Supreme Court of Ohio Clerk of Court - Filed October 22, 2021 - Case No. 2021-1193

IN THE SUPREME COURT OF OHIO

LEAGUE OF WOMEN VOTERS OF OHIO, *et al.*, *Relators*, *v.* OHIO REDISTRICTING COMMISSION, *et al.*, *Respondents*.	Case No. 2021-1193
BRIA BENNETT, *et al.*, *Relators*, *v.* OHIO REDISTRICTING COMMISSION, *et al.*, *Respondents*.	Case No. 2021-1198
THE OHIO ORGANIZING COLLABORATIVE, *et al.*, *Relators*, *v.* OHIO REDISTRICTING COMMISSION, *et al.*, *Respondents*.	Case No. 2021-1210

COMPLAINTS AND ANSWERS – APPENDIX OF EXHIBITS

Volume 1

(*counsel listing on next page*)

Freda J. Levenson (0045916)
ACLU of Ohio Foundation, Inc.
4506 Chester Avenue
Cleveland, Ohio 44103
Tel: 614-586-1972 x 125
flevenson@acluohio.org

David J. Carey (0088787)
ACLU of Ohio Foundation, Inc.
1108 City Park Avenue, Suite 203
Columbus, OH 43206
(614) 586-1972 x2004
dcarey@acluohio.org

Alora Thomas (PHV 22010-2021)
Kelsey Miller*
Julie A. Ebenstein (PHV 25423-2021)
American Civil Liberties Union 125 Broad Street
New York, NY 10004
(212) 519-7866
athomas@aclu.org
jebenstein@aclu.org

Robert D. Fram (PHV 25414-2021)
Donald Brown** (PHV 25480-2021)
Joshua González (PHV 25424-2021)
Juliana Goldrosen (PHV 25193-2021)
David Denuyl (PHV 25452-2021)
COVINGTON & BURLING LLP
Salesforce Tower
415 Mission Street, Suite 5400
San Francisco, CA 94105-2533
(415) 591 6000
rfram@cov.com

DAVE YOST
OHIO ATTORNEY GENERAL
Michael J. Hendershot (0081842)
Michael A. Walton (0092201)
Bridget C. Coontz (0072919)
Julie M. Pfeiffer (0069762)
30 E. Broad Street Columbus, OH 43215
Tel: (614) 466-2872
Fax: (614) 728-7592
Michael.Hendershot@OhioAttorneyGeneral.gov
Michael.Walton@OhioAGO.gov
bridget.coontz@ohioago.gov
julie.pfeiffer@ohioago.gov

Counsel for Respondents
Governor Mike DeWine, Secretary of State Frank LaRose, and Auditor Keith Faber

W. Stuart Dornette (0002955)
Beth A. Bryan (0082076)
Philip D. Williamson (0097174)
TAFT STETTINIUS & HOLLISTER LLP
425 Walnut St., Suite 1800
Cincinnati, Ohio 45202-3957
T: (513) 381-2838
dornette@taftlaw.com
bryan@taftlaw.com
pwilliamson@taftlaw.com

Phillip J. Strach (PHV 25444-2021)
Thomas A. Farr (PHV 25461-2021)
John E. Branch, III (PHV 25460-2021)
Alyssa M. Riggins (PHV 25441-2021)
NELSON MULLINS RILEY & SCARBOROUGH LLP
4140 Parklake Ave., Suite 200
Raleigh, North Carolina 27612
phil.strach@nelsonmullins.com
tom.farr@nelsonmullins.com
john.branch@nelsonmullins.com
alyssa.riggins@nelsonmullins.com
T: (919) 329-3812

Counsel for Respondents
Senate President Matt Huffman and House Speaker Robert Cupp

James Smith*
Megan C. Keenan (PHV 25410-2021)
L. Brady Bender (PHV 25192-2021)
Alexander Thomson (PHV 25462-2021)
COVINGTON & BURLING LLP
One CityCenter
850 Tenth Street, NW
Washington, DC 20001-4956
(202) 662-6000
mkeenan@cov.com

Anupam Sharma (PHV 25418-2021)
James Hovard (PHV 25420-2021)
Yale Fu (PHV 25419-2021)
COVINGTON & BURLING LLP
3000 El Camino Real
5 Palo Alto Square, 10th Floor
Palo Alto, CA 94306-2112
(650) 632-4700
asharma@cov.com

Madison Arent*
COVINGTON & BURLING LLP
The New York Times Building
620 Eighth Avenue
New York, NY 10018-1405
(212) 841 1000
marent@cov.com

Counsel for Relators
League of Women Voters et al.
**Pro Hac Vice Motion Forthcoming*
***Pro Hac Vice Motion Pending*

Abha Khanna (PHV 2189-2021)
Ben Stafford (PHV 25433-2021) ELIAS LAW GROUP
1700 Seventh Ave, Suite 2100
Seattle, WA 98101
akhanna@elias.law
bstafford@elias.law
T: (206) 656-0176
F: (206) 656-0180

John Gilligan (Ohio Bar No. 0024542)
Diane Menashe (Ohio Bar No. 0070305)
ICE MILLER LLP
250 West Street, Suite 700
Columbus, Ohio 43215
John.Gilligan@icemiller.com
Diane.Menashe@icemiller.com

Counsel for Respondents
Senator Vernon Sykes and
House Minority Leader Emilia Sykes

Erik J. Clark (Ohio Bar No. 0078732)
Ashley Merino (Ohio Bar No. 0096853)
ORGAN LAW LLP
1330 Dublin Road
Columbus, Ohio 43215
T: (614) 481-0900
F: (614) 481-0904
ejclark@organlegal.com
amerino@organlegal.com

Counsel for Respondent
Ohio Redistricting Commission

Aria C. Branch (PHV 25435-2021)
Jyoti Jasrasaria (PHV 25401-2021)
Spencer W. Klein (PHV 25432-2021)
ELIAS LAW GROUP
10 G St NE, Suite 600
Washington, DC 20002
abranch@elias.law
jjasrasaria@elias.law
sklein@elias.law
T: (202) 968-4490
F: (202) 968-4498

Donald J. McTigue* (Ohio Bar No. 0022849)
**Counsel of Record*
Derek S. Clinger (Ohio Bar No. 0092075)
MCTIGUE & COLOMBO LLC
545 East Town Street
Columbus, OH 43215
dmctigue@electionlawgroup.com
dclinger@electionlawgroup.com
T: (614) 263-7000
F: (614) 368-6961

Counsel for Relators
Bria Bennett, et al.

Peter M. Ellis (0070264)
Counsel of Record
M. Patrick Yingling (PHV 10145-2021)
REED SMITH LLP
10 South Wacker Drive, 40th Floor
Chicago, IL 60606
Tel: (312) 207-1000
Fax: (312) 207-6400
pellis@reedsmith.com
mpyingling@reedsmith.com

Brad A. Funari (PHV 3139-2021)
Danielle L. Stewart (0084086)
Reed Smith LLP
225 Fifth Avenue
Pittsburgh, PA 15222
Tel: 412-288-4583
Fax: 412-288-3063
bfunari@reedsmith.com
dstewart@reedsmith.com

Brian A. Sutherland (PHV 25406-2021)
REED SMITH LLP
101 Second Street, Suite 1800
San Francisco, CA 94105
Tel: (415) 543-8700
Fax: (415) 391-8269
bsutherland@reedsmith.com

Ben R. Fliegel (PHV 25411-2021)
REED SMITH LLP
355 South Grand Avenue, Suite 2900
Los Angeles, CA 90071
Tel: (213) 457-8000
Fax: (213) 457-8080
bfliegel@reedsmith.com

Alicia L. Bannon (PHV 25409-2021)
Yurij Rudensky (PHV 25422-2021)
Michael Li (PHV 25430-2021)*
Ethan Herenstein (PHV 25429-2021)
BRENNAN CENTER FOR JUSTICE
AT NYU SCHOOL OF LAW
120 Broadway, Suite 1750
New York, NY 10271
Tel: (646) 292-8310
Fax: (212) 463-7308
alicia.bannon@nyu.edu

Counsel for Relators
Ohio Organizing Collaborative et al.
**Pro Hac Vice Motion Forthcoming*

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IN THE SUPREME COURT OF OHIO

League of Women Voters of Ohio,
100 East Broad Street, Suite 1310
Columbus, OH 43215

A. Philip Randolph Institute of Ohio,
6805 Oak Creek Drive
Columbus, OH 43229

Tom Harry,
9116 N Creek Ln.
Dayton, OH 45458

Tracy Beavers,
1030 W Comet Rd.
New Franklin, OH 44216

Valerie Lee,
5000 Sycamore Woods Blvd.
Dayton, OH 45426

Iris Meltzer,
1012 Vine St.
Kent, OH, 44240

Sherry Rose,
241 Whittier Dr.
Kent, OH 44240

Bonnie Bishop,
8160 Sunset Ln. #208
Sylvania, OH, 43560

Relators,

v.

Ohio Redistricting Commission,
Ohio Statehouse
1 Capitol Square
Columbus, Ohio 43215

Michael DeWine,
Riffe Center

Original Action Pursuant to
Ohio Const., Art. XI

30th Floor
77 S. High St.
Columbus, OH 43215

Frank LaRose,
22 N. Fourth St.,
16th Floor
Columbus, Ohio 43215

Keith Faber,
88 E. Broad St.,
5th Floor
Columbus, Ohio 43215

Matt Huffman,
Ohio Statehouse
1 Capitol Square
2nd Floor
Columbus, OH 43215

Robert R. Cupp,
77 S. High St.
14th Floor
Columbus, OH 43215

Vernon Sykes, and
Senate Building
1 Capitol Square
Ground Floor
Columbus, OH 43215

Emilia S. Sykes,
77 S. High St.
14th Floor
Columbus, OH 43215

Respondents.

Complaint

Robert D. Fram*
Donald Brown*
Joshua González*
Juliana Goldrosen (PHV 25193 - 2021)
Salesforce Tower
415 Mission Street, Suite 5400
San Francisco, CA 94105-2533
(415) 591-6000
rfram@cov.com

James Smith*
Megan C. Keenan*
L. Brady Bender (PHV 25192 - 2021)
One CityCenter
850 Tenth Street, NW
Washington, DC 20001-4956
(202) 662-6000
mkeenan@cov.com

Anupam Sharma*
James Hovard*
Yale Fu*
3000 El Camino Real
5 Palo Alto Square, 10th Floor
Palo Alto, CA 94306-2112
(650) 632-4700
asharma@cov.com

Madison Arent*
The New York Times Building
620 Eighth Avenue
New York, NY 10018-1405
(212) 841 1000
marent@cov.com

Freda J. Levenson (0045916)
ACLU of Ohio Foundation, Inc.
4506 Chester Avenue
Cleveland, Ohio 44103
(614) 586-1972 x125
flevenson@acluohio.org

David J. Carey (0088787)
ACLU of Ohio Foundation, Inc.
1108 City Park Avenue, Suite 203
Columbus, OH 43206
(614) 586-1972 x2004
dcarey@acluohio.org

Alora Thomas*
Julie A. Ebenstein*
American Civil Liberties Union
125 Broad Street
New York, NY 10004
(212) 519-7866
athomas@aclu.org
jebenstein@aclu.org

Counsel for Relators
** Pro Hac Vice Motion Forthcoming*

INTRODUCTION

1. Just after midnight on September 16, 2021, with a 5-2 vote along strictly partisan lines, Ohio's Redistricting Commission enacted maps that are intended to, and will, entrench a Republican veto-proof supermajority in both chambers of Ohio's General Assembly for the next four years. This extreme partisan gerrymandering flouts the clear commands of Article XI of the Ohio Constitution that "[n]o general assembly district plan shall be drawn primarily to favor or disfavor a political party," Ohio Const. art. XI, § 6(A), and that the number of seats held by a party in the Ohio General Assembly "shall correspond closely to the statewide preferences of the voters of Ohio" over the previous decade, *id.* § 6(B).

2. Over the past decade, Republicans have received between 46.2% and 59.7% of the statewide vote. *See* Ex. 10, Testimony of Collin Marozzi to Ohio Redistricting Commission at Table 1 (submitted Aug. 27, 2021); *see also* Ex. 9, Ohio Redistricting Commission, *Article XI, Section 8(C)(2) Statement* (Sept. 16, 2021) (according to the Redistricting Commission's own statement, Republicans have only garnered an average 55% of the votes in statewide elections over the past 10 years). But the enacted map draws 67% of the House districts and 69% of the Senate districts to favor Republicans, locking in Republican veto-proof supermajorities in both chambers for the next four years. *See* Ex. 1, Warshaw Aff., at 5, 24–25.

3. This brazen manipulation of district lines for extreme partisan advantage doubly dishonors the voters of this state: by adopting a map that utterly fails to correspond with voters' preferences as manifested by the vote share of the two major parties' candidates over the past decade; and by openly defying a constitutional amendment adopted overwhelmingly by Ohio voters just six years ago, which sought to put an end to precisely this kind of extreme partisan gerrymandering.

4. The constitutional amendment to end partisan gerrymandering arose as a direct response to the severe partisan manipulation of the last decade. The 2011 General Assembly maps were drawn in secrecy, without public oversight or minority party participation, in a location referred to as "the bunker." And under that map, Republicans maintained a hammerlock on supermajority status in elections between 2012 and 2020—at times controlling more than 65% of the seats in the Ohio House of Representatives and 75% of the seats in the Ohio State Senate, even though their statewide vote share over the decade ranged from only 46.2% to 59.7%. *See* Ohio Sec. of State, *131th General Assembly Ohio House of Representatives* (2016), https://bit.ly/2XHuXAp; Ohio Senate, *Senators* (2021), https://bit.ly/3u57eGB; Ex. 10, Testimony of Collin Marozzi to Ohio Redistricting Commission at Table 1 (submitted Aug. 27, 2021).

5. In 2011, a group of voters challenged Ohio's legislative map on the basis of partisan unfairness, but this Court found it lacked the power to act because, at that time, the "words used in Article XI d[id] not explicitly require political neutrality, or for that matter, politically competitive districts or representational fairness, in the apportionment board's creation of state legislative districts. Unlike Ohio, some states specify in either constitutional or statutory language that no apportionment plan shall be drawn with the intent of favoring or disfavoring a political party." *Wilson v. Kasich*, 2012-Ohio-5367, ¶ 14, 134 Ohio St. 3d 221, 225, 981 N.E.2d 814, 820.

6. In response, on November 3, 2015, Ohio voters—by an overwhelming margin of 71.5% to 28.5%—amended the constitution by adding precisely what this Court previously found missing: express constitutional commands that districts not be drawn "to favor or disfavor a political party," and that the distribution of seats "shall correspond closely to the statewide preferences of the voters of Ohio." Ohio Const. art. XI, §§ 6(A), 6(B); *see also* Ohio Sec'y of State, 2015 Official Statewide Election Results (Nov. 3, 2015), https://bit.ly/3hZWnJm. The

express purpose of the amendment was to "[e]nd 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." Ohio Sec'y of State, *Issue 1 Ballot Language* (Nov. 2015), https://bit.ly/3ElgrPY. Ohioans were promised that a "yes" vote on the ballot measure amending the constitution would "make sure state legislative districts are drawn to be more competitive and compact, and ensure that no district plan should be drawn to favor or disfavor a political party." Sens. K. Faber & J. Schiavoni and Reps. K. Schuring & M. Curtin, *Vote Yes on Issue 1*, https://bit.ly/3tWHrjR (emphasis in original).

7. The constitutional amendment established the bipartisan Ohio Redistricting Commission, tasked that Commission with redistricting the General Assembly in line with the goals of increasing transparency and ending partisan gerrymandering, and gave this Court jurisdiction to hear claims that the Commission failed to adhere to constitutional standards. *See* Ohio Const., art. XI, § 9.

8. It is necessary and appropriate for this Court to exercise its constitutionally-delegated authority. While the U.S. Supreme Court has held that partisan gerrymandering claims are non-justiciable in federal court, it has also acknowledged that it is the providence of state courts to address the scourge of partisan gerrymandering. *Rucho v. Common Cause*, 139 S. Ct. 2484, 2507 (2019) ("Provisions in state statutes and state constitutions can provide standards and guidance for state courts to apply."). "Indeed, state courts are particularly well-positioned to adjudicate redistricting disputes," and "[s]tate courts' duty to decide constitutional cases applies with full force in the redistricting context." *Common Cause v. Lewis*, N.C. Super. No. 18 CVS 014001, 2019 WL 4569584, at *124–25 (Sep. 03, 2019); *see also League of Women Voters v. Commonwealth*, 645 Pa. 1, 8, 178 A.3d 737, 741 (2018) (Supreme Court of Pennsylvania finding

that it could establish a workable standard for adjudicating partisan gerrymandering claims under the state constitution). *See also Ohio A. Philip Randolph Inst. v. Householder*, 140 S. Ct. 101, 101 (2019) (citing *Rucho v. Common Cause*, 139 S. Ct. 2484 (2019)).

9. There is a long history of state courts finding that partisan gerrymandering violates state constitutional rights. "In Wisconsin, the State Supreme Court declared that the challenged 'apportionment act violates and destroys one of the highest and most sacred rights and privileges of the people of this state, guarantied [sic] to them by the ordinance of 1787 and the constitution, and that is 'equal representation in the legislature.'"" *Ohio A. Philip Randolph Inst. v. Householder*, 373 F. Supp. 3d 978, 1090 (S.D.Ohio 2019) (quoting *State ex rel. Att'y Gen. v. Cunningham*, 81 Wis. 440, 51 N.W. 724, 729 (1892)); *League of Women Voters v. Commonwealth,* 645 Pa. at 8 (Pennsylvania Supreme Court holding that "the 2011 [Congressional] Plan violates Article I, Section 5—the Free and Equal Elections Clause—of the Pennsylvania Constitution" because it is a partisan gerrymander); *Lewis*, 2019 WL 4569584, at *128 (holding that the "extreme partisan gerrymanders" at issue "violate[d] the fundamental constitutional rights of free elections, equal protection, speech, assembly and association").

10. Judicial intervention is necessary because the kind of extreme partisan gerrymandering that has occurred once again in Ohio violates "the core principle of republican government . . . that the voters should choose their representatives, not the other way around." *Ariz. State Legislature v. Ariz. Indep. Redistricting Comm'n*, 135 S. Ct. 2652, 2677 (2015) (internal quotation marks omitted); *see also League of Women Voters v. Commonwealth*, 645 Pa. 1, 8, 178 A.3d 737, 740–41 (2018) ("It is a core principle of our republican form of government "that the voters should choose their representatives, not the other way around."). "A principal danger feared by our country's founders lay in the possibility that the holders of governmental authority would

use official power improperly to perpetuate themselves, or their allies, in office." *Stanson v. Mott*, 17 Cal. 3d 206, 217 (1976) (citing The Federalist Papers, Nos. 52, 53 (Madison), 10 Richardson, Messages and Papers of the Presidents 98–99 (1899) (President Jefferson)). Rather than reflecting voters' actual preferences, elections under gerrymandered systems, like Ohio's General Assembly map, systematically lock in candidates from the legislators' preferred party and discourage electoral competition.

11. Indeed, the distortion of the map enacted last week is just as extreme—and in some ways, even more extreme—than the gerrymander that had finally motivated Ohioans to pass the anti-gerrymandering constitutional amendment.

12. This Court must act expeditiously before Ohio's democracy is distorted yet again. The primary election for candidates for the General Assembly is currently scheduled for May 3, 2022, and the candidate filing deadline is scheduled for February 2, 2022.

13. Relators bring this action to ensure that the fair, neutral, and constitutionally-mandated requirements of Article XI govern the current reapportionment process and the map that will obtain in the 2022 elections.

JURISDICTION

14. This Court has original jurisdiction of this matter under Article XI of the Ohio Constitution. Ohio Const., art. XI, § 9 ("The supreme court of Ohio shall have exclusive, original jurisdiction in all cases arising under this article."). Pursuant to Article XI, Relators seek a determination that the apportionment plan adopted by the Ohio Redistricting Commission is invalid.

PARTIES

A. **Relators**

15. Relator League of Women Voters of Ohio ("LWVO") is the Ohio chapter of the League of Women Voters of the United States, a nonpartisan, statewide non-profit founded in May 1920, shortly before the ratification of the Nineteenth Amendment in August 1920 granting women's suffrage. With 3,661 members across the state, LWVO and its 29 local Leagues and 4 at-large units are dedicated to empowering citizens and ensuring an effective democracy. The LWVO has members, the vast majority of whom are registered Ohio voters, in all of Ohio's Senate districts and 94 of Ohio's 99 House districts. Ex. 2, Miller Aff. ¶ 4.

16. As part of its mission to empower voters and defend democracy, LWVO aims to shape public policy, to educate the public about policy issues and the functioning of our democracy, and to protect and expand Ohioans' access to elections and their government. Individual LWVO members invest substantial volunteer time in voter education, civic engagement, and voter registration. *Id.* ¶ 5.

17. The gerrymandered general assembly map impairs LWVO's work by deterring and discouraging its members and other Ohio voters from engaging in the political process, thereby making it more difficult for LWVO to engage voters through its education, registration, and outreach efforts. For example, LWVO and its members have struggled to engage and activate self-identified Democratic voters in districts drawn in a manner that favors Republican candidates. When LWVO hosts forums for candidates in districts that are not competitive, it is difficult to get candidates from the favored party to attend. *Id.* ¶ 6.

18. Concern about the prospect of a gerrymandered general assembly map has forced LWVO during 2021 to divert staff responsibilities, member efforts, and financial resources to an advocacy campaign for fair districts. If LWVO and its members could rely on a nonpartisan

process to produce fair maps and competitive districts, those resources would otherwise have been devoted to LWVO's traditional nonpartisan voter education services and programs. *Id.* ¶ 7.

19. Instead, LWVO has been forced to expend money and time advocating for fair districts. This advocacy by members and staff includes attending and testifying at multiple hearings across the state, mobilizing voter communications with elected officials, and organizing lobbying visits and rallies at the Statehouse in Columbus, among other efforts. During the 2021 redistricting cycle, LWVO helped sponsor a competition for citizens to draw redistricting maps that privileged good governance aims over partisan ends. LWVO has deployed all of its staff members on redistricting-related work, hired a new staff person to work strictly on redistricting, and hired a mapping expert to run the citizen map-drawing competition and analyze the Ohio Redistricting Commission map proposals as they became available. *Id.* ¶ 8.

20. In addition, fundraising by LWVO for its traditional programs has suffered during 2021 due to the fair districts campaign. Financial supporters of LWVO have been forced to choose between supporting LWVO's traditional programs and funding the advocacy campaign for fair districts in 2021. As an example, LWVO's fundraising for Women's Equality Day is down roughly 40 percent in 2021 compared to 2020. *Id.* ¶ 9.

21. LWVO is suing on its own behalf as well as in its capacity as representative of its members in order to seek a constitutional map. *Id.* ¶ 14.

22. Relator Ohio A. Philip Randolph Institute ("APRI") is the Ohio chapter of the A. Philip Randolph Institute, a national organization for African-American trade unionists and community activists, with eight chapters across Ohio and hundreds of members and volunteers statewide. Ex. 3, Washington Aff. ¶¶ 4–5.

23. While APRI supports a variety of charitable ventures unrelated to voting, the bulk of APRI's work is focused on voter education, registration, civic engagement, and outreach efforts. These efforts have continued during the COVID-19 pandemic, with APRI leadership and members conducting in-person and virtual voter outreach and voter education events, and partnering with churches to educate the public about absentee voting. *Id.* at ¶¶ 4–5, 7–8.

24. The gerrymandered general assembly map impairs APRI's work by deterring and discouraging its members and other Ohio voters from engaging in the political process, thereby making it more difficult for APRI to engage voters through its education, registration, and outreach efforts. At voter outreach events throughout 2021, both in person and virtual, APRI representatives have routinely heard attendees reiterate that because of gerrymandering, they believe nothing will ever change and they will never get a fair district map where their votes will matter. As a result, it is more difficult for APRI members to get people engaged. *Id.* ¶¶ 9–10.

