

Ohio Redistricting Transparency Report

The Elephant in the Room



How power was used in the political backrooms to manipulate districts to benefit the political insiders.

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A project of the League of Women Voters of Ohio and Ohio Citizen Action

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“Information is the currency of democracy.”

Thomas Jefferson

Executive Summary

The 2011 redistricting process was in many ways “business as usual.” The party in power used the process to gain maximum political advantage. The minority party was shut out. Public input was ignored. The result was the approval of new districts that will provide for largely predetermined elections where we will know which party will win before we even know who the candidates are.

The districts were drawn and critical decisions were made in the backrooms outside of public view. When maps were unveiled, they were raced through the process in an effort to avoid public scrutiny. The elephant in the room that those drawing the maps would not publicly acknowledge drove the process. While the Republican officials talked about creating fair and constitutional districts, the driving force was how they could manipulate district boundaries in order to gain the maximum political advantage for the Republican Party – much like Democratic politicians have done when they had the power of the pen.

We participated in the public portion of the redistricting process and followed up with multiple public record requests in an effort to find out what really happened. While many records continue to be withheld, we have uncovered a number of records which help identify the elephant in the room.

In this report we carefully evaluate and document the level of transparency. We conclude that for the following reasons those responsible for Ohio’s 2011 redistricting process deserve a grade of D minus:

- Decisions were not made in public (p. 5)
- Public input was ignored (p. 6)
- The public had limited opportunity to review proposed maps (p. 7)
- The public was not provided with relevant data for proposed districts (p. 8)
- Nonpartisan redistricting criteria was not used (p. 9)
- The criteria used to evaluate plans was never publicly identified (p. 10)

Much of the above is apparent from observing the official process. By reviewing the records, we uncovered secrets which were not known. Some of these include:

- A concerted **strategy of secrecy** was employed which included use of a national consultant, secret meetings, and a secret redistricting office (p. 13)
- \$210,000 was **secretly paid** to two Republican staffers (p. 14)
- Speaker of the House John **Boehner’s team** was the primary decision maker for the congressional map (p. 15)

- A last minute change was made to the congressional districts to honor a request from Boehner’s team to move the **corporate headquarters of a major campaign contributor** into a different congressional district (p. 16)
- Republican officials believed that changes they made to state legislative districts could save them **millions of dollars in future campaign expenses** (p. 17)
- Based on their own political indexes, Republican officials believed they created a congressional plan which would provide a 12 – 4 Republican advantage and a state legislative plan which would **ensure their control of the legislature** even if there were a strong Democratic year (p. 17-19)
- **Multiple maps** were considered including pairings of Congressman Sutton and Fudge, Gibbs and Johnson, and Turner and Jordan (p. 19-20)
- Requests by State Senator Chris Widener to keep Clark County in one congressional district were ignored because this would **hurt the political index** for Congressman Stivers’ district (p. 20)
- **A last minute change** was made to split Mercer County into three congressional districts in order to move State Senator Keith Faber’s home from the 8th congressional district to the 4th congressional district (p. 20)

Because many records have still not been provided even though public record requests were made over two months ago, many things are still not known, including:

- What lobbying did legislators and congressmen engage in for their districts?
- What congressional district plans have been proposed in private negotiations between Democratic and Republican politicians?
- How many other district boundaries were manipulated to raise campaign funds?
- What else was discussed in the political backrooms?

Introduction

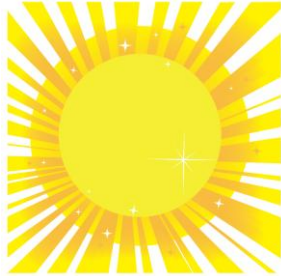
The Ohio Campaign for Accountable Redistricting (OCAR) was established through a partnership led by the League of Women Voters of Ohio, Ohio Citizen Action, and the Midwest Democracy Network, with funding provided by the Joyce Foundation. 25 Ohio organizations joined together to support this effort with the goal of educating the public about the redistricting process. Central to this process was organizing a competition where private citizens could draw their own state legislative and congressional maps which were evaluated based on nonpartisan redistricting criteria, some of which were submitted to the Apportionment Board and Legislature for their consideration.

OCAR and its partners represented public interests by advocating for an open process and the use of nonpartisan redistricting criteria and by providing an opportunity for the public to be involved in the redistricting process. However, the requests by OCAR and other members of the public fell on deaf ears. Although there were many public hearings, the actual decisions were made in private. Maps were unveiled at the last minute and quickly adopted. But for the

efforts of OCAR and its partners, there would have been no meaningful scrutiny of the new districts.

Transparency Evaluation

Transparency – What is it? Why does it matter?



A transparent and open process allows for a more honest and fair outcome, as decisions are made in public based on information which is available to the public. Factors which may have been overlooked can be considered before decisions are final. An open process also requires officials to publicly explain the basis for their decisions and allows the public the opportunity to hold their elected officials accountable. After all, these officials work for the public.

On the other hand, officials who wish to conceal their actions, or the reasons for their actions, may prefer to keep the public in the dark. Nowhere is this more the case than with redistricting. It is an open secret that the political party in power uses redistricting as an opportunity to gain political advantage by drawing the districts in a way which provides the best opportunity for their party to win elections in the greatest number of districts.

Yet, few public officials will acknowledge that political advantage is their goal. Rather, they claim they are drawing fair and constitutional maps. Because the political calculations take place in private, the politicians are better able to conceal their efforts.

A truly open process in redistricting would include the following components:

- Decisions made in public
- Actual consideration of maps and input provided by the public
- A fair opportunity for the public to review proposed maps
- Public access to actual redistricting data, including political indexes, the number of districts favoring each party, compactness measures, number of splits, and any other data supporting an individual plan.
- Use of nonpartisan redistricting criteria such as compactness, minimizing splits of governmental units, maximizing politically balanced districts, and balancing the number of districts which favor each party.
- Identification of the factors which are used to evaluate each plan.

So, how did our Ohio officials do?

Were decisions made in public?

