

IN THE SUPREME COURT OF OHIO

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145 S. St. Clair St. Unit 28
Toledo, OH 43604

Relators,

v.

Case No. _____

Original Action Filed Pursuant to Ohio
Constitution, Article XI, Section 9(A)

*[Apportionment Case Pursuant to S. Ct.
Prac. R. 14.03]*

Ohio Redistricting Commission

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Columbus, OH 43215

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77 South High St. 14th Floor
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Senator Vernon Sykes, Co-Chair

1 Capitol Sq. Ground Floor
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Secretary of State Frank LaRose, Member

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Auditor Keith Faber, Member

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Respondents.

**RELATORS' COMPLAINT
IN ORIGINAL ACTION**

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INTRODUCTION

1. Relators bring this action to challenge the constitutionality of Ohio’s General Assembly reapportionment plan (the “2021 Commission Plan”) under Article XI of the Ohio Constitution, which provides the process and rules for reapportionment of Ohio’s General Assembly districts.

2. Last decade, after the 2010 Census, the Republican majority in the Ohio legislature used its control over redistricting to entrench itself in power. Ohio is and was a “purple” state, but, in 2011, mapmakers purposefully drew gerrymandered maps to maximize Republican performance. What resulted is what was intended: Republican supermajorities grossly at odds with voter preferences.

3. Ohio voters strongly objected. And they took action to ensure that voters could choose their state representatives and senators, rather than continuing to allow legislators to choose their voters. Accordingly, in 2015, Ohio voters approved the “Fair Districts Amendments” by an overwhelming majority, expressing an unequivocal desire, purpose, and directive to increase transparency and decrease partisanship in the state legislative redistricting process. The Amendments enshrined reforms in the Ohio Constitution that touch every aspect of redistricting—from composition of the body responsible for apportionment, to procedures used in approving new districts, to substantive criteria for maps, to judicial review of final plans.

4. Notably, the Ohio Constitution now forbids partisan gerrymandering. First, it mandates that the Ohio Redistricting Commission “shall attempt” to draw a General Assembly plan in which “[t]he statewide proportion of districts whose voters, based on statewide state and federal partisan general election results during the last ten years, favor each political party shall

correspond closely to the statewide preferences of the voters of Ohio.” Ohio Constitution, Article XI, Section 6(B).

5. Second, the same section of the Constitution also prescribes that the Ohio Redistricting Commission “shall attempt” to meet the following standard: “No general assembly district plan shall be drawn primarily to favor or disfavor a political party.” *Id.* Section 6(A).

6. The Ohio Constitution thus requires the Commission to draw fair maps that respect traditional redistricting criteria and attempt to achieve partisan proportionality. This reflects a wholesale reversal of the status quo: gerrymandered maps.

7. In seeking to preserve that status quo, the 2021 Commission has treated Ohio voters—and the Ohio Constitution—with contempt. The Commission flatly ignored constitutional deadlines for releasing its proposed maps. Rather than drawing those maps in the light of day after public comment, it adopted maps drawn in secret by the Republican legislative caucuses and presented to the full Commission the same day they were unveiled to the public. And in blatant violation of its constitutional mandate, the Commission adopted maps without even *considering* a standard for proportional representation until *after* voting to approve the maps. The Commission’s disregard of constitutional mandates had its desired effect: the 2021 Commission Plan will preserve the existing Republican supermajority, whereas even the most begrudging attempt to comply with the constitutional directive of proportional representation would give voters an opportunity to elect Democratic legislators in at least 45 percent of General Assembly districts.

8. The Commission’s post hoc rationalization explaining how such a blatantly partisan plan meets the Constitution’s proportional fairness standard defies logic and further demonstrates that the Commission did not even *attempt* to meet any intelligible standard of proportionality during the mapmaking process. Using the Commission’s indefensible reasoning, it would have

been permissible to draw a plan in which 81 percent or more of the state's districts favor Republican candidates, despite the fact that Republicans win only about 54 percent of the statewide vote on average.

9. Maps submitted to the Commission by the public demonstrated that the Commission could have met the standard of partisan proportionality while adhering to all other constitutional requirements. Indeed, the Commission-adopted maps ignored or subordinated traditional redistricting criteria and the interests of communities of color in order to give Ohio Republicans continuing supermajority control of the statehouse.

10. Partisan gerrymandering is an existential threat to our democracy, and it violates the Ohio Constitution, as amended by more than 71 percent of Ohioans just six years ago. As the Florida Supreme Court held when considering the effect of a similar redistricting amendment in its own state, courts have an “important duty to honor and effectuate the intent of the voters in passing [this] groundbreaking constitutional amendment . . . because the people . . . have, through their constitution, entrusted that responsibility to the judiciary.” *League of Women Voters of Fla. v. Detzner*, 172 So. 3d 363, 416 (Fla. 2015).

11. Multiple commissioners bemoaned the plan they voted to adopt. Secretary of State Frank LaRose remarked, “I’m casting my ‘yes’ vote with great unease.” State Auditor Keith Faber added that the plan was not “that bad” but was “not that good either.” Governor Mike DeWine expressed his view that the Commission “could have produced a more clearly constitutional bill. That’s not the bill we have in front of us.” Governor DeWine added that he was “not judging the bill one way or another. That’s up to a court to do.” [Exhibit 1.]

12. The Commission has shown itself to be unwilling to adhere to the Fair Districts Amendments. It left compliance with the Ohio Constitution “up to [this] court to do.” And so, Relators must seek relief before this Court.

NATURE OF THE ACTION AND JURISDICTION

13. This is an apportionment case commenced pursuant to this Court’s original and exclusive jurisdiction under Article XI, Section 9 of the Ohio Constitution.

14. Pursuant to Article XI, Relators seek a determination that the 2021 Commission Plan is invalid.

15. Further, because the Commission’s failure to abide by its constitutional mandate was in bad faith, Relators seek an award of reasonable attorneys’ fees.

16. Relators affirmatively allege that they acted with the utmost diligence and that there has been no unreasonable delay or lapse of time in asserting their rights, and that there is no prejudice to Respondents.

PARTIES

17. Respondents are the Ohio Redistricting Commission (the “Commission”) and its seven members: Co-Chair House Speaker Bob Cupp, Co-Chair Senator Vernon Sykes, Governor Mike DeWine, Secretary of State Frank LaRose, Auditor Keith Faber, Senate President Matt Huffman, and House Minority Leader Emilia Sykes. The Commission voted to approve the 2021 Commission Plan, attached as Exhibit A, and is responsible for creating a new constitutionally-compliant reapportionment plan under Article XI of the Ohio Constitution.

18. Relators are Ohio electors who live in districts that were drawn in violation of Article XI.

19. Relator Bria Bennett lives at 795 Lane West Rd. SW, Warren, OH 44481, which is in Ohio House District 65 and Ohio Senate District 28 in the 2021 Commission Plan.
20. Relator Regina Adams lives at 14360 Rockside Rd., Maple Heights, OH 44137, which is in Ohio House District 22 and Ohio Senate District 21 in the 2021 Commission Plan.
21. Relator Kathleen M. Brinkman lives at 400 Pike St. Unit 809, Cincinnati, OH 45202, which is in Ohio House District 24 and Ohio Senate District 9 in the 2021 Commission Plan.
22. Relator Martha Clark lives at 4439 Filbrun Ln., Trotwood, OH 45426, which is in Ohio House District 39 and Ohio Senate District 5 in the 2021 Commission Plan.
23. Relator Susanne L. Dyke lives at 2558 Guilford Rd., Cleveland Heights, OH 44118, which is in Ohio House District 21 and Ohio Senate District 21 in the 2021 Commission Plan.
24. Relator Carrie Kubicki lives at 13201 Vermillion Rd., Amherst, OH 44001, which is in Ohio House District 53 and Ohio Senate District 13 in the 2021 Commission Plan.
25. Relator Meryl Neiman lives at 2115 Clifton Ave., Columbus, OH 43209, which is in Ohio House District 1 and Ohio Senate District 15 in the 2021 Commission Plan.
26. Relator Holly Oyster lives at 21370 Harrisburg Westville Rd., Alliance, OH 44601, which is in Ohio House District 59 and Ohio Senate District 33 in the 2021 Commission Plan.
27. Relator Constance Rubin lives at 3088 Whitewood St. NW, North Canton, OH 44720, which is in Ohio House District 48 and Ohio Senate District 29 in the 2021 Commission Plan.
28. Relator Everett Totty lives at 145 S. St. Clair St. Unit 28, Toledo, OH 43604, which is in Ohio House District 41 and Ohio Senate District 11 in the 2021 Commission Plan.

LEGAL BACKGROUND

29. The Commission is responsible for redistricting the State’s House and Senate districts in compliance with Article XI of the Ohio Constitution.

30. Article XI sets forth procedural and substantive requirements that the Commission must follow in drawing state legislative maps, with the purpose of providing fair criteria for the reapportionment process and ensuring transparency.

31. Article XI, Section 1 requires “the affirmative vote of four members of the commission, including at least two members of the commission who represent each of the two largest political parties represented in the general assembly” to adopt a state legislative plan for ten years.

32. Article XI, Section 1 further requires the Commission to adopt a general assembly district plan not later than September 1 of a year ending in the numeral one. Prior to approving a plan, the Commission is to release maps for the House and Senate and then hold three hearings on the proposed plan in meetings “open to the public” and “broadcast by electronic means of transmission using a medium readily accessible to the general public.”

33. Article XI, Section 2 provides that “[e]ach house of representatives district shall be entitled to a single representative in each general assembly” and “[e]ach senate district shall be entitled to a single senator in each general assembly.”

34. Article XI, Section 3 explains the process for determining the “ratio of representation in the house of representatives and in the senate” based on the “whole population of the state, as determined by the federal decennial census.” It also requires that the population of each district not deviate from that ideal ratio more than five percent.

35. Article XI, Section 3 then provides that “[a]ny general assembly district plan adopted by the commission shall comply with all applicable provisions of the constitutions of Ohio and the United States and of federal law.” In doing so, Section 3 incorporates all relevant provisions of the Ohio Constitution, as well as the requirements of the Fourteenth Amendment to the United States Constitution and the federal Voting Rights Act.

