

In the
Supreme Court of Ohio

LEAGUE OF WOMEN VOTERS OF OHIO, et al., :
: *Relators*, : Case No. 2021-1193
: *v.* : Original Action Pursuant to
: Ohio Const., Art. XI
OHIO REDISTRICTING COMMISSION, et al., :
: *Respondents.* : Apportionment Case
:

BRIA BENNETT, et al., :
: *Relators*, : Case No. 2021-1198
: *v.* : Original Action Pursuant to
: Ohio Const., Art. XI
OHIO REDISTRICTING COMMISSION, et al., :
: *Respondents.* : Apportionment Case
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OHIO ORGANIZING COLLABORATIVE, et al., :
: *Relators*, : Case No. 2021-1210
: *v.* : Original Action Pursuant to
: Ohio Const., Art. XI
OHIO REDISTRICTING COMMISSION, et al., :
: *Respondents.* : Apportionment Case
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SUPPLEMENTAL BRIEF OF GOVERNOR MIKE DEWINE, SECRETARY OF STATE
FRANK LAROSE, AND AUDITOR KEITH FABER

OHIO ATTORNEY GENERAL

BRIDGET C. COONTZ (0072919)

Counsel of Record

JULIE M. PFEIFFER (0069762)

MICHAEL A. WALTON (0092201)

Assistant Attorneys General

MICHAEL J. HENDERSHOT (0081842)

Deputy Solicitor

Constitutional Offices Section

30 E. Broad Street, 16th Floor

Columbus, Ohio 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 Ohio Governor DeWine,
Ohio Secretary of State LaRose, and Ohio Auditor
Faber*

LEAGUE OF WOMEN VOTERS OF OHIO, et al., :
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COUNSEL FOR RELATORS

**Not admitted in Ohio*

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*
KELSEY MILLER*
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 (PHV-25414)
DONALD BROWN*
JOSHUA GONZÁLEZ (PHV-25424)
JULIANA GOLDROSEN (PHV-25193)
DAVID DENUYL (PHV-25452)
Covington & Burling LLP
Salesforce Tower
415 Mission Street, Suite 5400
San Francisco, CA 94105-2533
(415) 591 6000
rfram@cov.com

LAURA B BENDER (PHV-25192)
Covington & Burling LLP
MEGAN KEENAN (PHV-25410)
Alexander Thomson (PHV-25462)
850 W. Tenth Street, NW
Washington DC 20001-4956
Tel: (202) 662-5968
Fax: (202) 662-6291
bbender@cov.com
mkeenan@cov.com
athomson@cov.com

YIYE FU (PHV-25419)
Covington & Burling LLP
JAMES HOVARD (PHV-25420)
ANUPAM SHARMA (PHV-25418)
3000 El Camino Real
5 Palo Alto Square
Palo Alto CA 94306-2112
Tel: (650) 632-4716
Fax: (650) 632-4800
yfu@cov.com
jhovard@cov.com
asharma@cov.com

MADISON ARENT
Covington & Burling LLP
The New York Times Building
620 Eighth Avenue
New York, NY 10018-1405
Tel: (212) 841 1000
marent@cov.co

**COUNSEL FOR AMICUS CURIAE
CAMPAIGN LEGAL CENTER**

STEVEN S. KAUFMAN (0016662)
DOLORES P. GARCIA PRIGNITZ
(0085644)
SARA S. DORLAND (0095682)
Ulmer & Berne
1100 Skylight Office Tower
1660 West Second Street
Cleveland, Ohio 44113
Tel: (216) 583-7000
Fax: (216) 583-7001
skaufman@ulmer.com
dgarcia@ulmer.com
sdorland@ulmer.com

ROBERT N. WEINER
(PHV 25521 pending)
CHRISTOPHER LAMAR
(PHV 25519 pending)
VALENCIA RICHARDSON
(PHV 25517 pending)
Campaign Legal Center
1101 14th Street NW, Suite 400
Washington, DC 20005
Tel: (202) 736-2200
Fax: (202) 736-2222
rweiner@campaignlegalcenter.org
clamar@campaignlegalcenter.org
vrichardson@campaignlegalcenter.org