While the new state legislative and congressional districts were approved in public, **there is no evidence that any decisions were actually made in public.** The following demonstrates that decisions were actually made in private discussions among majority party officials:

- Starting July 11, weekly meetings were held in private among the secretaries of the Apportionment Board and representatives of the Governor, Auditor, Speaker of the House, and Senate President.¹
- Both the congressional and state legislative maps were drawn in private and approved within days of being unveiled.²
- HB 319 which established the new congressional districts was adopted without a single change to the proposed districts.
- The only changes made to the state legislative districts from the plan presented by the Apportionment Board Secretaries were to honor private requests made by individual legislators, none of whom addressed their requests at a public meeting.³
- Ray DiRossi⁴ testified at the Sept. 26 Apportionment Board hearing that as he prepared draft maps of state legislative districts he presented them to legislative leadership and obtained feedback from them.⁵
- The first meeting of the House Government and Elections Committee to discuss congressional redistricting held on Sept. 6, 2011 was delayed while majority members were in a party caucus.
- On Sept. 21, the final Senate Government Oversight and Reform Committee hearing on HB 319 was recessed immediately before the Senators voted so that majority Senators could have a party caucus to discuss in private how to proceed.
- To ensure that the Apportionment Board meetings did not deviate from the plan worked out in private, detailed scripts of each meeting (including which member would make and second each motion) were prepared in advance.⁶

¹ See pp. 13-14 herein and App. pp. 19.1-22. (Documents contained in the Appendix to this report are referenced as App. pp. __.)

² HB 319 which contained the new congressional districts was approved by the House of Representatives within 48 hours of being introduced. The state legislative districts were approved by the Ohio Apportionment Board within three business days of being unveiled. See App. pp. 4-6 for a complete timeline of the redistricting process.

³ Testimony of Ray DiRossi and Heather Mann before Ohio Apportionment Board on Sept. 28, 2011, transcript pp. 6-16, available at: <http://www.sos.state.oh.us/sos/upload/reshape/ApportionmentBoard/transcripts/2011-09-28.pdf>.

⁴ Ray DiRossi and Heather Mann served as Joint Secretaries for the Ohio Apportionment Board and were responsible for drafting the maps for the new districts. See App. pp. 1-2 for a listing of key players in the redistricting process.

⁵ App. pp. 162-166.

⁶ See App. pp. 146-152 for script of initial Apportionment Board meeting. Scripts were prepared for every meeting and for the regional hearings, as well. Governor Kasich acknowledged that he was following a script at the initial Apportionment Board meeting. (App. p. 154).

Making the decisions behind closed doors is not only bad policy and creates public distrust, but also puts in question whether the Apportionment Board's actions were in violation of Ohio's Sunshine Law.⁷

Was public input actually considered?



OCAR presented eight different congressional maps to the Legislature and two state legislative maps to the Apportionment Board.⁸ Yet, there is no evidence that any map presented even influenced a single district. The congressional map which was adopted in HB 319 was decided upon before some of the citizen maps were even presented to the Legislature.⁹

Similarly, the schedule adopted by the Apportionment Board to approve state legislative maps demonstrates no intention to consider public maps. The Ohio Constitution requires the Apportionment Board to meet between August 1 and October 1 to adopt state legislative districts.¹⁰ Yet, at the Board's organizational meeting Aug. 4, it approved a schedule where the full Board would not meet again until Monday, Sept. 26, only five days before the districts must be determined. The Board directed that proposed maps be submitted by Friday, Sept. 23, thus ensuring a process where there would be no opportunity to give substantial consideration to alternate maps. The Board then adopted rules which limited the proponent of any plan a total of ten minutes to testify about the plan – less than 5 seconds for each of the 132 districts in a legislative plan!¹¹

In addition to not considering public plans, both the Legislature and the Apportionment Board completely disregarded the testimony expressed by members of the public which focused on two issues:

- Use nonpartisan redistricting criteria
- Before voting on a map, publish the map on a public website for at least two weeks in order to provide an opportunity for public scrutiny

These requests were made multiple ways:

⁷ See R.C. 121.22, as well as pp. 13-14 herein.

⁸ All maps submitted by OCAR, including a description of each plan, are available at www.drawthelineohio.org.

⁹ On July 19, 2011 OCAR announced its public competition which required congressional maps to be completed by Sept. 11, 2011. This deadline was published in the media, was available on the OCAR website, and was provided to the Legislators during testimony at multiple regional legislative hearings on July 20, 21, and Aug. 2. However, on Aug. 30, the House Government and Elections Committee issued a notice scheduling hearings and requesting proposed maps by Sept. 2. OCAR was the only entity to present any map by the Sept. 2 deadline (OCAR-A). OCAR presented an additional map on Sept. 8 (OCAR-B) and four more maps on Sept. 12 (OCAR-C, OCAR-D, OCAR-E, OCAR-G). The HB 319 map was finalized over the weekend of Sept. 10-11 and was unveiled on Sept. 13.

¹⁰ Art. 11, Sect. 1, Ohio Constitution.

¹¹ See App. pp. 168 for a copy of Apportionment Board Rule 011-1-10.

- On June 27, OCAR sent a letter to every legislator making these requests¹²
- On July 20-21 and Aug. 2, 22-26 countless citizens testified at regional legislative and Apportionment Board hearings to request that nonpartisan criteria be used, to have public hearings after proposed maps were available, and to have proposed maps available on the internet for at least two weeks before being voted on.
- On Sept. 19, OCAR sent a letter to each of the members of the Apportionment Board requesting that the proposed maps be made public¹³
- On Sept. 19, over 300 Ohioans e-mailed Senate President Thomas Niehaus to request that the Senate allow time for the public to review the proposed congressional districts in HB 319.¹⁴ Instead, HB 319 was raced through the Senate Committee and full Senate over the next two days.
- Ohio’s newspapers called upon the Legislature to slow down the process to allow time for public input.¹⁵

Did the public have an opportunity to review maps?

Not much. While the Legislature is often criticized for issues dragging on for months or years without resolution, on congressional redistricting they demonstrated an impressive ability to move with speed and efficiency.