36. Section 3 also mandates that “[e]very general assembly district shall be composed of contiguous territory, and the boundary of each district shall be a single nonintersecting continuous line.”

37. After setting forth these baseline requirements, Section 3 enumerates each step of the process to draw House districts, specifying criteria for dividing counties, municipal corporations, and townships in drawing district lines.

38. Article XI, Section 4 goes on to specify criteria for the drawing of Senate districts, requiring, for example, that “Senate districts shall be composed of three contiguous house of representatives districts.”

39. Article XI, Section 5 provides a process for determining which senator will represent a Senate district when that district’s boundaries are changed in the General Assembly plan during a senator’s term.

40. Article XI, Section 6 provides plan-wide standards for the Commission:

The Ohio redistricting commission shall attempt to draw a general assembly district plan that meets all of the following standards:

- (A) No general assembly district plan shall be drawn primarily to favor or disfavor a political party.
- (B) The statewide proportion of districts whose voters, based on statewide state and federal partisan general election results during the last ten years, favor each political party shall correspond closely to the statewide preferences of the voters of Ohio.
- (C) General assembly districts shall be compact.

41. Although the Commission may not “violate the district standards described in Section 2, 3, 4, 5, or 7” in an effort to comply with Section 6, the Commission is not free to ignore Section 6’s standards.

42. Article XI, Section 8 sets forth an impasse procedure for when, as is the case here, the Commission fails to adopt a plan with the approval of at least two members of each of the two major political parties. Prior to approving a plan under Section 8, the Commission must hold a public hearing concerning the proposed plan. Under Section 8, a plan must be approved by September 15. Finally, although the Commission may approve a plan by simple majority vote, that plan will remain in effect for only four years and requires the Commission to explain how the plan meets Section 6(B)’s proportionality requirement.

FACTS

A. Before the passage of 2015 redistricting reforms, Ohio’s redistricting process and outcomes were corrupted by excessive partisanship that resulted in districts that did not reflect the will of Ohioans.

43. The reforms to state legislative redistricting enacted in 2015, hereinafter referred to as the “Fair Districts Amendments,” were a response to decades of unfair redistricting practices in Ohio.

44. The Fair Districts Amendments addressed two primary ways hyper-partisan legislators had distorted and coopted the redistricting process in Ohio: (1) gerrymandering of maps to favor the party in power, also known as partisan gerrymandering; and (2) engaging in map-drawing in complete secrecy.

1. Ohio has a history of partisan gerrymandering.

45. Prior to the Fair Districts Amendments taking effect, partisan gerrymandering was rampant in Ohio. [Exhibit 4.]

46. In previous cycles, state legislative maps were drawn by an Apportionment Board consisting of the Governor, Secretary of State, State Auditor, and appointees of the Senate President, Senate Minority Leader, Speaker of the House, and House Minority Leader. The Board could adopt maps by a simple majority, and there was no requirement for bipartisanship in the approval of a final plan. [Exhibit 4.]

47. This process proved to be a recipe for egregious partisan gerrymanders.

48. The 2011 redistricting cycle provides a stark example. Public records obtained from the 2011 Apportionment Board show that mapmakers drew maps with the express purpose of maximizing Republican performance. In choosing between alternative plans, Republicans closely considered how they would perform based on 2004 and 2008 presidential election results, with an eye toward maximizing the number of districts where Republicans performed well. Because 2008 was a particularly unfavorable year for Republicans, a high-performance map would enable Republicans to win a majority of seats even in an election in which Democrats won a majority of votes. [Exhibit 2.]

49. As a consequence of the Board's commitment to maximizing Republican control, the maps that it approved overwhelmingly favored Republicans, and individual races were almost always uncompetitive. According to a League of Women Voters study, it was possible to predict the outcome of all Senate races, as well as almost all House races, in 2012, 2014, and 2016 based exclusively on the partisan index of a given district. [Exhibit 4.]

50. The 2011 gerrymander led to a large gap between the statewide preferences of voters and the partisan breakdowns in each chamber of the General Assembly. For example, in the first elections held under the new maps, a majority of Ohioans voted for the Democratic presidential candidate, but Republicans gained supermajorities in both houses of the General

Assembly. While Ohio regularly sees close statewide elections and has voted for Democratic candidates for President and U.S. Senate in recent years, Republicans presently enjoy majorities of 64-35 in the House and 25-8 in the Senate under the 2011 adopted plan, which is attached as Exhibit B.

2. Ohio's redistricting process lacked transparency.

51. Prior to the Fair Districts Amendments, the process for drawing state legislative districts was not transparent, with major decisions often made behind closed doors without the benefit of public input. Again, the 2011 redistricting cycle serves as both the most recent and most vivid example of this recurring problem.

52. The Apportionment Board's first public meeting of the 2011 cycle took place on August 4, at which time the Board approved a schedule for approving state legislative maps. Under the plan, the Board would not meet again until September 26, just five days before the then-constitutionally mandated deadline by which the Board was required to approve final maps. [Exhibit 2.]

53. The Board did not unveil maps until Friday, September 23, just three days before its September 26 meeting. It approved the maps two days after the meeting, on September 28. [Exhibit 2.]

54. The sparse public record between August 4 and September 28, however, belied a flurry of activity behind closed doors. Throughout the summer and early fall of 2011, Republican members of the Board held meetings in private with Republican operatives and elected officials to craft pro-Republican maps.

55. It was during this time period that Republicans infamously booked a 91-day stay at a Double Tree hotel in Columbus. This room, dubbed "the Bunker" by Republican operatives,

became the staging ground for secret negotiations over state legislative and congressional maps. [Exhibit 2.]

56. Central to this cloak-and-dagger operation were the joint secretaries to the Board, Ray DiRossi and Heather Mann. DiRossi and Mann were responsible for advising the Board on Article XI's then-requirements, and it fell to them to draw the first draft of the Board's maps. Although both were on leave from jobs as staff members in the House and Senate at the time, they were not paid by the state of Ohio during their time as joint secretaries. Instead, they received payments from the Republican Legislative Task Force through companies they themselves had established. [Exhibit 2.]

57. Joint Secretary DiRossi personally booked the Double Tree room that became known as "the Bunker" and worked there throughout the mapmaking process. [Exhibit 3.]

58. The process, as then constituted, left little room for public comment. As noted above, the Board revealed maps just five days before voting to approve them. Additionally, the Board allowed for only ten minutes of remarks from any public proponent of a redistricting plan, amounting to fewer than 5 seconds for each of the 132 districts involved in the plan. [Exhibit 2.]

B. After the 2011 redistricting cycle, the General Assembly and the public voted to reform redistricting in Ohio.

1. The Ohio General Assembly overwhelmingly supported redistricting reforms, citing concerns about partisan gerrymandering, lack of transparency, and deferential judicial review.

59. In late 2014, members of the House introduced HJR 12, a bill to amend Article XI to reform redistricting in Ohio, attached as Exhibit 5. This proposal ultimately became the Fair Districts Amendments, which amended Article XI to its present form (save for a few later changes related only to congressional redistricting).

60. In its as-enrolled form, attached as Exhibit 6, HJR 12 sought to reform the redistricting process in Ohio in several important ways.

61. First, HJR 12 increased transparency. HJR 12 mandated, for example, that the Commission hold three public hearings on a proposed map and that all meetings be open to the public.

62. Second, HJR 12 encouraged bipartisanship in the redistricting process. HJR 12 replaced the Apportionment Board with the Commission. In a change to the previous system, HJR 12 required the votes from two members of the two largest parties represented in the General Assembly to approve a ten-year map.

63. Third, HJR 12 increased fairness in the redistricting process. HJR 12 required the Commission to attempt to draw districts that did not favor one political party and reflected the statewide partisan preferences of Ohio voters. It also provided that if a map was passed on a party-line vote, the Commission was required to explain how the plan corresponded to statewide voter preferences.

64. Finally, HJR 12 provided for robust judicial review of redistricting plans. HJR 12 required courts to strike down entire maps if certain of the rules are not complied with and set forth clear rules the Commission must follow in drawing maps. This stands in contrast to the previous version of Article XI, which did not contain a specific provision on when a map must be struck down and was framed in highly permissive language. It was the prior language in the since-amended Article XI that prompted this Court to conclude, in *Wilson v. Kasich*, that redistricting plans should be reviewed with a high degree of deference and struck down only when relators have established that a plan is unconstitutional “beyond a reasonable doubt.” 134 Ohio St.3d 221, 2012-Ohio-5367, 981 N.E.2d 814, ¶ 24. HJR 12 changes this. Indeed, Commission members from both

parties tacitly acknowledged this changed level of judicial review when questioning the constitutionality of the 2021 Commission Plan after its adoption, noting that it would be this Court—not the Commission itself—that would resolve whether the 2021 Commission Plan passes constitutional muster. [Exhibit 1.]

65. Concerns about partisan gerrymandering and lack of transparency under the then-extant redistricting system pervaded the legislative debates and public statements on HJR 12.

66. For example, Representative Mike Duffey, a Republican from Worthington, remarked during the floor debate on HJR 12 in the House that “right now we have got a redistricting system that does not require any balance. It does not require minority party participation. And I really think that that has been destructive to the legislature—in my experience . . . This is a purple state. Sometimes we lose as Republicans. I think when the shoes are—if the shoe was on the other foot, and the Democrats were in control of two of the three statewide offices, we’d be looking at 60-39 majority the other way. And I don’t think anybody really wants to see government operate that way. They want to see some kind of balance, and I think that this is going to provide that. And so, I strongly support the plan.” [Exhibit 7.]

67. Representative Huffman (now Senate President Huffman, a Commission member) remarked during floor debates on HJR 12, “There’s . . . much more transparency that is dictated—again, this will be in the Constitution—about how the board will meet, when they have to have public meetings, publishing the map before it goes into place for public comment.” [Exhibit 7.]

68. Legislative debates also touched on the more robust judicial standard of review imposed by the new legislation. During debate on HJR 12, Representative Kathleen Clyde, a Democrat, noted, “The Ohio Supreme Court also ruled that the criteria currently in the Ohio

constitution are not enforceable and this plan should help fix that frustrating problem.” [Exhibit 8.]