**COUNSEL FOR AMICUS CURIAE
CITY OF CINCINNATI**

EMILY SMART WOERNER, (0089349)
Deputy City Solicitor
Counsel of Record
SHANNON PRICE (100744)
Assistant City Solicitor
801 Plum Street, Room 214
Cincinnati, Ohio 45202
Tel: (513) 352-3309
Fax: (513) 352-1515
emily.woerner@cincinnati-oh.gov
shannon.price@cincinnati-oh.gov

**COUNSEL FOR AMICUS CURIAE WE
ARE OHIO**

JOHN M. HASELEY (0063042)
470 West Broad Street
Columbus, Ohio 43215
Tel: (614) 937-8872
haseley@goconnorlaw.com

**COUNSEL FOR AMICUS CURIAE
OHIO STATE CONFERENCE OF THE
NAACP**

*Not admitted to Ohio Bar

SUBODH CHANDRA (0069233)
DONALD SCREEN (0044070)

Counsel of Record

The Chandra Law Firm LLC

1265 West 6th Street

Cleveland, Ohio 44113

Tel: (216) 578-1700

subodh.chandra@chandralaw.com

donald.screen@chandralaw.com

JANETTE MCCARTHY WALLACE
(0066257)

ANTHONY P. ASHTON*

ANNA KATHRYN BARNES*

NAACP

Office of the General Counsel

4805 Mount Hope Drive

Baltimore, MD 21215

Tel: (410) 580-577

jlouard@naacpnet.org

aashton@naacpnet.org

abarnes@naacpnet.org

JON GREENBAUM*

EZRA ROSENBERG*

POOJA CHAUDHURI*

Lawyers' Committee for Civil Rights
Under Law

1500 K Street, N.W., Ste. 900

Washington, D.C. 20005

Tel: (202) 662-8600

jgreenbaum@lawyerscommittee.org

erosenberg@lawyerscommittee.org

pchaudhuri@lawyerscommittee.org

**COUNSEL FOR RESPONDENTS SEN-
ATE PRESIDENT MATT HUFFMAN
AND HOUSE SPEAKER ROBERT
CUPP**

PHILLIP J. STRACH (PHV-25444)

THOMAS A. FARR (PHV-25461)

JOHN E. BRANCH, III (PHV-25460)

ALYSSA M. RIGGINS (PHV-25441)

GREG MCGUIRE (PHV-25483)

Nelson Mullins Riley & Scarborough
LLP

4140 Parklake Ave., Suite 200

Raleigh, North Carolina 27612

Tel: (919) 329-3812

phil.strach@nelsonmullins.com

tom.farr@nelsonmullins.com

john.branch@nelsonmullins.com

alyssa.riggins@nelsonmullins.com

greg.mcguire@nelsonmullins.com

W. STUART DORNETTE (0002955)

BETH A. BRYAN (0082076)

PHILIP D. WILLIAMSON (0097174)

Taft Stettinus & Hollister LLP

425 Walnut St., Suite 1800

Cincinnati, OH 45202-3957

Tel: 513-381-2838

dornette@taftlaw.com

bryan@taftlaw.com

pwilliamson@taftlaw.com

**COUNSEL FOR AMICUS CURIAE
DAVID NIVEN, Ph.D.**

STEPHANIE M. CHMIEL (0087555)

Counsel of Record

MARY E. CSARNY (0097682)

Thompson Hine LLP

41 S. High Street, Suite 1700

Columbus, OH 43215

Tel: (614) 469-3247

Fax: (614) 469-3361

Stephanie.Chmiel@ThompsonHine.com

Mary.Csarny@ThompsonHine.com

**COUNSEL FOR RESPONDENTS SEN-
ATOR VERNON SYKES AND
HOUSE MINORITY LEADER EMILIA
SYKES**

JOHN GILLIGAN (0024542)

DIANE MENASHE (0070305)

Ice Miller LLP

250 West Street, Suite 700

Columbus, Ohio 43215

John.Gilligan@icemiller.com

Diane.Menashe@icemiller.com

**COUNSEL FOR RESPONDENT
OHIO REDISTRICTING COMMIS-
SION SPECIAL COUNSEL TO AT-
TORNEY GENERAL DAVE YOST**

ERIK J. CLARK (0078732)

ASHLEY MERINO (0096853)