On Sept. 12, Rep. Matt Huffman, Chair of the House Government and Elections Committee issued a notice indicating the next afternoon the Committee would hear testimony on a yet to be introduced bill, with a further hearing on the 14th, at which time the bill would be voted on.¹⁶ The next day HB 319 was introduced with the maps unveiled that afternoon. 24 hours later the House Committee voted on the legislation and within 48 hours of the maps being introduced HB 319 was approved by the full House in a near party line vote. The Senate moved just as quickly the next week. On Sept. 20 the Senate Committee on Government Oversight and Reform¹⁷ held two hearings on the bill, and approved the bill on a straight party line vote the next day, with the only change being to add a monetary appropriation to assist local boards of elections in implementing the new districts. One hour later, HB 319 was approved by the full Senate and still later the same day the full House concurred with the Senate amendment.¹⁸

¹² App. pp. 7-8.

¹³ App. 9.

¹⁴ The e-mails were discovered among records produced in response to a public record request.

¹⁵ See e.g. “Give Ohioans a chance to study proposed maps”, Cleveland Plain Dealer, Sept. 14, 2011, http://www.cleveland.com/opinion/index.ssf/2011/09/give_ohioans_a_chance_to_study.html; “Drawn to Gridlock”, Akron Beacon Journal, Sept. 14, 2011, <http://www.ohio.com/editorial/drawn-to-gridlock-1.235063>; “Lose this map”, Toledo Blade, Sept. 15, 2011, <http://www.toledoblade.com/Editorials/2011/09/15/Lose-this-map.html>; App. pp. 169-174.

¹⁶ Copy of notice at App. pp. 25-26.

¹⁷ One might have hoped that a committee devoted to oversight and reform would have been more concerned with transparency.

¹⁸ See App. pp. 4-6 for a complete time line.

The Apportionment Board schedule provided even less time for public scrutiny. Proposed maps were unveiled on Friday, Sept. 23, considered by the Apportionment Board on Monday, Sept. 26, and voted on Sept. 28.¹⁹

All of this was designed to limit the time that the public could have to review, analyze, and raise questions about the proposed maps.

Was the public provided with redistricting data for proposed districts?

The public was briefly provided with maps, a legal description, population figures, minority population percentages, and incumbent addresses, but little else. However, to fully evaluate the impact of proposed districts it is necessary to examine the underlying data on proposed districts.



Specifically, as maps were unveiled, the following information was withheld from the public:

- Political indexes for each district
- Number of districts which favored each political party
- Number of governmental units which were split
- Any measure of compactness
- An interactive map

As a starting point, the public, as well as legislators and board members who must vote on the maps, need to be able to identify the precise boundaries of proposed districts. Instead, only static pictures of the entire State and larger counties were posted on the Secretary of State's Website (www.reshapeohio.gov), even though the site contained mapping software which could have allowed for an interactive version of the proposed congressional and state legislative districts, so that the boundaries could be examined in detail. Thus the maps only provided the public with approximate district boundaries.

But, the actual district boundaries are just the first step. In order to evaluate the maps it is important to know how the new districts will affect future elections – what are the indexes for each district and how many districts favor each party? Additionally, it is important to know the compactness measure for the proposed districts, as well as the number of governmental units which are split. This type of information allows one to objectively compare proposed plans.

Instead of providing this information, the proponents of the new congressional and state legislative districts concealed this information – not because they didn't have it, but because

¹⁹ Proposed timelines discovered in the public records demonstrate an early plan to hold the maps “in the can” until the last minute. See p. 13 herein.

they didn't want to let the public see it.²⁰ But for OCAR, this information would not have been available to the public at all. OCAR, after making repeated requests, obtained block equivalency files²¹ for the proposed districts and was able to evaluate each proposed map using the same criteria as used in its citizen completion.

Were nonpartisan redistricting criteria used?



The lack of nonpartisan redistricting criteria is most apparent when the congressional and state legislative maps were compared with maps generated through the citizen competition and scored using these criteria. Mathematical formulas were used to score the competition maps based on the following nonpartisan criteria:²²

- Compactness
- Minimizing the number of county and municipalities split into different districts
- Competitiveness – maximizing the number of districts which either party could win
- Representational fairness – balancing the number of districts which favor each party

The maps of the new congressional and state legislative districts were scored using the same formulas used to score the competition maps and they couldn't compete with maps generated from the competition. In fact the congressional maps scored dead last!²³

This was most apparent with the congressional maps. 53 congressional district plans were submitted during the competition. Not only did all 53 plans score higher than the congressional plan adopted by the Legislature, but it wasn't even close, as is shown by the following table which shows for comparison purposes the scores for the 1st place, 10th place, and 53rd place competition plans, as compared to the congressional plan (HB 319) which was adopted by the Legislature.

²⁰ Through public record requests, documents have been discovered which show the political indexes for each district as determined by the mapmakers. App. pp. 108-109, 111-121. See also, pp. 18-19 herein where this issue is discussed in more detail.

²¹ A block equivalency file is a two column spreadsheet which identifies the district in which each of Ohio's 300,000 census blocks are located. It is the data that any software program needs to create a district map.

²² For more information on nonpartisan redistricting principles see [A Citizen's Guide to Redistricting](#), published by the Brennan Center. Available at:

http://www.brennancenter.org/content/resource/a_citizens_guide_to_redistricting/

²³ App. p. 10.

Competition Scores for Congressional Plans²⁴

1 st place ²⁵	222.6
10 th place	194.7
53 rd place	84.1
HB 319	38.5

A closer examination of the districts which were adopted demonstrates why they scored so low when evaluated based on nonpartisan redistricting criteria. The first place plan resulted in 11 of the state’s 16 congressional districts being heavily competitive, which was defined as having a political index in which neither political party had an advantage of more than 5%. The HB 319 districts which were adopted had no districts which were heavily competitive and only two districts in which the difference in the political index was less than 10%.²⁶ As a result, we can already determine which party’s candidate is likely to be elected in each of Ohio’s 16 congressional districts for the next ten years. This deprives Ohioans of having a meaningful opportunity to hold their congressmen accountable in future elections.