25. The prospect of another gerrymandered map has consumed APRI's time and resources throughout 2021 that would otherwise have gone to traditional voter registration and outreach efforts, and that APRI would not have had to divert if its members could rely on Ohio's process to produce nonpartisan, fair maps. For example, APRI members have invested time and energy testifying at redistricting hearings in response to the Commission's proposed maps, at times forcing them to cancel or set aside other activities. In addition, APRI members have been forced to educate citizens and answer countless questions about the redistricting process, what "packing" and "cracking" are, why there is an initiative for fair districts and what its goals are, why their neighborhoods have been chopped up in unprecedented ways, and why a system has been designed that leads them to feel that their votes do not count. *Id.* ¶¶ 11–13.

26. Members of the public frequently contact APRI with questions about gerrymandering and similar issues, because they cannot get through to their elected representatives or get an answer from them. Responding to questions about redistricting also takes up a significant amount of APRI's time and resources. *Id.* at ¶ 14.

27. APRI is suing on its own behalf as well as in its capacity as representative of its members in order to seek a constitutional map. *Id.* ¶ 15.

28. Relator Tom Harry is a United States citizen, registered to vote in the State of Ohio, and an active Ohio voter. He is a Democratic voter, has supported Democratic state legislative candidates for Ohio's State House of Representatives and Senate in the past, and plans to support such candidates in the future. Relator Harry lives at 9116 N Creek Lane, Dayton, Ohio 45458, which is in Ohio House District 37 and Ohio Senate District 6. Relator Harry's interests in electing members of the General Assembly under a fair map have been prejudiced by the maps that Respondents adopted. The improper partisan unfairness of the maps that Respondents adopted has resulted in an illegally large number of districts whose voters have supported Republican candidates. House District 37 is amongst those improperly drawn districts.

29. Relator Tracy Beavers is a United States citizen, registered to vote in the State of Ohio, and an active Ohio voter. She is a Democratic voter, has supported Democratic state legislative candidates for Ohio's State House of Representatives and Senate in the past, and plans to support such candidates in the future. Relator Beavers is an active member of the League of Women Voters of Ohio. Relator Beavers lives at 1030 W Comet Road, New Franklin, Ohio 44216, which is in Ohio House District 31 and Ohio Senate District 27. Relator Beavers' interests in electing members of the General Assembly under a fair map have been prejudiced by the maps that Respondents adopted. The improper partisan unfairness of the maps that Respondents adopted

has resulted in an illegally large number of districts whose voters have supported Republican candidates. House District 31 and Senate District 27 are amongst those improperly drawn districts.

30. Relator Valerie Lee is a United States citizen, registered to vote in the State of Ohio, and an active Ohio voter. She is a Democratic voter, has supported Democratic state legislative candidates for Ohio's State House of Representatives and Senate in the past, and plans to support such candidates in the future. Relator Valerie Lee is an active member of the League of Women Voters of Ohio. Relator Lee lives at 5000 Sycamore Woods Boulevard, Dayton, Ohio 45426, which is in Ohio House District 39 and Ohio Senate District 5. Relator Lee's interests in electing members of the General Assembly under a fair map have been prejudiced by the maps that Respondents adopted. The improper partisan unfairness of the maps that Respondents adopted has resulted in an illegally large number of districts whose voters have supported Republican candidates. House District 39 and Senate District 5 are amongst those improperly drawn districts.

31. Relator Iris Meltzer is a United States citizen, registered to vote in the State of Ohio, and an active Ohio voter. She is a Democratic voter, has supported Democratic state legislative candidates for Ohio's State House of Representatives and Senate in the past, and plans to support such candidates in the future. Relator Meltzer is an active member of the League of Women Voters of Ohio. Relator Meltzer lives at 1012 Vine Street, Kent, Ohio, 44240 which is in Ohio House District 72 and Ohio Senate District 32. Relator Meltzer's interests in electing members of the General Assembly under a fair map have been prejudiced by the maps that Respondents adopted. The improper partisan unfairness of the maps that Respondents adopted has resulted in an illegally large number of districts whose voters have supported Republican candidates. House District 72 and Senate District 32 are amongst those improperly drawn districts.

32. Relator Sherry Rose is a United States citizen, registered to vote in the State of Ohio, and an active Ohio voter. She is a Democratic voter, has supported Democratic state legislative candidates for Ohio's State House of Representatives and Senate in the past, and plans to support such candidates in the future. Relator Rose is an active member of the League of Women Voters of Ohio. Relator Rose lives at 241 Whittier Drive, Kent, Ohio 44240, which is in Ohio House District 72 and Ohio Senate District 32. Relator Rose's interests in electing members of the General Assembly under a fair map have been prejudiced by the maps that Respondents adopted. The improper partisan unfairness of the maps that Respondents adopted has resulted in an illegally large number of districts whose voters have supported Republican candidates. House District 72 and Senate District 32 are amongst those improperly drawn districts.

33. Relator Bonnie Bishop is a United States citizen, registered to vote in the State of Ohio, and an active Ohio voter. She is a Democratic voter, has supported Democratic state legislative candidates for Ohio's State House of Representatives and Senate in the past, and plans to support such candidates in the future. Relator Bishop is an active member of the League of Women Voters of Ohio, and former President of the League of Women Voters of Toledo-Lucas County. Relator Bishop lives at 8160 Sunset Lane #208, Sylvania, Ohio, 43560, which is in Ohio House District 43 and Ohio Senate District 2. Relator Bishop's interests in electing members of the General Assembly under a fair map have been prejudiced by the maps that Respondents adopted. The improper partisan unfairness of the maps that Respondents adopted has resulted in an illegally large number of districts whose voters have supported Republican candidates. House District 43 and Senate District 2 are amongst those improperly drawn districts.

34. The maps that Respondents adopted deprive Relators and all similarly situated individuals of rights guaranteed to them under Article XI of the Ohio Constitution.

B. Respondents

35. Respondents are the Ohio Redistricting Commission and the members of the Ohio Redistricting Commission, namely Ohio Governor Michael DeWine, Ohio Secretary of State Frank LaRose, Ohio Auditor Keith Faber, President of the Ohio Senate Matt Huffman, Speaker of the Ohio House Robert R. Cupp, Ohio Senator Vernon Sykes, and Minority Leader of the Ohio House Emilia Sykes.

LEGAL BACKGROUND

A. Article XI

36. "Prior to the [Ohio] Constitution of 1851, the apportionments of legislative districts had been made by the General Assembly with the result that oftentimes political advantage was sought to be gained by the party in power. Accordingly, Article XI was incorporated in the Constitution for the purpose of correcting the evils of former days." *State ex rel. Herbert v. Bricker*, 139 Ohio St. 499, 508, 41 N.E.2d 377 (Ohio 1942). "The objective sought by the constitutional provisions was the prevention of gerrymandering." *Id.* at 509.

37. The Article XI in Ohio's 1851 Constitution aimed to prevent gerrymandering by imposing new constraints on Ohio's redistricting process and transferring the process from the General Assembly to the Ohio Apportionment Board.

38. Earlier incarnations of Article XI, however, proved insufficient to prevent partisan gerrymandering, as this Court determined that it lacked clear commands regarding partisan fairness. *Wilson*, 2012-Ohio-5367, ¶ 14, 134 Ohio St. 3d at 225, 981 N.E.2d at 820. In response, the voters of Ohio overwhelmingly passed a constitutional amendment in 2015, amending Article XI in several respects. First, the amended Article XI established the Ohio Redistricting Commission, which is responsible for redistricting the State's House and Senate Districts in compliance with Article XI of the Ohio Constitution. The Commission consists of seven members:

the Governor, the Auditor of State, the Secretary of State; one person appointed by the Speaker of the House of Representatives, one person appointed by the legislative leader of the largest political party in the House of Representatives of which the Speaker of the House is not a member, one person appointed by the president of the Senate, and one person appointed by the legislative leader of the largest political party in the Senate of which the president of the Senate is not a member. Ohio Const., art. XI, § 1(A).

39. "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 shall be required to adopt any general assembly district plan." *Id.* § 1(B)(3). "If the Ohio redistricting commission fails to adopt a final general assembly district plan not later than the first day of September [2021], the commission shall introduce a proposed general assembly district plan by a simple majority vote of the commission." *Id.* § 8(A)(1).

40. Article XI imposes detailed guidelines for redistricting that include objective, rules for the reapportionment process, as well as mandates that the commission be guided by partisan fairness, and eschew any quest for unfair partisan advantage.

a) Commission Process and Deadlines: Section 1

41. "The affirmative vote of four members of the commission"—"including at least two" opposition party members of the commission—"shall be required to adopt any general assembly district plan." *Id.* § 1(B)(3).

42. The Commission was required to hold three hearings "before adopting, but after introducing, a proposed plan." *Id.* §1(B)(3)(c).

43. The Commission was to adopt a plan by September 1, 2021.

44. If the Commission was unable to reach consensus with the two opposition members by September 1, 2021, it could use the impasse procedure. Under the impasse procedure, the

Commission could introduce a proposed General Assembly plan by simple majority vote. *Id*. §8(A)(1).

45. At least one hearing was required after the introduction of a simple majority map, in which the public could give testimony and there could be amendments to the plan. *Id*. § 8(A)(2).

46. Under the impasse procedure, the Commission had until September 15, 2021 to adopt a final map. *Id*. § 8(A)(3).

47. If a plan were adopted with the two members of the opposition party voting in favor of the plan, it would be in force for 10 years. *Id*. § 8(B).

48. A plan adopted by a simple majority vote, without at least two of the opposition party members, would be in force for only four years. *Id*. § 8(C)(1)(a).

49. When a simple majority four-year plan is adopted, the Commission "***shall include*** a statement explaining what the commission determined to be the statewide preferences of the voters of Ohio and the manner in which the statewide proportion of districts in the plan whose voters, based on statewide state and federal partisan general election results during the last ten years, favor each political party corresponds closely to those preferences." *Id*. § 8(C)(2) (emphasis added).

50. Further, "[a]t the time the plan is adopted, a member of the commission who does not vote in favor of the plan may submit a declaration of the member's opinion concerning the statement included with the plan." *Id.*

b) Political Fairness: Section 6

51. In addition to the Section 8 requirement for a statement by the Commissioners who enact a simple majority map, explaining how they considered statewide voter preferences in drawing their map, Section 6 mandates that the Commission be guided by political fairness in the drawing of all maps under Article XI.

52. Section 6 provides that the 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.

Id. § 6 (emphasis added).

53. The provisions of Section 6(a) and Section 6(b) are complementary. Together, they require that map drawers not draw maps to the favor of one party or another, and one way that favoritism can be measured is through the deviation from statewide vote share in statewide elections over the past decade.

54. Section 6 further provides that all maps "shall be compact." *Id*. § 6(C).

c) Jurisdiction: Section 9

55. Article XI, Section 9 gives this Court "exclusive, original jurisdiction in all cases arising under this article" without limitation. *Id.* § 9(A).

56. Section 9(B) states that, "[i]n the event that any section of this constitution relating to redistricting, any general assembly district plan made by the Ohio redistricting commission, or any district is determined to be invalid by an unappealed final order of a court of competent jurisdiction then, notwithstanding any other provisions of this constitution, the commission shall be reconstituted as provided in Section 1 of this article, convene, and ascertain and determine a general assembly district plan in conformity with such provisions of this constitution as are then valid, including establishing terms of office and election of members of the general assembly from districts designated in the plan, to be used until the next time for redistricting under this article in conformity with such provisions of this constitution as are then valid." *Id.* § 9(B).

57. Section 9(B) thereby provides the global remedy for any case in which the court determines that the plan or any district is "invalid," including on the basis of Section 6 of Article XI. It provides that where this Court determines that a plan is "invalid" that it shall direct that the Redistricting Commission shall be reconstituted so as to "ascertain and determine a general assembly district plan" that conforms with the terms of the Ohio Constitution. Article XI, Section 6 —and its specific partisan fairness requirements—is precisely just such a constitutional provision with which a plan must comply.

58. There are additional remedies set forth in Section 9 for violations of specified articles. In particular, Section 9(D)(3) provides specific remedies to be applied when a plan includes violations of Sections 2, 3, 4, 5, or 7 of Article XI. It provides that if those other sections are violated that this Court can direct three different remedies: (a) the correction of isolated errors, *see* § 9(D)(3)(a); (b) a direction that an entirely new map be enacted (if certain numerical requirements are met (*i.e.,* 6 invalid House districts and/or 2 invalid Senate districts), *see* § 9(D)(3)(b); or (c) a direction, even where these numerical minima are not met, that an entirely new map be enacted whenever a violation of Section 2,3,4,5 or 7 results in partisan unfairness, *see* § 9(D(3)(c)). That the Constitution went out of its way to make sure that partisan fairness considerations have extra weight in Section 9(D)(3)(c)—requiring an entirely new statewide map just for one instance of a municipal split infraction—only underscores the importance of those considerations to Article XI.

FACTS

A. Respondents Engaged in an Unduly Partisan Process.

59. The State of Ohio has a history of gerrymandered maps. The maps that came out of Ohio's 2011 decennial apportionment process were particularly gerrymandered. For example, in 2012 elections, the year the map was new, Democratic candidates won 50.2% of the statewide

vote, but they won only 39.4% of Ohio's state house seats. *See* Ex. 1, Warshaw Aff., at 18. This bias persisted: Democrats won 45.6% of the votes, but only 35.4% of the seats, in the 2020 state house elections. *Id*. The extreme seat bias was the result not of political geography, but of a manipulated process. *Id.* at 18–22.

60. The process used by the Redistricting Commission mirrors the process that was used in 2011 to draw the map. The prior manipulated apportionment process was outlined in detail in the three-judge federal panel in *Ohio A. Philip Randolph Inst. v. Householder*. While the litigation focused on the congressional process, both the congressional and state legislative maps were drawn using the same process at the same time. *Ohio A. Philip Randolph Inst. v. Householder*, 18-cv-357 (S.D. Ohio), Dkt 230-12 (Ray DiRossi Deposition Tr.) at 52:14–53:14, 63:21–64:14, 89:14–90:3, 95:7–15, 164:11–15, 178:6–13, 232:24–233:6, 276:20–277:3. Based on the court's review of extensive evidence, the panel found that "partisan intent predominated" the map drawing process. *Ohio A. Philip Randolph Inst. v. Householder*, 373 F. Supp. 3d at 1099. The court specifically credited "evidence of the timeline and logistics of the map-drawing process, the map drawers' heavy use of partisan data, contemporaneous statements made by the map drawers about their efforts, the characteristics of the map itself (including the irregular shape of the districts, their lack of compactness, and the high number of county and municipality splits), and finally, the outlier partisan effects that the map has produced since its enactment." *Id*.

61. One procedural issue that the three-judge panel found particularly relevant was that "[t]here was a severe disconnect between the outward face of the map-drawing process and its true inner workings." *Id.* at 1099–1100. While the process was supposed to be conducted by the bipartisan apportionment board, in reality the map was drawn in secret by partisan actors. *Id*.

62. The 2021 state redistricting process was just as flawed and as infected with partisan bias as the 2011 state redistricting process. The 2021 Ohio Redistricting Commission was convened on August 6, 2021. There were only two Democrats on the Commission; the rest of the members were from the Republican Party. As in 2011, all deliberations happened behind closed doors and the process was controlled by one party.

63. Despite the constitutional mandate that any general assembly district plan must be adopted, including with the support of at least two Democratic members of the Commission, by September 1, 2021, Ohio Const., art. XI, §§ 1(B)(3), 1(C), the Republicans failed to even present a map until nine days after that constitutional deadline.

64. In flouting the constitutional deadlines of Section 1 of Article XI, the Republican members of the Commission repeatedly invoked the delayed release of the Census data as a rationale. Ex. 5, Tr. of Sept. 9, 2021 Morning Hrg., at 3, 12, 13; Ex. 6, Tr. of Sept. 9, 2021 Afternoon Hrg., at 5–6. But this delayed data did not come as a surprise to the Commission—the Commission had been well aware by early 2021 that the Census data would be received later than usual. In fact, Ohio Republican leadership filed a lawsuit seeking an earlier release of Census data, but withdrew their request when the Census Bureau announced that it would be able to produce Census data by August 16, 2021, over a month earlier than the previously-announced release date of September 30, 2021. With full awareness of both this new release date and its constitutionally-mandated deadline to adopt a general assembly district plan, the Republican administration specifically represented to the Sixth Circuit that, "[a]lthough Ohio would prefer to get its data sooner, Ohio agrees that an August 16 delivery would allow it to complete its redistricting process." *Ohio v. Raimondo*, 848 F. App'x 187, 188 (6th Cir. 2021).

65. On September 9, 2021, the Republican members of the Commission presented a map through the testimony of Ray DiRossi, the chief map drawer. The map was introduced at the first of two hearings that day, which took place at 10:00 A.M.

66. DiRossi has a long history in the state of drawing Republican maps and was one of two chief map drawers of the gerrymandered map in 2011. *Ohio A. Philip Randolph Inst.*, 373 F. Supp. 3d at 995–96 (describing how DiRossi served "as [one of] the principal on-the-ground map drawers" and left his position in government to serve as a Republican consultant in order to draw the map). In 2011, DiRossi secured a room at the DoubleTree Hotel in Columbus, and dubbed it the "bunker." Only Republicans had access to the bunker while he was drawing his maps. *Id*.

67. This time around, DiRossi once again worked at the direction of only the Republican members of the Commission, with no input or oversight from the Democratic members.

68. This dynamic first became clear at the Commission's August 31, 2021 hearing. Having never been consulted by Republican members of the Commission about drawing a proposed map, the Democratic members of the Commission presented a proposed map on August 31, 2021, in advance of the Commission's constitutional deadline. At that time, the Republican members of the Commission refused to inform the Democratic members as to when they would be introducing any separate map, but one Republican member, Senate President Matt Huffman, indicated that he was "not prepared to discuss" the constitutionality of the Democrats' proposed map because he would "rather have our version of . . . the Senate Democrats' expert here today . . . to talk about that." Ex. 4, Tr. of Aug. 31, 2021 Hrg., at 9. House Minority Leader Emilia Sykes indicated that she had "not been privy to any of those conversations" regarding other maps that Commission members were working on, and she asked what, if anything, she could "expect in

terms of participating" in the drawing of other maps the Commission would consider. *Id.* at 8. No Republican member indicated that she would be included or that her input would be considered in drawing an alternative map.

69. At the Commission hearing on September 9, 2021, it became clear that the Republicans' expert was DiRossi. At that September 9 hearing, DiRossi testified that he had been "directed," by General Assembly leadership, "not to use" any "racial data or demographic data" when drawing the map. Ex. 5, Tr. of Sept. 9, 2021 Morning Hrg., at 8. In response, House Minority Leader Emilia Sykes—who is part of General Assembly leadership as the Leader of the Democrats in the Ohio House—asked who directed him thus, and indicated she was not privy to any request that DiRossi ignore racial data. *Id.* at 9.

70. Mr. DiRossi also stated that the Republican representatives and staffers responsible for drafting this map were "conducting an analysis of the election data contemplated by the constitution," but that analysis was "ongoing," and was "not complete" at the time that this map was proposed to the Commission. Ex. 5, Tr. of Sept. 9, 2021 Morning Hrg., at 8.

71. In the second hearing on September 9, 2021, in a 5-2 vote along partisan lines, the Commission voted to introduce the Republicans' map that had been proposed at the 10:00 A.M. meeting as the official proposed map of the Commission. Ex. 6, Tr. of Sept. 9, 2021 Afternoon Hrg., at 2, 7–8. Not only did the Commission embrace the Republicans' map as its proposed plan over the objection of its Democratic members, but it selected the Republicans' map as the Commission's proposed plan before giving the public any meaningful opportunity to look at, much less review, the map.

72. The map was first presented to the public at 10:00 A.M., and the Commission selected that map as its proposed plan the same day at its 2:00 P.M. hearing. Both hearings had

been announced with only one day's notice. Many witnesses testified that they were provided insufficient notice to fully participate and did not have enough time to view the map in order to provide feedback. *See* Ex. 5, Tr. of Sept. 9, 2021 Morning Hrg.; Ex. 6, Tr. of Sept. 9, 2021 Afternoon Hrg.

73. Similarly, in 2011, the Court found that the maps had been drawn in secret and only shared at the last moment with little opportunity for engagement from the opposition party or public. *Ohio A. Philip Randolph Inst.*, 373 F. Supp. 3d. at 1100.

74. On the evening of September 15, 2021, Senate President Huffman introduced an amendment to the Republican-proposed map that the Commission had passed on September 9, revising several district boundaries. Within ten minutes of its introduction, the Commission had passed the amendment along party lines. Just after midnight on September 16, 2021, the Commission voted—again in a 5-2 vote along party lines—to adopt the Republicans' amended map, introduced less than an hour earlier, as the general assembly plan for the next four years.

75. Though most of the Republicans' process took place behind closed doors, Republican Commission members made public statements revealing that their map was plainly unduly partisan, candidly admitting that their map would not stand up to scrutiny under Article XI of the Ohio Constitution.

76. Governor DeWine expressed regret and doubt about of the legality of the final maps at the Commission's final hearing, stating he was "sure" the Commission could have reached an outcome "that was much more clearly constitutional," Ex. 7, Tr. of Sept. 15, 2021 Hrg., at 11. In a separate statement after the vote, Governor DeWine likewise said that the Commission's "job is to make [the redistricting plan] as constitutional as we can, and ***I thought we could have done***

better." Susan Tebben, *Huffman Defends his Maps, Redistricting Process Despite No Bipartisan Support*, Ohio Capital Journal (Sept. 17, 2021), https://bit.ly/3nWEwqf (emphasis added).

77. Secretary of State LaRose similarly lamented at the final meeting that the Commission's "***map has many shortcomings,***" and expressed "fear we're going to be back in this room very soon." Ex. 7, Tr. of Sept. 15, 2021 Hrg., at 10 (emphasis added).

78. Auditor Faber acknowledged that the Commission's map was "***not that good.***" Ex. 7, Tr. of Sept. 15, 2021 Hrg., at 14 (emphasis added).

79. Because the Republicans' amended map did not receive the support of two members of the minority party, the Commission was required under Article XI, Section 8(C)(2) to adopt a "statement explaining what the commission determined to be the statewide preferences of the voters of Ohio and the manner in which the statewide proportion of districts in the plan whose voters, based on statewide state and federal partisan general election results during the last ten years, favor each political party corresponds closely to those preferences."

80. During the Commission's hearings, witnesses frequently cited the importance of these Section 6(B) requirements, and asked how compliance with this constitutional requirement would be determined. *See, e.g.*, Ex. 5, Tr. of Sept. 9, 2021 Morning Hrg.; Ex. 6, Tr. of Sept. 9, 2021 Afternoon Hrg. Republican Commission members did not provide any clear explanation of how this provision should be interpreted, however, or how their maps would comply with this requirement: Auditor Faber even dismissed the requirements of Section 6 as "aspirational." Ex. 5, Tr. Of Sept. 9, 2021 Morning Hrg., at 23. During the Commission's final meeting on September 15, in fact, Secretary of State LaRose expressed concern that he had been "been asking for the rationale [for compliance with Section 6(B)] for days" but had "not gotten an answer until tonight,"

and asked whether "there [was] a reason for, for not sort of sharing this sooner to sort of guide the conversations as we've been having them." Ex. 7, Tr. of Sept. 15, 2021 Hrg., at 17.

81. At the final meeting, Senate President Huffman introduced a statement to comply with Section 8(C)(2), which he said "was prepared probably in the last five or six hours," and was "simply listing all" of the partisan metrics that could be "considered" to determine compliance with Section 6(B). Ex. 7, Tr. of Sept. 15, 2021 Hrg., at 17. Senate President Huffman's statement was adopted by the Commission along a 5-2 party-line vote. The statement did not provide a constitutionally valid, or even credible, justification for the enacted map, but was bald sophistry. *See infra* ¶¶ 87–88.

B. Respondents' Partisan Process Created Unduly Partisan Results.

82. This extremely partisan process described above yielded predictably partisan results. In violation of Article XI, the maps that Respondents adopted on September 16, 2021 were drawn primarily to favor Republicans and disfavor Democrats, and the statewide proportion of districts whose voters favor each political party does not correspond closely to the statewide preferences of the voters of Ohio. These violations are detailed in the causes of action below.