Organ Law LLP

1330 Dublin Road

Columbus, Ohio 43215

Tel: (614) 481-0900

Fax: (614) 481-0904

ejclark@organlegal.com

amerino@organlegal.com

BRIA BENNETT, et al.,

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COUNSEL FOR RELATORS

DONALD J. MCTIGUE (0022849)

Counsel of Record

DEREK S. CLINGER (0092075)

McTigue & Colombo LLC

dmctigue@electionlawgroup.com

dclinger@electionlawgroup.com

ABHA KHANNA (PHV-2189)

WILLIAM B. STAFFORD (PHV-25433)

Elias Law Group

1700 Seventh Ave., Suite 2100

Seattle, WA 98101

Tel: (206) 656-0716

akhanna@elias.law

bstafford@elias.law

ARIA C. BRANCH (PHV-25435)

JYOTI JASRASARIA (PHV-25401)

SPENCER W. KLEIN (PHV-25432)

Elias Law Group

10 G Street NC, Suite 600

Washington, DC 20002

Telephone: 202-968-449

abranach@elias.law

jjasrasaria@elias.law

sklein@elias.law

COUNSEL FOR AMICUS CURIAE

CITY OF CINCINNATI

EMILY SMART WOERNER, (0089349)

Deputy City Solicitor

Counsel of Record

SHANNON PRICE (100744)

Assistant City Solicitor

801 Plum Street, Room 214

Cincinnati, Ohio 45202

Tel: (513) 352-3309

Fax: (513) 352-1515

emily.woerner@cincinnati-oh.gov

shannon.price@cincinnati-oh.gov

COUNSEL FOR AMICUS CURIAE

DAVID NIVEN, Ph.D.

STEPHANIE M. CHMIEL (0087555)

Counsel of Record

MARY E. CSARNY (0097682)

Thompson Hine LLP

41 S. High Street, Suite 1700

Columbus, OH 43215

Tel: (614) 469-3247

Fax: (614) 469-3361

Stephanie.Chmiel@ThompsonHine.com
Mary.Csarny@ThompsonHine.com
**COUNSEL FOR LEAGUE OF
WOMEN VOTERS**

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

**COUNSEL FOR RESPONDENTS SEN-
ATE PRESIDENT MATT HUFFMAN
AND HOUSE SPEAKER ROBERT
CUPP**

PHILLIP J. STRACH (PHV-25444)
THOMAS A. FARR (PHV-25461)
JOHN E. BRANCH, III (PHV-25460)
ALYSSA M. RIGGINS (PHV-25441)
GREG McGUIRE (PHV-25483)
Nelson Mullins Riley & Scarborough
LLP
4140 Parklake Ave., Suite 200
Raleigh, North Carolina 27612
Tel: (919) 329-3812
phil.strach@nelsonmullins.com
tom.farr@nelsonmullins.com
john.branch@nelsonmullins.com
alyssa.riggins@nelsonmullins.com
greg.mcguire@nelsonmullins.com

W. STUART DORNETTE (0002955)
BETH A. BRYAN (0082076)
PHILIP D. WILLIAMSON (0097174)
Taft Stettinus & Hollister LLP
425 Walnut St., Suite 1800
Cincinnati, OH 45202-3957
Tel: 513-381-2838
dornette@taftlaw.com
bryan@taftlaw.com
pwilliamson@taftlaw.com

**COUNSEL FOR RESPONDENTS SEN-
ATOR VERNON SYKES AND HOUSE
MINORITY LEADER EMILIA SYKES**

JOHN GILLIGAN (0024542)
DIANE MENASHE (0070305)
Ice Miller LLP
250 West Street, Suite 700
Columbus, Ohio 43215
John.Gilligan@icemiller.com
Diane.Menashe@icemiller.com

**COUNSEL FOR RESPONDENT
OHIO REDISTRICTING COMMIS-
SION SPECIAL COUNSEL TO
ATTORNEY GENERAL DAVE YOST**

ERIK J. CLARK (0078732)
ASHLEY MERINO (0096853)
Organ Law LLP
1330 Dublin Road
Columbus, Ohio 43215
Tel: (614) 481-0900
Fax: (614) 481-0904
ejclark@organlegal.com
amerino@organlegal.com