Ohio’s new congressional districts will likely result in an Ohio congressional delegation of 12 Republicans and four Democrats for the next decade regardless of whether most Ohioans vote for the Democratic or Republican candidate. In contrast, under any of the top ten congressional plans generated through the citizen competition, the ultimate balance of Ohio’s congressional delegation will depend on the preferences of the voters.

This type of partisan imbalance was created by splitting up counties and municipalities in a way that packed Democratic voters into four congressional districts and provided comfortable Republican majorities in the remaining 12 districts. This resulted in splitting every major Ohio city and 27 counties into different districts. In comparison, the winning congressional map kept cities intact and split only five counties into separate districts.

Was the criteria used to evaluate plans identified?

Witness: Will you consider competitiveness as a criteria [sic] in selecting a plan?

Apportionment Board Member: I would suggest, respectfully, that’s outside the scope of this hearing?

.....

Witness: What criteria will you use to adopt a plan?

²⁴ For a spreadsheet listing the scores for all 53 competition plans, as well as the HB 319 districts which were adopted, see App. p. 10.

²⁵ The first place plan was authored by Mike Fortner and on Sept. 12 was submitted to the Legislature for consideration as OCAR-C. See App. pp. 11-16.

²⁶ See App. pp. 110 for the political indexes for the HB 319 congressional districts as determined by OCAR.

Apportionment Board Member: Once again, I'm afraid that that's a little bit outside the context of this.²⁷

--Testimony from the Aug. 25 regional Apportionment Board Hearing

Despite repeated requests, neither the Apportionment Board nor the Legislature ever clarified how they would choose among various plans.²⁸ Rather, they indicated that they would follow the legal requirements in adopting a plan. Since the regional hearings both by the joint legislative committee and the representatives of the Apportionment Board were held before any official maps were available, the only substantive issue which could be determined at the regional hearings would have been the development of criteria by which plans would be evaluated. However, the officials with the power to determine the districts did not wish to restrict themselves to any specific criteria. This allowed them to defend the plans they adopted as being fair and constitutional without having any standard by which that could be measured.

The closest those who would approve the maps came to addressing redistricting criteria was to start the July 20 joint legislative hearing in Columbus with a redistricting presentation by the Legislative Service Commission.

During the presentation, the following were listed as traditional redistricting principles:

- Compactness
- Contiguity
- Preservation of political subdivisions
- Preservation of communities of interest
- Preservation of cores of prior districts
- Protection of incumbents²⁹

This listing of traditional redistricting principles is somewhat odd. Contiguity is not a principle by which plans are evaluated, but rather is a minimum legal requirement of any district. Moreover, achieving representation fairness and competitive districts are routinely considered to be important nonpartisan criteria, but are absent from this list. However, since neither the

²⁷ State Auditor David Yost, one of five members of the Apportionment Board refused to answer the simple question posed by Alice Schneider of the League of Women Voters of Greater Cincinnati at an Aug. 25 regional hearing of the Apportionment Board. Yost went on to say that the criteria used were up to the conscience of each member of the Apportionment Board. Complete transcript available at:

<http://www.sos.state.oh.us/sos/upload/Reshape/AppportionmentBoard/transcripts/2011-08-25-Cincinnati.pdf>

See pages 23-26 of the transcript at App. pp. 158-161.

²⁸ At the Aug. 26 regional hearing in Columbus, Secretary of State Jon Husted said he would follow the law, but refused to clarify how he would choose among competing legal plans. Complete transcript is available at:

<http://www.sos.state.oh.us/sos/upload/Reshape/AppportionmentBoard/transcripts/2011-08-26-Columbus.pdf>

See pages 14-16 of the transcript at App. pp. 1659-161. The issue was raised multiple other times including at various legislative hearings which hearings are not recorded.

²⁹ A copy of the PowerPoint presentation made by LSC is available at:

<http://www.sos.state.oh.us/sos/upload/reshape/testimony/2011-07-20-Jacobsen.pdf>

legislators nor the Apportionment Board ever publicly agreed upon a set of criteria to use, the public was left in the dark as to how plans would be evaluated.

Final Grade – D minus:

In an effort to search for the positive, the following small steps were taken by the Legislature and Apportionment Board which should continue in future redistricting cycles – although with changes as noted:

REPORT CARD				
GRADING PERIOD	1	2	3	4
Mathematics	A			
Science	A			
Language Arts	C			
History	S			
Physical Education	A			
Art	A			
Music	A			
Foreign Languages	C			
Health				
Other				
Overall Average				
Teacher				
Parent				
Student				

1. **Regional public hearings.** Holding regional hearings was a positive step and one that has the potential to help involve the public in the redistricting process. However, it would have been more beneficial to hold regional hearings after proposed maps were available to review and comment upon. Additionally, more should have been done to publicize the hearings,³⁰
2. **Public testimony.** Throughout the process both the legislative committees and the Apportionment Board did permit numerous concerned citizens including multiple representatives of the League of Women Voters and other interested organizations to provide public testimony. We would urge the officials in the future to fully consider the public input and not just use this as window dressing.
3. **Testimony by map drawers.** The authors of the official Apportionment Board map, Ray DiRossi and Heather Mann, both testified in a public hearing which provided some glimpse into what otherwise took place out of public view. It is unfortunate that they did not also testify about how they drew the congressional maps. Finally, it was disappointing that during DiRossi's testimony he needed to repeatedly consult with legal counsel before answering questions, which created a strong appearance that he was being very cautious about what he revealed.

However, on balance the lack of actual transparency was woeful. Decisions were made in private. Public input was ignored. Maps were unveiled at the last minute and raced through the process in an effort to avoid public scrutiny. And negotiations continue to take place behind closed doors as if the politicians from each political party are the only interested party.

Today's technology provides the opportunity to easily share information with the public. The public redistricting competition demonstrated that members of the public can create quality nonpartisan redistricting maps. Our politicians need to remember that they work for the public.

³⁰ News releases were not sent to local media where the hearings were held. In fact, the reporter for the Zanesville newspaper who attended the joint legislative hearing held in Zanesville only learned of the hearing that morning from his editor who had seen a Columbus media report. Nothing had been published in the local newspaper to announce the hearing. It is not surprising that only a handful of people attended the Zanesville hearing.