83. Beyond the procedural irregularities, the extremity of the skew of the map itself illustrates that Republican members of the Commission sought to ensure that the enacted plan would favor their party, even if doing so violated Article XI.

84. Despite Section 6's requirement that the map "correspond closely" with the manifest leanings of the electorate, the enacted map, and the Huffman statement accompanying it, reveal the majority's rejection of Section 6, and their disdain for the voters of Ohio or their well-established preferences. Over the past decade, Republicans have received between 46.2% and 59.7% of the statewide vote. *See* Ex. 10, Testimony of Collin Marozzi to Ohio Redistricting Commission at Table 1 (submitted Aug. 27, 2021); *see also* Ex. 9, Ohio Redistricting Commission,

Article XI, Section 8(C)(2) Statement (Sept. 16, 2021) (according to the Redistricting Commission's own statement, Republicans have only garnered an average 55% of the votes in statewide elections over the past 10 years). In the past decade, Democrats have won on average 45.5% of the statewide two-party vote. Ex. 1, Warshaw Aff., at 5, 24–25. Yet, they are only projected to win an approximate 32% to 33% of the seats in the Ohio House and 29% to 31% of the seats in the Ohio Senate—numbers that are just as disproportional as the 2012-2020 gerrymandered map—and in the Senate, even *more* disproportionate. *Id.* at 24–25.

85. Nor can Respondents reasonably contend that they even "attempted" to meet the requirements of Section 6. The blatant partisan unfairness of the enacted map belies any such contention.

86. Moreover, as the Cooper Affidavit makes plain, it was wholly possible to enact a map that complied with the other provisions of Article XI without violating the partisan fairness requirements of Section 6. Ex. 8, Cooper Aff. ¶¶ 20, 22. These alternative maps highlight that disproportionately advantaging Republicans was not necessary to achieve equal population requirements or other compelling state interests, but rather was done in order to advance the partisan aims of the Commission's Republican majority.

87. In the Commission's statement concerning how it considered the statewide voter preferences, it stated that "the Commission determined that Republican candidates won thirteen out of sixteen of those elections resulting in a statewide proportion of voters favoring statewide Republican candidates of 81 % and a statewide proportion of voters favoring statewide Democratic candidates of 19%." Ex. 9, Ohio Redistricting Commission, *Article XI, Section 8(C)(2) Statement* (Sept. 16, 2021).

88. The Commission's suggestion that it could somehow comply with Section 6(B) by counting up the number of elections in which Republican candidates were victorious finds no support in the language of Section 6(B). Rather, that provision expressly states that partisan fairness is to be determined by comparing two measures: (1) the proportion of ***districts*** in the plan whose ***voters*** favor a political party, based on statewide elections over the past ten years; and (2) the statewide preferences of the ***voters*** of Ohio. To suggest that one should merely count up the number of elections that Republicans won to determine the statewide preferences of the voters effectively means that all of the votes cast for a Democrat in an election count for nothing. Under the Commission's methodology, if the Republicans won 100% of the elections, each by 51% of the vote, then instead of constituting 51% of the statewide voter preferences, the Republicans would supposedly constitute 100% of the statewide voter preferences and that all the voters in the state preferred Republican candidates. Accordingly, under the Commission's approach, the Republicans would be entitled to 100% of the seats in the General Assembly rather than 51%. Such a methodology tortures Section 6(B) beyond any reasonable construction. *See also* Warshaw Aff. § 4.1 (noting that, under the Commission's explanation, "[I]f Republicans had won each statewide election with 50.1% of the vote, the statewide proportion of voters favoring Republican candidates is 100%. Thus, Republicans would be entitled to win 100% of the legislative seats. It makes much more sense that the text of Section 6(B)'s proportionality requirement instead implies that Republicans are entitled to 50.1% of the legislative seats if they win 50.1% of the votes.").

89. Accordingly, it is clear that the Commission did not draw a map that complied with the requirements of Article XI, Section 6, and in fact intentionally rejected Section 6.

FIRST CAUSE OF ACTION
Violation of Article XI

(The Districts of the Ohio House of Representatives)

90. Relators restate and incorporate by reference the allegations of paragraphs 1 through 89 above as though fully set forth in this Paragraph.

91. The House map that Respondents adopted is invalid because it violates Section 6 of Article XI in several ways. The House map that Respondents adopted violates Section 6(a) as it was drawn primarily to favor the Republican Party, which is demonstrated through statements made by the members of the Commission, the map drawing process, and the extreme nature of the partisan skew of the map. *See, e.g.* Ex. 1, Warshaw Aff. at 23–28 (describing the partisan skew of the map). The House map that Respondents adopted further does not comply with the requirement of Article XI, Section 6(B), because 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 does not correspond closely to the statewide preferences of the voters of Ohio. *See* Ex. 1, Warshaw Aff. at 23–28.

SECOND CAUSE OF ACTION
Violation of Article XI

(The Districts of the Ohio Senate)

92. Relators restate and incorporate by reference the allegations of paragraphs 1 through 91 above as though fully set forth in this Paragraph.

93. The Senate map that Respondents adopted is invalid because it violates Section 6 of Article XI in several ways. The Senate map that Respondents adopted violates Section 6(a) as it was drawn primarily to favor the Republican Party, which is demonstrated through the procedure of the map drawing process and the partisan bias metrics of the map. *See* Ex. 1, Warshaw Aff., at 23–28. The Senate map that Respondents adopted further does not comply with the requirement

of Article XI, Section 6(B), because 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 does not correspond closely to the statewide preferences of the voters of Ohio. *See* Ex. 1, Warshaw Aff., at 23–28.

PRAYER FOR RELIEF

Accordingly, Relators respectfully request that this Court:

1. Declare that the maps that Respondents adopted are invalid for failure to comply with Article XI of the Ohio Constitution;

2. Order the Commission to adopt a new general assembly district plan or, at a minimum, to amend the maps that Respondents adopted to correct the violations, as contemplated in Article XI, Section 9(B);

3. Issue a permanent injunction and judgment barring Respondents from calling, holding, supervising, administering, or certifying any elections under the maps that Respondents adopted, as Relators have no adequate remedy at law and will be irreparably harmed by the continued violation of their constitutional and statutory rights;

4. Hold hearings, consider briefing and evidence, and otherwise take actions necessary to adopt redistricting plans for the state of Ohio or to direct the Commission as to plans to be adopted;

5. 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 plans adopted by the Commission pursuant to the Ohio Constitution; and

6. 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 Freda J. Levenson

Freda J. Levenson (0045916)
ACLU of Ohio Foundation, Inc.
4506 Chester Avenue
Cleveland, Ohio 44103
(614) 586-1972 x125
flevenson@acluohio.org

David J. Carey (0088787)
ACLU of Ohio Foundation, Inc.
1108 City Park Avenue, Suite 203
Columbus, OH 43206
(614) 586-1972 x2004
dcarey@acluohio.org

Alora Thomas*
Julie A. Ebenstein*
American Civil Liberties Union
125 Broad Street
New York, NY 10004
(212) 519-7866
athomas@aclu.org
jebenstein@aclu.org

Robert D. Fram*
Donald Brown*
Joshua González*
Juliana Goldrosen (PHV 25193 - 2021)
Salesforce Tower
415 Mission Street, Suite 5400
San Francisco, CA 94105-2533
(415) 591-6000
rfram@cov.com

James Smith*
Megan C. Keenan*
L. Brady Bender (PHV 25192 - 2021)
One CityCenter
850 Tenth Street, NW
Washington, DC 20001-4956
(202) 662-6000
mkeenan@cov.com

Anupam Sharma*
James Hovard*
Yale Fu*
3000 El Camino Real
5 Palo Alto Square, 10th Floor
Palo Alto, CA 94306-2112
(650) 632-4700
asharma@cov.com

Madison Arent*
The New York Times Building
620 Eighth Avenue
New York, NY 10018-1405
(212) 841 1000
marent@cov.com

Counsel for Relators
** Pro Hac Vice Motion Forthcoming*

IN THE SUPREME COURT OF OHIO

League of Women Voters of Ohio, *et al.*,	:	
	:	**Case No. 2021-1193**
Relators,	:	
v.	:	**Original Action Filed Pursuant to Ohio Constitution, Article XI, Section 9(A)**
Ohio Redistricting Commission, *et al.*,	:	**[Apportionment Case Pursuant to S. Ct. Prac. R. 14.03]**
Respondents.	:	

RESPONDENT SENATOR VERNON SYKES' ANSWER TO RELATORS' COMPLAINT

Freda Levenson
flevenson@acluohio.org
David J. Carey
dcarey@acluohio.org
Alora Thomas
athomas@aclu.org
Julie A. Epstein
jepstein@aclu.org

Robert D. Fram
rfram@cov.com
Joshua Gonzalez
Jgonzalez@cov.com
Megan C. Keenan
Mkeenan@cov.com
Anupam Sharma
asharma@cov.com
Madison Arent
marent@cov.com

Laura B. Bender
David Denuyl
Yiye Fu
Joshua Goldrosen
James Hovard
Alexander Thomson

Counsel for LWOV Relators

Erik Clark
ejclark@organlegal.com
Ashley Merino
amerino@organlegal.com

Counsel for Respondent Ohio Redistricting Commission

Bridget Coontz
Bridget.Coontz@ohioAGO.gov
Julie Pfieffer
Julie.Pfieffer@ohioAGO.gov
Michael K. Hendershot
Michael A. Walton
Michael.walton@ohioago.gov
David Anthony Yost

Counsel for Respondents Ohio Governor Mike DeWine, Ohio Secretary of State Frank LaRose, and Ohio Auditor Keith Faber

Peter M. Ellis
pellis@reedsmith.com
M. Patrick Yingling
MPYingling@ReedSmith.com
Natalie R. Salazar
NSalazar@reedsmith.com
Brian A. Sutherland

Abha Khanna
Ben Stafford
Elias Law Group
1700 Seventh Avenue, Suite 200
Seattle, WA 9801
akhanna@elias.law
bstafford@elias.law

Aria C. Branch
Jyoti Jasrasaria
Spencer W. Klein
Elias Law Group
10 G. Street NE, Suite 600
Washington, DC 20002
abranch@elias.law
jjasrasaria@elias.law
sklein@elias.law

Donald J. McTigue
Derek S. Clinger
McTigue & Colombo LLC
545 East Town Street
Columbus, OH 43215
dmctigue@electionlawgroup.com
dclinger@electionlawgroup.com

William Stuart Dornette
dornette@taftlaw.com
John Branch
John.branch@nelsonmullins.com
Beth Anne Bryan
bryan@taftlaw.com
Thomas Farr
Tom.farr@nelsonmullins.com
Alyssa Riggins
Alyssa.riggins@nelsonmullins.com
Phillip Strach
Phillip.strach@nelsonmullins.com
Philip Daniel Williamson
pwilliamson@taftlaw.com

Counsel for Bria Bennett Relators

bsutherland@reedsmith.com
Ben R. Fliegel*
bfliegel@reedsmith.com

Alicia L. Bannon
Alicia.bannon@nyu.edu
Yurji Rudensky
rudenskyy@brennan.law.nyu.edu
Ethan Herenstein
herensteine@brennan.law.nyu.edu

Brad Funari
Michael Li
Natalie R. Stewart

Attorneys for OOC Relators

Diane Menashe (0070305)*
*Counsel of Record
John Gilligan (0024542)
ICE MILLER LLP
250 West Street, Suite 700
Columbus, Ohio 43215
T: (614) 462-6500
F: (614) 222-3468
Diane.Menashe@icemiller.com
John.Gilligan@icemiller.com

Counsel for Respondents Senator Vernon Sykes and House Minority Leader Emilia Sykes

Respondent Sen. Vernon Sykes ("Sen. Sykes" or "Respondent"), by his attorneys, hereby answers and asserts the following affirmative defenses to the Complaint filed by Relators the League of Women Voters, *et al.*, according to the numbered paragraphs therein, as follows:

INTRODUCTION

1. Respondent admits the allegations of Paragraph 1.

2. In response to Paragraph 2, Respondent admits that the 2021 Commission Plan (the "Plan") was designed to preserve the Republican super majority in the Ohio General Assembly, whereas a map that complied with the provisions of Article XI, Section 6, would have established districts favoring Democrats in at least 45% of the state's districts with the remaining 55% favoring Republicans.

3. In response to Paragraph 3, Respondent admits that the Plan was designed to favor the Republican super majority in the Ohio General Assembly, whereas a map that complied with the provisions of Article XI, Section 6, would have established districts favoring Democrats in at least 45% of the state's districts with the remaining 55% favoring Republicans.

4. Respondent admits the allegations of Paragraph 4.

5. In response to Paragraph 5, Respondent admits that in 2011, a group of voters challenged Ohio's map on the basis of partisan unfairness. Answering further, Respondent states that the *Wilson v. Kasich* decision of the Ohio Supreme Court is a written document which speaks for itself, and thus no response is required to Relators' characterization of it.

6. In response to Paragraph 6, Respondent admits that on November 3, 2015, approximately 71 percent of Ohio voters voted in favor of Issue 1, thereby voting to amend Article XI of the Ohio Constitution. Answering further, Respondent states that the Ohio Constitution and the additional source materials cited in Paragraph 6 speak for themselves, and thus no response is required to Relators' characterization of them.

7. Respondent admits the allegations of Paragraph 7.

8. Respondent admits the allegations of the first sentence of Paragraph 8. Answering further, Respondent states that the remaining allegations of Paragraph 8 rely upon the written opinions of several courts, including (but not limited to) the Supreme Court of the United States, which opinions speak for themselves and thus no response is required to Relators' characterization of them.

9. In response to Paragraph 9, Respondent states that the written opinions of several courts, which opinions speak for themselves and thus no response is required to Relators' characterization of them. Answering further, Respondent is without knowledge or information sufficient to form a belief as to the truth of any remaining allegations of Paragraph 9, and therefore denies same.

10. In response to Paragraph 10, Respondent states that the written opinions of several courts, which opinions speak for themselves and thus no response is required to Relators' characterization of them. Answering further, Respondent is without knowledge or information sufficient to form a belief as to the truth of any remaining allegations of Paragraph 10, and therefore denies same.

11. In response to Paragraph 11, Respondent states that he voted against the Plan, which was proposed by Republican members of the Commission and adopted by a 5-2 party-line vote, and which was inconsistent with the Ohio Constitution, as amended overwhelmingly by Ohio voters just six years ago.

12. Respondent admits the allegations of Paragraph 12.

13. In response to Paragraph 13, Respondent states that the Complaint speaks for itself, and thus no response is required to Relators' characterization of it.

JURISDICTION

14. In response to Paragraph 14, Respondent admits that the Supreme Court of Ohio has original jurisdiction of this matter pursuant to Article XI of the Ohio Constitution. Answering further, Respondent states that the Complaint speaks for itself, and thus no response is required to Relators' characterization of it.

PARTIES

A. Relators

15. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation of Paragraph 15, and therefore denies same.

16. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation of Paragraph 16, and therefore denies same.

17. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation of Paragraph 17, and therefore denies same.

18. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation of Paragraph 18, and therefore denies same.

19. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation of Paragraph 19, and therefore denies same.

20. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation of Paragraph 20, and therefore denies same.

21. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation of Paragraph 21, and therefore denies same.

22. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation of Paragraph 22, and therefore denies same.

23. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation of Paragraph 23, and therefore denies same.

24. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation of Paragraph 24, and therefore denies same.

25. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation of Paragraph 25, and therefore denies same.

26. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation of Paragraph 26, and therefore denies same.

27. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation of Paragraph 27, and therefore denies same.

28. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation of Paragraph 28, and therefore denies same.

29. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation of Paragraph 29, and therefore denies same.

30. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation of Paragraph 30, and therefore denies same.

31. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation of Paragraph 31, and therefore denies same.

32. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation of Paragraph 32, and therefore denies same.

33. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation of Paragraph 33, and therefore denies same.

34. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation of Paragraph 34, and therefore denies same.

B. Respondents

35. In response to Paragraph 35, Respondent admits that he and the other six individuals listed comprise the Commission.

LEGAL BACKGROUND

A. Article XI

36. In response to Paragraph 36, Respondent states that the Ohio Supreme Court decision referenced therein speaks for itself, and thus no response is required to Relators' characterization of it.

37. In response to Paragraph 37, Respondent states that Article XI speaks for itself, and thus no response is required to Relators' characterization of it.

38. In response to Paragraph 38, Respondent states that the source materials cited therein speak for themselves, and thus no response is required to Relators' characterization of them.

39. In response to Paragraph 39, Respondent states that Article XI speaks for itself, and thus no response is required to Relators' characterization of it.

40. In response to Paragraph 40, Respondent states that Article XI speaks for itself, and thus no response is required to Relators' characterization of it.

a) Commission Process and Deadlines: Section 1

41. In response to Paragraph 41, Respondent states that Article XI speaks for itself, and thus no response is required to Relators' characterization of it.

42. In response to Paragraph 42, Respondent states that Article XI speaks for itself, and thus no response is required to Relators' characterization of it.

43. Respondent admits the allegations of Paragraph 43.

44. In response to Paragraph 44, Respondent admits that the Republican members of the Commission excluded Respondent and House Minority Leader Emilia Sykes from the process of drafting a proposed district plan, and that no such plan had been proposed, let alone adopted, by September 1, 2021. Answering further, Respondent states that Article XI speaks for itself, and thus no response is required to Relators' characterization of it.

45. In response to Paragraph 45, Respondent states that Article XI speaks for itself, and thus no response is required to Relators' characterization of it.

46. In response to Paragraph 46, Respondent states that Article XI speaks for itself, and thus no response is required to Relators' characterization of it.

47. In response to Paragraph 47, Respondent states that Article XI speaks for itself, and thus no response is required to Relators' characterization of it.

48. In response to Paragraph 48, Respondent states that Article XI speaks for itself, and thus no response is required to Relators' characterization of it.

49. In response to Paragraph 49, Respondent states that Article XI speaks for itself, and thus no response is required to Relators' characterization of it.

50. In response to Paragraph 50, Respondent states that Article XI speaks for itself, and thus no response is required to Relators' characterization of it.

b) Political Fairness: Section 6

51. In response to Paragraph 51, Respondent states that Article XI speaks for itself, and thus no response is required to Relators' characterization of it.

52. In response to Paragraph 52, Respondent states that Article XI speaks for itself, and thus no response is required to Relators' characterization of it.

53. In response to Paragraph 53, Respondent states that Article XI speaks for itself, and thus no response is required to Relators' characterization of it.

54. In response to Paragraph 54, Respondent states that Article XI speaks for itself, and thus no response is required to Relators' characterization of it.

c) Jurisdiction: Section 9

55. In response to Paragraph 55, Respondent states that Article XI speaks for itself, and thus no response is required to Relators' characterization of it.

56. In response to Paragraph 56, Respondent states that Article XI speaks for itself, and thus no response is required to Relators' characterization of it.

57. In response to Paragraph 57, Respondent states that Article XI speaks for itself, and thus no response is required to Relators' characterization of it.

58. In response to Paragraph 58, Respondent states that Article XI speaks for itself, and thus no response is required to Relators' characterization of it.

FACTS

A. Respondents Engaged in an Unduly Partisan Process

59. In response to Paragraph 59, Respondent admits that Ohio has a history of gerrymandered maps and admits that the maps in effect in the 2012 election cycle were no exception. Answering further, Respondent states that Exhibit 1 speaks for itself, and thus no response is required to Relators' characterization of it.

60. In response to Paragraph 60, Respondent states that he voted against the Plan proposed by Republican members of the Commission because, as in 2011, neither the process for drawing the map nor the map itself complied with the Ohio Constitution. Answering further, Respondent states that the caselaw cited therein speaks for itself, and thus no response is required to Relators' characterization of it.

61. In response to Paragraph 61, Respondent states that the caselaw cited therein speaks for itself, and thus no response is required to Relators' characterization of it.

62. Respondent admits the allegations of Paragraph 62.

63. Respondent admits the allegations of Paragraph 63.

64. Respondent admits the allegations of Paragraph 64.

65. Respondent admits the allegations of Paragraph 65.

66. Respondent admits the allegations of Paragraph 66.

67. In response to Paragraph 67, Respondent admits that he and House Leader Emilia Sykes had no opportunity to provide input on any map DiRossi prepared, and ultimately the Plan passed by a party-line vote of 5-2 with both Respondent and House Minority Leader Emilia Sykes voting against the Plan.

68. Respondent admits the allegations of Paragraph 68.

69. Respondent admits the allegations of Paragraph 69.

70. Respondent admits the allegations of Paragraph 70.

71. Respondent admits the allegations of Paragraph 71.

72. Respondent admits the allegations of Paragraph 72.

73. In response to Paragraph 73, Respondent states that the caselaw cited therein speaks for itself, and thus no response is required to Relators' characterization of it.

74. Respondent admits the allegations of Paragraph 74.

75. Respondent is without knowledge or information sufficient to form a belief as to the truth of any remaining allegations of Paragraph 75, and therefore denies same.

76. In response to Paragraph 76, Respondent states that the materials cited therein speak for themselves and thus no response is required to Relators' characterization of them. Respondent

is without knowledge or information sufficient to form a belief as to the truth of any remaining allegations of Paragraph 76, and therefore denies same.

77. In response to Paragraph 77, Respondent states that Exhibit 7 speaks for itself, and thus no response is required to Relators' characterization of it.

78. In response to Paragraph 78, Respondent states that Exhibit 7 speaks for itself, and thus no response is required to Relators' characterization of it.

79. Respondent admits the allegations of Paragraph 79.

80. In response to Paragraph 80, Respondent states that Exhibits 5 and 7 speak for themselves, and thus no response is required to Relators' characterization of them.

81. In response to Paragraph 81, Respondent admits that the Commission adopted the Section 8(C)(2) statement introduced by Senate President Huffman (the "Statement"). Answering further, Respondent states that he and House Minority Leader Emilia Sykes introduced a response to the Statement, referred to as the Minority Report, memorializing the Plan's numerous deficiencies and the reasons it failed to comply with Article XI of the Ohio Constitution. Answering further, Respondent states that Exhibit 7 speaks for itself, and thus no response is required to Relators' characterization of it.

B. Respondents' Partisan Process Created Unduly Partisan Results.

82. Respondent admits the allegations of Paragraph 82.

83. Respondent admits the allegations of Paragraph 83.

84. In response to Paragraph 84, Respondent admits that the Commission voted to approve the Plan by a 5-2 party-line vote, with Respondent and House Minority Leader Emilia Sykes voting against the Republicans' proposal. Answering further, Respondent states that the

Statement and the additional materials cited therein speak for themselves, and thus no response is required to Relators' characterization of them.

85. In response to Paragraph 85, Respondent admits that the Republican members of the Commission did not attempt to meet the requirements of Article XI, Section 6. Answering further, Respondent states that the Plan was designed to preserve the Republican super majority in the Ohio General Assembly, whereas a map that complied with the provisions of Article XI, Section 6, would have established districts favoring Democrats in at least 45% of the state's districts with the remaining 55% favoring Republicans. The Plan was adopted by the Commission by a 5-2 party-line vote with Respondent and House Minority Leader Emilia Sykes voting against the Plan.

86. In response to Paragraph 86, Respondent states that the Plan was designed to preserve the Republican super majority in the Ohio General Assembly, whereas a map that complied with the provisions of Article XI, Section 6, would have established districts favoring Democrats in at least 45% of the state's districts with the remaining 55% favoring Republicans. The Plan was adopted by the Commission by a 5-2 party-line vote with Respondent and House Minority Leader Emilia Sykes voting against the Plan.

87. In response to Paragraph 87, Respondent states that Exhibit 9 speaks for itself, and thus no response is required to Relators' characterization of it.

88. In response to Paragraph 88, Respondent states that the Plan was designed to preserve the Republican super majority in the Ohio General Assembly, whereas a map that complied with the provisions of Article XI, Section 6, would have established districts favoring Democrats in at least 45% of the state's districts with the remaining 55% favoring Republicans. The Plan was adopted by the Commission by a 5-2 party-line vote with Respondent and House

Minority Leader Emilia Sykes voting against the Plan. Answering further, Respondent states that the affidavit cited in Paragraph 88 speaks for itself, and thus no response is required to Relators' characterization of it.