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Respondents. :

COUNSEL FOR RELATORS

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

PETER M. ELLIS (0070264)

Counsel of Record

M. PATRICK YINGLING
(PHV 10145-2021)
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

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

BRAD A. FUNARI (PHV 3139-2021)
DANIELLE L. STEWART (0084086)
Reed Smith Centre
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

**COUNSEL FOR AMICUS CURIAE
CITY OF CINCINNATI**

EMILY SMART WOERNER, (0089349)

Deputy City Solicitor

Counsel of Record

SHANNON PRICE (100744)

Assistant City Solicitor

801 Plum Street, Room 214

Cincinnati, Ohio 45202

Tel: (513) 352-3309

Fax: (513) 352-1515

emily.woerner@cincinnati-oh.gov

shannon.price@cincinnati-oh.gov

**COUNSEL FOR AMICUS CURIAE
DAVID NIVEN, Ph.D.**

STEPHANIE M. CHMIEL (0087555)

Counsel of Record

MARY E. CSARNY (0097682)

Thompson Hine LLP

41 S. High Street, Suite 1700

Columbus, OH 43215

Tel: (614) 469-3247

Fax: (614) 469-3361

Stephanie.Chmiel@ThompsonHine.com

Mary.Csarny@ThompsonHine.com

**COUNSEL FOR LEAGUE OF
WOMEN VOTERS**

FREDA J. LEVENSON (0045916)

ACLU of Ohio Foundation, Inc.

4506 Chester Avenue

Cleveland, Ohio 44103

Tel: (614) 586-1972, x125

flevenson@acluohio.org

**COUNSEL FOR AMICUS CURIAE
OHIO STATE CONFERENCE OF THE
NAACP**

***Not admitted to Ohio Bar**

SUBODH CHANDRA (0069233)

DONALD SCREEN (0044070)

Counsel of Record

The Chandra Law Firm LLC

1265 West 6th Street

Cleveland, Ohio 44113

Tel: (216) 578-1700

subodh.chandra@chandralaw.com

donald.screen@chandralaw.com

JANETTE MCCARTHY WALLACE
(0066257)

ANTHONY P. ASHTON*

ANNA KATHRYN BARNES*

NAACP

Office of the General Counsel

4805 Mount Hope Drive

Baltimore, MD 21215

Tel: (410) 580-577

jlouard@naacpnet.org

aashton@naacpnet.org

abarnes@naacpnet.org

JON GREENBAUM*

EZRA ROSENBERG*

POOJA CHAUDHURI*

Lawyers' Committee for Civil Rights
Under Law

1500 K Street, N.W., Ste. 900

Washington, D.C. 20005

Tel: (202) 662-8600

jgreenbaum@lawyerscommittee.org

erosenberg@lawyerscommittee.org

pchaudhuri@lawyerscommittee.org

**COUNSEL FOR RESPONDENTS SEN-
ATE PRESIDENT MATT HUFFMAN
AND HOUSE SPEAKER ROBERT
CUPP**

PHILLIP J. STRACH (PHV-25444)
THOMAS A. FARR (PHV-25461)
JOHN E. BRANCH, III (PHV-25460)
ALYSSA M. RIGGINS (PHV-25441)
GREG MCGUIRE (PHV-25483)
Nelson Mullins Riley & Scarborough
LLP
4140 Parklake Ave., Suite 200
Raleigh, North Carolina 27612
Tel: (919) 329-3812
phil.strach@nelsonmullins.com
tom.farr@nelsonmullins.com
john.branch@nelsonmullins.com
alyssa.riggins@nelsonmullins.com
greg.mcguire@nelsonmullins.com

W. STUART DORNETTE (0002955)
BETH A. BRYAN (0082076)
PHILIP D. WILLIAMSON (0097174)
Taft Stettinus & Hollister LLP
425 Walnut St., Suite 1800
Cincinnati, OH 45202-3957
Tel: 513-381-2838
dornette@taftlaw.com
bryan@taftlaw.com
pwilliamson@taftlaw.com