69. Legislators also discussed the meaning and consequences of the partisan fairness standards under what is now Section 6 of Article XI. Representative John Becker, a Republican from Union Township, Clermont County, speaking in opposition to the resolution, remarked that Section 6(B)’s requirement that a redistricting plan reflect the partisan preferences of Ohio voters as expressed in statewide elections “guarantees—and this could be good or bad depending on your perspective—but it guarantees we will forever have a very close 50/50 split in this Chamber so you’re no longer ever going to see a strong partisan divide. Some people like that and some won’t, I just wanted everybody to be aware you’ll never see this kind of division again.” [Exhibit 7.]

70. HJR 12 passed the General Assembly in December 2014 by a vote of 28-1 in the Senate and 80-8 in the House. [Exhibit 9.] Following approval by the Governor, it was placed on the November 2015 ballot as a popular referendum.

2. Ohioans voted for redistricting reforms in large numbers, in response to ballot language and public campaigns that emphasized bipartisanship, transparency, and fairness.

71. The referendum on the Fair Districts Amendments—known as Issue 1—appeared on Ohio ballots as follows, as seen on the sample ballot attached as Exhibit 10:

Issue 1
Creates a bipartisan, public process for drawing legislative districts
Proposed Constitutional Amendment Proposed by Joint Resolution of the General Assembly

To enact new Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10 of Article XI and to repeal Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, and 15 of Article XI of the Constitution of the State of Ohio.

A majority yes vote is necessary for the amendment to pass.

The proposed amendment would:

- End the partisan process for drawing Ohio House and Senate districts, and replace it with a bipartisan process with the goal of having district boundaries that are more compact and politically competitive.
- Ensure a transparent process by requiring public meetings, public display of maps, and a public letter explaining any plan the Commission adopts by a simple majority vote.
- Establish the bipartisan Ohio Redistricting Commission, composed of 7 members including the Governor, the Auditor of State, the Secretary of State, and 4 members appointed by the majority and minority leaders of the General Assembly.
- Require a bipartisan majority vote of 4 members in order to adopt any final district plan, and prevent deadlock by limiting the length of time any plan adopted without bipartisan support is effective.

If passed, the amendment will become effective immediately.

	YES	SHALL THE AMENDMENT BE APPROVED?
	NO	

72. In seeking approval from the Ohio Ballot Board for the above ballot language for Issue 1, Senators Keith Faber (now Auditor Faber, a Commission member) and Joe Schiavoni, along with Representatives Kirk Schuring and Michael Curtin, submitted a bipartisan statement in support of Issue 1. The statement characterized Issue 1 as establishing “a fair, bipartisan, and transparent process,” which would “establish[] fair and balanced standards for drawing state legislative districts, including that no district plan should favor a political party.” [Exhibit 11.]

73. Issue 1 gained support across the political spectrum, earning the endorsements of both major political parties in the state, as well as the Ohio Chamber of Commerce, Ohio NAACP, Ohio League of Women Voters, Ohio Fraternal Order of Police, Ohio Right to Life, NARAL Pro-Choice Ohio, and many other organizations. [Exhibit 12.]

74. The organizational literature distributed by pro-Issue 1 organizations emphasized the goals of ending partisan gerrymandering and ensuring transparency.

75. The website of the “Fair Districts = Fair Elections Coalition” (the “Coalition”), an umbrella organization of several good-government organizations advocating for Issue 1’s approval, described the then-status quo as follows: “Right now the Ohio Constitution allows one political party in Ohio to draw General Assembly districts to increase partisan advantage instead of ensuring fair representation. In 2011, map-makers labeled the hotel room where they drew maps in secret ‘the bunker’ and used partisan information to draw as many districts as possible for their party. They even changed district lines for a major political donor. If voters amend Ohio’s Constitution by approving Issue 1 in November, they would end a system of hyper-partisan manipulation of state legislative map-making with no transparency and no accountability.” [Exhibit 13.]

76. In its voter guide for the 2015 elections, the League of Women Voters included among the “PROs” in favor of Issue 1: “Prohibits partisan gerrymandering” and “requires transparency and public hearings.” [Exhibit 14.]

77. The literature distributed by the Coalition explained that Issue 1 would “establish clear rules for creating fair districts; require transparency and public input; and create a bipartisan process that requires both parties to work together.” [Exhibit 14.]

78. Fair Districts for Ohio, another coalition supporting Issue 1 started by current Commissioners (and then-state Representatives) Huffman and Vernon Sykes, put up posters explaining that Issue 1 would establish a redistricting process that is bipartisan, transparent, fair, and accountable. The poster noted that to advance fairness, the amendments “protect[] against gerrymandering by prohibiting any district from primarily favoring one political party” and “require[] districts to closely follow the statewide preferences of voters.” To advance the goal of accountability, the Issue “creates a process for the Ohio Supreme Court to order the commission

to redraw the map if the plan favors one political party.” And for transparency, the poster pointed to the many procedural requirements imposed by Issue 1, including that all meetings be open to the public and that the public have an opportunity to comment on a redistricting plan. [Exhibit 15.]

79. Additional literature distributed by Fair Districts for Ohio stated that, once Issue 1 passed, “no longer will politicians be able to meet behind closed doors to carve up the state into safe districts.” [Exhibit 16.]

80. Voters overwhelmingly approved Issue 1 by a vote of 71.47 to 28.53 percent. [Exhibit 17.]

C. The 2021 Commission proceedings were not transparent and produced maps that violate Article XI, as amended.

1. The Commission missed multiple constitutional deadlines and did not actively engage with public input.

81. The Ohio Redistricting Commission held its first meeting on August 6, 2021. The meeting lasted only seven minutes and did not allow for public comment. [Exhibit 18.]

82. Beginning on August 23, the Commission held a weeklong series of ten “public hearings” throughout the state, where the public had the opportunity to provide testimony. The Commission had not released draft maps at this time, meaning the public had no opportunity to comment or provide feedback on the Commission’s intended redistricting approach. [Exhibit 19.]

83. Those members of the public who took the time to speak at these hearings found they were shouting into the wind. Commission members’ attendance at public hearings ranged from spotty to non-existent. Only Co-Chair Senator Sykes attended every session. Governor DeWine did not personally attend a single session; he skipped the first scheduled hearing to attend training camp for the Cincinnati Bengals. [Exhibit 20.] The other members of the Commission also frequently sent proxies. The high watermark for attendance was at the hearing held at Ohio

State University at Lima, where six members attended. Save for that meeting, no more than three members of the Commission attended any other public hearing that week. [Exhibit 21.]

84. Prior to and during the period in which the Commission held these public hearings, no member of the Commission had introduced a map, nor had the Commission, as a whole, proposed a map.

85. At the public hearings, Commission members refused to answer questions and made clear that there would be no debate or dialogue between Commission members and the public. For example, at the hearing held in Cincinnati on August 24, former state Democratic Party chairman David Pepper asked Commission members if they had been in private meetings to discuss state legislative maps. [Exhibit 21.] Commission members refused to answer the question.

86. The Commission reconvened, this time with all members present, on August 31, just one day short of Article XI, Section 1's September 1 deadline to adopt a General Assembly district plan. At this meeting, the Commission merely adopted procedural rules. [Exhibit 22.]

87. The August 31 meeting also saw the first legislative maps introduced by a member of the Commission, as Co-Chair Senator Sykes introduced a plan on behalf of the Senate Democratic caucus. No other maps were submitted on that day. [Exhibit 22.]

88. The maps introduced by the Senate Democratic caucus, updated slightly on September 2 and attached as Exhibit C, complied with all of Article XI's line-drawing criteria. The maps also substantially matched the partisan preferences in the state, which the Senate Democratic caucus determined to be 45.9 percent Democratic and 54.1 percent Republican, based on statewide partisan elections between 2012 and 2020. The Senate Democratic caucus maps would lead to the election of approximately 44 Democrats and 55 Republicans in the House, and 14 Democrats and 19 Republicans in the Senate.

89. During the August 31 meeting, Commission member and House Minority Leader Sykes repeatedly asked Co-Chair Speaker Cupp when members could expect to see a map from any of the Republican members of the Commission. In each instance, Co-Chair Speaker Cupp refused to commit to a date when maps would be released, responding at one point: “obviously when a map is presented, members of the Commission will have an opportunity to weigh in.” Co-Chair Speaker Cupp also indicated that he did not expect Republicans to *propose* a map prior to the September 1 deadline for the Commission to *adopt* a proposed map for public comment; even under Section 8’s impasse provision, September 1 is the final day to propose a map. [Exhibit 22.]

90. The September 1 deadline came and went, and the Commission failed to adopt or even propose, state legislative maps. The Commission thus failed to comply with the deadlines set forth in Article XI, Section 1 or Article XI, Section 8 of the Ohio Constitution.

2. The Commission proposed blatantly partisan maps.

91. With just one week until the final deadline to approve General Assembly maps under Article XI, Section 8’s impasse procedure, the Commission announced on September 8 that it would hold two hearings the following day. The public was given notice of the meetings just 24 hours before the first hearing gaveled to order. [Exhibit 23.]

92. At the first hearing on September 9, Commission member and Senate President Huffman declared his intention to introduce maps to the Commission in his capacity as Senate President. [Exhibit 24.]

93. Shortly thereafter, Senate President Huffman’s maps, attached as Exhibit D, appeared on the Commission website. This was the first the public had seen of any map proposed by a Republican member of the Commission.

94. Senate President Huffman’s maps were officially presented to the Commission that morning by Ray DiRossi—the former joint secretary of the 2011 Apportionment Board and the person responsible for the 2011 “Bunker”—now the Senate Republicans’ finance director. [Exhibit 24.]

95. DiRossi’s presentation focused exclusively on the maps’ compliance with the line-drawing criteria in Sections 3 and 4 of Article XI. His presentation made no reference to partisan proportionality or partisan fairness. [Exhibit 24.]

96. Following the presentation, Co-Chair Senator Sykes asked DiRossi whether the maps complied with Article XI’s requirement that redistricting plans attempt to reflect the partisan makeup of the state and not favor or disfavor any one political party. In response, DiRossi explained that the Republicans’ analysis of the partisan breakdown of the maps was “ongoing.” [Exhibit 24.]