89. Respondent admits that the Plan, adopted by the Commission by a 5-2 party-line vote with Respondent and House Minority Leader Emilia Sykes voting in opposition, does not comply with the Ohio Constitution.

FIRST CAUSE OF ACTION
VIOLATION OF ARTICLE XI

(The Districts of the Ohio House of Representatives)

90. Respondent restates and incorporates by reference all prior and subsequent answers as though fully restated herein.

91. Respondent admits that the Plan, adopted by the Commission by a 5-2 party-line vote with Respondent and House Minority Leader Emilia Sykes voting in opposition, does not comply with the Ohio Constitution. Answering further, Respondent states that the affidavit and other materials cited in Paragraph 91 speak for themselves, and thus no response is required to Relators' characterization of them.

SECOND CAUSE OF ACTION
VIOLATION OF ARTICLE XI

(The Districts of the Ohio Senate)

92. Respondent restates and incorporates by reference all prior and subsequent answers as though fully restated herein.

93. Respondent admits that the Plan, adopted by the Commission by a 5-2 party-line vote with Respondent and House Minority Leader Emilia Sykes voting in opposition, does not

comply with the Ohio Constitution. Answering further, Respondent states that the affidavit and other materials cited in Paragraph 93 speak for themselves, and thus no response is required to Relators' characterization of them.

94. Respondent denies every allegation not explicitly admitted to be true herein.

PRAYER FOR RELIEF

In response to Relators' Prayer for Relief, Respondent requests that the Court grant the relief requested in Paragraphs 1-5. In response to Paragraph 6, Respondent denies any obligation to pay Relators' attorneys' fees and costs.

Respectfully submitted,

ICE MILLER LLP

/s/ Diane Menashe
Counsel to the Ohio Attorney General

Diane Menashe (0070305)
John Gilligan (0024542)
250 West Street, Suite 700
Columbus, Ohio 43215
Diane.Menashe@icemiller.com
John.Gilligan@icemiller.com
T: (614) 462-6500
F: (614) 222-3468

Counsel for Respondents Senator Vernon Sykes and House Minority Leader Emilia Sykes

CERTIFICATE OF SERVICE

I hereby certify that on October 18, 2021, I have served the foregoing document by email on the following:

Freda Levenson
flevenson@acluohio.org
David J. Carey
dcarey@acluohio.org
Alora Thomas
athomas@aclu.org
Julie A. Epstein
jepstein@aclu.org

Robert D. Fram
rfram@cov.com
Joshua Gonzalez
Jgonzalez@cov.com
Megan C. Keenan
Mkeenan@cov.com
Anupam Sharma
asharma@cov.com
Madison Arent
marent@cov.com

Laura B. Bender
David Denuyl
Yiye Fu
Joshua Goldrosen
James Hovard
Alexander Thomson

Counsel for LWOV Relators

Abha Khanna
Ben Stafford
Elias Law Group
1700 Seventh Avenue, Suite 200
Seattle, WA 9801
akhanna@elias.law
bstafford@elias.law

Aria C. Branch
Jyoti Jasrasaria
Spencer W. Klein

Erik Clark
ejclark@organlegal.com
Ashley Merino
amerino@organlegal.com

Counsel for Respondent Ohio Redistricting Commission

Bridget Coontz
Bridget.Coontz@ohioAGO.gov
Julie Pfieffer
Julie.Pfieffer@ohioAGO.gov
Michael K. Hendershot
Michael A. Walton
Michael.walton@ohioago.gov
David Anthony Yost

Counsel for Respondents Ohio Governor Mike DeWine, Ohio Secretary of State Frank LaRose, and Ohio Auditor Keith Faber

Peter M. Ellis
pellis@reedsmith.com
M. Patrick Yingling
MPYingling@ReedSmith.com
Natalie R. Salazar
NSalazar@reedsmith.com
Brian A. Sutherland
bsutherland@reedsmith.com
Ben R. Fliegel*
bfliegel@reedsmith.com

Alicia L. Bannon
Alicia.bannon@nyu.edu
Yurji Rudensky
rudenskyy@brennan.law.nyu.edu
Ethan Herenstein
herensteine@brennan.law.nyu.edu

Elias Law Group
10 G. Street NE, Suite 600
Washington, DC 20002
abranch@elias.law
jjasrasaria@elias.law
sklein@elias.law

Brad Funari
Michael Li
Natalie R. Stewart

Attorneys for OOC Relators

Donald J. McTigue
Derek S. Clinger
McTigue & Colombo LLC
545 East Town Street
Columbus, OH 43215
dmctigue@electionlawgroup.com
dclinger@electionlawgroup.com

William Stuart Dornette
dornette@taftlaw.com
John Branch
John.branch@nelsonmullins.com
Beth Anne Bryan
bryan@taftlaw.com
Thomas Farr
Tom.farr@nelsonmullins.com
Alyssa Riggins
Alyssa.riggins@nelsonmullins.com
Phillip Strach
Phillip.strach@nelsonmullins.com
Philip Daniel Williamson
pwilliamson@taftlaw.com

Counsel for Bria Bennett Relators

/s/ Diane Menashe
Diane Menashe (0070305)

IN THE SUPREME COURT OF OHIO

Bria Bennett
795 Lane West Rd. SW
Warren, OH 44481

Regina C. Adams
14360 Rockside Rd.
Maple Heights, OH 44137

Kathleen M. Brinkman
400 Pike St. Unit 809
Cincinnati, OH 45202

Martha Clark
4439 Filbrun Ln.
Trotwood, OH 45426

Susanne L. Dyke
2558 Guilford Rd.
Cleveland Heights, OH 44118

Carrie Kubicki
13201 Vermillion Rd.
Amherst, OH 44001

Meryl Neiman
2115 Clifton Ave.
Columbus, OH 43209

Holly Oyster
21370 Harrisburg Westville Rd.
Alliance, OH 44601

Constance Rubin
3088 Whitewood St. NW
North Canton, OH 44720

Everett Totty
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
1 Capitol Sq.
Columbus, OH 43215

House Speaker Robert R. Cupp, Co-Chair
77 South High St. 14th Floor
Columbus, OH 43215

Senator Vernon Sykes, Co-Chair
1 Capitol Sq. Ground Floor
Columbus, OH 43215

Governor Mike DeWine, Member
Riffe Ctr. 30th Floor
77 South High St.
Columbus, OH 43215

Secretary of State Frank LaRose, Member
22 North Fourth St.16th Floor
Columbus, OH 43215

Auditor Keith Faber, Member
88 East Broad St. 5th Floor
Columbus, OH 43215

Senate President Matt Huffman, Member
1 Capitol Sq. 2nd Floor
Columbus, OH 43215

House Minority Leader Emilia Sykes, Member
77 South High St. 14th Floor
Columbus, OH 43215

Respondents.

RELATORS' COMPLAINT
IN ORIGINAL ACTION

Abha Khanna (Pro Hac Vice Pending)
Ben Stafford (Pro Hac Vice Pending)
ELIAS LAW GROUP
1700 Seventh Ave, Suite 2100
Seattle, WA 98101
akhanna@elias.law
bstafford@elias.law
T: (206) 656-0176
F: (206) 656-0180

Aria C. Branch (Pro Hac Vice Pending)
Jyoti Jasrasaria (Pro Hac Vice Pending)
Spencer W. Klein (Pro Hac Vice Pending)
ELIAS LAW GROUP
10 G St NE, Suite 600
Washington, DC 20002
abranch@elias.law
jjasrasaria@elias.law
sklein@elias.law
T: (202) 968-4490
F: (202) 968-4498

Donald J. McTigue* (0022849)
**Counsel of Record*
Derek S. Clinger (0092075)
MCTIGUE & COLOMBO LLC
545 East Town Street
Columbus, OH 43215
dmctigue@electionlawgroup.com
dclinger@electionlawgroup.com
T: (614) 263-7000
F: (614) 368-6961

Counsel for Relators

Dave Yost (0056290)
OHIO ATTORNEY GENERAL
30 E. Broad Street
Columbus, Ohio 43215
T: (614) 466-2872
F: (614) 728-7592

Counsel for Respondents

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

Donald J. McTigue* (0022849)
*Counsel of Record
Derek S. Clinger (0092075)
MCTIGUE & COLOMBO LLC
545 East Town Street
Columbus, OH 43215
dmctigue@electionlawgroup.com
dclinger@electionlawgroup.com
T: (614) 263-7000
F: (614) 368-6961

Abha Khanna (Pro Hac Vice Pending)
Ben Stafford (Pro Hac Vice Pending)
ELIAS LAW GROUP
1700 Seventh Ave, Suite 2100
Seattle, WA 98101
akhanna@elias.law
bstafford@elias.law
T: (206) 656-0176
F: (206) 656-0180

Aria C. Branch (Pro Hac Vice Pending)
Jyoti Jasrasaria (Pro Hac Vice Pending)
Spencer W. Klein (Pro Hac Vice Pending)
ELIAS LAW GROUP
10 G St NE, Suite 600
Washington, DC 20002
abranch@elias.law
jjasrasaria@elias.law
sklein@elias.law
T: (202) 968-4490
F: (202) 968-4498

Counsel for Relators

IN THE SUPREME COURT OF OHIO

Bria Bennett, *et al.*,	:	
	:	**Case No. 2021-1198**
Relators,	:	
v.	:	**Original Action Filed Pursuant to Ohio Constitution, Article XI, Section 9(A)**
Ohio Redistricting Commission, *et al.*,	:	**[Apportionment Case Pursuant to S. Ct. Prac. R. 14.03]**
Respondents.	:	

RESPONDENT SENATOR VERNON SYKES' ANSWER TO RELATORS' COMPLAINT

Freda Levenson
flevenson@acluohio.org
David J. Carey
dcarey@acluohio.org
Alora Thomas
athomas@aclu.org
Julie A. Epstein
jepstein@aclu.org

Robert D. Fram
rfram@cov.com
Joshua Gonzalez
Jgonzalez@cov.com
Megan C. Keenan
Mkeenan@cov.com
Anupam Sharma
asharma@cov.com
Madison Arent
marent@cov.com

Laura B. Bender
David Denuyl
Yiye Fu
Joshua Goldrosen
James Hovard
Alexander Thomson

Counsel for LWOV Relators

Erik Clark
ejclark@organlegal.com
Ashley Merino
amerino@organlegal.com

Counsel for Respondent Ohio Redistricting Commission

Bridget Coontz
Bridget.Coontz@ohioAGO.gov
Julie Pfieffer
Julie.Pfieffer@ohioAGO.gov
Michael K. Hendershot
Michael A. Walton
Michael.walton@ohioago.gov
David Anthony Yost

Counsel for Respondents Ohio Governor Mike DeWine, Ohio Secretary of State Frank LaRose, and Ohio Auditor Keith Faber

Peter M. Ellis
pellis@reedsmith.com
M. Patrick Yingling
MPYingling@ReedSmith.com
Natalie R. Salazar
NSalazar@reedsmith.com
Brian A. Sutherland

Abha Khanna
Ben Stafford
Elias Law Group
1700 Seventh Avenue, Suite 200
Seattle, WA 9801
akhanna@elias.law
bstafford@elias.law

Aria C. Branch
Jyoti Jasrasaria
Spencer W. Klein
Elias Law Group
10 G. Street NE, Suite 600
Washington, DC 20002
abranch@elias.law
jjasrasaria@elias.law
sklein@elias.law

Donald J. McTigue
Derek S. Clinger
McTigue & Colombo LLC
545 East Town Street
Columbus, OH 43215
dmctigue@electionlawgroup.com
dclinger@electionlawgroup.com

William Stuart Dornette
dornette@taftlaw.com
John Branch
John.branch@nelsonmullins.com
Beth Anne Bryan
bryan@taftlaw.com
Thomas Farr
Tom.farr@nelsonmullins.com
Alyssa Riggins
Alyssa.riggins@nelsonmullins.com
Phillip Strach
Phillip.strach@nelsonmullins.com
Philip Daniel Williamson
pwilliamson@taftlaw.com

Counsel for Bria Bennett Relators

bsutherland@reedsmith.com
Ben R. Fliegel*
bfliegel@reedsmith.com

Alicia L. Bannon
Alicia.bannon@nyu.edu
Yurji Rudensky
rudenskyy@brennan.law.nyu.edu
Ethan Herenstein
herensteine@brennan.law.nyu.edu

Brad Funari
Michael Li
Natalie R. Stewart

Attorneys for OOC Relators

Diane Menashe (0070305)*
*Counsel of Record
John Gilligan (0024542)
ICE MILLER LLP
250 West Street, Suite 700
Columbus, Ohio 43215
T: (614) 462-6500
F: (614) 222-3468
Diane.Menashe@icemiller.com
John.Gilligan@icemiller.com

Counsel for Respondents Senator Vernon Sykes and House Minority Leader Emilia Sykes

Respondent Sen. Vernon Sykes ("Sen. Sykes" or "Respondent"), by his attorneys, hereby answers and asserts the following affirmative defenses to the Complaint filed by Relators Bria Bennett *et al.*, according to the numbered paragraphs therein, as follows:

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.

ANSWER: In response to Paragraph 1, Respondent states that the Complaint speaks for itself, and thus no response is required to Relators' characterization of it.

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.

ANSWER: Respondent admits the allegations of Paragraph 2.

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.

ANSWER: Insofar as the "Fair Districts Amendments" referenced therein are the same amendments defined in Paragraphs 43-45, Respondent admits the allegations of Paragraph 3.

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).

ANSWER: Respondent admits the allegations of Paragraph 4.

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).

ANSWER: Respondent admits the allegations of Paragraph 5.

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.

ANSWER: Respondent admits the allegations of Paragraph 6.

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.

ANSWER: Respondent admits that as a result of the conduct by the Republican majority of the Commission, the Commission failed to meet its constitutional deadlines. Answering further, Respondent admits that the 2021 Commission Plan (the "Plan") was designed to preserve the Republican super majority in the Ohio General Assembly, whereas a map that complied with the provisions of Article XI, Section 6, would have established districts favoring Democrats in at least 45% of the state's districts with the remaining 55% favoring Republicans. Respondent denies any remaining allegations of Paragraph 7.

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.

ANSWER: In response to Paragraph 8, Respondent states: that he voted against the District Plan proposed by Republican members of the Commission; that neither the District Plan nor the actions of the Republican Commissioners complied with the Ohio Constitution; and

therefore, Respondent and House Minority Leader Emilia Sykes voted against the Republicans' proposed District Plan.

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.

ANSWER: In response to Paragraph 9, Respondent states that he voted against the District Plan proposed by Republican members of the Commission because neither the process for drawing the map nor the map itself complied with the Ohio Constitution. Further, the Commission was presented with multiple maps that did comply with the Ohio Constitution, but the majority-Republican members of the Commission refused to adopt, or even consider, any of those plans. Respondent admits that the Plan was adopted by a 5-2 party-line vote, with Respondent and House Minority Leader Emilia Sykes voting against the Republicans' proposal.

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).

ANSWER: In response to Paragraph 10, Respondent admits that Partisan gerrymandering is a threat to our democracy, and it violates the Ohio Constitution, as amended by

more than 71 percent of Ohioans just six years ago. Answering further, Respondent states that the remaining allegations of Paragraph 10 rely upon the written opinion of the Florida Supreme Court, which opinion speaks for itself and thus no response is required to Relators' characterization of it.

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.]

ANSWER: In response to Paragraph 11, Respondent states that Exhibit 1 speaks for itself and requires no response. Respondent is without knowledge or information sufficient to form a belief as to the truth of any remaining allegations of Paragraph 11, and therefore denies same.

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.

ANSWER: In response to Paragraph 12, Respondent states that he voted against the District Plan proposed by Republican members of the Commission which was inconsistent with the Fair District Amendments (as defined in Paragraphs 43-45 of the Complaint) and failed to comply with the provisions of the Ohio Constitution. Respondent admits that the Plan was adopted by a 5-2 party-line vote, with Respondent and House Minority Leader Emilia Sykes voting against the Republicans' proposal.

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.

ANSWER: In response to Paragraph 13, Respondent states that the Complaint speaks for itself, and thus no response is required to Relators' characterization of it.

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

ANSWER: In response to Paragraph 14, Respondent states that the Complaint speaks for itself, and thus no response is required to Relators' characterization of it.

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.

ANSWER: In response to Paragraph 15, Respondent states that he voted against the District Plan proposed by Republican members of the Commission, and that neither the Plan nor the conduct of the five Republican Commissioners, satisfied the requirements of the Ohio Constitution their obligations under the Ohio Constitution. Respondent admits that the Plan was adopted by a 5-2 party-line vote, with Respondent and House Minority Leader Emilia Sykes voting against the Republicans' proposal.

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.

ANSWER: In response to Paragraph 16, Respondent states that the allegations are not directed at Respondent, and thus no response is required. Respondent denies any remaining allegations of Paragraph 16.

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.

ANSWER: In response to Paragraph 17, Respondent admits that he and the other six individuals listed comprise the Commission, and that the Commission is responsible for creating a constitutionally-compliant reapportionment plan under Article XI of the Ohio Constitution. Answering further, Respondent denies voting for the 2021 Commission Plan attached to the Complaint as Exhibit A (the "District Plan" or the "Plan'). Respondent states that he voted against the District Plan proposed by Republican members of the Commission which was adopted by a 5-2 party-line vote, with Respondent and House Minority Leader Emilia Sykes voting against the Republicans' proposal.

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

ANSWER: Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation of Paragraph 18, and therefore denies same.

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.

ANSWER: Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation of Paragraph 19, and therefore denies same.

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.

ANSWER: Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation of Paragraph 20, and therefore denies same.

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.

ANSWER: Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation of Paragraph 21, and therefore denies same.

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.

ANSWER: Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation of Paragraph 22, and therefore denies same.

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.

ANSWER: Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation of Paragraph 23, and therefore denies same.

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.

ANSWER: Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation of Paragraph 24, and therefore denies same.

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.

ANSWER: Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation of Paragraph 25, and therefore denies same.

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.

ANSWER: Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation of Paragraph 26, and therefore denies same.

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.

ANSWER: Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation of Paragraph 27, and therefore denies same.

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.

ANSWER: Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation of Paragraph 28, and therefore denies same.

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.

ANSWER: Respondent admits the allegations of Paragraph 29.

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.

ANSWER: In response to Paragraph 30, Respondent states that Article XI speaks for itself, and thus no response is required to Relators' characterization of it.

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.

ANSWER: In response to Paragraph 31, Respondent states that Article XI speaks for itself, and thus no response is required to Relators' characterization of it.

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."

ANSWER: In response to Paragraph 32, Respondent states that Article XI speaks for itself, and thus no response is required to Relators' characterization of it.

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."

ANSWER: In response to Paragraph 33, Respondent states that Article XI speaks for itself, and thus no response is required to Relators' characterization of it.

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.

ANSWER: In response to Paragraph 34, Respondent states that Article XI speaks for itself, and thus no response is required to Relators' characterization of it.

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.

ANSWER: In response to Paragraph 35, Respondent states that Article XI speaks for itself, and thus no response is required to Relators' characterization of it.

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."

ANSWER: In response to Paragraph 36, Respondent states that Article XI speaks for itself, and thus no response is required to Relators' characterization of it.

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.

ANSWER: In response to Paragraph 37, Respondent states that Article XI speaks for itself, and thus no response is required to Relators' characterization of it.

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."

ANSWER: In response to Paragraph 38, Respondent states that Article XI speaks for itself, and thus no response is required to Relators' characterization of it.

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.

ANSWER: In response to Paragraph 39, Respondent states that Article XI speaks for itself, and thus no response is required to Relators' characterization of it.

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.

ANSWER: In response to Paragraph 40, Respondent states that Article XI speaks for itself, and thus no response is required to Relators' characterization of it.

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.

ANSWER: In response to Paragraph 41, Respondent states that Article XI speaks for itself, and thus no response is required to Relators' characterization of it.

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.

ANSWER: In response to Paragraph 42, Respondent states that Article XI speaks for itself, and thus no response is required to Relators' characterization of it.

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.

ANSWER: Respondent admits the allegations of Paragraph 43.

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.

ANSWER: Respondent admits the allegations of Paragraph 44.

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.]

ANSWER: Respondent admits the allegations of Paragraph 45.

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.]

ANSWER: Respondent admits the allegations of Paragraph 46.

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

ANSWER: Respondent admits the allegations of Paragraph 47.

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.]

ANSWER: Respondent admits the allegations of Paragraph 48.

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.]

ANSWER: Respondent admits the allegations of Paragraph 49.

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.

ANSWER: Respondent admits the allegations of Paragraph 50.

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.

ANSWER: Respondent admits the allegations of Paragraph 51.

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.]

ANSWER: In response to Paragraph 52, Respondent states that he is without knowledge or information sufficient to form a belief as to the truth of any remaining allegations of Paragraph 52, and therefore denies same.

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.]

ANSWER: In response to Paragraph 53, Respondent states that he is without knowledge or information sufficient to form a belief as to the truth of any remaining allegations of Paragraph 53, and therefore denies same.

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.

ANSWER: Respondent admits the allegations of Paragraph 54.

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.]

ANSWER: In response to Paragraph 55, Respondent states that he is without knowledge or information sufficient to form a belief as to the truth of any remaining allegations of Paragraph 55, and therefore denies same.

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.]

ANSWER: Respondent admits the allegations of Paragraph 56.

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.]

ANSWER: In response to Paragraph 57, Respondent states that he is without knowledge or information sufficient to form a belief as to the truth of any remaining allegations of Paragraph 57, and therefore denies same.

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.]

ANSWER: In response to Paragraph 58, Respondent admits that the 2011 redistricting process left little room for public comment. Answering further, Respondent states that he is without knowledge or information sufficient to form a belief as to the truth of any remaining allegations of Paragraph 58, and therefore denies same

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).

ANSWER: Respondent admits the allegations of Paragraph 59.

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

ANSWER: In response to Paragraph 60, Respondent states that the text of HJR 12 speaks for itself, and thus no response is required to Relators' characterization of it.

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.

ANSWER: In response to Paragraph 61, Respondent states that the text of HJR 12 speaks for itself, and thus no response is required to Relators' characterization of it.

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.

ANSWER: In response to Paragraph 62, Respondent states that the text of HJR 12 speaks for itself, and thus no response is required to Relators' characterization of it.

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.

ANSWER: In response to Paragraph 63, Respondent states that the text of HJR 12 speaks for itself, and thus no response is required to Relators' characterization of it.

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.]

ANSWER: In Response to Paragraph 64, Respondent states that the written materials cited therein speak for themselves, and thus no response is required to Relators' characterization of them.

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.

ANSWER: Respondent admits the allegations of Paragraph 65.

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.]

ANSWER: In response to Paragraph 66, Respondent states that Exhibit 7 speaks for itself, and thus no response is required to Relators' characterization of it.

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.]

ANSWER: In response to Paragraph 67, Respondent states that Exhibit 7 speaks for itself, and thus no response is required to Relators' characterization of it.

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.]

ANSWER: In response to Paragraph 68, Respondent states that Exhibit 9 speaks for itself, and thus no response is required to Relators' characterization of it.

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.]

ANSWER: In response to Paragraph 69, Respondent states that Exhibit 7 speaks for itself, and thus no response is required to Relators' characterization of it.

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.

ANSWER: In response to Paragraph 70, Respondent states that HJR 12 passed the General Assembly in December 2014, and thereafter, was placed on the November 2015 ballot.

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	

ANSWER: In response to Paragraph 71, Respondent states that Exhibit 10 speaks for itself and thus no response is required to Relators' characterization of it.

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.]

ANSWER: In response to Paragraph 72, Respondent states that the allegations are not directed at Respondent, and thus no response is required. Answering further, Respondent states that Exhibit 11 speaks for itself and thus no response is required to Relators' characterization of it.

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.]

ANSWER: In response to Paragraph 73, Respondent states that the allegations are not directed at Respondent, and thus no response is required. Answering further, Respondent states that Exhibit 12 speaks for itself and thus no response is required to Relators' characterization of it.

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

ANSWER: In response to Paragraph 74, Respondent states that the allegations are not directed at Respondent, and thus no response is required. Answering further, Respondent states that the literature referenced in Paragraph 74 speaks for itself and thus no response is required to Relators' characterization of it.