**COUNSEL FOR RESPONDENTS SEN-
ATOR VERNON SYKES AND
HOUSE MINORITY LEADER EMILIA
SYKES**

JOHN GILLIGAN (0024542)
DIANE MENASHE (0070305)
Ice Miller LLP
250 West Street, Suite 700
Columbus, Ohio 43215
John.Gilligan@icemiller.com
Diane.Menashe@icemiller.com

**COUNSEL FOR RESPONDENT
OHIO REDISTRICTING COMMIS-
SION
SPECIAL COUNSEL TO ATTORNEY
GENERAL DAVE YOST**

ERIK J. CLARK (0078732)
ASHLEY MERINO (0096853)
Organ Law LLP
1330 Dublin Road
Columbus, Ohio 43215
Tel: (614) 481-0900
Fax: (614) 481-0904
ejclark@organlegal.com
amerino@organlegal.com

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ARGUMENT

Ultimately, Article XI, Section 8(C)(1), does not impede this Court's "authority" to grant the relief requested in these cases. Rather, that section creates a 4-year/6 year map framework that would control elections for a decade when the Redistricting Commission does not adopt a ten-year map framework under Section 8(B). Both frameworks are subject to judicial review. Sections 8 and 9 need to be read together to discern the Court's "authority," as well as give full effect to all the language in Article XI. Specifically, Section 9(D)(3), which outlines the available remedies refers throughout to "the plan" or "a general assembly district plan" without mentioning the plan's duration.

But the reason that Section 8(C)(1) does not impede this Court's review authority underscores why Section 9(D)(3)(c) precludes the kind of claim alleged here, i.e., one that pleads no violation of Sections 2, 3, 4, 5, or 7, and instead pleads only a Section 6 violation. *See, e.g.,* Br. of Governor, et al., at 17–24. (The claims of Relators who allege violations under Section 3 fail for other reasons, *see id.* at 24–29, 35–36.) The Court's order to focus on Section 8(C)(1) highlights the importance of Section 9(D)(3)'s carefully tailored remedies. Without the specific language in Section 9(D)(3), the Court would lack authority to invalidate a map drawn under Section 8(C)(1)(a) at all. Read alone, Section 8(C)(1) *could* be read to support an argument that judicial review of four year maps is unavailable by parsing the differing language in 8(C)(1)(a) and (b). But that parsing would yield the surprising result that only six-year and ten-year maps are subject to judicial review.

At first glance, Section 8(C)(1)(a) precludes judicial remedies for four-year maps. That is because it makes no reference to Section 9's remedies, even though neighboring provisions explicitly cite Section 9. Section 8(C)(1)(a) addresses maps passed by "simple majority" vote. It provides that such maps last four years. That provision reads:

Except as otherwise provided in division (C)(1)(b) of this section, if the commission adopts a final general assembly district plan in accordance with division (A)(3) of this section by a simple majority vote of the commission, and not by the vote required to adopt a plan under division (B)(3) of Section 1 of this article, the plan shall take effect upon filing with the secretary of state and shall remain effective until two general elections for the house of representatives have occurred under the plan.

The very next provision is 8(C)(1)(b). It deals with maps passed by a simple majority that are necessary because the predecessor map lasted only four years. Such maps remain in effect for up to six years unless invalidated "as provided in Section 9." The full provision reads:

If the commission adopts a final general assembly district plan in accordance with division (A)(3) of this section by a simple majority vote of the commission, and not by the vote required to adopt a plan under division (B) of Section 1 of this article, and that plan is adopted to replace a plan that ceased to be effective under division (C)(1)(a) of this section before a year ending in the numeral one, the plan adopted under this division shall take effect upon filing with the secretary of state and shall remain effective until a year ending in the numeral one, except as provided in Section 9 of this article.

The section immediately before 8(C)(1)(a) deals with ten-year maps and also employs the "except as provided in Section 9" language as a carve-out to those map's default longevity. Ohio Const. Art. XI, §8(B).