97. Co-Chair Speaker Cupp and Senate President Huffman told the press later that day that the Republican caucuses did not analyze the partisan balance of their maps at all prior to introducing them. [Exhibit 25.] That is, Co-Chair Speaker Cupp and Senate President Huffman confirmed that their maps had not been drafted with any attempt to comply with Article XI, Section 6 of the Ohio Constitution.

98. Nevertheless, the partisan composition of the map that Senate President Huffman proposed would calcify the Republican Party’s supermajority in both houses of the General Assembly. Of the 132 total General Assembly districts, only 31 percent would lean Democratic: 32 of 99 in the House and 9 of 33 in the Senate. Indeed, those numbers would somewhat *reduce* Democratic representation in the General Assembly, in which the members were elected based on

the hyper-partisan maps created in the 2011 Republican Bunker, resulting in Democrats presently holding 35 House seats and 8 Senate seats.

99. Next, House Minority Leader Sykes asked about the Republican plan's compliance with the Voting Rights Act. DiRossi replied that the mapmakers had not considered "racial or demographic" data in drawing the maps. DiRossi explained that leadership in the General Assembly had instructed him to exclude this data from his analysis. [Exhibit 24.]

100. At the second hearing of the day, mere hours after the public had seen the Republican maps for the first time, the Commission voted along party lines to propose Senate President Huffman's maps in their entirety as the Commission's plan. The Commission did not hold a vote on or consider the issue of adopting the Senate Democratic maps or any other map prior to holding a vote on the Republican maps. [Exhibit 23.]

3. Ohioans offered public testimony about the proposed Commission maps' failure to adhere to constitutional and statutory mandates.

101. In the days following introduction of the initially proposed Commission maps, members of the public offered testimony on the maps' effects and its compliance with the Ohio Constitution. [Exhibits 26, 27, 28.]

102. In doing so, speakers often referenced alternative maps that had been submitted by the Senate Democratic caucus and members of the public, including a map proposed by the nonpartisan Ohio Citizens' Redistricting Commission, attached as Exhibit E.

103. Many voters testified about the maps' total inability to achieve anything remotely resembling partisan fairness. One witness called the maps "a joke and a fraud." [Exhibit 29.] Witnesses stressed that under Article XI, maps should correspond closely to the statewide preferences of voters, as expressed in the results of statewide partisan elections. Several witnesses explained that a fair map would result in around 45 percent of districts going to Democrats and 55

percent of districts going to Republicans. [Exhibits 26, 27, 28.] At the September 14 hearing, Commission member and Secretary LaRose, while questioning a witness, himself expressed his understanding that 6(B)'s proportionality requirement would allocate about 45 percent of seats to Democrats and about 55 percent to Republicans. [Exhibit 28.]

104. Under no measurement did the maps do this; instead, upwards of 64 percent of districts favored Republicans under the proposed maps.

105. Witnesses also discussed the maps' failure to respect communities of color. In particular, speakers noted that the maps packed and cracked Black communities throughout the state, thereby limiting the strength of their votes. At the Dayton hearing, for example, one witness noted that (as discussed in more detail below) the Commission-proposed Republican plan drew "black communities in and around Dayton together with white rural [counties]," and another testified that the proposed map "cut off Dayton . . . from [its] suburban neighbors that face challenges similar to [its] own." [Exhibit 26.]

106. Witnesses also chastised the Commission for its purported failure to even consider racial or demographic data in drawing the map. Doing so, speakers stressed, abdicated the Commission's responsibility to ensure compliance with the Voting Rights Act and protect communities of interest. [Exhibit 24.]

107. Testimony was also given about the Republican maps' failure to respect communities of interest. At the hearing in Cleveland in particular, many witnesses complained about being lumped in with communities with which they shared little in common. For example, Catherine LaCroix, a resident of Shaker Heights and co-President of the regional League of Women Voters chapter, noted that under the Republican maps, many of the districts surrounding Shaker Heights had broken apart communities that share school districts, while at the same time

districts “wander across the county to distant points and communities that have nothing in common with.” [Exhibit 27.]

108. Columbus resident Richard Topper shared that “[t]he Republican map puts [his] neighbors to the north, south and east with whom [he] share[s] parks, roads, schools and facilities and Next-Door app in” a different Senate District than his, which includes the entirety of Union County—which “voted 2-1 Republican in 2020.” [Exhibit 30.]

109. Zaiba Malik submitted testimony from West Chester, expressing that she was “disappointed to see how [her] current districts do not include [her] next-door communities that [she] share[s] life experiences with.” [Exhibit 31.]

4. The Commission adopted General Assembly maps that violate the Ohio Constitution.

110. In response to the abundance of testimony delineating gross flaws in the Commission-proposed maps, Co-Chair Senator Sykes introduced two sets of amendments on behalf of Senate and House Democrats. [Exhibit 26.] The second of these amendments was introduced after discussions with Secretary LaRose and Auditor Faber. [Exhibit 32.] The Commission refused to bring either of Co-Chair Senator Sykes’ maps up for a vote.

111. The deadline for adopting general assembly maps under Article XI, Section 8 was September 15, 2021. Shortly before the midnight deadline, the Commission convened to vote on a slightly amended map proposed by Senate President Huffman just that evening. Before the vote was held, Auditor Faber asked whether the Commission had a constitutionally-required statement explaining how the proposed plan complied with Section 6(B) of the Constitution, as required by Article XI, Section 8(C)(2). Senate President Huffman explained that while the statement had already been prepared (in the last few hours), there was no requirement to share it before the vote was cast. [Exhibit 1.]

112. Accordingly, the Commission voted without discussing whether the maps complied with Section 6(B). Instead, the Commission adopted the Republican state legislative maps proposed by Senate President Huffman with few changes (the “2021 Commission Plan”), by a 5-2 party-line vote. [Exhibit 1.]

113. The Commission approved the 2021 Commission Plan a few minutes after midnight on September 16, missing the final constitutional deadline set by Article XI, Section 8. [Exhibit 1.]

114. Even Commission members who voted in favor of the plan expressed strong reservations about it. Prior to casting his “yes” vote, Secretary of State Frank LaRose remarked “I’m casting my ‘yes’ vote with great unease. I fear – I fear we’re going to be back in this room very soon.” [Exhibit 1.] Under Article XI, if the Court declares a redistricting plan invalid, the Commission must then reconvene to consider new maps.

115. Auditor Keith Faber added “[T]his map isn’t that bad. It’s not that good either.” [Exhibit 1.]

116. Governor Mike DeWine expressed his view that the Commission “could have produced a more clearly constitutional bill. That’s not the bill we have in front of us.” [Exhibit 1.] Governor DeWine also added that he was “not judging the bill one way or another. That’s up to a court to do.”

117. The two Democratic Commissioners expressed their view that the adopted plan was plainly unconstitutional.

a. The 2021 Commission Plan’s districts do not match the statewide preferences of Ohio voters.

118. The 2021 Commission Plan does not match the statewide preferences of Ohio voters. Rather, it reflects the partisan preferences of the Republican majority by maintaining—and

even increasing—the number of likely Republican districts. The House map includes 32 districts expected to elect a Democrat and 62 districts expected to elect a Republican. The Senate map includes 9 expected Democratic seats and 21 expected Republican seats.

119. Following a years-long fight by Ohio voters to enact constitutional amendments mandating that maps be fairly drawn, the 2021 Commission Plan achieves the remarkable result of maintaining the status quo. That is, the Commission managed to defang constitutional amendments designed to upend the status quo so that the partisan majority could instead maintain business as usual.

120. The 2021 Commission Plan does not reflect Ohio voters' statewide preferences because the Commission did not attempt to achieve partisan proportionality. Crediting statements by DiRossi, Senate President Huffman, and Co-Chair Speaker Cupp that the Republican maps were drawn without regard to partisan data, it is logically impossible that the Commission could have attempted to achieve partisan fairness in creating the initially proposed maps.

121. And if Republicans did in fact consider the partisan breakdown of the districts in their maps before presenting them to the Commission, the maps were plainly not an attempt to achieve partisan proportionality, but just the opposite.

122. The Republicans' report on their compliance with the partisan fairness criteria only bolsters the conclusion that the 2021 Commission Plan violates the Ohio Constitution.

123. Following a party-line vote on the plan, the Republican Commissioners then issued a recently-drafted statement on how they purportedly ascertained the statewide preferences of Ohio voters in creating the 2021 Commission Plan, attached as Exhibit F.

124. But it appears that only two of the seven Commissioners—at most—even *saw* the statement prior to accepting the plan they had supposedly crafted in reliance on the statement's

analysis. [Exhibit 1.] According to the statement, members of the Commission calculated partisan fairness by looking at two figures. [Exhibit F.]

125. First, the Commission averaged the percentage of votes cast for Democratic and Republican candidates in partisan statewide races for the last ten years. This yielded a result of 46 percent support for Democrats and 54 percent support for Republicans. This measure is uncontroversial. [Exhibit F.]

126. Second, and remarkably, Republicans considered the percentage of races *won* by Republicans in statewide partisan elections for the last ten years. Under this measurement, the statewide voter preferences are 81 percent Republican and 19 percent Democratic. [Exhibit F.]

127. The Commission then explained that it supposedly aimed to achieve a result in between these two figures, and dutifully met this goal with a map where 64.4 percent of districts lean Republican and 35.6 percent leaned Democratic. [Exhibit F.]

128. As the Democratic Commissioners' response to the report noted, the majority report's approach to ascertaining the statewide preferences of Ohio voters is "absurd." [Exhibit 33.] That is, if 50.01 percent of Ohio voters favored Republican candidates in each statewide race, the majority report suggests that 100 percent of Ohioans favor Republican candidates. The logic-defying nature of the Commission's decision to consider the percentage of statewide races won by one party in determining statewide voter preference is plain when the approach is applied to other states. In Minnesota, for example, no Republican has won statewide in the last ten years. The Commission's measurement would therefore suggest that Minnesota voters prefer 100 percent of their elected officials to be Democrats (even though, in fact, control of the state legislature in Minnesota has been closely divided for the last decade). The same is true in California, even though more than *six million* people in that state voted for former President Trump in the 2020 election.

129. At least one Republican member of the Commission, Secretary LaRose, had previously expressed a view of partisan fairness directly at odds with the Commission report, *see supra* ¶ 103.