Secrets Uncovered

“The liberties of a people never were, nor ever will be, secure, when the transactions of their rulers may be concealed from them . . . To cover with the veil of secrecy the common routine of business, is an abomination in the eyes of every intelligent man.”

Patrick Henry

Secrecy was the game plan.

From the start, the plan was to determine the new districts in secret. This strategy was handed down from national party leaders and included private meetings, a secret office, and a plan to keep maps under wraps until the last minute.

Secrecy strategy – As early as May 2010, the Republican National Committee³¹ conducted training on redistricting. The theme of the training was – “Keep it secret, keep it safe.”³² The training was attended by Michael Lenzo, Ohio House Majority Counsel. Materials from the training were provided to Heather Mann and Ray DiRossi, who were assigned to draw the Ohio maps. John Morgan who provided this training served as a consultant to the Republican officials in charge of Ohio’s redistricting efforts.³³ The plan to keep maps secret until the last minute is also apparent from proposed timelines found in the files of the redistricting officials. These called for completing the congressional map by Aug 19 and then holding it “in the can” until the Legislature came back Sept. 13-14.³⁴ The Apportionment Board timeline called for plans to be submitted by Sept. 23 and voted on Sept. 28 or 29.³⁵



Secret meetings – Even though Ohio’s Sunshine Law generally requires “public officials to take official action and to conduct all deliberations upon official business only in open meetings unless the subject matter is specifically excepted by law,”³⁶ every effort was made to conduct all of the deliberations in private.³⁷ On July 7 & 8, 2011 each Republican member of the Ohio Apportionment Board, as well as their staffs, met separately with the consultant John Morgan, as well as legal counsel, to discuss

³¹ We assume that the Democratic Party provided similar advice for use in states where Democrats controlled the redistricting process.

³² See App. p. 17 for the first PowerPoint slide presented at the training.

³³ See App. pp. 19-21 for e-mails describing Morgan as a consultant and arranging meetings with him.

³⁴ See App. p. 24.

³⁵ App. p. 23. Record obtained from the files of Ray DiRossi, Joint Secretary of the Apportionment Board. See also DiRossi’s e-mail of Sept. 1, 2011 where he commands that no external maps be printed. App. p. 27.

³⁶ R.C. 121.22(A).

³⁷ While the Ohio Legislature has largely exempted itself from following the requirements of the Ohio Sunshine Law, no such exemption occurs for the Ohio Apportionment Board. See Ohio Adm. Code 011-1-03, as adopted by the Apportionment Board on Aug. 4, 2011. App. p. 167.

redistricting strategy.³⁸ Starting July 11, 2011 weekly redistricting meetings were held among the staff of the Governor, Auditor, Senate President, House Majority Leader, and the Secretaries of the Apportionment Board.³⁹

Hotel used as secret redistricting office – At a taxpayer cost of \$9,600, redistricting officials rented a downtown hotel room from July 17, 2011 to Oct. 15, 2011 to use as a secret redistricting office.⁴⁰ The address of the hotel room never shows up on any correspondence. Meetings scheduled for the hotel room appear to be described as meetings in the “bunker” or simply as “off site.”⁴¹ The purpose of renting the hotel appears to be twofold – to ensure that no one could gain access to the redistricting plans and to provide a place where those drawing the maps could meet with interested parties without being seen by other staff.⁴²

Using “attorney-client privilege” to keep records secret – The Apportionment Board hired Washington D.C. attorney Mark Braden to serve as legal counsel, even though the Ohio Attorney General is their statutory legal counsel. Braden served for ten years as chief legal counsel to the Republican National Committee and promotes himself as being the “father of soft money.”⁴³ House Majority Counsel Michael Lenzo has refused to provide records of any communications with Braden on the basis of attorney-client privilege.⁴⁴ It appears that Braden did more than simply provide legal advice. Rather, he was involved in redistricting strategy. He hired consultant John Morgan and participated in meetings with him and Ohio redistricting officials.⁴⁵ The secretaries of the Apportionment Board submitted draft maps to him for consideration.⁴⁶ Braden’s name is even listed as the author of one of the final three congressional plans considered by Republican legislative leaders.⁴⁷

\$210,000 secretly paid to two Republican staffers.

At its initial meeting on Aug. 4, 2011 the Ohio Apportionment Board named Ray DiRossi and Heather Mann as its joint secretaries. It was assumed that DiRossi and Mann were working as state employees as both had been employed by the House and Senate.⁴⁸ However, a public records search revealed that neither were state employees while the Apportionment Board met.⁴⁹ Instead, each were paid \$105,000 (\$210,000 total) through contracts the Republican

³⁸ See App. pp. 19-21 for sample e-mails arranging these meetings. Note that the Ohio Supreme Court has held that the requirements of the Sunshine Law cannot be avoided simply by holding a series of separate back to back meetings with individual members of a public body. *State ex rel. Cincinnati Post v. City of Cincinnati*, 76 Ohio St.3d 540, 542, 1996-Ohio-372.

³⁹ See App. pp. 19-22 for sample e-mails arranging these meetings.

⁴⁰ Room 601 of the Doubletree Suites, 50 South Front St, Columbus was rented. The normal guest room furniture was moved out of the room and computers with internet connections were hooked up. See App. pp. 29-34 for documents describing the arrangements made with the hotel.

⁴¹ See App. 22, 35-36 for sample references to such meetings.

⁴² For the two weeks prior to the hotel room being rented, efforts were made to ensure that only two Senate and two House staff could have access to the state facilities in which redistricting business was being conducted. See App. p. 29.

⁴³ See App. p. 38 for Braden’s bio, as posted on his firm’s website at <http://www.bakerlaw.com/emarkbraden/>.

⁴⁴ See App. pp. 39-40.

⁴⁵ See App. pp. 19-21.

⁴⁶ See App. pp. 84.

⁴⁷ See App. p. 109.

⁴⁸ DiRossi and Mann were described in media reports as legislative staff. See App. pp. 62-65.

⁴⁹ See App. pp. 66-69.