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.]

ANSWER: In response to Paragraph 75, Respondent states that the allegations are not directed at Respondent, and thus no response is required. Answering further, Respondent states that Exhibit 13 speaks for itself and thus no response is required to Relators' characterization of it.

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.]

ANSWER: In response to Paragraph 76, Respondent states that the allegations are not directed at Respondent, and thus no response is required. Answering further, Respondent states that Exhibit 14 speaks for itself and thus no response is required to Relators' characterization of it.

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.]

ANSWER: In response to Paragraph 77, Respondent states that Exhibit 14 speaks for itself and thus no response is required to Relators' characterization of it.

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.]

ANSWER: In response to Paragraph 78, Respondent admits that he was instrumental in launching the Fair Districts for Ohio coalition in support of Issue 1, and that the Issue 1 campaign utilized posters in support of its goal to protect against gerrymandering and require districts to be drawn such that the legislative districts would more accurately reflect the statewide preferences of

Ohio voters. Answering further, Respondent states that Exhibit 15 speaks for itself and thus no response is required to Relators' characterization of it.

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.]

ANSWER: In response to Paragraph 79, Respondent states that Exhibit 16 speaks for itself and thus no response is required to Relators' characterization of it.

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

ANSWER: Respondent admits the allegations of Paragraph 80.

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

1. 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.]

ANSWER: Respondent admits that the Ohio Redistricting Commission (the "Commission") held its first meeting on August 6, 2021. Answering further, Respondent states that Exhibit 18 speaks for itself and thus no response is required to Relators' characterization of it.

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.]

ANSWER: Respondent admits that the majority-Republican Commissioners had not released a proposed District Map when the Commission held its first public hearings. Answering

further, Respondent states that Exhibit 19 speaks for itself and thus no response is required to Relators' characterization of it.

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.]

ANSWER: In response to Paragraph 83, Respondent admits that he was the only member of the Commission to attend every session, and that numerous citizen speakers expressed frustration during these hearings. Answering further, Respondent states that Exhibits 20 and 21 speak for themselves and thus no response is required to Relators' characterization of it.

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.

ANSWER: Respondent admits the allegations of Paragraph 84.

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.

ANSWER: In response to Paragraph 85, Respondent states that at the Commission meeting of August 24, 2021, both Commissioner LaRose and Commissioner Faber were asked whether they had participated in private meetings to discuss state legislative maps, and they declined to respond to Mr. Pepper. Answering further, Respondent denies any remaining allegations of Paragraph 85 as it relates to him personally.

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.]

ANSWER: Respondent admits that the Commission reconvened on August 31. Answering further, Respondent states that Exhibit 22 speaks for itself and thus no response is required to Relators' characterization of it.

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.]

ANSWER: Respondent admits the allegations of Paragraph 87.

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.

ANSWER: Respondent admits the allegations of Paragraph 88.

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.]

ANSWER: In response to Paragraph 89, Respondent states that the allegations are not directed at Respondent, and thus no response is required. Answering further, Respondent states that Exhibit 22 speaks for itself and thus no response is required to Relators' characterization of it.

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.

ANSWER: In response to Paragraph 90, Respondent admits that the majority-Republican commissioners had not formally proposed or adopted state legislative maps as of September 1, 2021. Answering further, Respondent states that Article XI of the Ohio Constitution speaks for itself and thus no response is required to Relators' characterization of it.

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.]

ANSWER: Respondent admits the allegations of Paragraph 91.

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.]

ANSWER: Respondent admits the allegations of Paragraph 92.

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.

ANSWER: Respondent admits the allegations of Paragraph 93.

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.]

ANSWER: Respondent admits the allegations of Paragraph 94.

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.]

ANSWER: Respondent admits the allegations of Paragraph 95.

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.]

ANSWER: Respondent admits the allegations of Paragraph 96.

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.

ANSWER: Respondent admits the allegations of Paragraph 97.

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.

ANSWER: Respondent admits the allegations of Paragraph 98.

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.]

ANSWER: Respondent admits the allegations of Paragraph 99.

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.]

ANSWER: In response to the allegations of Paragraph 100, Respondent admits that the Commission voted to approve the District Plan by a 5-2 party-line vote, with Respondent and House Minority Leader Emilia Sykes voting against the Republicans' proposal.

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.]

ANSWER: Respondent admits the allegations of Paragraph 101.

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.

ANSWER: Respondent admits the allegations of Paragraph 102.

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.]

ANSWER: In response to Paragraph 103, Respondent admits that many voters criticized the Republican-proposed map and admits that a fair map would have resulted in around 45 percent of districts going to Democrats and 55 percent of districts going to Republicans. Answering further, Respondent states that Article XI of the Ohio Constitution and the Exhibits referenced in Paragraph 103 speak for themselves and thus no response is required to Relators' characterization of them.

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

ANSWER: In response to Paragraph 104, Respondent admits that the so-called Commission maps failed to satisfy the proportional fairness provision of Section 6. Answering further, Respondent denies any remaining allegations of Paragraph 104.

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.]

ANSWER: In response to Paragraph 105, Respondent states that Exhibit 26 speaks for itself, and thus no response is required to Relators' characterization of it. Answering further, Respondent denies any remaining allegations of Paragraph 105.

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.]

ANSWER: In response to Paragraph 106, Respondent admits that many voters criticized the Republican-proposed map and admits that a fair map would have resulted in around 45 percent of districts going to Democrats and 55 percent of districts going to Republicans. Answering further, Respondent states that Exhibit 24 speaks for itself and thus no response is required to Relators' characterization of it.

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.]

ANSWER: In response to Paragraph 107, Respondent admits that many voters criticized the Republican-proposed map and admits that a fair map would have resulted in around 45 percent of districts going to Democrats and 55 percent of districts going to Republicans. Answering further, Respondent states that Exhibit 27 speaks for itself and thus no response is required to Relators' characterization of it.

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.]

ANSWER: In response to Paragraph 108, Respondent admits that many voters criticized the Republican-proposed map and admits that a fair map would have resulted in around 45 percent of districts going to Democrats and 55 percent of districts going to Republicans. Answering further, Respondent states that Exhibit 30 speaks for itself and thus no response is required to Relators' characterization of it.

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.]

ANSWER: In response to Paragraph 109, Respondent admits that many voters criticized the Republican-proposed map and admits that a fair map would have resulted in around 45 percent of districts going to Democrats and 55 percent of districts going to Republicans. Answering further, Respondent states that Exhibit 31 speaks for itself and thus no response is required to Relators' characterization of it.

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.

ANSWER: Respondent admits the allegations of Paragraph 110.

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.]

ANSWER: In response to Paragraph 111, Respondent states that Article XI of the Ohio Constitution and Exhibit 1 speak for themselves, and thus no response is required to Relators' characterization of them. Answering further, Respondent denies any remaining allegations of Paragraph 111.

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.]

ANSWER: Respondent admits the allegations of Paragraph 112.

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.]

ANSWER: Respondent admits that the Commission voted to approve the District Plan by a 5-2 party-line vote, with Respondent and House Minority Leader Emilia Sykes voting against the Republicans' proposal. Answering further, Respondent states that Article XI of the Ohio

Constitution and Exhibit 1 speak for themselves and thus no response is required to Relators' characterization of them.

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.

ANSWER: Respondent admits the allegations of Paragraph 114.

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

ANSWER: Respondent admits the allegations of Paragraph 115.

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."

ANSWER: Respondent admits the allegations of Paragraph 116.

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

ANSWER: Respondent admits the allegations of Paragraph 117.

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.

ANSWER: Respondent admits the allegations of Paragraph 118.

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.

ANSWER: Respondent admits the allegations of the first sentence of Paragraph 119, and states that the Republican Commissioners adopted a Plan that failed to comply with the purpose or text of Article XI. Answering further, Respondent denies the remaining allegations of Paragraph 119.

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.

ANSWER: Respondent admits the allegations of Paragraph 120.

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.

ANSWER: Respondent admits the allegations of Paragraph 121.

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.

ANSWER: Respondent admits the allegations of Paragraph 122.

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.

ANSWER: Respondent admits the allegations of Paragraph 123.

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.]

ANSWER: In response to Paragraph 124, Respondent states that the Plan was adopted by a 5-2 party-line vote, with Respondent and House Minority Leader Emilia Sykes voting against the Republicans' proposal. Answering further, Respondent states that Exhibits 1 and F speak for themselves, and thus no response is required to Relators' characterization of them.

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.]

ANSWER: In response to Paragraph 125, Respondent admits that the Plan was designed to preserve the Republican super majority in the Ohio General Assembly, whereas a map that complied with the provisions of Article XI, Section 6, would have established districts favoring Democrats in at least 45% of the state's districts with the remaining 55% favoring Republicans.

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.]

ANSWER: In response to Paragraph 126, Respondent admits that the Plan was designed to preserve the Republican super majority in the Ohio General Assembly, whereas a map that complied with the provisions of Article XI, Section 6, would have established districts favoring Democrats in at least 45% of the state's districts with the remaining 55% favoring Republicans. Respondent further admits that the Plan was adopted by a 5-2 party-line vote, with Respondent and House Minority Leader Emilia Sykes voting against the Republicans' proposal.

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.]

ANSWER: In response to Paragraph 127, Respondent admits that the Plan was designed to preserve the Republican super majority in the Ohio General Assembly, whereas a map that complied with the provisions of Article XI, Section 6, would have established districts favoring Democrats in at least 45% of the state's districts with the remaining 55% favoring Republicans. Respondent further admits that the Plan was adopted by a 5-2 party-line vote, with Respondent and House Minority Leader Emilia Sykes voting against the Republicans' proposal.

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.

ANSWER: Respondent admits the allegations of Paragraph 128.

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.

ANSWER: Respondent admits the allegations of Paragraph 129.

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.]

ANSWER: Respondent admits that he had neither seen Exhibit 1 nor discussed the rationale behind Exhibit 1, which purported to justify the majority Commissioners' views on the provisions of Article XI, Section 6(B). Respondent also admits that he disagreed with the rationale of Exhibit 1. Answering further, Respondent denies every remaining allegation in Paragraph 130.

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.]

ANSWER: In response to Paragraph 131, Respondent states that the allegations are not directed at Respondent, and thus no response is required. Answering further, Respondent states that Exhibit 1 speaks for itself, and thus no response is required to Relators' characterization of it.

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.

ANSWER: In response to Paragraph 132, Respondent states that the allegations are not directed at Respondent, and thus no response is required. Answering further, Respondent states that Exhibit 1 speaks for itself, and thus no response is required to Relators' characterization of it.

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.]

ANSWER: Respondent admits the allegations of Paragraph 133.

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

ANSWER: Respondent admits the allegations of Paragraph 134.

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.

ANSWER: In response to Paragraph 135, Respondent states that neither the Plan nor the rationale behind it comply with the requirements 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.

ANSWER: Respondent admits the allegations of Paragraph 136.

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).

ANSWER: In response to Paragraph 137, Respondent states that he voted against the Republican-proposed Plan and that neither the Plan nor the conduct of the five Republican Commissioners complied with the requirements of the Ohio Constitution.

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.

ANSWER: Respondent admits the allegations of Paragraph 138.

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.

ANSWER: Respondent admits the allegations of Paragraph 139.

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.

ANSWER: In response to Paragraph 140, Respondent states that he voted against the Republican-proposed Plan and that neither the Plan nor the conduct of the five Republican Commissioners complied with the requirements of the Ohio Constitution.

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.

ANSWER: In response to Paragraph 141, Respondent states that he voted against the Republican-proposed Plan and that neither the Plan nor the conduct of the five Republican Commissioners complied with the requirements of the Ohio Constitution.

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.

ANSWER: In response to Paragraph 142, Respondent states that he voted against the Republican-proposed Plan and that neither the Plan nor the conduct of the five Republican Commissioners complied with the requirements of the Ohio Constitution.

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.

ANSWER: In response to Paragraph 143, Respondent admits that the maps proposed by the Ohio Senate Democratic Caucus and the Ohio Citizens' Redistricting Commission were

submitted before the Republican plan was itself submitted for consideration. Answering further, Respondent states that he voted against the Republican-proposed Plan and that neither the Plan nor the conduct of the five Republican Commissioners complied with the requirements of the Ohio Constitution. Respondent further states that the Plan was adopted by a 5-2 party-line vote, with Respondent and House Minority Leader Emilia Sykes voting against the Republicans' proposal.

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

ANSWER: Respondent admits the allegations of Paragraph 144.

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.

ANSWER: In response to Paragraph 145, Respondent states that he voted against the Republican-proposed Plan and that neither the Plan nor the conduct of the five Republican Commissioners complied with the requirements of the Ohio Constitution. Respondent further states that the Plan was adopted by a 5-2 party-line vote, with Respondent and House Minority Leader Emilia Sykes voting against the Republicans' proposal.

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.

ANSWER: Respondent restates and incorporates by reference all prior and subsequent answers as though fully restated herein.

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.

ANSWER: Respondent admits that he voted against the Republican-proposed Plan and that neither the Plan nor the conduct of the five Republican Commissioners complied with the requirements of the Ohio Constitution. Respondent further states that the Plan was adopted by a 5-2 party-line vote, with Respondent and House Minority Leader Emilia Sykes voting against the Republicans' proposal.

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.

ANSWER: Respondent admits the allegations of Paragraph 148.

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

ANSWER: In response to Paragraph 149, Respondent states that Paragraph 149 states a legal conclusion to which no response is required.

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).

ANSWER: In response to Paragraph 150, Respondent states that he voted against the Republican-proposed Plan and that neither the Plan nor the conduct of the five Republican Commissioners complied with the requirements of the Ohio Constitution.

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.

ANSWER: Respondent restates and incorporates by reference all prior and subsequent answers as though fully restated herein.

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.

ANSWER: Respondent admits that the Republican-designed Plan was drawn primarily to favor the Republican Party, and that neither the Plan nor the conduct of the five Republican Commissioners complied with the requirements of the Ohio Constitution. Respondent further states that the Plan was adopted by a 5-2 party-line vote, with Respondent and House Minority Leader Emilia Sykes voting against the Republicans' proposal.

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.

ANSWER: Respondent admits the allegations of Paragraph 153.

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

ANSWER: In response to Paragraph 154, Respondent states that Paragraph 154 states a legal conclusion to which no response is required.

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

ANSWER: In response to Paragraph 155, Respondent states that he voted against the Republican-proposed Plan and that neither the Plan nor the conduct of the five Republican Commissioners complied with the requirements of the Ohio Constitution.

156. Respondent denies every allegation not explicitly admitted to be true herein.

PRAYER FOR RELIEF

In response to Relators' Prayer for Relief, Respondent requests that the Court grant the relief requested in Paragraphs 1-5. In response to Paragraph 6, Respondent denies any obligation to pay Relators' attorneys' fees and costs.

Respectfully submitted,

ICE MILLER LLP

/s/ Diane Menashe
Counsel to the Ohio Attorney General

Diane Menashe (0070305)
John Gilligan (0024542)
250 West Street, Suite 700
Columbus, Ohio 43215
Diane.Menashe@icemiller.com
John.Gilligan@icemiller.com
T: (614) 462-6500
F: (614) 222-3468

Counsel for Respondents Senator Vernon Sykes and House Minority Leader Emilia Sykes

CERTIFICATE OF SERVICE

I hereby certify that on October 19, 2021, I have served the foregoing document by email on the following:

Freda Levenson
flevenson@acluohio.org
David J. Carey
dcarey@acluohio.org
Alora Thomas
athomas@aclu.org
Julie A. Epstein
jepstein@aclu.org

Robert D. Fram
rfram@cov.com
Joshua Gonzalez
Jgonzalez@cov.com
Megan C. Keenan
Mkeenan@cov.com
Anupam Sharma
asharma@cov.com
Madison Arent
marent@cov.com

Laura B. Bender
David Denuyl
Yiye Fu
Joshua Goldrosen
James Hovard
Alexander Thomson

Counsel for LWOV Relators

Abha Khanna
Ben Stafford
Elias Law Group
1700 Seventh Avenue, Suite 200
Seattle, WA 9801
akhanna@elias.law
bstafford@elias.law

Aria C. Branch
Jyoti Jasrasaria
Spencer W. Klein

Erik Clark
ejclark@organlegal.com
Ashley Merino
amerino@organlegal.com

Counsel for Respondent Ohio Redistricting Commission

Bridget Coontz
Bridget.Coontz@ohioAGO.gov
Julie Pfieffer
Julie.Pfieffer@ohioAGO.gov
Michael K. Hendershot
Michael A. Walton
Michael.walton@ohioago.gov
David Anthony Yost

Counsel for Respondents Ohio Governor Mike DeWine, Ohio Secretary of State Frank LaRose, and Ohio Auditor Keith Faber

Peter M. Ellis
pellis@reedsmith.com
M. Patrick Yingling
MPYingling@ReedSmith.com
Natalie R. Salazar
NSalazar@reedsmith.com
Brian A. Sutherland
bsutherland@reedsmith.com
Ben R. Fliegel*
bfliegel@reedsmith.com

Alicia L. Bannon
Alicia.bannon@nyu.edu
Yurji Rudensky
rudenskyy@brennan.law.nyu.edu
Ethan Herenstein
herensteine@brennan.law.nyu.edu

Elias Law Group
10 G. Street NE, Suite 600
Washington, DC 20002
abranch@elias.law
jjasrasaria@elias.law
sklein@elias.law

Brad Funari
Michael Li
Natalie R. Stewart

Attorneys for OOC Relators

Donald J. McTigue
Derek S. Clinger
McTigue & Colombo LLC
545 East Town Street
Columbus, OH 43215
dmctigue@electionlawgroup.com
dclinger@electionlawgroup.com

William Stuart Dornette
dornette@taftlaw.com
John Branch
John.branch@nelsonmullins.com
Beth Anne Bryan
bryan@taftlaw.com
Thomas Farr
Tom.farr@nelsonmullins.com
Alyssa Riggins
Alyssa.riggins@nelsonmullins.com
Phillip Strach
Phillip.strach@nelsonmullins.com
Philip Daniel Williamson
pwilliamson@taftlaw.com

Counsel for Bria Bennett Relators

/s/ Diane Menashe
Diane Menashe (0070305)

IN THE SUPREME COURT OF OHIO

The Ohio Organizing Collaborative
25 East Boardman Street, Suite 230
Youngstown, OH 44504

Council on American-Islamic Relations, Ohio
4985 Cemetery Road
Hilliard, OH 43026

Ohio Environmental Council
1145 Chesapeake Avenue, Suite I
Columbus, OH 43212

Pierrette Talley
935 Parkside Boulevard
Toledo, OH 43607

Samuel Gresham Jr.
255 Old Trail Drive
Columbus, OH 43213

Ahmad Aboukar
5019 Noor Park Circle
Dublin, OH 43016

Mikayla Lee
383 Oak Street
Columbus, OH 43215

Prentiss Haney
918 Windsor Street
Cincinnati, OH 45206

Crystal Bryant
2210 East 97th Street
Cleveland, OH 44106

Relators,

v.

Ohio Redistricting Commission
1 Capitol Square
Columbus, OH 43215

APPORTIONMENT CASE

Filed pursuant to S.Ct.Prac.R. 14.03(A) and Section 9 of Article XI of the Ohio Constitution to challenge a plan of apportionment promulgated pursuant to Article XI.

House Speaker Robert R. Cupp, Co-Chair
77 South High Street, 14th Floor
Columbus, OH 43215

Senator Vernon Sykes, Co-Chair
1 Capitol Square, Ground Floor
Columbus, OH 43215

Senate President Matt Huffman, Member
1 Capitol Square, 2nd Floor
Columbus, OH 43215

House Minority Leader Emilia Sykes, Member
77 South High Street, 14th Floor
Columbus, OH 43215

Governor Mike DeWine, Member
77 South High Street, 30th Floor
Columbus, OH 43215

Auditor Keith Faber, Member
88 East Broad Street, 5th Floor
Columbus, OH 43215

Secretary of State Frank LaRose, Member
22 North Fourth Street, 16th Floor
Columbus, OH 43215

Respondents.

RELATORS' COMPLAINT IN APPORTIONMENT CASE

Alicia L. Bannon (PHV 25409-2021)*
Yurij Rudensky (PHV 25422-2021)*
Michael Li (PHV 25430-2021)*
Ethan Herenstein*
BRENNAN CENTER FOR JUSTICE
AT NYU SCHOOL OF LAW
120 Broadway, Suite 1750
New York, NY 10271
Tel: (646) 292-8310
Fax: (212) 463-7308
alicia.bannon@nyu.edu

Peter M. Ellis (Ohio Bar No. 0070264)
Counsel of Record
M. Patrick Yingling*
Natalie R. Salazar*
REED SMITH LLP
10 South Wacker Drive, 40th Floor
Chicago, IL 60606
Tel: (312) 207-1000
Fax: (312) 207-6400
pellis@reedsmith.com

Brian A. Sutherland (PHV 25406-2021)*
REED SMITH LLP
101 Second Street, Suite 1800
San Francisco, CA 94105
Tel: (415) 543-8700
Fax: (415) 391-8269
bsutherland@reedsmith.com

Ben R. Fliegel*
REED SMITH LLP
355 South Grand Avenue, Suite 2900
Los Angeles, CA 90071
Tel: (213) 457-8000
Fax: (213) 457-8080
bfliegel@reedsmith.com

Counsel for Relators
** Pro Hac Vice Motion Forthcoming*

INTRODUCTION

1. In 2015, the people of Ohio issued a resounding declaration that partisan gerrymandering should have no place in this state. With more than 71 percent of the vote—and across party lines—Ohioans approved a constitutional amendment to end the long legacy of partisan gerrymandering in Ohio and to encourage bipartisanship in the redistricting process. In so doing, the people instructed the Ohio Redistricting Commission to attempt to adopt a General Assembly district plan under which the number of districts favoring each party is proportional to the statewide preferences of voters, and to refrain from drawing districts primarily to favor or disfavor a political party.

2. This amendment came as a direct response to an extreme partisan gerrymander in the General Assembly district plan adopted in 2011, and, after that plan was challenged, to this Court's subsequent ruling that "[t]he words used in Article XI [of the Ohio Constitution] do not explicitly require political neutrality, or for that matter, politically competitive districts or representational fairness, in the apportionment board's creation of state legislative districts." *Wilson v. Kasich*, 134 Ohio St.3d 221, 2012-Ohio-5367, 981 N.E.2d 814, ¶ 14. In amending the Constitution, the people enacted provisions to explicitly require partisan fairness and conferred on this Court the authority and the obligation to enforce those provisions.

3. Flouting these clear constitutional commands and defying the will of the people, on September 16, 2021, just after midnight, the Ohio Redistricting Commission voted 5-2 on party lines to adopt a district plan that has the intent and effect of entrenching a veto-proof Republican supermajority in both chambers of the General Assembly for the next four years.

4. The Ohio Redistricting Commission's own analysis highlights the brazenness of the district plan's partisan gerrymander and the bad faith of the underlying process. In a statement issued pursuant to Article XI, Section 8(C)(2) of the Ohio Constitution, the Ohio Redistricting Commission calculated that under the plan it enacted, 64.4 percent of districts favored Republicans, while the statewide proportion of voters favoring Republican candidates over the past 10 years was only 54 percent. *See* Ex. 6. The Ohio Redistricting Commission justified this disparity by pointing to the fact that Republican candidates won 13 of 16 statewide elections, or 81 percent of contests, during that period, asserting that the percentage of election wins is an appropriate measure of voters' statewide preferences. *Id.* According to the Ohio Redistricting Commission's tortured reasoning, had Republicans won 100 percent of statewide elections over the past decade, even if only by a single vote in each instance, a plan drawn to favor Republicans to win every single seat in the General Assembly would be proportional to Ohio voters' statewide preferences.