130. Further evincing that this partisan fairness justification was a mere post hoc fig leaf covering Republicans' brazen attempt to engage in extreme partisan gerrymandering, several members of the Commission were not even aware of the Commission's rationale prior to voting on the map. [Exhibit 1.]

131. After approving the map, but prior to adopting the rationale, Secretary LaRose stated on the record that he had only just received the statement and that "[he] ha[d] not gotten an answer" about "how [Senate President Huffman] believe[s] that [he is] reaching the representational fairness or proportionality requirement in Section 6" "until tonight." [Exhibit 1.]

132. In response to Secretary LaRose's statement, Senate President Huffman himself admitted that "this statement [explaining the proportional standard] was prepared probably in the last five or six hours." [Exhibit 1.] He did not suggest that the principles of the statement guided the mapmaking process throughout. In fact, his own statements to the press after the Commission first proposed a map on September 9 confirm that they did not, *see supra* ¶ 97.

133. The Commission's Democratic members similarly stated that "until just a few moments ago, [they] had no idea how [the Republican members] decided to calculate or figure out proportional representation." [Exhibit 1.]

134. In fact, the 2021 Commission Plan remains disproportionately favorable to Republicans. Again, the average Democratic candidate received around 46 percent of votes in an Ohio statewide election held during the last ten years, while the average Republican candidate received 54 percent. The map, by the Commission's own admission, favors Republicans 64.4

percent of the time, a substantial and consequential deviation from the statewide voter preferences of Ohioans.

135. As explained below, *see infra* ¶ 143, the Commission had ample opportunity to consider publicly submitted maps that *did* meet a reasonable definition of partisan proportionality while also meeting all of Article XI's other requirements. The 2021 Commission Plan did not attempt to achieve—let alone actually achieve—partisan proportionality, as required by Section 6(B) of Article XI. Instead, the Commission considered how its already drawn map supposedly met proportionality only after the fact. That alone defies Section 6(B) of Article XI.

b. The 2021 Commission Plan was drawn primarily to favor the Republican Party.

136. It is plain from the partisan composition of the maps that the Commission created and adopted the 2021 Commission Plan with the single-minded goal of protecting Republican performance.

137. By Republicans' own view in their statement on partisan fairness, the actual statewide voter preference of Ohioans is 54-46 in favor of Republicans. Under any coherent reading of the Constitution, 54 is the benchmark for the percentage of majority-Republican seats that should exist in a given plan. The Republican statement treated this figure as a floor, however, seeking to achieve a result between the benchmark percentage and the percentage of statewide races *won* by Republicans (81 percent of races). [Exhibit F.] As a result, Republicans drew their map with the express purpose of creating *more* Republican districts than what would correspond to the statewide preferences of Ohio voters. This act of electoral rent-seeking constitutes partisan gerrymandering in direct contravention of Section 6(A).

138. Not only could the Commission have drawn a plan that reflected statewide voter preferences while adhering to all other constitutional provisions, but Republicans' attempt to maintain an undue advantage meant that other redistricting principles were subordinated.

139. In particular, Commission Republicans' pursuit of this goal came at a cost to Ohio's communities of color. The 2021 Commission Plan packs and cracks those communities, inhibiting their ability to organize to elect candidates of their choice, and diluting the strength of their votes.

140. For example, in the 2021 Commission Plan's house map, District 39 (Relator Clark's district) reaches into communities directly west of Dayton in Montgomery County, joining a primarily Black and Democratic community with white, Republican Preble County, thereby submerging Black and Democratic votes in a district that is overwhelmingly white and Republican.

141. Likewise, there is one fewer Hamilton County House district in the 2021 Commission Plan, as compared to the 2011 adopted plan, in which Black voters constitute a majority of the voting age population.

142. Two possibilities exist behind the 2021 Commission Plan: (1) either DiRossi was telling the truth when he said he followed the Republican legislative leaders' instruction to not consider racial data in drawing the maps, and the plan simply neglects the interests of minority communities entirely; or (2) the mapmakers did consider racial demographic data and deliberately packed and cracked minority communities into districts where their votes counted less than their white counterparts. Whatever the case may be, the 2021 Commission Plan represents a subordination of minority voters' interests in the name of protecting Republican incumbents and maximizing Republican candidates' chances of success.

143. Moreover, the Commission chose the Republican plan despite ample opportunity to consider several other plans that complied with Article XI's line-drawing requirements, either

exceeded or matched the Republican plan on compactness scores, and achieved substantially higher partisan fairness than the Republican plan. These maps, namely the maps proposed by the Ohio Senate Democratic Caucus [Exhibit C] and the Ohio Citizens' Redistricting Commission [Exhibit E], were submitted to the Commission via the Commission's public website well before the Republican plan was itself submitted for consideration.

144. Moreover, countless Ohioans testified in favor of these plans at the Commission's public meetings and hearings from September 9 through September 14.

145. The reapportionment plans adopted by the Commission deprive Relators and all similarly situated individuals of rights guaranteed to them under Article XI of the Ohio Constitution.

FIRST CAUSE OF ACTION—Violation of Article XI, Section 6(B) of the Ohio Constitution

146. Relators restate and incorporate by reference all prior paragraphs and the paragraphs in the counts below as though fully set forth in this paragraph.

147. The 2021 Commission Plan was drawn without regard for the statewide preferences of the voters of Ohio, as determined by the statewide state and federal partisan general election results during the last ten years. Despite the fact that multiple plans presented to the Commission met all of Article XI's line-drawing requirements and achieved partisan proportionality, the Commission adopted a plan that exacerbates existing partisan distortions. The Commission thus did not attempt to draw a General Assembly plan in which the statewide proportion of districts whose voters favor each political party corresponds closely to the statewide preferences of voters.

148. As a result, the 2021 Commission Plan as a whole violates Article XI, Section 6(B) of the Ohio Constitution. The 2021 Commission Plan as a whole deprives Relators and all other citizens of Ohio the rights guaranteed them by the Ohio Constitution.

149. Relators have no adequate remedy at law and will be irreparably harmed by the continued violation of their constitutional rights.

150. The Commission acted in bad faith in adopting a plan in contravention of Section 6(B), as evidenced by its failure to adhere to Article XI's procedural requirements and its "contrived attempts to justify an untenable position" regarding the partisan composition of its plan. *See State ex rel. The Fairfield Leader v. Ricketts*, 56 Ohio St. 3d 97, 104, 564 N.E.2d 486, 493 (1990).

SECOND CAUSE OF ACTION—Violation of Article XI, Section 6(A) of the Ohio Constitution

151. Relators restate and incorporate by reference all prior paragraphs and the paragraphs in the counts below as though fully set forth in this paragraph.

152. The 2021 Commission Plan was drawn primarily to favor the Republican Party. Despite the fact that multiple plans presented to the Commission met all of Article XI's line-drawing requirements and achieve partisan proportionality, the Commission adopted a plan that exacerbates existing partisan distortions. The Commission thus did not attempt to draw a General Assembly plan so as not to favor a particular party.

153. As a result, the 2021 Commission Plan as a whole violates Article XI, Section 6(A) of the Ohio Constitution. The 2021 Commission Plan as a whole deprives Relators and all other citizens of Ohio the rights guaranteed them by the Ohio Constitution.

154. Relators have no adequate remedy at law and will be irreparably harmed by the continued violation of their constitutional rights.

155. The Commission acted in bad faith in adopting a plan in contravention of Section 6(A), *see supra* ¶ 150.

PRAYER FOR RELIEF

Accordingly, Relators respectfully request that this Court:

1. Declare that the apportionment plan adopted by the Commission is invalid for failure to comply with Article XI of the Ohio Constitution;
2. Issue a permanent injunction and judgment barring Respondents from calling, holding, supervising, administering, or certifying any elections under the apportionment plan adopted by the Commission, as Relators have no adequate remedy at law and will be irreparably harmed by the continued violation of their constitutional rights;
3. Hold hearings, consider briefing and evidence, and otherwise take actions necessary to direct the Commission as to characteristics of a plan to be adopted;
4. Retain jurisdiction of this action to render any and all further orders that the Court may from time to time deem appropriate, including, but not limited to, determining the validity of any new redistricting plan adopted by the Commission pursuant to the Ohio Constitution; and
5. Grant such other or further relief the Court deems appropriate, including, but not limited to, an award of Relators' attorneys' fees and reasonable costs.

Respectfully submitted,

/s/ Donald J. McTigue

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IN THE SUPREME COURT OF OHIO

Bria Bennett, et al.,

Relators,

v.

Ohio Redistricting Commission, et al.,

Respondents.

Case No. _____

Original Action Filed Pursuant to Ohio
Constitution, Article XI, Section 9(A)

*[Apportionment Case Pursuant to S. Ct.
Prac. R. 14.03]*

VERIFICATION OF DEREK S. CLINGER

Franklin County

/ss

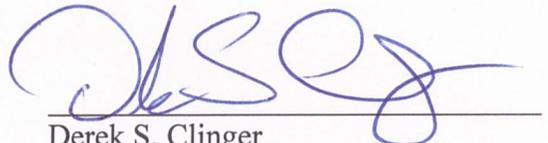
State of Ohio

I, Derek S. Clinger, having been duly sworn and cautioned according to law, hereby state that I am over the age of eighteen years and am competent to testify to the facts set forth below based on my personal knowledge and having personally examined all records referenced in this affidavit, and further state as follows:

1. I am an attorney at law licensed to practice in the State of Ohio, and I serve as legal counsel to the Relators in this action.
2. Exhibit 1 to the Complaint is a true and correct copy of a certified transcription of the Ohio Redistricting Commission’s September 15, 2021 meeting.
3. Exhibit 2 to the Complaint is a true and correct copy of the Ohio Campaign for Accountable Redistricting’s Ohio Redistricting Transparency Report, entitled “The Elephant in the Room.”
4. Exhibit 3 to the Complaint is a true and correct copy of the Appendix to the Ohio Campaign for Accountable Redistricting’s Ohio Redistricting Transparency Report.
5. Exhibit 4 to the Complaint is a true and correct copy of a report from the League of Women Voters of Ohio and Common Cause Ohio, entitled “Ohio’s Gerrymandering Problem: Why Haven’t We Fixed This Yet?”
6. Exhibit 5 to the Complaint is a true and correct copy of H. J. R. No. 12, as introduced during the 130th General Assembly Regular Session (2013-2014).
7. Exhibit 6 to the Complaint is a true and correct copy of H. J. R. No. 12, as enrolled.