Legislative Task Force members entered into with Policy Widgets, LLC and Capital Advantage, LLC, which were companies Mann and DiRossi established.⁵⁰

Mann resigned from the House on Aug. 4 and returned to the House payroll on approximately Nov. 11, during which time she was paid under the contract with Policy Widgets.⁵¹ This resulted in Mann's compensation increasing over six fold during the 14 weeks she was compensated under the redistricting contract (\$1202/wk as House employee to \$7,500/wk under the contract).⁵²

By contracting with Policy Widgets and Capitol Advantage, rather than contracting with Mann and DiRossi personally, or having them on the payroll as state employees, Republican officials were able to hide the lucrative payments they were making to close staffers.



Heather Mann is looking over the Governor's shoulder, while Ray DiRossi is standing on the far right. Others in the photo include Chad Hawley, Ohio House Majority Caucus Director of Policy; Troy Judy, Speaker Batchelder's Chief of Staff; Mike Dittoe, House Majority Communications Director; and Mike Lenzo, Majority Legal Counsel.

Congressional map approved by Boehner

When Rep. Huffman testified in support of HB 319, he was asked who drew the map. He advised that it was drawn by staff. This was partially true. Heather Mann and Ray DiRossi were the Ohio staff responsible for the map. However, their direction came from Tom Whatman,

⁵⁰ See App. pp. 41-61, for copies of the contracts, record of payment, and record regarding the companies. In addition to being paid \$105,000 each, Policy Widgets and Capital Advantage were reimbursed for any expenses incurred. The sole obligation of Policy Widgets and Capital Advantage was to provide the services of Mann and DiRossi. Neither company appears to have any other staff or employees.

⁵¹ See App. pp. 67-70.

⁵² House compensation is available at <http://das.ohio.gov/Divisions/HumanResources/HRDOCBPolicy/StateEmployeeData/StateEmployeeSalaries.aspx>. See also App. p. 70.

Executive Director of Team Boehner,⁵³ and Adam Kincaid, Redistricting Coordinator for the National Republican Congressional Committee.⁵⁴

During the weekend before HB 319 was introduced, Senator Keith Faber and Senator Chris Widener sought modifications to the map. However, Senate President Thomas Niehaus made clear that the critical requirement was to create a map which Speaker Boehner fully supported.

“I am still committed to ending up with a map that Speaker Boehner fully supports, with or without votes from two members of leadership.”

Sept. 11 e-mail from Niehaus to Whatman⁵⁵

The next morning when Ray DiRossi provided Senator Niehaus with the final map for his approval, Niehaus’ question was: “Did Whatman sign off?”⁵⁶

If there is any question about Boehner’s influence, look what happened in the 16th Congressional District.

Mapmakers were chasing campaign money



Not only were politicians choosing their voters, but redistricting was used to maximize potential campaign contributions. This is most obvious in the 16th Congressional District, where a puppet shaped peninsula was carved into Canton and attached to the District. The total population in this peninsula is zero! No other portion of Canton is in the 16th District.⁵⁷

This zero population area was attached to the 16th District because it contains the Timken manufacturing plant and their corporate headquarters. Those connected with Timken are major campaign contributors to Congressman Renacci.⁵⁸ Keeping the plant in his district gave these contributors a reason to continue to contribute to Renacci.



So, who requested this bizarre change? None other than **Tom Whatman, Chief Executive of Team Boehner, requested this**

⁵³ Team Boehner was established in January 2011 to be part of a collaborative effort to support Republican Congressional candidates across the country. As Executive Director, Whatman is responsible for overseeing all of Speaker John Boehner’s political operations. See App. p. 71.

⁵⁴ See App. 79-85 for sample e-mails exchanged among the group during the drafting process.

⁵⁵ App. 73.

⁵⁶ Sept. 12 e-mail from Senate President Niehaus to Ray DiRossi. App. p. 74.

⁵⁷ See App. 102-104 for complete maps.

⁵⁸ According to an investigative report published in the Canton Repository on Nov. 14, 2011, Timken executives and their spouses, Timken’s board members, Timken family members, and a PAC associated with Timken have contributed over \$120,000 to Renacci during the past two years.

carve out the night before HB 319 was introduced and it took only 8 minutes to get this approved!

Sept 12 e-mails

9:28 PM - Whatman to Kincaid and DiRossi: “Guys: really really sorry to ask but **can we do a small carve out down 77 in Canton and put Timken hq in the 16th**. I should have thought about this earlier.”

9:36 PM - Kincaid: “**Yeah, sure, no problem.** Ray/Heather, do you want me to do it and send the file over, or will y’all do it?”

9:36 PM - DiRossi: “You do and get equivalence file⁵⁹ to us asap. Thanks.”

9:39 PM - Kincaid: “10-4”

9:41 PM – Whatman: “Thanks guys. **Very important to someone important to us all.** I really should have thought of this.”⁶⁰

Speaker Boehner’s control over this process is demonstrated by the fact that there was no hesitation to honor this request and no explanation was necessary. Moreover the change was made after Ohio House Speaker William Batchelder and Senate President Thomas Niehaus had already signed off on the bill.⁶¹ DiRossi apparently understood that he was to make changes requested by Boehner without the necessity of obtaining further approval from Batchelder, Niehaus, or the bill’s sponsor.

The 15rd Congressional District also has two strange peninsulas which reach into Franklin County. One reaches Congressman Stivers’ new residence in Upper Arlington. The other stretches into downtown Columbus to pick up various business interests, including several banks and Nationwide Insurance. Some have speculated that this was also done with potential Stivers’ contributors in mind. While we have not uncovered records to establish this, the records do show that one of the final changes to the map was an edit to the Stivers’ district.⁶²

The records establish that Speaker Boehner was not the only one concerned about how redistricting would affect campaign funds. The map drawers also looked at how redistricting would affect funds needed for state legislative races. One week before the state legislative districts were released, Ohio House Majority Caucus Chief of Staff Troy Judy provided Ray DiRossi with an analysis which ranked the top 43 state house districts by the amount of in kind

⁵⁹ Equivalence file would be short for block equivalency file which is the basic data for any redistricting plan, as it identifies the district into which each census block is assigned.