Without looking outside Section 8(C), the difference in language between Sections 8(B) and 8(C)(1)(b) on one hand and Section 8(C)(1)(a) on the other would require giving the different provisions different meanings. That is because the Court generally interprets the Constitution by using “the same rules of construction” used “in construing statutes.” *Athens v. McClain*, 163 Ohio St. 3d 61, 2020-Ohio-5146, 168 N.E.3d 411, ¶ 29, quoting *Toledo City School Dist. Bd. of Edn. v. State Bd. of Edn.*, 146 Ohio St. 3d 356, 2016-Ohio-2806, 56 N.E.3d 950, ¶ 16. The basic rule for statutes and Constitutions alike is that different language conveys different meaning. That rule is strongest when a law “includes particular language in one section ... but omits it in another.” *Loughrin v. United States*, 573 U.S. 351, 358 (2014) (internal quotation marks omitted); see also *State v. Bryant*, 160 Ohio St. 3d 113, 2020-Ohio-1041, 154 N.E.3d 31, ¶ 18. So the absence of a reference to the Section 9 remedies for four-year maps is best read “to impose different legal standards” in these neighboring parts of the Constitution. *Miracle v. Ohio Dep’t of Veterans Servs.*, 157 Ohio St. 3d 413, 2019-Ohio-3308, 137 N.E.3d 1110, ¶ 19; see also *State v. Jones*, 163 Ohio St. 3d 242, 2020-Ohio-6729, 169 N.E.3d 649, ¶¶ 28, 31; *State v. Noling*, 153 Ohio St. 3d 108, 2018-Ohio-795, 101 N.E.3d 435, ¶ 42. In other words, because Division (C)(1)(a) omits what Division (C)(1)(b) and Section (B) include, the meaning of (C)(1)(a) is “underscored by what the [Constitution] does not say.” *Ayers v. City of Cleveland*, 160 Ohio St. 3d 288, 2020-Ohio-1047, 156 N.E.3d 848, ¶ 21. And what the Constitution conspicuously does not say is that a four-year map enacted under Section 8(C)(1)(a) can be invalidated

pursuant to Section 9. That is, Section 8(C)(1)(a) “could have” included Section 9 remedies, but the drafters of the provision “chose not to” include them. *Bryant* at ¶ 18. If we stopped there, Section 8(C)(1)(a) would be best read to afford no judicial review of maps passed under its authority. In other words, reading Section 8(C) alone would mean that the only remedies available against four-year maps would be political.

But Section 8(C)(1) is not an island. The Constitution, “like any document, is designed to be understood as a whole.” *State v. Porterfield*, 106 Ohio St. 3d 5, 2005-Ohio-3095, 829 N.E.2d 690, ¶ 12. So understanding Section 8(C) means reading it along with Section 9(D)(3)(c). And that Section explicitly contemplates this Court’s review of maps enacted under Section 8(C). So any lesson from reading 8(C) alone must be tempered with this explicit language in Section 9(D)(3)(c) that speaks to this Court’s review of Section 8(C) maps.

“Where provisions of the Constitution address the same subject matter, they must be read *in pari materia* and harmonized if possible.” *State ex rel. Toledo v. Lucas Cty. Bd. of Elections*, 95 Ohio St.3d 73, 78, 2002-Ohio-1383, 765 N.E.2d 854 (internal quotation marks omitted). Reading different parts of the Constitution together triggers a “duty to give a construction to the Constitution as will make it consistent with itself, and will harmonize and give effect to all its various provisions.” *Hill v. Higdon*, 5 Ohio St. 243, 247 (1855); *Smith v. Leis*, 106 Ohio St. 3d 309, 2005-Ohio-5125, 835 N.E.2d 5, ¶ 59.

Reading Sections 8 and 9 together requires a reading of Section 8 that preserves this Court's review of maps "under Division (C) of Section 8." Ohio Const., Art. XI, §9(D)(3)(c); *see also id.* §9(D)(3) (imposing required predicate violation of Sections 2, 3, 4, 5, or 7 for such review). And that means reading Section 8(C)(1)(a)'s "except as otherwise provided in division (C)(1)(b)" clause to incorporate into Section 8(C)(1)(a) the Section 9 reference in Section 8(C)(1)(b). Read that way, even maps passed under Section 8(C)(1)(a) are reviewable under Section 9(D)(3)(c).

This tour through Sections 8 and 9 underscores a point the Statewide officeholders made in their opening brief: allegations that a map violates the standards in Article XI, Section 6 are only actionable if the challenger pleads and proves a predicate violation of Sections 2, 3, 4, 5, or 7. That is plain from reading Section 9(D)(3) alone. But it is even more obvious when the language of Section 9(D)(3) is the only reason the Constitution affords a judicial remedy for four year maps at all.