8. Exhibit 7 to the Complaint lists a true and correct link to a video recording of the Ohio House of Representatives' December 4, 2014 debate on H. J. R. No. 12.
9. Exhibit 8 to the Complaint lists a true and correct link to a video recording of the Ohio House of Representatives' December 17, 2014 debate on H. J. R. No. 12.
10. Exhibit 9 to the Complaint is a true and correct photograph of page 584 of the Final Edition of the Bulletin of the 130th General Assembly of the State of Ohio (2013-2014).
11. Exhibit 10 to the Complaint is a true and correct copy of a sample ballot produced by the Summit County Board of Elections web site for the 2015 general election.
12. Exhibit 11 to the Complaint is a true and correct copy of the bipartisan statement submitted to the Ohio Ballot Board for approval for ballot language for Issue 1.
13. Exhibit 12 to the Complaint is a true and correct copy of a web archive of Yes On Issue 1! Fair Districts = Fair Elections' "Endorsements" page.
14. Exhibit 13 to the Complaint is a true and correct copy of a web archive of Yes On Issue 1! Fair Districts = Fair Elections' "Details of the Proposal" page.
15. Exhibit 14 to the Complaint is a true and correct copy of the Fall 2015 edition of "Ohio Voter," the newsletter of the League of Women Voters of Ohio.
16. Exhibit 15 to the Complaint is a true and correct copy of Fair Districts for Ohio's poster in support of Issue 1.
17. Exhibit 16 to the Complaint is a true and correct copy of Fair Districts for Ohio's literature in support of Issue 1.
18. Exhibit 17 to the Complaint is a true and correct copy of Secretary of State Frank LaRose's website's "Statewide Issue History" page.
19. Exhibit 18 to the Complaint is a true and correct link to a video recording of the Ohio Redistricting Commission's August 6, 2021 meeting.
20. Exhibit 19 to the Complaint is a true and correct copy of an August 13, 2021 press release on Senator Vernon Sykes's website, entitled "Ohio Redistricting Commission Announces Dates for Regional Public Hearings."
21. Exhibit 20 to the Complaint is a true and correct copy of an August 26, 2021 article in 13abc.com by Josh Croup, entitled "'People are fed up': Toledoans demand end to gerrymandering."
22. Exhibit 21 to the Complaint lists true and correct links to video recordings of the Ohio Redistricting Commission's August 23-27, 2021 public hearings.

23. Exhibit 22 to the Complaint lists a true and correct link to a video recording of the Ohio Redistricting Commission's August 31, 2021 meeting.
24. Exhibit 23 to the Complaint is a true and correct copy of a certified transcription of the Ohio Redistricting Commission's September 9, 2021 afternoon meeting.
25. Exhibit 24 to the Complaint is a true and correct copy of a certified transcription of the Ohio Redistricting Commission's September 9, 2021 morning meeting.
26. Exhibit 25 to the Complaint is a true and correct copy of a September 11, 2021 article in The Columbus Dispatch by Jessie Balmert, entitled "'An insult to democracy': Ohio Republicans' redistricting plan panned soon after release."
27. Exhibit 26 is a true and correct copy of a certified transcription of the Ohio Redistricting Commission's September 12, 2021 hearing.
28. Exhibit 27 is a true and correct copy of a certified transcription of the Ohio Redistricting Commission's September 13, 2021 hearing.
29. Exhibit 28 is a true and correct copy of a certified transcription of the Ohio Redistricting Commission's September 14, 2021 hearing.
30. Exhibit 29 to the Complaint is a true and correct copy of written testimony submitted by Paul Szymanowski at the Ohio Redistricting Commission's September 14, 2021 hearing.
31. Exhibit 30 to the Complaint is a true and correct copy written testimony submitted by Richard Topper at the Ohio Redistricting Commission's September 14, 2021 hearing.
32. Exhibit 31 to the Complaint is a true and correct copy written testimony submitted by Zaiba Malik at the Ohio Redistricting Commission's September 14, 2021 hearing.
33. Exhibit 32 to the Complaint is a true and correct copy of a September 15, 2021 article in The Blade by Jim Provance, entitled "Redistricting talks go into the last minute."
34. Exhibit 33 to the Complaint is a true and correct copy of the "Minority Report" or Declaration of Members Opinion on Statement pursuant to Article XI, Section 8(C)(2).
35. I have read the Complaint filed in this action and affirm that the factual allegations contained in paragraphs 17-28, 45-49, 52-87, 89-97, 99-117, 123-124, 129-133, and 144 are true.


Derek S. Clinger

Sworn to before me this 24 day of September, 2021.


Notary Public

RONALD J. PACTIGUE, Attorney At Law
Notary Public - State of Ohio
My commission has no expiration date
Section 147.03 R.C.



IN THE SUPREME COURT OF OHIO

Bria Bennett, et al.,

Relators,

v.

Ohio Redistricting Commission, et al.,

Respondents.

Case No. _____

Original Action Filed Pursuant to Ohio
Constitution, Article XI, Section 9(A)

*[Apportionment Case Pursuant to S. Ct.
Prac. R. 14.03]*

AFFIDAVIT OF DR. JONATHAN RODDEN

I, Jonathan Rodden, having been duly sworn and cautioned according to law, hereby state that I am over the age of eighteen years and am competent to testify to the facts set forth below based on my personal knowledge and having personally examined all records referenced in this affidavit, and further state as follows:

1. I am currently a tenured Professor of Political Science at Stanford University and the founder and director of the Stanford Spatial Social Science Lab—a center for research and teaching with a focus on the analysis of geo-spatial data in the social sciences. I am engaged in a variety of research projects involving large, fine-grained geo-spatial data sets including ballots and election results at the level of polling places, individual records of registered voters, census data, and survey responses. I am also a senior fellow at the Stanford Institute for Economic Policy Research and the Hoover Institution. Prior to my employment at Stanford, I was the Ford Professor of Political Science at the Massachusetts Institute of Technology. I received my Ph.D. from Yale University and my B.A. from the University of Michigan, Ann Arbor, both in political science. A copy of my current C.V. is included as Exhibit G.
2. In my current academic work, I conduct research on the relationship between the patterns of political representation, geographic location of demographic and partisan groups, and the drawing of electoral districts. I have published papers using statistical methods to assess political geography, balloting, and representation in a variety of academic journals including *Statistics and Public Policy*, *Proceedings of the National Academy of Science*, *American Economic Review Papers and Proceedings*, the *Journal of Economic Perspectives*, the *Virginia Law Review*, the *American Journal of Political Science*, the *British Journal of Political Science*, the *Annual Review of Political Science*, and the *Journal of Politics*. One of these papers was selected by the American Political Science Association as the winner of the Michael Wallerstein Award for the best paper on political economy published in the last year, and another received an award from the American Political Science Association section on social networks. In 2021, I received a John Simon Guggenheim Memorial Foundation Fellowship, and received the Martha Derthick Award of the American Political Science

Association for “the best book published at least ten years ago that has made a lasting contribution to the study of federalism and intergovernmental relations.”

3. I have recently written a series of papers, along with my co-authors, using automated redistricting algorithms to assess partisan gerrymandering. This work has been published in the *Quarterly Journal of Political Science*, *Election Law Journal*, and *Political Analysis*, and it has been featured in more popular publications like the *Wall Street Journal*, the *New York Times*, and *Boston Review*. I have recently completed a book, published by *Basic Books* in June of 2019, on the relationship between political districts, the residential geography of social groups, and their political representation in the United States and other countries that use winner-take-all electoral districts. The book was reviewed in *The New York Times*, *The New York Review of Books*, *Wall Street Journal*, *The Economist*, and *The Atlantic*, among others.
4. I have expertise in the use of large data sets and geographic information systems (GIS), and conduct research and teaching in the area of applied statistics related to elections. My PhD students frequently take academic and private sector jobs as statisticians and data scientists. I frequently work with geo-coded voter files and other large administrative data sets, including in recent papers published in the *Annals of Internal Medicine* and *The New England Journal of Medicine*. I have developed a national data set of geo-coded precinct-level election results that has been used extensively in policy-oriented research related to redistricting and representation.
5. I have been accepted and testified as an expert witness in six election law and redistricting cases: *Romo v. Detzner*, No. 2012-CA-000412 (Fla. Cir. Ct. 2012); *Mo. State Conference of the NAACP v. Ferguson-Florissant Sch. Dist.*, No. 4:2014-CV-02077 (E.D. Mo. 2014); *Lee v. Va. State Bd. of Elections*, No. 3:15-CV-00357 (E.D. Va. 2015); *Democratic Nat’l Committee et al. v. Hobbs et al.*, No. 16-1065-PHX-DLR (D. Ariz. 2016); *Bethune-Hill v. Virginia State Board of Elections*, No. 3:14-cv-00852-REP-AWA-BMK (E.D. Va. 2014); and *Jacobson et al. v. Lee*, No. 4:18-cv-00262 (N.D. Fla. 2018). I also worked with a coalition of academics to file Amicus Briefs in the Supreme Court in *Gill v. Whitford*, No. 16-1161, and *Rucho v. Common Cause*, No. 18-422. Much of the testimony in these cases had to do with geography, electoral districts, voting, ballots, and election administration. I am currently working as a consultant for the Maryland Redistricting Commission. I am being compensated at the rate of \$550/hour for my work in this case. My compensation is not dependent upon my conclusions in any way.

I. INTRODUCTION AND SUMMARY

6. For the purpose of this affidavit, I have been asked to examine whether the redistricting plan for the Ohio State House of Representatives and Ohio Senate, adopted by the Ohio Redistricting Commission on September 16, 2021, and attached as Exhibit A (“2021 Commission Plan”), complies with the standard set forth in Article XI, Section 6(B), namely, that “[t]he statewide proportion of districts whose voters, based on statewide state and federal partisan general election results during the last ten years, favor each political party shall correspond closely to the statewide preferences of the voters of Ohio.”