5. The resulting plan enacted by the Ohio Redistricting Commission is intended to and has the effect of favoring and giving disproportionate political power and control over the future of Ohio to one political party and its members. For example, with a statewide average of 54 percent voter support, Republican candidates are estimated to win 64 of 99 seats in the House of Representatives, nearly two-thirds of all seats. By contrast, because of the way the Commission drew the districts, Democrats would win only 49 seats with an equivalent percentage of statewide support. Ex. 1 (Latner Aff. ¶ 26). In other words, the number of votes that would secure a veto-proof *super*majority for Republicans would likely not be enough to obtain a simple majority for Democrats. Even some of the Commissioners who voted for the plan cast doubt on its legality. For example, Governor Mike DeWine commented, "[w]hat I am sure

in my heart is that this Committee could have come up with a bill that was much more clearly, clearly constitutional, and I'm sorry we did not do that."[1]

6. The harms are stark: the district plan dilutes the voting power of Ohio voters who tend to support Democrats by intentionally cracking and packing them into districts on the basis of political party for the purpose of weakening their political influence. These abuses are especially borne by members of Ohio's growing Black and Muslim communities who, because of Ohio's political geography, are among the communities that bear the brunt of the enacted partisan gerrymander and are burdened in effectively organizing and having their voices heard by elected leaders. Ohio-based organizations that mobilize voters and encourage civic engagement around issues of racial, religious, economic, and environmental justice are hampered in effectively advocating to their legislators and engaging their communities in collective action. Statewide, the plan's dramatic pro-Republican skew creates a disconnect between the preferences of Ohio voters and electoral outcomes, leading to a government that is less representative, responsive, and accountable to the people.

7. This action before the Supreme Court of Ohio is necessary to give effect to the will of Ohio voters and to the unambiguous commands of Article XI of the Ohio Constitution. Because the Ohio Redistricting Commission's General Assembly district plan does not comply with and violates the Ohio Constitution, this Court should declare the plan invalid and order the Ohio Redistricting Commission to adopt a new General Assembly district plan that complies with the Constitution in accordance with Section 9 of Article XI of the Ohio Constitution.

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[1] Ohio Redistricting Commission, Hearing on September 15, 2021, at timestamp 35:30 – 36:06, https://ohiochannel.org/video/ohio-redistricting-commission-9-15-2021.

JURISDICTION

8. This is an apportionment case. *See* S.Ct.Prac.R. 5.08(A)(3), 14.03(A).[2] This Court has original and exclusive jurisdiction over this apportionment case under Section 9 of Article XI of the Ohio Constitution and Supreme Court Practice Rule 14.03 because relators allege that the Ohio Redistricting Commission adopted a General Assembly district plan that violates Article XI of the Ohio Constitution. They seek judicial remedies as set forth in Section 9 of Article XI.

PARTIES

A. Relators in this Apportionment Case

9. The Ohio Organizing Collaborative (OOC) is a nonprofit organization incorporated in Ohio with a multi-pronged mission of organizing everyday Ohioans to build transformative power for racial, social, and economic justice. It is organized and existing under Ohio law, with its principal place of business at 25 E Boardman Street, Youngstown, OH 44503. The OOC is made up of four grassroots organizing membership projects and dozens of campaigns that span a broad range of leaders, communities, and intersecting issues, including college students, people of faith, people directly impacted by mass incarceration, unemployed workers, care providers and the families they serve, and people working in the care economy. The OOC has five current members on its Board of Directors, all of whom, on information and

[2] This is not an "original action" under this Court's rules, which define that phrase to mean "a case that invokes the original jurisdiction of the Supreme Court pursuant to Article IV, Section 2(B)(1)(a) through (e) of the Ohio Constitution." S.Ct.Prac.R. 5.06(A); *see also* S.Ct.Prac.R. 12.01 (prescribing rules for "original actions" under Article IV, Section 2). The parties here invoke Article XI as the basis for this Court's original jurisdiction, not Article IV. Unlike Rule 12.03, Rule 14.03 does not specify how to refer to the parties. Because Rule 14.03 is silent on that question, the challengers will refer to themselves as "relators" and refer to their opponents as "respondents." This terminology is for convenient reference and is not meant to suggest that this is a mandamus action or other type of original action.

belief, are registered Ohio voters. It also has hundreds of members concentrated in Columbus, Cleveland, Dayton, and Cincinnati and thousands of supporters and volunteers in almost every metropolitan area across the State.

10. One of the OOC's state and local priorities is structural democracy reform, which it pursues through grassroots community organizing, large scale civic engagement, and strategic communication. Its non-partisan voter engagement program, for example, has registered hundreds of thousands of Ohioans to vote. The OOC is especially focused on engaging young voters and voters of color in the democratic process. And, over the past few years, the OOC helped to drive community organizing and public engagement strategies during the redistricting process to ensure that Ohio would get a fair map outcome. The OOC convened a nonpartisan citizens commission which modeled a thorough and robust community engagement process to produce constitutional, fair, and proportional maps within deadlines set out in Ohio's constitution. During the community information gathering process, the Ohio Citizens' Redistricting Commission engaged thousands of people, with a particular focus on uplifting the voices of Black, brown, and immigrant Ohioans. Members, officers, and volunteers of the OOC regularly engage with state lawmakers to advance their agenda of economic and racial justice and structural democracy reform.

11. The gerrymandered General Assembly district plan directly impairs the OOC's mission of encouraging civic engagement and fair districts. The plan also deters and discourages its members and partners, along with other Ohio voters, from engaging in the political process, which, in turn, makes it more difficult for the OOC to engage voters through its registration and outreach efforts. The plan likewise hampers the OOC's ability to advance a legislative agenda focused on policies that help improve economic, social, educational, and health outcomes for its

members. These burdens will require the OOC to dedicate additional staff and resources to advance its goals. In addition, the OOC's concerns about the prospect of a gerrymandered General Assembly district plan has forced it during 2021 to divert time and resources to an advocacy campaign for fair districts. The OOC hired two dedicated employees and spent additional staff time to focus on redistricting in 2021, in order to ensure fair maps and a fair opportunity to advance its legislative agenda in the decade to come. The enacted plan will require OOC to continue to divert time and resources to advocacy for fair districts and fair redistricting going forward.

12. The OOC is suing on its own behalf and on behalf of its members who are registered voters in Ohio.

13. The Council on American Islamic Relations, Ohio (CAIR-Ohio) is the largest advocacy and civil rights organization for Muslims in the Midwest. Founded in 1998 in Columbus, Ohio, CAIR-Ohio is an affiliate of the Council on American-Islamic Relations, a nonprofit, grassroots national civil rights organization. CAIR-Ohio has three offices in Ohio: one in Columbus, one in Cincinnati, and one in Cleveland. It is a nonpartisan not-for-profit corporation organized and existing under Ohio law, with its principal place of business at 4985 Cemetery Road, Hilliard, OH 43026.

14. CAIR-Ohio's mission is to protect civil liberties, empower American Muslims, and build coalitions that promote justice and mutual understanding. It advances its mission through civic engagement, legislative advocacy at the local, state, and federal level, education, media relations, and legal advocacy. CAIR-Ohio's civic engagement and advocacy efforts include programs throughout the year to facilitate opportunities for Ohio Muslims to engage with

elected officials and advocate for legislation that aims to preserve and expand voting rights, strengthen the political system for marginalized communities, protect civil liberties, and promote social justice. CAIR-Ohio also has a robust non-partisan voter mobilization program including voter registration drives, voter guides, candidate forums, phone banks, and get-out-the-vote events. As part of this program, CAIR-Ohio provides education on voter ID laws, early voting opportunities, and changes to the voting process.

15. The gerrymandered General Assembly district plan hinders CAIR-Ohio's work, making its civic engagement and advocacy efforts more labor-intensive and depleting its resources and ability to build relationships and influence lawmakers. Ohio Muslims are primarily concentrated in metropolitan areas of Ohio, and for that reason, CAIR-Ohio's advocacy work largely stems from the centers of these communities. Because the gerrymandered plan segments areas with a high concentration of Ohio Muslims, a single community will have to advocate to multiple state representatives, diluting the power of collective action and increasing administrative costs for CAIR-Ohio. For example, CAIR-Ohio regularly undertakes letter writing campaigns. Because the partisan gerrymander divides the Muslim communities across the state into a multitude of districts, the impact of these action alerts on legislators will be greatly reduced. While CAIR-Ohio may be able to coordinate 100 letters from a single mosque, those letters will then have to be divided among multiple legislators, and what is in reality a significant community outcry will be far reduced in impact. This will also increase the organizational burden on CAIR-Ohio, as multiple petitions and templates will need to be created for each mosque or event as opposed to simply one or two. CAIR-Ohio will incur similar administrative costs in organizing advocacy days that have to be coordinated among over 30 legislators. These advocacy days require CAIR-Ohio staff members to organize and facilitate meetings between up

to one hundred Ohio constituents and their respective representatives. With communities being split into different districts, such events will be difficult to execute with limited staff capacity.

16. The partisan gerrymandered plan also limits CAIR-Ohio's ability to build meaningful and ongoing relationships with the legislators that represent the Muslim community. Because CAIR-Ohio's constituents are divided, it is hampered in building inroads with legislators. As a result, CAIR-Ohio is less able to accomplish its legislative and policy goals as its limited staff resources are spread thin across multiple offices.

17. CAIR-Ohio seeks to empower Ohio Muslims through voter registration drives, candidate forums, and civic engagement education. As a minority group, Ohio Muslims are sorely underrepresented in the political sphere, and this obstacle is compounded through gerrymandering. With representatives who do not reflect the values of their respective communities, Muslim voters become apathetic towards policy advocacy and civic engagement efforts. Individual elected officials in safe non-competitive districts will feel no obligation to be responsive to the needs of their Muslim constituents, creating dissonance between communities and those who are meant to serve them. This negatively impacts the willingness of the community to be civically engaged as their efforts are often dismissed. Furthermore, these sentiments make it increasingly difficult for CAIR-Ohio to carry out its mission.

18. The Ohio Environmental Council (OEC) is a nonpartisan, not-for-profit corporation organized and existing under Ohio law, with its principal place of business at 1145 Chesapeake Avenue, Suite I, Columbus, OH 43212. The OEC is an environmental justice organization whose mission is to secure healthy air, land, and water for all who call Ohio home. The OEC works for pragmatic solutions to keep Ohio clean and beautiful, and its communities

safe. It fights for clean air and water, clean energy, and protected public lands. It holds polluters accountable in court while working with communities and companies that want to invest in a clean, more sustainable direction. For more than 50 years, the OEC has led many of the major environmental policy wins in Ohio.

19. One of the four pillars of the OEC's work is safeguarding the integrity and accessibility of Ohio's democracy, recognizing that civic engagement is critical in securing long-term environmental protections. The OEC advocates on behalf of a healthy democracy, because without a healthy democracy, it cannot create policies that benefit the people of Ohio and ensure clean water, vibrant public lands, renewable energy, and a stable climate. In support of this mission, the OEC advocates for fair representation and fair maps in Ohio, which help to amplify the voices of Ohioans and secure a healthy environment for the State.

20. The OEC has over 100 environmental and conservation member organizations and over 3,100 individual members, who live in 84 of Ohio's 88 counties. In the past two years, more than 5,352 individuals across the state have voluntarily taken action in furtherance of the OEC's work through calling and writing decision-makers, volunteering to support an OEC event, and assisting with organizing community members. The OEC regularly activates its members and volunteers to participate in political processes, including submitting testimony and comments to government agencies, contacting decision-makers about environmental and democracy-related issues, and attending hearings. The OEC also regularly holds educational events to inform its memberships about environmental issues impacting Ohio, the United States, and the planet. The OEC's headquarters is in Columbus, but it has regional coordinators in Cleveland, Cincinnati, Toledo, and Youngstown. Upon information and belief, the vast majority

of the OEC's members are registered voters in Ohio, and include Democrats, Republicans, and Independents.

21. Since its founding in 1969, the OEC has relied on the Ohio and the federal Constitutions' freedoms of assembly and association to organize and advocate for the interests of its members to secure protections for environmental and human health. The gerrymandered General Assembly plan harms OEC's members and hinders its work by dividing many of Ohio's communities and also diluting the votes of Democratic voters for the purpose of maintaining a Republican advantage in the Ohio General Assembly. The gerrymander results in a government that is not representative or responsive to OEC's members or the public, including on issues of environmental justice.

22. Because of the gerrymandered General Assembly district plan, the OEC has and will continue to expend additional time and resources in order to organize voters to defend Ohio's environment and ensure a free and fair democratic process. For example, the gerrymandered plan cracks communities, particularly communities of color, that share common health and environmental challenges, which requires the OEC and its members to expend additional resources in order to target multiple members of the General Assembly with respect to local health issues. In particular, the Environmental Protection Agency's Environmental Justice Screening and Mapping Tool (EJSCREEN), which generates scores combining demographic factors and environmental hazard indicators, indicates that the area west of Interstate 75 extending to Trotwood and Drexel, and within the communities of Northview and West Carrollton, has the highest Environmental Justice (EJ) Index percentile scores in the state. This score is highest in areas with large numbers of low-income and/or minority residents and higher environmental hazard values. This region of Dayton is not only made up of predominantly low-

income and minority communities, but it contains areas that lie in the 95th-100th percentile EJ Index score for National Air Toxics Assessment cancer risk, lead paint, and superfund proximity indicators. Under the district plan, this area with high environmental hazard concerns is split into three House districts: districts 36, 38, and 39. Communities in this area are represented by three different House districts, cracking apart those affected by the same environmental hazards and injustices. Additionally, district 39 scoops into this affected area yet extends far west and southwest to the Indiana border. It dilutes minority voices with those from rural communities who do not experience high cancer, lead paint, and superfund proximity hazards.

23. The gerrymandered General Assembly district plan also directly affects the OEC's ability to educate its membership and activate them to improve Ohio's environment. Starting in 2019 and continuing through the present, the OEC has advocated for a stronger, more responsive democracy because a healthy environment is not possible without a healthy democracy, and when Ohio's districts are gerrymandered, it does not have a healthy democracy. Thus, the OEC is spending significant resources to educate its membership on the importance of voting rights and fair districts in response to gerrymandered districts. Since 2019, the OEC has funded voter registration efforts, held educational sessions on fair maps and redistricting, and educated membership and supporters directly about voting procedures for state legislative elections. The plan adopted on September 16, 2021, by the Ohio Redistricting Commission perpetuates the need for continued investment in educational efforts regarding Ohio's democratic institutions. Because the gerrymandered plan encourages apathy and discourages voters from engaging in the democratic process, the OEC will need to expend additional resources over the next decade to continue encouraging its membership and supporters to engage in elections and other political activities and advocate for environmental issues.

24. The OEC is suing on its own behalf and on behalf of its members who are registered voters in Ohio.

25. Pierrette "Petee" Talley lives at 935 Parkside Boulevard, Toledo, OH 43607, which is in House district 42 and Senate district 11 in the enacted plan. Ms. Talley is an Ohio voter who is registered with the Democratic Party and who regularly supports Democratic candidates for office. Ms. Talley is the Chief Executive Officer of the Ohio Coalition on Black Civic Participation/Ohio Unity Coalition, the state affiliate of the national Unity Voter Empowerment Campaign convened by the National Coalition on Black Civic Participation. Ms. Talley is a former member of the executive committee of the Ohio AFL-CIO. Ms. Talley is also active in her community, including engaging with voters and in other civic activities.

26. Samuel Gresham Jr. lives at 255 Old Trail Drive, Columbus, OH 43213, which is in House district 2 and Senate district 15 in the enacted plan. Mr. Gresham is an Ohio voter who is not registered with either major party and who regularly supports the best candidates for office, including Democrats. Mr. Gresham is a member of the Ohio Citizens' Redistricting Commission, the Chair of Common Cause Ohio, and the former President and Chief Executive Officer of Columbus Urban League. Mr. Gresham is active in his community, including engaging with voters and in other civic activities.

27. Ahmad Aboukar lives at 5019 Noor Park Circle, Dublin, OH 43016, which is in House district 11 and Senate district 16 in the enacted plan. Mr. Aboukar is an Ohio voter who is registered with the Democratic Party and who regularly supports the best candidates for office, including Democrats. Mr. Aboukar is a small business owner and a student at the Ohio State University School of Law. Mr. Aboukar is active in the Muslim and broader community that

lives in the area around the Noor Islamic Cultural Center in Dublin, Ohio, including engaging with voters and in other civic activities.

28. Mikayla Lee lives at 383 Oak Street, Columbus, OH 43215, which is in House district 1 and Senate district 15 in the enacted plan. Ms. Lee is an Ohio voter who is registered with the Democratic Party and who regularly supports Democratic candidates for office. Ms. Lee works for a nonpartisan and not-for-profit organization that helps young people run for office and serves as the Vice President of the Ohio Young Black Democrats. Ms. Lee is also active in her community, including engaging with voters and in other civic activities.

29. Prentiss Haney lives at 918 Windsor Street, Cincinnati, OH 45206, which is in House district 24 and Senate district 9 in the enacted plan. Mr. Haney is an Ohio voter who is registered with the Democratic Party and who regularly supports Democratic candidates for office. Mr. Haney is the co-executive director of the Ohio Organizing Collaborative and is currently on sabbatical from his official duties. Mr. Haney is also active in his community, including engaging with voters and in other civic activities.

30. Crystal Bryant lives at 2210 East 97th Street, Cleveland, OH 44106, which is in House district 18 and Senate district 23 in the enacted plan. Ms. Bryant is an Ohio voter who is registered with the Democratic Party and who regularly supports Democratic candidates for office. Ms. Bryant is the executive director of the N.A.A.C.P. Cleveland Branch. She is also the co-founder of Cleveland Votes, a non-partisan voter engagement organization that focuses on building civic muscle for the most underserved. Ms. Bryant is also active in her community, including engaging with voters and in other civic activities.

B. Respondents in this Apportionment Case

31. The Ohio Redistricting Commission (Commission) is a seven-member body charged under Ohio law with responsibility for the redistricting of this State for the General Assembly.

32. Robert R. Cupp is a Co-Chair of the Commission and Speaker of the Ohio House of Representatives, with his principal place of business at 77 South High Street, 14th Floor, Columbus, OH 43215.

33. Vernon Sykes is a Co-Chair of the Commission and an Ohio Senator, with his principal place of business at 1 Capitol Square, Ground Floor, Columbus, OH 43215.

34. Matt Huffman is a member of the Commission and the Ohio Senate President, with his principal place of business at 1 Capitol Square, 2nd Floor, Columbus, OH 43215.

35. Emilia Sykes is a member of the Commission and the Ohio House of Representative House Minority Leader, with her principal place of business at 77 South High Street, 14th Floor, Columbus, OH 43215.

36. Mike DeWine is a member of the Commission and the Governor of Ohio, with his principal place of business at 77 South High Street, 30th Floor, Columbus, OH 43215.

37. Keith Faber is a member of the Commission and the Ohio Auditor of State, with his principal place of business at 88 East Broad Street, 5th Floor, Columbus, OH 43215.

38. Frank LaRose is a member of the Commission and the Ohio Secretary of State, with his principal place of business at 22 North Fourth Street, 16th Floor, Columbus, OH 43215. Secretary LaRose is the chief elections officer of the State.

FACTS

A. The General Assembly Proposes and Voters Approve Amendments to Article XI of the Ohio Constitution to Curb Partisan Gerrymandering

39. Partisan gerrymandering has a long and unfortunate history in the State of Ohio. The State has at numerous points in its history adopted reforms to limit redistricting abuses, but partisan forces have consistently sought to circumvent these reforms in pursuit of undue advantage. At the State's inception, legislative districts were drawn by the General Assembly and "oftentimes political advantage was sought to be gained by the party in power." *State ex. rel. Herbert v. Bricker*, 139 Ohio St. 499, 508, 41 N.E.2d 377 (1942). The Constitution of 1851 incorporated Article XI "for the purpose of correcting the evils of former days," by creating an apportionment board that did not need the General Assembly's approval to adopt maps. *Id.* "The objective sought by the constitutional provisions was the prevention of gerrymandering." *Id.* at 509. Unfortunately, these provisions, without more, did not stop partisan abuses, *see* Ex. 1 (Latner Aff. ¶ 13), or racially discriminatory districts, *see, e.g.*, *Armour v. State of Ohio*, 775 F. Supp. 1044, 1058-1060 (N.D.Ohio 1990).

40. Partisan gerrymandering reared its head during last decade's redistricting cycle. But when Ohio voters sought to challenge the extreme gerrymander under Article XI, this Court ruled that Article XI, as it then existed, was of no help. "The words used in Article XI [of the Ohio Constitution]," this Court explained, "do not explicitly require political neutrality, or for that matter, politically competitive districts or representational fairness, in the apportionment board's creation of state legislative districts." *Wilson v. Kasich*, 134 Ohio St.3d 221, 2012-Ohio-5367, 981 N.E.2d 814, ¶ 14.

41. Unwilling to allow another partisan gerrymander, Ohioans acted swiftly to pressure the General Assembly to amend Article XI. In 2014, the 130th General Assembly adopted a joint resolution to propose an amendment to Article XI of the Ohio Constitution. Ex. 2. As described in the official ballot language, the proposed amendment would, among other things, "[e]nd 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." Ex. 3.

42. Under Ohio law, the Ohio Ballot Board published arguments for and against Ballot Issue 1 in a newspaper of general circulation. The official arguments for and against Ballot Issue 1 also appeared on the Ohio Secretary of State's website.

43. The official arguments in favor of Ballot Issue 1 stated in part, "Voting **YES on Issue 1**, will make sure state legislative districts are drawn to be **more competitive** and compact, and ensure that <u>no district plan should be drawn to favor or disfavor a political party</u>." Ex. 4 (bolding and underlining in original). The arguments in favor of Ballot Issue 1 emphasized, "Voting YES on Issue 1 will establish fair and balanced standards for drawing state legislative districts, including that no district plan should favor a political party." *Id.* The arguments in favor of Ballot Issue 1 were prepared by Senators Keith Faber and Joe Schiavoni and Representatives Kirk Schuring and Mike Curtin. *Id.* Mr. Faber is currently the Ohio Auditor of State, a member of the Commission, and a respondent in this apportionment case.

44. The official arguments against Ballot Issue 1 did not dispute the premise that Ballot Issue 1, if approved by the voters, would ensure no district plan should be drawn to favor or disfavor a political party. Rather, the arguments against Ballot Issue 1 asserted, among other

things, that the "gerrymandering that results from partisan control is not a bad process, because it leads to one-party control of government and voters can know who to hold responsible." Ex. 5. The arguments against Ballot Issue 1 stated, "The current process can be trusted to maintain fair district lines; a 'no' vote maintains the status quo." *Id.*

45. The people of Ohio voted resoundingly to reject the redistricting regime that existed as of 2015, in favor of a new one that would ensure that no district plan should be drawn to favor or disfavor a political party. In November 2015, Ohio voters approved Ballot Issue 1 with more than 71 percent of the vote, thereby amending Article XI of the Ohio Constitution as proposed in the joint resolution. The amended Article XI took effect on January 1, 2021. *See* Ex. 2, at page 9.

46. Under Article XI, as thus amended, the Commission is required to "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." Ohio Constitution, Article XI, Section 6(A), (B). The Commission also violates Article XI if its General Assembly district plan does not comply with the Ohio Constitution. Ohio Constitution, Article XI, Section 3(B)(2). This Court must remedy such violations pursuant to Article XI, Section 9.

B. The Ohio Redistricting Commission Uses a Partisan Process to Propose and Adopt a General Assembly District Plan

47. The Commission was convened on August 6, 2021. The Commission consisted of five Republican members and two Democratic members.

48. Soon after convening, the Commission held hearings across the State to hear from members of the public. In these hearings, held between August 23 and August 27, Ohio citizens uniformly demanded that the Commission respect the will of the people as expressed in the 2015 amendments of the Ohio Constitution, and put an end to partisan gerrymandering. Dozens of witnesses testified in Cleveland, Youngstown, Dayton, Cincinnati, Zanesville, Rio Grande, Lima, Toledo, Akron, and Mansfield that no district plan should be drawn to favor or disfavor a political party. The following testimony is representative of the hearing testimony before the Commission:

a. "I would like to see the end of gerrymandering, and I think that was the intent of the constitutional amendment, and hopefully we can have fair representation, which is called for by the constitutional amendment." – Robert Clyde.[3]

b. "Every person in this room knows that we, the Ohio voters, were voting to end gerrymandering and to thus provide fair representation to all Ohioans. As our elected officials, you must draw districts using the process defined in the Ohio Constitution by those amendments." – Wendy Dyer.[4]

c. "The strong support of voters on the redistricting issue is clear. It resulted in a change to the state constitution. This body is a product of that change. Now it is up to this body to live up to the letter and the spirit of the law. We need a

[3] Ohio Redistricting Commission, Hearing on August 23, 2021 - Youngstown, at timestamp 50:11 – 50:28, https://ohiochannel.org/video/ohio-redistricting-commission-8-23-2021-youngstown.