⁶⁰ See App. pp. 99-101 for complete e-mail exchange. HB 319 was introduced on Sept. 13, 2011 and unveiled at the House State Government and Elections Committee that afternoon.

⁶¹ The final manipulations to the congressional map were made over the weekend of Sept. 10 – 11. On Monday, Sept. 12, Speaker Batchelder and President Niehaus signed off on the congressional map, which was introduced as HB 319 on Sept. 13.

⁶² See App. pp. 96, 98. The e-mails are not clear as to the nature of the change to this district.

campaign contributions provided by the Republican Party or caucuses.⁶³ DiRossi’s response was:

“But we have made significant improvements to many HDs on this list. Hopefully saving millions over the coming years.”⁶⁴

Republican mapmakers analyzed political indexes to maximize Republican seats

No political data was presented when HB 319 was introduced or when the state legislative districts were unveiled. However, this data not only existed, but had been thoroughly analyzed with the explicit goal of increasing the Republican advantage in multiple districts. By early July Republican map drawers had agreed upon the indexes they would use to evaluate districts.

They made a strategic decision to evaluate districts under the most favorable Democratic conditions, so that Republican candidates could safely win a solid majority of districts even in a heavily Democratic year. To do this they generally evaluated districts two ways. The first was to look at the percentage of votes which McCain received in a district in the 2008 Presidential race. Since McCain received 46.9% of the vote which is approximately 5% less than a typical statewide Republican candidate would receive.



The second comparison was to create what they labeled as a “unified index” which was based on the 2004 Presidential race, the 2006 Attorney General and Auditor’s races, the 2008 Presidential race, and the 2010 Governor’s race. Since this included two races in which the Democratic candidate won by approximately 5% and no races in which the Republican candidate won by more than 2%, this resulted in a Democratic leaning index. For the congressional districts, they also looked at the 2010 Attorney General race. Charts were created which provided the following information for each district: the incumbent, the indexes, and how much the McCain vote and the unified index changed.⁶⁵

Republican map drawers concluded that 12 of the 16 new congressional districts favored Republicans and that only the 14th District (LaTourette) could be considered a swing district.⁶⁶

⁶³ There were 18 house districts in which the over \$1 million in Republican in kind funds were provided, with the most expensive being the 20th and 18th house districts, which each topped \$3.3 million. See list in Judy e-mail at App. pp. 106-106. See App. p. 107 for a breakdown of who won in the various districts on the list.

⁶⁴ App. p. 106.

⁶⁵ See App. pp. 108-109, 111-121. The state legislative district charts also included when each candidate was term limited, information which would only be needed if one were interested in evaluating future elections.

⁶⁶ See App. p. 108. Because the 14th district is bordered by Lake Erie to the north, Pennsylvania to the east, and Democratic areas to the south and west, it is not possible to make the district significantly more Republican. This analysis is very similar to

Heather Mann analyzed the number of state house districts that were 50+, 52+, and 55+ under both the unified index and the 2008 Presidential index. No matter which analysis was used the number of favorable Republican districts markedly increased under the new maps. Mann determined that under the unified index the number of districts which were 52+% Republican increased from 48 to 57 and the number of districts which were 55+% Republican increased from 36 to 44. Mann’s analysis is very similar to the OCAR analysis, as both concluded that the number of strong Republican house districts increased by 8 to 9 seats.⁶⁷ Mann concluded:

- We now have a majority of seats that lean Republican (50% or better) on 2008 Presidential numbers.
- Previously, to retain a 50+ seat majority under 2008 Presidential year conditions, we had to win all seats above a 49.14%; now we only have to hold 50 or more seats that are 50.94% or better.⁶⁸

Multiple maps considered

In an effort to obtain the most advantageous possible districts, multiple different configurations were considered. For example by Sept. 10, two weeks before the state legislative districts were unveiled, between 11 and 21 different Franklin County maps had been considered.⁶⁹



Four primary congressional maps were considered,⁷⁰ which would have paired the following congressmen:

- Kaptur/Kucinich & Sutton/Fudge (labeled 4-way split)
- Gibbs/Johnson & Kaptur/Jordan & Sutton/Fudge (open seat in Franklin Co)
- Turner/Austria & Kaptur/Kucinich & Sutton/Fudge (open seat in Franklin Co)
- Turner/Jordan & Kaptur/Kucinich & Sutton/Fudge (open seat in Franklin Co)

This evolved into two Sept. 2 variations of the Turner/Austria pairing and finally a Sept. 8 variation of the Turner/Austria plan. The final three versions also changed the Sutton/Fudge pairing to a Sutton/Renacci pairing.⁷¹ While the precise reasons one map was chosen over another can not be conclusively determined from the records, several things are apparent.

the OCAR analysis which Republican officials criticized. OCAR identified the map as a 12 – 4 Republican map with only the 6th and 14th districts being potentially competitive. App. p. 110.

⁶⁷ App. pp. 130-131.

⁶⁸ App. p. 122. Since 1.6% of the voters in the 2008 Presidential election voted for a candidate other than McCain or Obama, that if McCain received at least 49.2% of the vote, he was likely the winning candidate in the district.

⁶⁹ See App. pp. 132-133 which lists options 5 through 11, along with the political indexes for each option and which legislators would end up in the same house districts and the senate districts in which various house members would end up. The accompanying e-mail describes option 11 as version 21.

⁷⁰ See App. p. 109 for a chart which lists each potential configuration, along with the percentage of votes received by McCain in each proposed district.

⁷¹ The Sept. 8 and one of the Sept. 2 revised maps are listed with the name “Whatman” (chief executive of Team Boehner). The other Sept. 2 revised map is listed with the name “Braden” (legal counsel). App. p. 109.

13 – 3 Republican map effort. The number of attempted GOP seats is listed for each map.⁷² The 4 way split map is the only one which attempts to obtain 13 Republican seats. This map was likely rejected because while it created 13 seats which favored Republicans, in four of the 13 Republican districts McCain received less than 50% of the vote.