7. I demonstrate that this “partisan proportionality” standard was clearly not met by the maps adopted by the Ohio Redistricting Commission.
8. Furthermore, I have been asked to examine whether the partisan composition of the Commission’s maps may have been a result of the Commission’s need to satisfy other requirements of the Ohio Constitution: specifically, the requirements to avoid county and municipal splits, laid out in Article XI, Sections 3 and 4, and to attempt to draw compact districts, as set forth in Article XI, Section 6(C).
9. I examine several additional maps that were available to the Commission, and to the public, prior to September 15. I demonstrate that these maps were able to abide by the “partisan proportionality” clause while also abiding by the strict rules of the Ohio Constitution regarding county and municipality splits, and while creating districts with similar or better compactness scores than those drawn by the Commission.

II. DATA SOURCES

10. I have collected statewide election data for 2012 to 2020 from the Ohio Secretary of State. I also accessed precinct-level election results from the Ohio Secretary of State for statewide elections from 2016 to 2020 that were matched to 2020 Ohio vote tabulation districts by a team at Harvard University called the Algorithm-Assisted Redistricting Methodology Project.¹ Additionally, I accessed the proposed and adopted Ohio redistricting plans uploaded to the web page of the Ohio Redistricting Commission, true copies of which are attached as Exhibits A, C, D, and E.²

III. MEASURING PARTISAN PROPORTIONALITY

11. The Ohio Constitution instructs the commissioners to use “statewide state and federal partisan general election results during the last ten years” to ascertain the “statewide preferences of the voters of Ohio,” and attempt to draw a map in which the “statewide proportion of districts whose voters favor each party shall correspond closely” to those “statewide preferences.”
12. As further discussed below, the only reasonable way to implement this notion of “statewide preferences,” as ascertained from past elections to anticipated future seat shares, is via the proportion of votes received by the candidates for the two parties. That is to say, if a party won 50 percent of the average statewide vote in the relevant elections, a proposed map should favor that party—aggregating the results of those same elections—in somewhere very close to 50 percent of the seats.
13. The first task, then, is to establish this target from the last decade of statewide partisan election results. Figure 1 provides a visualization of Ohio statewide general election results from 2012 to 2020. Ohio is a hotly contested state with a tradition of split-ticket voting and significant swings from one year to another. The Democratic candidate won the presidential

¹ <https://alarm-redist.github.io/posts/2021-08-10-census-2020/>

² <https://redistricting.ohio.gov/maps>

contest in 2012, but the Republican candidate won in 2016 and 2020. Ohio's U.S. Senate delegation is typically split between the parties, and other statewide elections are often very competitive, although 2014 was an exception, as was the 2016 U.S. Senate race.

- Figure 1 reveals that while Ohio statewide elections have been mostly quite close over the last decade, Republican candidates have held a narrow advantage. To quantify this, Table 1 provides the raw data. Including all of the statewide general elections from 2012 to 2020, the Democratic vote share of the two-party vote (ignoring small parties and write-in candidates) was around 45.9 percent.

Figure 1: Statewide General Election Outcomes, Ohio, 2012-2020

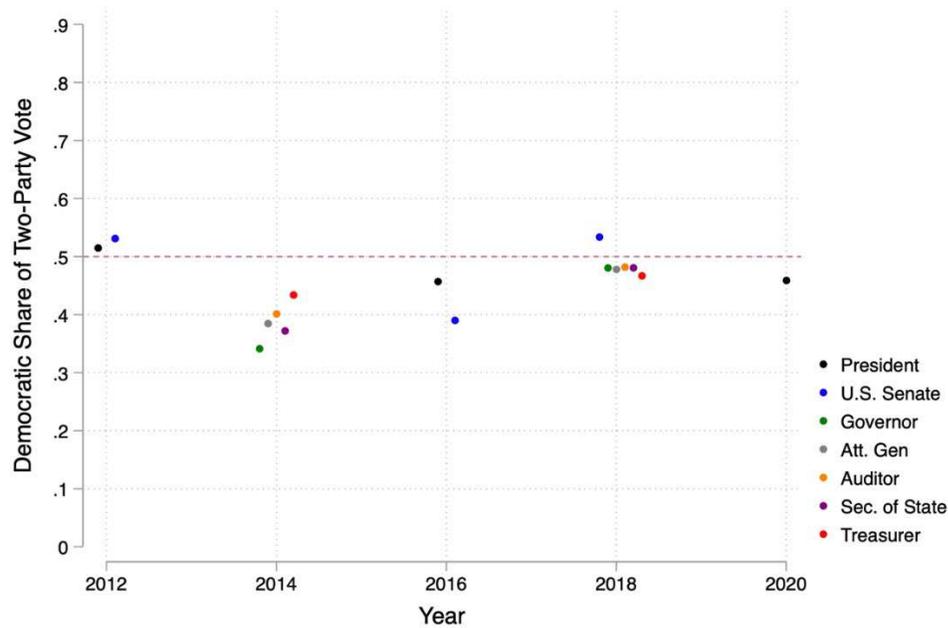


Table 1: Statewide General Election Outcomes, Ohio, 2012-2020

	Democratic Votes	Republican Votes	Other	Two-party Democratic Vote Share
2012 President	2,827,709	2,661,439	91,791	51.5%
2012 U.S. Senate	2,762,766	2,435,744	250,618	53.1%
2014 Governor	1,009,359	1,944,848	101,706	34.2%
2014 Att. Gen.	1,178,426	1,882,048		38.5%
2014 Auditor	1,149,305	1,711,927	143,363	40.2%
2014 Sec. of State	1,074,475	1,811,020	141,292	37.2%
2014 Treasurer	1,323,325	1,724,060		43.4%
2016 President	2,394,164	2,841,005	261,318	45.7%
2016 Senate	1,996,908	3,118,567	258,689	39.0%
2018 Senate	2,358,508	2,057,559	1,017	53.4%
2018 Governor	2,070,046	2,235,825	129,949	48.1%
2018 Att. Gen.	2,086,715	2,276,414		47.8%
2018 Auditor	2,008,295	2,156,663	175,962	48.2%
2018 Sec. of State	2,052,098	2,214,273	103,585	48.1%
2018 Treasurer	2,024,194	2,308,425		46.7%
2020 President	2,679,165	3,154,834	88,203	45.9%
Sum, all elections	30,995,458	36,534,651	1,747,493	45.9%
Sum, 2016-2020	19,670,093	22,363,565	1,018,723	46.8%

15. Determining the proportion of districts that favor each party, as set forth in Article XI, Section 6, requires an aggregation of the precinct-level results of these past elections to the boundaries of its proposed districts. However, precinct-level election results linked with geospatial boundaries were not available for the 2012 and 2014 elections, as the Commission itself acknowledged in its Article XI, Section 8(C)(2) Statement, attached as Exhibit F. Thus, Table 1 also sets forth that the two-party Democratic vote share in 2016, 2018, and 2020 general elections was around 47 percent.
16. Accordingly, using the full statewide election results from 2012 to 2020, the Ohio Constitution requires the Commission to attempt to draw state legislative maps in which 45.9 percent of seats favor Democrats and 54.1 percent of seats favor Republican. Since there are 99 seats in the Ohio House of Representatives, a statewide vote share of 45.9 percent would be associated with 45.44 Democratic seats, which rounds down to 45 seats. Similarly, a 45.9 percent vote share would be associated with about 15.15 Democratic seats in the 33-member Ohio Senate, which rounds down to 15 seats.

17. I have aggregated the precinct-level results of each election from 2016 to 2020 included in Table 1 to the level of the districts in the 2021 Commission Plan. For each district, I calculate the average Democratic share of the votes received by the candidates of the two major parties across each of these elections. I then ascertain the number of districts in which this quantity is greater than 50 percent. Using this technique, I ascertain that the 2021 Commission Plan produced 37 majority-Democratic House seats and 62 majority-Republican House seats, as shown in Table 2 below. In the Senate, the 2021 Commission Plan produced 10 majority-Democratic Senate seats and 23 majority-Republican seats. This is a gap of 8 House seats and 5 Senate seats between the Democratic-leaning seats produced by the 2021 Commission Plan and the seat share that would be proportionate to the statewide Democratic vote share.
18. Notably, the partisanship of the Commission’s maps is not very different from that of the current maps, adopted in 2011 and attached as Exhibit B. The current breakdown of the General Assembly under the 2011 maps is as follows: 35 Democrats and 64 Republicans in the House; 8 Democrats and 25 Republicans in the Senate.
19. In addition to this examination of seats above and below the 50 percent cut-point, it is also useful to examine how many of the Democratic- and Republican-leaning seats are razor-thin majorities, and how many are more comfortable majorities. I count the number of seats where the average Democratic share of the vote for the two major parties was less than 48 percent—let us call these expected Republican seats. And I count the number of seats where the average Democratic share of the vote for the two major parties was greater than 52 percent—let us call these expected Democratic seats. Finally, I count the number of seats that we might call “tossups,” where the average Democratic vote share was between 48 percent and 52 percent.
20. As set forth in Table 2 below, in the 2021 Commission Plan, all of the majority-Republican House seats are greater than 52 percent Republican. Of the 37 majority-Democratic seats, only 32 are greater than 52 percent Democratic. All five of the “toss-up” seats are slim Democratic majorities. In the Commission’s Senate plan, there are 21 expected Republican seats, 9 expected Democratic seats, and three “toss-ups.”
21. In its Article XI, Section 8(C)(2) Statement, the Commission explained its ostensible attempt to comply with the “partisan proportionality” requirement in the Ohio Constitution. In this statement, the Ohio Redistricting Commission offers an unsound implementation of the constitutional requirement, suggesting that “statewide preferences” can be measured as the share of all elections in which each party received more votes than the other party. This is a flawed way of characterizing voter preferences in general, but especially when the purpose is to evaluate seat shares. With this interpretation, a party that always wins 50.01 percent of the vote in general elections would be viewed as having 100 percent of the “statewide preference,” entitling it to draw a map that gave itself all of the seats, a patently absurd outcome.
22. Consider, for example, a situation in which the United States adopted Ohio’s constitutional amendment for U.S. House of Representatives districts. The only nationwide elections are presidential elections, for which Democratic candidates have won a majority of popular votes in each election since 2004, although many of these elections were extremely close. By the

Commission's logic, voters preferred Democratic candidates 100 percent of the time, and would therefore be entitled to 100 percent of the seats in Congress. This is simply not a tenable notion of voter preferences. In the vast academic literature on votes and seats, I have never encountered the notion that the seat share should correspond to the share of past elections in which a party received a plurality. Rather, the Ohio Constitution is clearly invoking the notion of voter preferences used by academics, pundits, and everyone else: the vote share.