[4] Ohio Redistricting Commission, Hearing on August 24, 2021 - Dayton, at timestamp 1:35:45 – 136:09, https://ohiochannel.org/video/ohio-redistricting-commission-8-24-2021-dayton.

transparent process that results in fair districts. Through this redistricting process, Ohio has the chance to serve as an example to the country about how to do this the right way. I call on you to put partisanship aside and listen to the will of the people." – Scott DiMauro.[5]

d. "Gerrymandering has happened under the control of both parties, both major political parties in the past, and it is not a practice that should be revisited under any circumstances. That is why Ohioans in all 88 counties voted twice to amend the state constitution, as you are certainly aware, to improve the process of drawing district lines, both for Ohio legislative districts and for U.S. Congress." – Dr. LaPearl Winfrey.[6]

e. "The voters of Ohio spoke in 2015 and 2018 asking for an end to gerrymandering. It is my hope that you listen to the majority of Ohio voters." – Jolynne Henning.[7]

f. "The Commission and the general legislature must honor the voters who voted twice to end gerrymandering. Elections should be determined by the voters and not by gerrymandered boundaries." – Sandy Sommer.[8]

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[5] *Id.* at 31:35 – 32:09.

[6] *Id.* at 2:01:09 – 2:01:37.

[7] Ohio Redistricting Commission, Hearing on August 24, 2021 - Cincinnati, at timestamp 1:28:40 – 1:28:53, https://ohiochannel.org/video/ohio-redistricting-commission-8-24-2021-cincinnati.

[8] *Id.* at 1:34:43 – 1:34:55.

g. "The majority of Ohio voters—71%—clearly demand an end to gerrymandering and increased transparency in the once every ten year process of drawing the maps. The citizens of Ohio are counting on you to draw fair maps, to avoid cracking and packing along party lines[.]" – Caroline Cook.[9]

h. "The redistricting rules you follow today were incorporated into the Ohio Constitution through the votes of over 70% of Ohio voters. The reforms are designed specifically to temper the political party influence in the redistricting process. Use these tools that the voters have given to you to draw fair districts this cycle." – Michael Ahern.[10]

i. "I do want to urge you guys that the voters gave you guys a charge, you folks a charge. The voters said, we want fair districts, we want to take the political, the partisan gerrymandering, out of this equation[.]" – Ted Linscott.[11]

j. "I just think that the voters who did this deserve to have the gerrymandering end. Please stand up for Ohio. Do the right thing. Give the people a fair vote." – Kay Chapman.[12]

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[9] Ohio Redistricting Commission, Hearing on August 25, 2021 - Zanesville, at timestamp 49:45 – 50:06, https://ohiochannel.org/video/ohio-redistricting-commission-8-25-2021-zanesville.

[10] Ohio Redistricting Commission, Hearing on August 25, 2021 – Rio Grande, at timestamp 17:04 – 17:29, https://ohiochannel.org/video/ohio-redistricting-commission-8-25-2021-rio-grande.

[11] *Id.* at 30:48 – 31:08.

[12] Ohio Redistricting Commission, Hearing on August 26, 2021 – Toledo, at timestamp 30:28 – 30:40, https://ohiochannel.org/video/ohio-redistricting-commission-8-26-2021-toledo.

k. "Ohio voters passed redistricting reform to get rid of gerrymandering. The resounding cry is, we won't accept gerrymandered maps. The maps that will be drawn should reflect to the spirit of redistricting forms in 2015 and 2018. Ohio deserves fair maps that keep communities together. In conclusion, I just want to remind everyone that redistricting reform received over 70% of the vote statewide and passed in all 88 counties. The people have spoken. We want our voices heard." – Cazzell Smith.[13]

49. The Ohio Constitution sets forth the following initial steps for adopting a General Assembly district plan.

a. First, the Commission "shall draft the proposed plan in the manner prescribed in [Article XI]." Ohio Constitution, Article XI, Section 1(C).

b. Second, the Commission shall release the proposed General Assembly district plan to the public. *See id.*

c. Third, the Commission shall conduct a minimum of three public hearings to present the proposed plan and seek public input. *See id.*

d. Fourth, the Commission "shall adopt a final general assembly district plan" not later than September 1, 2021. *Id.* Any such plan must be adopted by a bipartisan vote, including votes from at least two members who represent each of the two

[13] Ohio Redistricting Commission, Hearing on August 27, 2021 – Akron, at timestamp 1:04:26 – 1:05:01, https://ohiochannel.org/video/ohio-redistricting-commission-8-27-2021-akron.

largest political parties represented in the General Assembly. Ohio Constitution, Article XI, Section 1(B)(3).

50. The Commission met on August 31, 2021—the day before the deadline to adopt a final plan under Section 1(C) of Article XI. By that date, the Commission had failed to introduce a proposed plan to the public, let alone conduct any public hearings to present such a proposed plan and receive comments from the public.

51. At the August 31 hearing, House Leader Emilia Sykes asked her colleagues on the Commission "when the Commission will put forth a map that people, and members of the public, can comment on." Co-Chair Cupp replied that "a map is being developed, carefully, with regard to the data and the constitutional requirements . . ." but was unlikely to be available by September 1.[14] House Leader Sykes stated that she had not been consulted about the map that was being developed and asked who on the Commission was participating in developing the map and considering data.[15] Co-Chair Cupp replied that "the Commission itself is not drawing a map . . . . "[16] Senate President Huffman elaborated that in his view, each political party caucus could and would submit a proposed plan for the Commission's consideration, and that the Commission would select one of those submitted plans (or one submitted by a member of the public), to release to the public as the Commission's proposed plan.[17]

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[14] Ohio Redistricting Commission, Hearing on August 31, 2021, at timestamp 16:00-16:36, https://www.ohiochannel.org/video/ohio-redistricting-commission-8-31-2021; *see also id.* at 26:58-27:45, 30:54-31:19.

[15] *Id.* at 17:50-18:42.

[16] *Id.* at 19:00-19:10.

[17] *Id.* at 21:42-25:21.

52. The comments that the Republican Commissioners made on the record in response to House Leader Emilia Sykes' repeated questions about when she would have an opportunity to participate in drafting the plan that "the commission shall draft," Ohio Constitution, Art. XI, Section 1(C), underscored that the Republican legislative caucus, and not the Commission, was drafting the plan in private. As Co-Chair Cupp explained, "Obviously, when a map is presented, members of the Commission have an opportunity to weigh in."[18]

53. At that August 31 hearing, however, no Commissioner shared a plan from the Republican legislative caucus in the House or Senate. By contrast, Co-Chair Vernon Sykes introduced a plan from the members of the Ohio Senate Democratic caucus, as a starting point for the other members of the Commission to provide feedback and suggestions.[19]

54. September 1 came and passed without a proposed plan. The Commission's failure to adopt a final plan by September 1 triggered an "impasse" procedure under Section 8 of Article XI of the Ohio Constitution. That procedure permitted the Commission to introduce a plan by a partisan majority vote of the Commission. Ohio Constitution, Article XI, Section 8(A)(1). It also required the Commission to propose the plan to the public, "hold a public hearing concerning the proposed plan," and pass a final plan by September 15, 2021. Ohio Constitution, Article XI, Section 8(A)(2), (3).

55. The Commission met again at 10:00 a.m. on September 9, 2021. At that meeting, Senate President Huffman introduced a plan. Ray DiRossi, caucus staff to the Senate Majority Caucus, presented the plan to the Commission. In his presentation, Mr. DiRossi indicated that he

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[18] *Id.* at 31:20-31:29.

[19] *Id.* at 6:33-8:18.

had not yet determined whether that plan complied with Section 6's partisan fairness requirements, stating: "we are conducting an analysis of the election data contemplated by the constitution. That analysis is ongoing. It is not complete as of today, and it is ongoing."[20] Nevertheless, at a second meeting held just a few hours later, the Republican members of the Commission voted to introduce the Republican caucus plan as the Commission's proposed plan. Both hearings were announced with only one day's notice and the plan itself was only introduced at the 10:00 a.m. hearing, depriving witnesses of the time needed to review the plan and provide feedback.

56. Following the introduction of the proposed plan, the Commission held three public hearings: one on September 12, another on September 13, and a third on September 14, 2021. Despite the short time to review the plan, the public's verdict on the proposed plan was virtually, if not entirely, unanimous: the plan was a partisan gerrymander and therefore failed to comply with the Ohio Constitution. The following testimony is representative of the hearing testimony concerning the Commission's proposed plan:

a. "This redistricting process is a slap in the face to the over 70 percent of Ohioans who voted for the redistricting reforms. The Republican engineered maps give even more power to the Republican candidates. They are even more politically biased than the ones we currently have." Deborah Dalke.[21]

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[20] Ohio Redistricting Commission, Hearing at 10:00 a.m. on September 9, 2021, at timestamp 21:00-21:54, https://www.ohiochannel.org/video/ohio-redistricting-commission-9-9-2021-1000am.

[21] Ohio Redistricting Commission, Hearing on September 13, 2021, at timestamp 22:23 – 22:39, https://ohiochannel.org/video/ohio-redistricting-commission-9-13-2021

b. "[T]he Ohio Constitution was amended in 2015 and 2018 to prevent partisan gerrymandering of voting districts. Ohio voters of all parties demanded this, as demonstrated by the overwhelming support of more than 70 percent of these issues. While I am not a voting rights lawyer or expert, it is clear at a minimum that the following requirements have not been met by the proposed maps: . . . 'no plan shall be drawn primarily to favor or disfavor a political party.' Given the supermajority of the proposed maps, that doesn't seem to be met." Barbara Friedman Yaksic.[22]

c. "Voters of Ohio voted for change. We want an end to partisan gerrymandering and business as usual. We demand fair maps. As you know, time is running out." Scott DiMauro.[23]

57. The Committee convened at 10:30 a.m. on the morning of September 15, 2021, and immediately recessed at the request of Senate President Huffman. Although the Commission was supposed to reconvene at 3:00 p.m., it did not reconvene until 11:15 p.m.—leaving less than an hour to pass a final map under the constitutional deadline. Upon reconvening, Senate President Huffman introduced an amendment to the proposed plan, revising several district boundaries. Within 10 minutes of its introduction, the Commission passed the amendment along party lines.

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[22] *Id.* at 30:34 – 31:27.

[23] Ohio Redistricting Commission, Hearing on September 14, 2021, at timestamp 1:13:24 – 1:13:35, https://ohiochannel.org/video/ohio-redistricting-commission-9-14-2021.

58. Just after midnight, on September 16, 2021, the Commission adopted—again along party lines—that amended plan as the final General Assembly district plan. The two Democratic members of the Commission voted against the final plan, stating that it "egregiously violates the anti-gerrymandering provisions of the Ohio Constitution." Minority Report of Senator Vernon Sykes, Co-Chair, and House Minority Leader Emilia Strong Sykes, Commissioner (Sept. 15, 2021). Two other members of the Commission—who cast deciding votes to adopt the final plan—also cast doubt on the constitutionality of the plan and asked *this Court* to decide whether the plan is constitutional. To wit:

a. Secretary of State Frank LaRose stated, "I'm casting my Yes vote with great unease. I fear, I fear, we're going to be back in this room very soon. This map has many shortcomings, but they pale in comparison to the shortcomings of this process. Didn't have to be this way. It didn't have to be this way."[24]

b. Governor Mike DeWine stated, "I will vote to send this matter forward, but it will not be the end of it. We know that this matter will be in court. I'm not judging the bill one way or another—that's up for a court to do. What I do, what I am sure in my heart is that this Committee could have come up with a bill that was much more clearly, clearly constitutional, and I'm sorry we did not do that."[25]

59. Because the plan was passed along party lines, Section 8(C)(2) of Article XI required the Commission to "include a statement explaining what the commission determined to

[24] Ohio Redistricting Commission, Hearing on September 15, 2021, at timestamp 31:14 – 31:35, https://ohiochannel.org/video/ohio-redistricting-commission-9-15-2021

[25] *Id.* at 35:30 – 36:06.

be the statewide preferences of the voters of Ohio and the manner in which the statewide proportion of districts in the plan whose voters, based on statewide state and federal partisan general election results during the last ten years, favor each political party corresponds closely to those preferences, as described in division (B) of Section 6 of this article."

60. At the final meeting held overnight from September 15-16, 2021, Senate President Huffman introduced a statement to comply with Section 8(C)(2). That statement was approved along party lines.

61. In that statement, the Commission found that the statewide proportion of voters favoring statewide Republican candidates was 54 percent and the statewide proportion of voters favoring statewide Democratic candidates was 46 percent. Ex. 6. The Commission also found that 64.4 percent of districts in the Commission's plan favored Republicans, while 35.6 percent of districts favored Democrats. *Id.*

62. Despite this 10-point gap between Republican vote share and the proportion of districts expected to favor Republicans, the Commission concluded that "the statewide proportion of districts whose voters favor each political party corresponds closely to the statewide preferences of the voters of Ohio." Ex. 6. It justified this conclusion by counting the number of statewide state and federal partisan general elections during the last ten years. The Commission found that Republican candidates won 13 of 16 such elections, or 81 percent, during that period. *Id.*

63. Under the Commission's logic, if the Republican Party won five statewide elections with 50.1 percent of the vote and the Democrats won zero elections over the same

period of time, that would mean that the statewide preference of the voters of Ohio is to elect Republicans to 100 percent of the districts in the state. Ex. 1 (Latner Aff. ¶ 19).

64. The Commission also stated that its attempt to meet what it described as the "aspirational" standards of Article XI, Section 6 of the Ohio Constitution did not result in any violation of the "mandatory" requirements of Article XI, Sections 2, 3 ,4, 5, and 7 of the Ohio Constitution. Ex. 6.

C. The Enacted Plan is a Severe Partisan Gerrymander

65. Contrary to the Commission's Section 8(C)(2) statement quoted above, the enacted General Assembly district plan violates Section 6(B) of Article XI because it does *not* remotely correspond—much less "closely correspond"—with the statewide preferences of Ohio voters. To the contrary, the statewide proportion of districts whose voters favor the Republican Party is grossly disproportionate to statewide preferences, as reflected by voters' actual votes. According to the Commission's own Section 8(C)(2) statement, it drew the districts such that 64.4 percent of *districts* favor Republicans, even though a significantly smaller percentage of *voters*—54 percent, on average, during the last ten years—favor Republicans. As made clear by other plans submitted to the Commission, the Commission could have drawn districts that more closely correspond with the statewide preferences of voters, but deliberately refused to do so, based on a patently erroneous assertion that the percentage of statewide elections won by a political party reflects the statewide preferences of voters for that party. Ex. 1 (Latner Aff. ¶ 17).

66. The Commission drew the General Assembly district plan primarily to favor the Republican Party and to disfavor the Democratic Party, in violation of Section 6(A) of Article XI. The plan treats voters differently based on their political party preferences or, in other words,

it exhibits partisan asymmetry. A district plan exhibits partisan bias or partisan asymmetry when one party wins a larger number of legislative seats with a vote share than the other party would win with an equivalent vote share. For example, if one party would receive 65 percent of legislative seats with only 55 percent of the statewide vote share, while another party would receive only 45 percent of the seats with the same statewide vote share, that difference is the product of partisan asymmetry. Such a plan would plainly favor one party over the other.

67. The Commission's adopted plan exhibits severe and durable partisan bias, or asymmetry. Ex. 1 (Latner Aff. ¶ 26). For example, under the plan, Republicans win 64 of 99 House seats (65 percent—a veto-proof majority) with only 54 percent statewide support from voters. By contrast, if there is a uniform statewide vote swing in favor of Democrats so that they have 54 percent statewide support, they would win only 49 seats (less than 50 percent—short of even a bare majority). *Id.*

68. The Commission created a highly asymmetrical General Assembly district plan through "cracking" and "packing" throughout the State, *i.e.*, by splitting up or "cracking" Democratic voters in some geographies to dilute their voting strength and moving as many Democratic voters as possible into a small number of "packed" Democratic districts in others.

69. For example, in Hamilton County, House districts 24 and 25 are estimated to be 71 percent and 78 percent Democratic, respectively, with high proportions (41 percent and 52 percent, respectively) of voting age Black residents, while adjacent districts 27, 29, and 30 are safely Republican. Similarly, district 38 in Montgomery County is estimated to be 67 percent Democratic, creating safe Republican seats in adjoining districts 35 and 39, and a toss-up district 36. Ex. 1 (Latner Aff. ¶ 33). By concentrating Democratic support in a few districts, the

Commission created more opportunities for Republicans to win more seats with fewer votes, relative to the number of votes Democrats would need to receive to win the same number of seats.

70. Many district boundaries in the final General Assembly district plan, in addition to those discussed in the paragraph above, conform to partisan precincts in a precise manner, which indicates that the Commission relied on the partisan makeup of the districts when drawing district boundaries and attempted to draw districts primarily to favor or disfavor a political party. The partisan asymmetry of the resulting plan shows that the Commission succeeded in drawing districts to favor or disfavor a political party, *i.e.*, that it engaged in partisan gerrymandering. Both the House and Senate plans are biased in favor of the Republican Party.

FIRST CAUSE OF ACTION

(violation of Article XI, Section 3)

71. Relators restate and incorporate by reference the allegations of paragraphs 1 through 70 above as though fully set forth in this Paragraph.

72. Section 3 of Article XI of the Ohio Constitution 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." Ohio Constitution, Article XI, Section 3(B)(2). Thus, a General Assembly district plan that violates any other provision of the Ohio Constitution also violates Article XI, Section 3.

73. The Ohio Constitution prohibits drawing districts to deprive citizens of their right to alter or reform government for the equal protection and benefit. In particular, the Ohio Constitution provides:

> All political power is inherent in the people. Government is instituted for their equal protection and benefit, and they have the right to alter, reform, or abolish the same, whenever they may deem it necessary; and no special privileges or immunities shall ever be granted that may not be altered, revoked, or repealed by the general assembly.

Ohio Constitution, Article I, Section 2.

74. The General Assembly district plan adopted by the Ohio Redistricting Commission institutes government by drawing electoral districts, but it does not institute government or draw districts for the equal protection and benefit of the people. Rather, the plan adopted by the Commission draws districts for the benefit of Republican voters, at the expense of the relators and organizational members who are likely Democratic voters. In particular, the plan classifies voters by political affiliation and draws district boundaries on the basis of their political affiliation, leaving Democratic voters in cracked and packed election districts and thereby substantially diluting their voting power.

75. As a result, the plan systematically makes it more difficult for Democratic voters to elect a candidate of their choice in House and Senate districts. And on a statewide basis, candidates supported by Democratic voters win far fewer seats in the Ohio House and Senate than they would absent the gerrymander.

76. The Commission intended to draw districts to favor Republican voters and disfavor Democratic voters, and their adopted plan has that effect. And the Commission's justification for disfavoring Democratic voters—that Republicans won 13 out of 16 statewide races over a selected period of time—has no basis in the Ohio Constitution or common sense. Thus, the Commission's plan violates Article I, Section 2 of the Ohio Constitution, and thereby violates Article XI, Section 3.

SECOND CAUSE OF ACTION

(violation of Article XI, Section 3)

77. Relators restate and incorporate by reference the allegations of paragraphs 1 through 76 above as though fully set forth in this Paragraph.

78. The Ohio Constitution prohibits drawing districts to deprive citizens of their right to associate together to express their views on government, instruct their representatives, and petition for redress of grievances. In particular, the Ohio Constitution provides that "[t]he people have the right to assemble together, in a peaceable manner, to consult for their common good; to instruct their Representatives; and to petition the general assembly for the redress of grievances." Ohio Constitution, Article I, Section 3. And it provides that "[e]very citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of the right; and no law shall be passed to restrain or abridge the liberty of speech, or of the press." Ohio Constitution, Article I, Section 11.

79. The General Assembly district plan adopted by the Ohio Redistricting Commission subjects relators and organizational members who tend to vote for Democratic candidates to disfavored treatment because of their expression of political views and voting history. The gerrymandering interferes with these individuals' ability to exercise political influence by joining with like-minded others, and the right of expressive associations, including political parties, to be free from discrimination based on the political viewpoint of the group. Thus, the plan infringes upon their liberty of speech and of assembly under the Ohio Constitution.

80. The Commission intended to draw districts to favor Republican voters and disfavor Democratic voters based on their political associations, which are necessary to advance

their political speech, and their adopted plan has that effect. The Commission has no justification for deliberately disfavoring relators and burdening their rights of speech and assembly. Thus, the Commission's plan violates Article I, Sections 3 and 11 of the Ohio Constitution, and thereby violates Article XI, Section 3.

THIRD CAUSE OF ACTION

(violation of Article XI, Section 6)

81. Relators restate and incorporate by reference the allegations of paragraphs 1 through 80 above as though fully set forth in this Paragraph.

82. As mentioned, Section 6 of Article XI of the Ohio Constitution provides:

> 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.
>
> Nothing in this section permits the commission to violate the district standards described in Section 2, 3, 4, 5, or 7 of this article.

Ohio Constitution, Article XI, Section 6.

83. The Commission did not attempt to draw a General Assembly district plan that comported with Section 6(A)—to the contrary, the Commission deliberately adopted a General Assembly district plan that was drawn primarily to favor the Republican Party.

84. Nor did the Commission attempt to draw a General Assembly district plan that comported with Section 6(B). To the contrary, the Commission deliberately adopted a plan with a statewide proportion of districts whose voters favor each political party that does *not* correspond closely to the statewide preferences of the voters of Ohio.

PRAYER FOR RELIEF

Relators respectfully pray that this Court:

1. Declare that the General Assembly district plan approved by the Ohio Redistricting Commission in September 2021 is invalid;

2. Order the Commission to adopt a new General Assembly district plan in accordance with Article XI, Section 9 of the Ohio Constitution;

3. Issue a permanent injunction and judgment barring respondents from calling, holding, supervising, administering, or certifying any elections under the General Assembly district plan adopted by the Commission;

4. Retain jurisdiction over this apportionment case to enforce and compel compliance with this Court's orders and/or judgment and to render any and all further orders that the Court may deem appropriate, including, but not limited to, determining the validity of any new General Assembly district plan adopted by the Commission pursuant to the Ohio Constitution;

5. Grant such other or further relief as the Court deems appropriate, including, but not limited to, an award of relators' attorney fees and reasonable costs.