Jordan. There was much speculation prior to the congressional maps being released, that Speaker Boehner would attempt to create a district which punished Congressman Jim Jordan because he led a faction in the Republican congressional caucus that opposed Speaker Boehner on various budget compromises. In one plan Jordan was paired by Republican Congressman Turner. In another he was paired with Democratic Congressman Kaptur in a Democratic district. While these options were rejected, it is unknown whether possible retaliation against Congressmen Jordan was a reason these plans were created.

Sutton/Renacci. It is likely that Congressman Sutton was moved out of Congressman Fudge’s district and into Congressman Renacci’s district in order to appease African-American legislators, with whom Republican officials were negotiating in an effort to pick up some Democratic votes.⁷³ Moreover, since the Sutton/Renacci district is strongly Republican and only includes 25% of Congressman Sutton’s former district, pairing these two Congressmen into the same district does little to jeopardize Republican control of the district.⁷⁴

Widener. During the final weekend before the proposed congressional map was unveiled, State Senator Chris Widener, with the support of other current and former Clark County legislators, strongly advocated that the congressional map keep Clark County in a single district.⁷⁵ This request was rejected because it would have made the district prepared for Congressman Stivers less Republican.⁷⁶ The Boehner team described that request as “crazy.”⁷⁷ This demonstrates how little concern there was about splitting up counties and cities if to do so would provide a greater political advantage.

Faber. Also during the final weekend before the proposed congressional map was unveiled, there were multiple discussions, e-mails, and exchanges of proposed maps between State Senator Keith Faber and Ray DiRossi. Under the original maps, Mercer County was divided into two congressional districts, with Faber’s residence (7025 Dibble Rd., Celina) being in the 8th Congressional District (Boehner) and the rest of the County in the 5th Congressional District (Latta).⁷⁸ Different options were considered, apparently to move Faber into the 4th Congressional District (Jordan). Ultimately, the map proposed in HB 319 divided Mercer County

⁷² App. p. 109.

⁷³ Three African-American House members and two African-American State Senators (all Democratic) joined with Republican legislators to vote for HB 319. Moreover, a Democratic district within Franklin County was created, which was something that some African-American representatives had requested.

⁷⁴ See App. p. 97. This may have also been an additional reason that the Boehner team wanted to make sure that Congressman Renacci still had the benefit of the Timken contributors. See pp. 16-17 herein.

⁷⁵ See App. pp. 73, 94.

⁷⁶ See App. p. 87.

⁷⁷ See App. p. 87.

⁷⁸ See App. pp. 73, 86, 89-93.

into three districts, with a small segment which included Faber’s residence being attached to the 4th Congressional District.

Continued Mysteries

The rule in Ohio is that public records are the people's records, and that the officials in whose custody they happen to be are merely trustees for the people; therefore anyone may inspect such records at any time, subject only to the limitation that such inspection does not endanger the safety of the record, or unreasonably interfere with the discharge of the duties of the officer having custody of the same.

The Ohio Supreme Court

Patterson v. Ayers, 171 Ohio St. 369 (1960).

In an effort to discover the elephant in the room, on October 7, 2011 we issued multiple public records requests. This was followed by a few later requests. While numerous records have been provided in response to these requests, the following requests remain outstanding:⁷⁹

- Speaker William Batchelder – Oct. 7, 2011⁸⁰
- Mike Dittoe, House Communications Director – Oct. 7, 2011⁸¹
- Rep. Matt Huffman – Oct. 7, 2011⁸²
- Speaker John Boehner – Oct. 7, 2011⁸³
- Congressman Steve LaTourette – Oct. 7, 2011⁸⁴
- Speaker William Batchelder and Leader Armond Budish – Nov. 3, 2011⁸⁵
- Clerk of Ohio House – Nov. 21, 2011⁸⁶



Records have been received from Governor Kasich, Senator Niehaus, Senator Faber, Leader Budish, Heather Mann, Ray DiRossi, and the Legislative Services Commission, although even in these instances significant records have been withheld on the basis of attorney-client privilege.

Much of what happened in the backrooms remains unknown. Most notably, since late October negotiations among legislative leaders have taken place behind closed doors to attempt agree

⁷⁹ In addition to those listed below, an Oct. 7, 2011 public record request to Ray DiRossi and Heather Mann remains partially outstanding, although most of the requested records have been provided.

⁸⁰ App. p. 134.

⁸¹ App. p. 136.

⁸² App. p. 138.

⁸³ App. p. 140. Members of the U.S. Congress are not required to respond to either public record or Freedom of Information Act Requests, although they may do so.

⁸⁴ App. 142. Members of the U.S. Congress are not required to respond to either public record or Freedom of Information Act Requests, although they may do so.

⁸⁵ App. p. 144.

⁸⁶ App. p. 145.

upon a new congressional map. The parties involved have publicly disclosed that multiple maps have been exchanged in an effort to reach a compromise. Yet, these proposed maps have never been released even though more than a month has gone by since they have been requested.⁸⁷

While it is commendable that legislative leaders are trying to reach a compromise, they seem to forget that the goal should not be to agree upon a map which the Republican politicians like and the Democratic politicians can tolerate – but that the goal should be to adopt a map which is in the public interest. While individual legislators may have a desire to create districts in which they can easily be elected, the public has an interest in creating districts in which the voters will actually decide who is elected.

A number of changes were made to the state legislative districts based on private requests of individual legislators, as this was acknowledged at the Sept. 28th meeting of the Ohio Apportionment Board. But, we don't know how many other requests were made and why some were honored and some denied.

So, we still don't know –

- What maps have been exchanged in private?
- What lobbying did individual legislators or congressmen engage in regarding their district boundaries?
- What other district boundaries were manipulated to facilitate political fundraising?
- What else was discussed in the political backrooms?

Conclusion

Establishing the boundaries of legislative and congressional districts has historically been an insider issue. However, it is an issue which is central to our democracy. How these lines are drawn largely determines who may be elected and more importantly who will make our laws. This is an issue which affects us all.

Our goal is to shine a light on this process both to expose what took place in the backrooms and to help provide a roadmap to how we might do better in the future so that the voters can choose their politicians instead of the other way around.

⁸⁷ App. p. 144.