SHB 319"). See OAE0 Letter dated September 21, 2011, attached as Exhibit 1.

7. On September 21, 2011, I testified before the Senate Government Oversight and Reform Committee on SHB 319. I spoke as to the necessity and uses of the appropriation that had been included in the substitute version of SHB 319.

8. The county Boards of Elections must fully implement the new Congressional districts in order for voters to correctly and accurately be able to vote for the Congressional candidates in each new district.

9. The county Boards of Elections will use the appropriation in SHB 319 to implement the new Congressional District lines.

10. Many county Boards of Elections will use the appropriation to hire part time staff on a contract basis to assist in the geographic information systems portion of remapping the Congressional districts, which involves correctly assigning voters to the new Congressional districts so they are able to exercise their right to vote for Congressional candidates.

11. Many county Boards of Elections will also use the appropriation to pay outside vendors to fully implement the geographic information systems portion of remapping the Congressional districts.

12. Many county Boards of Elections will also use the appropriation to pay full time staff significant overtime in order to fully implement the remapping of the Congressional districts.

13. Many county Boards of Elections will also use the appropriation to pay for the mailing requirement in SHB 319 of the new polling locations that may result from the remapping of the Congressional districts, which will inform voters of any changes in voting locations so that they can successfully exercise their right to vote for the correct Congressional candidates.

14. The filing deadline for all partisan candidates for Congress in the March 2012 primary is December 7, 2011.

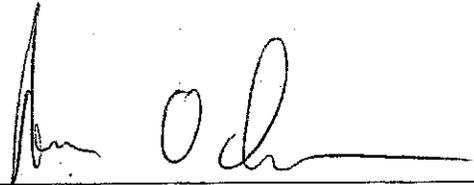
15. The 2011 general election will be held on November 8, 2011. Significant work will need to be done by the county Boards of Elections to successfully administer this statewide general election.

16. Without the appropriations in SHB 319, it will be difficult, if not impossible for the county Boards of Elections to successfully implement the new Congressional District lines in time for the filing deadline of December 7, 2011 for the March 2012 primary.

17. Without the full implementation of the new Congressional district lines by the county Boards of Elections, it will be impossible for partisan Congressional candidates to file their candidacy petitions by the December 7, 2011 filing deadline for the March 2012 primary.

18. Without the full implementation of the new Congressional district lines by the county Boards of Elections, it will be impossible for voters to exercise their right to vote for Congressional candidates in the new Congressional districts in the March 2012 primary.

Further affiant sayeth naught.



Aaron Ockerman

Sworn to before me and subscribed in my presence this 11 day of October, 2011.



Notary Public



Heather N. Mann, Attorney At Law
NOTARY PUBLIC - STATE OF OHIO
My commission has no expiration date
Sec. 147.03 R.C.

September 21, 2011



Ohio Association Of Election Officials

The Election Professionals

The Honorable Bill Batchelder, Speaker
Ohio House of Representatives
77 S. High St, 14th Floor
Columbus, OH 43215

The Honorable Tom Niehaus, President
Ohio Senate
Statehouse
Columbus, OH 43215

Dear Speaker Batchelder and President Niehaus:

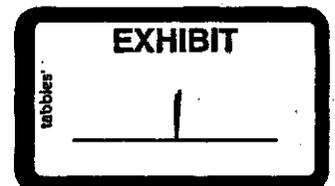
I am writing today to offer the support of the Ohio Association of Election Officials (OAEO) for a proposed appropriation for county boards of elections to assist in the redistricting process.

While our understanding is that an exact appropriation has not been settled on, the idea of state assistance to local boards is not without precedent, having also occurred in 2002. Indeed, boards of elections are already hard pressed to comply with the numerous statutory duties currently facing them. The OAEO has consistently and conscientiously supported legislation in the past to help us reduce costs and streamline operations. We have reduced staff, consolidated precincts, utilized new technologies, and worked collaboratively across county lines, all in an effort to be as efficient as possible with taxpayer dollars.

Redistricting is always a time consuming and costly endeavor for boards of elections. However, with preparations well under way for the presidential election of 2012, the effort becomes even more challenging this time around. While we have not conducted a formal statewide survey to gauge the exact cost of the task, a brief survey of those counties with staff who were with boards in 2000 leads us to believe that the cost is in the neighborhood of \$2.75 million to \$3 million.

This number reflects the fact that boards of various sizes will approach redistricting in different ways. Large counties will likely utilize board staff. Medium to small size counties will likely lean on county GIS staff, and will almost certainly need to bring in part time employees to assist in the effort.

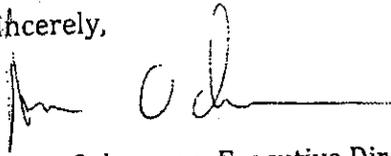
Without some financial support from the state, our members are likely to seek additional appropriations from county commissioners to comply with our statutory duties. Counties are already putting pressure on boards of elections to further



tighten budgets, not to expand them. I truly believe that should counties be forced to pick up the cost of redistricting, there will be much strife at the local level as sparring over already strained budgets intensifies.

In closing, I wish to express our members' gratitude for the willingness of the General Assembly to intervene to support local boards of elections in completing this monumentally important task. We stand ready to assist every member of the legislature as you discuss and debate this important topic. As always, I can be reached on my mobile phone at (514) 581-8238 should you or your staff have questions about this matter.

Sincerely,



Aaron Ockerman, Executive Director
Ohio Association of Election Officials

cc: Minority Leader Armond Budish
Minority Leader Capri Cafaro
Members, House State Government and Elections Committee
Members, Senate Oversight and Reform Committee
Representative Lou Blessing
Representative Sean O'Brien
Representative Matt Huffman