September 27, 2021 REED SMITH LLP

By: /s/ Peter M. Ellis

Peter M. Ellis (Ohio Bar No. 0070264)
Counsel of Record
REED SMITH LLP
10 South Wacker Drive, 40th Floor
Chicago, IL 60606
Tel: (312) 207-1000
Fax: (312) 207-6400
pellis@reedsmith.com

Supreme Court of Ohio Clerk of Court - Filed October 20, 2021 - Case No. 2021-1210

IN THE SUPREME COURT OF OHIO

Ohio Organizing Collaborative, *et al.*,	:	
	:	**Case No. 2021-1210**
Relators,	:	
v.	:	**Original Action Filed Pursuant to Ohio Constitution, Article XI, Section 9(A)**
Ohio Redistricting Commission, *et al.*,	:	**[Apportionment Case Pursuant to S. Ct. Prac. R. 14.03]**
Respondents.	:	

RESPONDENT SENATOR VERNON SYKES' ANSWER TO RELATORS' COMPLAINT

Freda Levenson
flevenson@acluohio.org
David J. Carey
dcarey@acluohio.org
Alora Thomas
athomas@aclu.org
Julie A. Epstein
jepstein@aclu.org

Robert D. Fram
rfram@cov.com
Joshua Gonzalez
Jgonzalez@cov.com
Megan C. Keenan
Mkeenan@cov.com
Anupam Sharma
asharma@cov.com
Madison Arent
marent@cov.com

Laura B. Bender
David Denuyl
Yiye Fu
Juliana Goldrosen
James Hovard
Alexander Thomson

Counsel for LWVO Relators

Erik Clark
ejclark@organlegal.com
Ashley Merino
amerino@organlegal.com

Counsel for Respondent Ohio Redistricting Commission

Bridget Coontz
Bridget.Coontz@ohioAGO.gov
Julie Pfieffer
Julie.Pfieffer@ohioAGO.gov
Michael K. Hendershot
Michael A. Walton
Michael.walton@ohioago.gov
David Anthony Yost

Counsel for Respondents Ohio Governor Mike DeWine, Ohio Secretary of State Frank LaRose, and Ohio Auditor Keith Faber

Peter M. Ellis
pellis@reedsmith.com
M. Patrick Yingling
MPYingling@ReedSmith.com
Natalie R. Salazar
NSalazar@reedsmith.com
Brian A. Sutherland

Abha Khanna
Ben Stafford
Elias Law Group
1700 Seventh Avenue, Suite 200
Seattle, WA 9801
akhanna@elias.law
bstafford@elias.law

Aria C. Branch
Jyoti Jasrasaria
Spencer W. Klein
Elias Law Group
10 G. Street NE, Suite 600
Washington, DC 20002
abranch@elias.law
jjasrasaria@elias.law
sklein@elias.law

Donald J. McTigue
Derek S. Clinger
McTigue & Colombo LLC
545 East Town Street
Columbus, OH 43215
dmctigue@electionlawgroup.com
dclinger@electionlawgroup.com

William Stuart Dornette
dornette@taftlaw.com
John Branch
John.branch@nelsonmullins.com
Beth Anne Bryan
bryan@taftlaw.com
Thomas Farr
Tom.farr@nelsonmullins.com
Alyssa Riggins
Alyssa.riggins@nelsonmullins.com
Phillip Strach
Phillip.strach@nelsonmullins.com
Philip Daniel Williamson
pwilliamson@taftlaw.com

Counsel for Bria Bennett Relators

bsutherland@reedsmith.com
Ben R. Fliegel*
bfliegel@reedsmith.com

Alicia L. Bannon
Alicia.bannon@nyu.edu
Yurji Rudensky
rudenskyy@brennan.law.nyu.edu
Ethan Herenstein
herensteine@brennan.law.nyu.edu

Brad Funari
Michael Li
Natalie R. Stewart

Attorneys for OOC Relators

Diane Menashe (0070305)*
*Counsel of Record
John Gilligan (0024542)
ICE MILLER LLP
250 West Street, Suite 700
Columbus, Ohio 43215
T: (614) 462-6500
F: (614) 222-3468
Diane.Menashe@icemiller.com
John.Gilligan@icemiller.com

Counsel for Respondents Senator Vernon Sykes and House Minority Leader Emilia Sykes

Respondent Sen. Vernon Sykes ("Sen. Sykes" or "Respondent"), by his attorneys, hereby answers the Complaint filed by Relators the League of Women Voters, *et al.*, according to the numbered paragraphs therein, as follows:

INTRODUCTION

1. Respondent admits the allegations of Paragraph 1.

2. In response to Paragraph 2, Respondent admits that in 2011, a group of voters challenged Ohio's map on the basis of partisan unfairness. Answering further, Respondent states that the *Wilson v. Kasich* decision of the Ohio Supreme Court is a written document which speaks for itself, and thus no response is required to Relators' characterization of it.

3. In response to Paragraph 3, Respondent states that the 2021 General Assembly District Plan, adopted by the Commission by a 5-2 party-line vote (which Respondent and House Minority Leader Emilia Sykes voted against) (the "Plan")[1] was designed to preserve the Republican super majority in the Ohio General Assembly, whereas a map that complied with the provisions of Article XI, Section 6, would have established districts favoring Democrats in at least 45% of the state's districts with the remaining 55% favoring Republicans.

4. In response to Paragraph 4, Respondent admits that the Plan was designed to preserve the Republican super majority in the Ohio General Assembly, whereas a map that complied with the provisions of Article XI, Section 6, would have established districts favoring Democrats in at least 45% of the state's districts with the remaining 55% favoring Republicans. Answering further, Respondent states that he and House Minority Leader Emilia Sykes voted

[1] Respondent notes that the Complaint refers to the Plan as the "district plan," the "General Assembly Plan" and the "General Assembly district plan." For the sake of clarity and consistency, as used herein, the "Plan" refers to the 2021 General Assembly District Plan, adopted by the Commission by a 5-2 party-line vote (which Respondent and House Minority Leader Emilia Sykes voted against).

against the Plan proposed by Republican members of the Commission and adopted by a 5-2 party-line vote.

5. In response to Paragraph 5, Respondent admits that the Plan was designed to preserve the Republican super majority in the Ohio General Assembly, whereas a map that complied with the provisions of Article XI, Section 6, would have established districts favoring Democrats in at least 45% of the state's districts with the remaining 55% favoring Republicans. Answering further, Respondent states that he and House Minority Leader Emilia Sykes voted against the Plan proposed by Republican members of the Commission and adopted by a 5-2 party-line vote.

6. Respondent admits the allegations of Paragraph 6.

7. In response to Paragraph 7, Respondent states that the Complaint speaks for itself, and thus no response is required to Relators' characterization of it.

JURISDICTION

8. In response to Paragraph 7, Respondent admits that the Ohio Supreme Court has jurisdiction over this apportionment case. Answering further, Respondent states that the Complaint speaks for itself, and thus no response is required to Relators' characterization of it.

PARTIES

A. Relators in this Apportionment Case

9. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation of Paragraph 9, and therefore denies same.

10. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation of Paragraph 10, and therefore denies same.

11. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation of Paragraph 11, and therefore denies same.

12. In response to Paragraph 12, Respondent states that the Complaint speaks for itself, and thus no response is required to Relators' characterization of it.

13. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation of Paragraph 13, and therefore denies same.

14. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation of Paragraph 14, and therefore denies same.

15. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation of Paragraph 15, and therefore denies same.

16. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation of Paragraph 16, and therefore denies same.

17. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation of Paragraph 17, and therefore denies same.

18. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation of Paragraph 18, and therefore denies same.

19. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation of Paragraph 19, and therefore denies same.

20. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation of Paragraph 20, and therefore denies same.

21. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation of Paragraph 21, and therefore denies same.

22. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation of Paragraph 22, and therefore denies same.

23. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation of Paragraph 23, and therefore denies same.

24. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation of Paragraph 24, and therefore denies same.

25. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation of Paragraph 25, and therefore denies same.

26. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation of Paragraph 26, and therefore denies same.

27. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation of Paragraph 27, and therefore denies same.

28. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation of Paragraph 28, and therefore denies same.

29. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation of Paragraph 29, and therefore denies same.

30. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation of Paragraph 30, and therefore denies same.

B. Respondents in this Apportionment Case

31. Respondent admits the allegations of Paragraph 31.

32. Respondent admits the allegations of Paragraph 32.

33. Respondent admits the allegations of Paragraph 33.

34. Respondent admits the allegations of Paragraph 34.

35. Respondent admits the allegations of Paragraph 35.

36. Respondent admits the allegations of Paragraph 36.

37. Respondent admits the allegations of Paragraph 37.

38. Respondent admits the allegations of Paragraph 38.

FACTS

A. The General Assembly Proposes and Voters Approve Amendments to Article XI of the Ohio Constitution to Curb Partisan Gerrymandering

39. Respondent admits the allegations of Paragraph 39.

40. In response to Paragraph 40, Respondent admits that the district maps drawn during the 2011 redistricting cycle by the majority-Republican Apportionment Board reflected an intentional effort to preserve and expand a Republican majority in the Ohio General Assembly. Answering further, Respondent states that the caselaw cited in Paragraph 40 speaks for itself, and thus no response is required to Relators' characterization of it.

41. Respondent admits the allegations of Paragraph 41.

42. Respondent admits the allegations of Paragraph 42.

43. In response to Paragraph 43, Respondent admits that Mr. Faber is currently the Ohio Auditor of State, a member of the Commission, and a respondent in this apportionment case. Answering further, states that Exhibit 4 speaks for itself, and thus no response is required to Relators' characterization of it.

44. In response to Paragraph 44, Respondent states that Exhibit 5 speaks for itself, and thus no response is required to Relators' characterization of it.

45. Respondent admits the allegations of Paragraph 45.

46. In response to Paragraph 46, Respondent admits that the Commission is required, under Article XI, to attempt to draw a plan that complies with the requirements set out therein. Answering further, Respondent states that Article XI speaks for itself, and thus no response is required to Relators' characterization of it.

B. The Ohio Redistricting Commission Uses a Partisan Process to Propose and Adopt a General Assembly District Plan

47. Respondent admits the allegations of Paragraph 47.

48. In response to Paragraph 48, Respondent admits that numerous members of the public testified at public hearings between August 23 and August 27, 2021, and that these citizens expressed a desire for the 2021 district maps to better reflect the partisan composition of the state of Ohio. With respect to sub-paragraphs (a)-(k), Respondent states that the witness testimony quoted therein speaks for itself, and thus no response is required to Relators' characterization of it.

49. In response to Paragraph 49, including subparagraphs (a)-(d), Respondent states that the Ohio Constitution speaks for itself, and thus no response is required to Relators' characterization of it.

50. In response to Paragraph 50, Respondent admits that the majority-Republican Commissioners had not released a proposed map when the Commission met on August 31, 2021.

51. In response to Paragraph 51, Respondent admits that the Republican members of the Commission did not consult Respondent or House Minority Leader Emilia Sykes as the Republicans prepared their own proposed map without input from the Democratic members of the Commission. Answering further, Respondent states that the August 31 hearing transcript referenced in Paragraph 51 speaks for itself, and thus no response is required to Relators' characterization of it.

52. In response to Paragraph 52, Respondent admits that the Republican members of the Commission did not consult Respondent or House Minority Leader Emilia Sykes as the Republicans prepared their own proposed map without input from the Democratic members of the Commission. Answering further, Respondent states that the August 31 hearing transcript

referenced in Paragraph 52 speaks for itself, and thus no response is required to Relators' characterization of it.

53. In response to Paragraph 53, Respondent admits that no Republican member of the Commission had introduced a proposed map as of August 31, 2021. Answering further, Respondent states that the August 31 hearing transcript referenced in Paragraph 53 speaks for itself, and thus no response is required to Relators' characterization of it.

54. In response to Paragraph 54, Respondent admits that no Republican member of the Commission had introduced a proposed map as of September 1, 2021. Answering further, Respondent states that Article XI speaks for itself, and thus no response is required to Relators' characterization of it.

55. Respondent admits the allegations of Paragraph 55.

56. Respondent admits the allegations of Paragraph 56. With respect to sub-paragraphs (a)-(c), Respondent states that the witness testimony quoted therein speaks for itself, and thus no response is required to Relators' characterization of it.

57. Respondent admits the allegations of Paragraph 57, and states that he and House Minority Leader Emilia Sykes voted against the amendment to the Republicans' proposed map.

58. Respondent admits the first sentence of Paragraph 58, and states that he and House Minority Leader Emilia Sykes voted against the Plan, which ultimately passed by a 5-2 party-line vote. Answering further, Respondent states that in response to the Section 8(C)(2) statement introduced by Senate President Huffman (the "Statement"), Respondent and House Minority Leader Emilia Sykes introduced a report, referred to as the Minority Report, memorializing the Plan's numerous deficiencies and the reasons it failed to comply with Article XI of the Ohio

Constitution. With respect to sub-paragraphs (a)-(b), Respondent states that the testimony quoted therein speaks for itself, and thus no response is required to Relators' characterization of it.

59. In response to Paragraph 59, Respondent states that Article XI speaks for itself, and thus no response is required to Relators' characterization of it.

60. In response to Paragraph 60, Respondent admits that a final meeting was held overnight from September 15-16, 2021, at which the Statement was discussed. Answering further, Respondent states that he and House Minority Leader Emilia Sykes introduced a report, referred to as the Minority Report, memorializing the Plan's numerous deficiencies and the reasons it failed to comply with Article XI of the Ohio Constitution.

61. In response to Paragraph 61, Respondent states that Exhibit 6 speaks for itself, and thus no response is required to Relators' characterization of it.

62. In response to Paragraph 62, Respondent states that Exhibit 6 speaks for itself, and thus no response is required to Relators' characterization of it.

63. In response to Paragraph 63, Respondent states that Exhibit 1 speaks for itself, and thus no response is required to Relators' characterization of it.

64. In response to Paragraph 64, Respondent states that Exhibit 6 speaks for itself, and thus no response is required to Relators' characterization of it.

C. The Enacted Plan is a Severe Gerrymander

65. In response to Paragraph 65, Respondent states that that the Plan was prepared by Republican members of the Commission and/or their staff, and was designed to preserve the Republican super majority in the Ohio General Assembly, whereas a map that complied with the provisions of Article XI, Section 6, would have established districts favoring Democrats in at least 45% of the state's districts with the remaining 55% favoring Republicans. The Plan was adopted

by the Commission by a 5-2 party-line vote with Respondent and House Minority Leader Emilia Sykes voting against the Plan. Answering further, Respondent states that Exhibit 1 speaks for itself, and thus no response is required to Relators' characterization of it.

66. In response to Paragraph 66, Respondent states that that the Plan was prepared by Republican members of the Commission and/or their staff, and was designed to preserve the Republican super majority in the Ohio General Assembly, whereas a map that complied with the provisions of Article XI, Section 6, would have established districts favoring Democrats in at least 45% of the state's districts with the remaining 55% favoring Republicans. The Plan was adopted by the Commission by a 5-2 party-line vote with Respondent and House Minority Leader Emilia Sykes voting against the Plan.

67. In response to Paragraph 67, Respondent states that that the Plan was prepared by Republican members of the Commission and/or their staff, and was designed to preserve the Republican super majority in the Ohio General Assembly, whereas a map that complied with the provisions of Article XI, Section 6, would have established districts favoring Democrats in at least 45% of the state's districts with the remaining 55% favoring Republicans. The Plan was adopted by the Commission by a 5-2 party-line vote with Respondent and House Minority Leader Emilia Sykes voting against the Plan. Answering further, Respondent states that Exhibit 1 speaks for itself, and thus no response is required to Relators' characterization of it.

68. In response to Paragraph 68, Respondent states that that the Plan was prepared by Republican members of the Commission and/or their staff, and was designed to preserve the Republican super majority in the Ohio General Assembly, whereas a map that complied with the provisions of Article XI, Section 6, would have established districts favoring Democrats in at least 45% of the state's districts with the remaining 55% favoring Republicans. The Plan was adopted

by the Commission by a 5-2 party-line vote with Respondent and House Minority Leader Emilia Sykes voting against the Plan.

69. In response to Paragraph 69, Respondent states that Exhibit 1 speaks for itself, and thus no response is required to Relators' characterization of it.

70. In response to Paragraph 70, Respondent states that that the Plan was prepared by Republican members of the Commission and/or their staff, and was designed to preserve the Republican super majority in the Ohio General Assembly, whereas a map that complied with the provisions of Article XI, Section 6, would have established districts favoring Democrats in at least 45% of the state's districts with the remaining 55% favoring Republicans. The Plan was adopted by the Commission by a 5-2 party-line vote with Respondent and House Minority Leader Emilia Sykes voting against the Plan.

FIRST CAUSE OF ACTION

(Violation of Article XI, Section 3)

71. Respondent restates and incorporates by reference all prior and subsequent answers as though fully restated herein.

72. In response to Paragraph 72, Respondent states that Article XI speaks for itself, and thus no response is required to Relators' characterization of it.

73. In response to Paragraph 73, Respondent states that Article I speaks for itself, and thus no response is required to Relators' characterization of it.

74. Respondent admits the allegations of Paragraph 74.

75. Respondent admits the allegations of Paragraph 75.

76. Respondent admits the first sentence of Paragraph 76 with respect to the Republican members of the Commission only, and states that the Plan was adopted by the Commission by a 5-2 party-line vote with Respondent and House Minority Leader Emilia Sykes voting against the

Plan. Answering further, Respondent states that the Ohio Constitution speaks for itself, and thus no response is required to Relators' characterization of it.

SECOND CAUSE OF ACTION

(Violation of Article XI, Section 3)

77. Respondent restates and incorporates by reference all prior and subsequent answers as though fully restated herein.

78. In response to Paragraph 78, Respondent states that Article XI speaks for itself, and thus no response is required to Relators' characterization of it.

79. Respondent admits the allegations of Paragraph 79.

80. Respondent admits the first sentence of Paragraph 80 with respect to the Republican members of the Commission only, and states that the Plan was adopted by the Commission by a 5-2 party-line vote with Respondent and House Minority Leader Emilia Sykes voting against the Plan. Answering further, Respondent states that the Ohio Constitution speaks for itself, and thus no response is required to Relators' characterization of it.

THIRD CAUSE OF ACTION

(Violation of Article XI, Section 6)

81. Respondent restates and incorporates by reference all prior and subsequent answers as though fully restated herein.

82. In response to Paragraph 82, Respondent states that Article XI speaks for itself, and thus no response is required to Relators' characterization of it.

83. Respondent admits the allegations of Paragraph 83 with respect to the Republican members of the Commission only, and states that the Plan was adopted by the Commission by a 5-2 party-line vote with Respondent and House Minority Leader Emilia Sykes voting against the

Plan. Answering further, Respondent states that the Ohio Constitution speaks for itself, and thus no response is required to Relators' characterization of it.

84. In response to Paragraph 84, Respondent states that that the Plan was prepared by Republican members of the Commission and/or their staff, and was designed to preserve the Republican super majority in the Ohio General Assembly, whereas a map that complied with the provisions of Article XI, Section 6, would have established districts favoring Democrats in at least 45% of the state's districts with the remaining 55% favoring Republicans. The Plan was adopted by the Commission by a 5-2 party-line vote with Respondent and House Minority Leader Emilia Sykes voting against the Plan.

85. Respondent denies every allegation not explicitly admitted to be true herein.

PRAYER FOR RELIEF

In response to Relators' Prayer for Relief, Respondent requests that the Court grant the relief requested in Paragraphs 1-5. In response to Paragraph 6, Respondent denies any obligation to pay Relators' attorneys' fees and costs.

Respectfully submitted,

ICE MILLER LLP

/s/ Diane Menashe
Counsel to the Ohio Attorney General

Diane Menashe (0070305)
John Gilligan (0024542)

250 West Street, Suite 700
Columbus, Ohio 43215
Diane.Menashe@icemiller.com
John.Gilligan@icemiller.com
T: (614) 462-6500
F: (614) 222-3468

Counsel for Respondents Senator Vernon Sykes and House Minority Leader Emilia Sykes

CERTIFICATE OF SERVICE

I hereby certify that on October 20, 2021, I have served the foregoing document by email on the following:

Freda Levenson
flevenson@acluohio.org
David J. Carey
dcarey@acluohio.org
Alora Thomas
athomas@aclu.org
Julie A. Epstein
jepstein@aclu.org

Robert D. Fram
rfram@cov.com
Joshua Gonzalez
Jgonzalez@cov.com
Megan C. Keenan
Mkeenan@cov.com
Anupam Sharma
asharma@cov.com
Madison Arent
marent@cov.com

Laura B. Bender
David Denuyl
Yiye Fu
Juliana Goldrosen
James Hovard
Alexander Thomson

Counsel for LWVO Relators

Abha Khanna
Ben Stafford
Elias Law Group
1700 Seventh Avenue, Suite 200
Seattle, WA 9801
akhanna@elias.law
bstafford@elias.law

Aria C. Branch
Jyoti Jasrasaria
Spencer W. Klein

Erik Clark
ejclark@organlegal.com
Ashley Merino
amerino@organlegal.com

Counsel for Respondent Ohio Redistricting Commission

Bridget Coontz
Bridget.Coontz@ohioAGO.gov
Julie Pfieffer
Julie.Pfieffer@ohioAGO.gov
Michael K. Hendershot
Michael A. Walton
Michael.walton@ohioago.gov
David Anthony Yost

Counsel for Respondents Ohio Governor Mike DeWine, Ohio Secretary of State Frank LaRose, and Ohio Auditor Keith Faber

Peter M. Ellis
pellis@reedsmith.com
M. Patrick Yingling
MPYingling@ReedSmith.com
Natalie R. Salazar
NSalazar@reedsmith.com
Brian A. Sutherland
bsutherland@reedsmith.com
Ben R. Fliegel*
bfliegel@reedsmith.com

Alicia L. Bannon
Alicia.bannon@nyu.edu
Yurji Rudensky
rudenskyy@brennan.law.nyu.edu
Ethan Herenstein
herensteine@brennan.law.nyu.edu

Elias Law Group
10 G. Street NE, Suite 600
Washington, DC 20002
abranch@elias.law
jjasrasaria@elias.law
sklein@elias.law

Brad Funari
Michael Li
Natalie R. Stewart

Attorneys for OOC Relators

Donald J. McTigue
Derek S. Clinger
McTigue & Colombo LLC
545 East Town Street
Columbus, OH 43215
dmctigue@electionlawgroup.com
dclinger@electionlawgroup.com

William Stuart Dornette
dornette@taftlaw.com
John Branch
John.branch@nelsonmullins.com
Beth Anne Bryan
bryan@taftlaw.com
Thomas Farr
Tom.farr@nelsonmullins.com
Alyssa Riggins
Alyssa.riggins@nelsonmullins.com
Phillip Strach
Phillip.strach@nelsonmullins.com
Philip Daniel Williamson
pwilliamson@taftlaw.com

Counsel for Bria Bennett Relators

/s/ Diane Menashe
Diane Menashe (0070305)

CERTIFICATE OF SERVICE

I, Freda J. Levenson, hereby certify that on October 22, 2021, I caused a true and correct copy of the following documents to be served by email upon the counsel listed below:

1. **Affidavit of Freda J. Levenson**
2. **Complaints and Answers From All Cases, Appendix of Exhibits, Volume 1 (pages 1 - 191)**

DAVE YOST
OHIO ATTORNEY GENERAL
Bridget C. Coontz (0072919)
Julie M. Pfeiffer (0069762)
Michael A. Walton (0092201)
Michael J. Hendershot (0081842)
30 E. Broad St.
Columbus, OH 43215
Tel: (614) 466-2872
Fax: (614) 728-7592
bridget.coontz@ohioago.gov
julie.pfeiffer@ohioago.gov
michael.walton@ohioago.gov
michael.hendershot@ohioago.gov

Counsel for Respondents Governor Mike DeWine, Secretary of State Frank LaRose, and Auditor Keith Faber

W. Stuart Dornette (0002955)
Beth A. Bryan (0082076)
Philip D. Williamson (0097174)
TAFT STETTINIUS & HOLLISTER LLP
425 Walnut St., Suite 1800
Cincinnati, OH 45202
Tel: (513) 381-2838
dornette@taftlaw.com
bryan@taftlaw.com
pwilliamson@taftlaw.com

Phillip J. Strach (PHV 25444-2021)
Thomas A. Farr (PHV 25461-2021)
John E. Branch (PHV 25460-2021)
Alyssa M. Riggings (PHV 25441-2021)
Greg McGuire (PHV 25483-2021)
NELSON MULLINS RILEY & SCARBOROUGH LLP
4140 Parklake Ave., Ste. 200
Raleigh, NC 27612
phil.strach@nelsonmullins.com
tom.farr@nelsonmullins.com
john.branch@nelsonmullins.com
alyssa.riggins@nelsonmullins.com
greg.mcguire@nelsonmullins.com
Tel: (919) 329-3812

Counsel for Respondents
Senate President Matt Huffman and
House Speaker Robert Cupp

John Gilligan (0024542)
Diane Menashe (0070305)
ICE MILLER LLP
250 West St., Ste., 700
Columbus, OH 43215
john.gilligan@icemiller.com
diane.menashe@icemiller.com

Counsel for Respondents
Senator Vernon Sykes and
House Minority Leader Emilia Sykes

Erik J. Clark (0078732)
Ashley Merino (0096853)
ORGAN LAW LLP
1330 Dublin Rd.
Columbus, OH 43215
Tel: (614) 481-0900
Fax: (614) 481-0904

Counsel for Respondent Ohio Redistricting Commission

/s/ Freda J. Levenson