IV. COMPARING THE COMMISSION'S MAPS TO ALTERNATIVE MAPS PRESENTED TO THE COMMISSION

23. It is clearly the case that the 2021 Commission Plan deviates significantly from any reasonable interpretation of the Ohio Constitution's partisan fairness requirement. But one might imagine that the partisan composition of the Commission's maps was a function of constraints imposed by other constitutional requirements related to so-called "traditional redistricting principles" that the Commission understood to be more important.
24. In fact, the next line after the "partisan proportionality" clause dictates that the Commission "shall attempt" to draw compact districts. One might wonder whether the Commission found it difficult to achieve partisan proportionality because of a tension between that goal and the additional goal of drawing compact districts. Moreover, the Constitution requires that the Commission use entire counties, municipal corporations, and townships as the building blocks of districts to the extent possible. Counties with population greater than that which is sufficient for a single district must spill into only a single additional district. The Commission must also endeavor not to split counties more than once, and not to split more than one municipality per district. One might imagine that efforts to abide by these requirements made it difficult for the Commission to achieve partisan proportionality.
25. A simple and effective way to examine such assumptions is to examine other maps that had been made available to the Commission before it finalized its own maps. Did those maps come closer to achieving partisan proportionality while abiding by the same rules and achieving similar benchmarks with respect to the traditional redistricting principles emphasized in the Constitution? If so, one cannot accept the claim that the Commission was forced by restrictive rules into drawing maps with a large advantage for one party.
26. I have therefore aggregated precinct-level election results to the level of proposed districts for a map introduced by Senator Sykes on September 2, attached as Exhibit C. An additional map was proposed by a group called the "Ohio Citizens Redistricting Commission" and is attached as Exhibit E. Based on my review, these maps are fully compliant with the line-drawing rules explained above, as set forth in Article XI, Sections 3 and 4 of the Ohio Constitution.
27. For each of these maps, as well as the 2021 Commission Plan and maps the Commission initially proposed, attached as Exhibit D, I have also produced compactness scores for the districts to assess the maps' compliance with Article XI, Section 6(C). I have included Reock, Polsby-Popper, and Convex Hull compactness measures, each of which takes a somewhat different approach to the notion of district compactness.

28. Although the Ohio Constitution does not specify the optimal number of county splits, I have also calculated the number of county splits generated by each plan. I define a county split in the same way as the Ohio Constitution. For example, Franklin County is not considered to be split in a House of Representatives plan if 11 districts are formed that fit completely within the county, and no fragment of any district spills over the county boundary. Moreover, a county that is kept intact but joined together with other “split” counties is not considered a split county. A county is only considered to be split if some part—but not all—of its territory is joined with territory from another county in the formation of a district.
29. In Table 2 below, I provide compactness scores and information on county splits for each of the Ohio House of Representatives plans I analyzed. Next, using the same technique described above, I include the number of majority-Democratic districts, majority-Republican districts, expected Democratic districts, expected Republican districts, and “toss-up” districts that would be produced by each plan.
30. First, in terms of compactness, the 2021 Commission Plan was similar to the plans submitted by Senator Sykes and the Citizens’ Commission. If anything, the plan produced by the Citizens’ Commission was on average more compact, according to both the Polsby-Popper and Convex Hull scores, and Senator Sykes’s plan was slightly more compact according to its Polsby-Popper score.
31. The Commission’s House map splits 33 counties. The Citizens’ Commission splits a greater number of counties (43) than does the Ohio Redistricting Commission, while Senator Sykes’s House map splits fewer counties (only 30).
32. Next, let us examine the partisan outcomes associated with these alternative plans. The relevant information is contained in Table 2. The plan submitted by Senator Sykes came very close to achieving partisan proportionality. It produced 44 majority-Democratic seats and 55 majority-Republican seats—a difference from proportionality of only one seat. The plan produced by the Citizens’ Commission produced 43 Democratic seats and 56 Republican seats—a difference from proportionality of only 2 seats. Again, the distance from proportionality in the Ohio Redistricting Commission’s final House map was 8 seats.
33. In short, Senator Sykes’s plan for the Ohio House of Representatives does just as well—in fact a little better—than the Commission’s House map at abiding by the traditional redistricting criteria emphasized in the Ohio Constitution, and it also comes much closer to achieving the required partisan proportionality. This indicates that the failure of the 2021 Commission Plan to achieve partisan proportionality and its overall favorability to Republicans was an intentional choice, rather than a natural outgrowth of other constraints.

**Table 2: Summary Information, Ohio House of Representative Plans
Submitted to Ohio Redistricting Commission**

	<u>Commission 9/16</u>	<u>Commission 9/9</u>	<u>Sykes 9/2</u>	<u>Citizens 9/10</u>
Average compactness scores				
(Higher scores = more compact)				
Reock	0.40	0.40	0.40	0.40
Polsby-Popper	0.30	0.30	0.31	0.34
Area/Convex Hull	0.74	0.73	0.74	0.76
Number of split counties	33	33	30	43
<hr/>				
# of seats with average two-party Democratic vote share >.5				
	37	32	44	43
Expressed as percentage of seats	37.4%	32.3%	44.4%	43.4%
# of seats with average two-party Republican vote share >.5				
	62	67	55	56
Expressed as percentage of seats	62.6%	67.7%	55.6%	56.6%
Distance from proportional seat allocation (seats)				
	8	13	1	2
Expressed as percentage of seats	8.1%	13.1%	1.0%	2.0%
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# of seats with average two-party Democratic vote share >.52				
	32	31	41	42
Expressed as a percentage of seats	32.3%	31.3%	41.4%	42.4%
# of seats with average two-party Democratic vote share <.48				
	62	63	54	54
Expressed as percentage of seats	62.6%	63.6%	54.5%	54.5%
# of seats with average two-party Democratic vote share between .48 and .52				
	5	5	4	3
Expressed as percentage of seats	5.1%	5.1%	4.0%	3.0%

**Table 3: Summary Information, Ohio Senate Plans
Submitted to Ohio Redistricting Commission**

	Commission 9/16	Commission 9/9	Sykes 9/2	Citizens 9/10
Average compactness scores				
(Higher scores = more compact)				
Reock	0.39	0.39	0.39	0.43
Polsby-Popper	0.31	0.31	0.31	0.37
Area/Convex Hull	0.73	0.72	0.73	0.78
Number of split counties	13	13	16	18
<hr/>				
# of seats with average two-party Democratic vote share >.5	10	9	14	14
Expressed as percentage of seats	30.3%	27.3%	42.4%	42.4%
# of seats with average two-party Republican vote share >.5	23	24	19	19
Expressed as percentage of seats	69.7%	72.7%	57.6%	57.6%
Distance from proportional seat allocation (seats)	5	6	1	1
Expressed as percentage of seats	15.2%	18.2%	3.0%	3.0%
<hr/>				
# of seats with average two-party Democratic vote share >.52	9	8	13	12
Expressed as a percentage of seats	9.1%	8.1%	13.1%	12.1%
# of seats with average two-party Democratic vote share <.48	21	21	18	18
Expressed as percentage of seats	63.6%	63.6%	54.5%	54.5%
# of seats with average two-party Democratic vote share between .48 and .52	3	4	2	3
Expressed as percentage of seats	3.0%	4.0%	2.0%	3.0%
<hr/> <hr/>				

34. Next, let us undertake a similar comparison of the Ohio Redistricting Commission’s Senate map with those submitted by Senator Sykes and the Citizens’ Commission. The key information is contained in Table 3.
35. Once again, the plan presented by Senator Sykes demonstrated a similar level of average compactness as the Commission’s map on each of the three metrics I considered. And again, the plans produced by the Citizens’ Commission were more compact. Relative to the Commission’s Senate map, the Sykes map split three additional counties, and the Citizens’ map split five additional counties.
36. The Commission’s Senate map produces only 10 majority-Democratic seats and 23 majority-Republican Seats. In contrast, both the Sykes plan and the Citizens’ Commission plan produced 14 Democratic seats and 19 Republican seats. Recall that the target set forth by the Constitution was 15 Democratic seats, meaning that both plans came within a single seat of the target. Again, as with the House of Representatives, these alternative maps demonstrate that for the Senate as well, it is possible to abide both by the Ohio Constitution’s traditional redistricting requirements as well as its partisan proportionality requirement. The fact that the Commission’s map strongly favors the Republican Party is the result of discretionary choices made by the Commission and reflects that the Commission did not attempt to achieve partisan proportionality.

V. CONCLUSION

37. The 2021 Commission Plan does not comply with the partisan proportionality requirement set forth in Article XI, Section 6(B).
38. The 2021 Commission Plan favors Republicans for reasons other than traditional redistricting criteria and the Ohio Constitution’s other requirements, as demonstrated by alternative maps presented to the Commission—which achieve greater partisan proportionality and are relatively similar, and in some cases slightly better, according to traditional redistricting criteria.
39. I have read the Complaint filed in this action and affirm that the factual allegations contained in paragraphs 50, 88, 98, 118, 125-128, 134-135, 137-141, 143 are true.

JURAT

STATE OF FLORIDA
COUNTY OF SAINT LUCIE

Jonathan Andrew Rodden

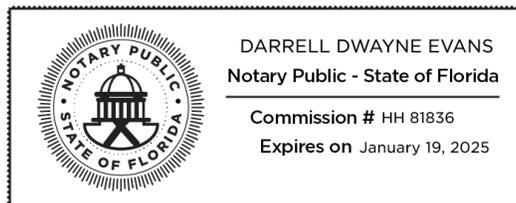
Jonathan Rodden

Sworn to before me this 24th day of September, 2021.

By Jonathan Andrew Rodden

Form of ID Produced: Driver’s License

Darrell Dwayne Evans
Notary Public
Darrell Dwayne Evans



My commission expires 01/19/2025

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