CONCLUSION

The Court should not read Section 8(C)(1) as an absolute barrier to judicial relief against a four-year map. But it should dismiss all three complaints here because they fail to plead and prove a predicate violation of Section 2, 3, 4, 5, or 7 (or, in the case of one set of Relators, invoke plainly inapplicable parts of the Bill of Rights).

Respectfully submitted,
OHIO ATTORNEY GENERAL

/s/ Bridget C. Coontz

BRIDGET C. COONTZ (0072919)

Counsel of Record

JULIE M. PFEIFFER (0069762)

MICHAEL A. WALTON (0092201)

Assistant Attorneys General

MICHAEL J. HENDERSHOT (0081842)

Deputy Solicitor

Constitutional Offices Section

30 E. Broad Street, 16th Floor

Columbus, Ohio 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 Ohio Governor DeWine, Ohio Secretary of State LaRose, and Ohio Auditor Faber

CERTIFICATE OF SERVICE

I hereby certify that on December 17, 2021, the foregoing *Supplemental Brief Of Governor Mike DeWine, Secretary Of State Frank LaRose, And Auditor Keith Faber* was filed electronically. I further certify that a copy of the foregoing has been served via the electronic mail upon the following counsel for Relators.

Counsel for Relators

FREDA J. LEVENSON (0045916)
ACLU of Ohio Foundation, Inc.
flevenson@acluohio.org

DAVID J. CAREY (0088787)
ACLU of Ohio Foundation, Inc.
dcarey@acluohio.org

ALORA THOMAS*
KELSEY MILLER*
JULIE A. EBENSTEIN*
American Civil Liberties Union
125 Broad Street
athomas@aclu.org
jebenstein@aclu.org

ROBERT D. FRAM (PHV-25414)
DONALD BROWN*
JOSHUA GONZÁLEZ (PHV-25424)
JULIANA GOLDRÖSEN (PHV-25193)
DAVID DENUYL (PHV-25452)
rfram@cov.com

LAURA B BENDER (PHV-25192)
MEGAN KEENAN (PHV-25410)
ALEXANDER THOMSON (PHV-25462)
bbender@cov.com
mkeenan@cov.com
athomson@cov.com

YIYE FU (PHV-25419)
JAMES HOVARD (PHV-25420)
ANUPAM SHARMA (PHV-25418)
yfu@cov.com
jhovard@cov.com
asharma@cov.com

MADISON ARENT
marent@cov.co

DONALD J. MCTIGUE* (0022849)
DEREK S. CLINGER (0092075)
dmctigue@electionlawgroup.com
dclinger@electionlawgroup.com

ABHA KHANNA (PHV-2189)
WILLIAM B. STAFFORD (PHV-25433)
Elias Law Group
akhanna@elias.law
bstafford@elias.law

ARIA C. BRANCH (PHV-25435)
JYOTI JASRASARIA (PHV-25401)
SPENCER W. KLEIN (PHV-25432)
abbranch@elias.law
jjasrasaria@elias.law
sklein@elias.law

Counsel for Relators

PETER M. ELLIS (0070264)

Counsel of Record

M. PATRICK YINGLING

(PHV 10145-2021)

NATALIE R. SALAZAR

pellis@reedsmith.com

BEN R. FLIEGEL (PHV 25411-2021)

Reed Smith LLP

bfliegel@reedsmith.com

BRAD A. FUNARI (PHV 3139-2021)

DANIELLE L. STEWART (0084086)

bfunari@reedsmith.com

dstewart@reedsmith.com

BRIAN A. SUTHERLAND

(PHV 25406-2021)

Reed Smith LLP

bsutherland@reedsmith.co

*Counsel For Amicus Curiae Campaign
Legal Center*

STEVEN S. KAUFMAN (0016662)

DOLORES P. GARCIA PRIGNITZ
(0085644)

SARA S. DORLAND (0095682)

Ulmer & Berne

skaufman@ulmer.com

dgarcia@ulmer.com

sdorland@ulmer.com

ROBERT N. WEINER

(PHV 25521 pending)

CHRISTOPHER LAMAR

(PHV 25519 pending)

VALENCIA RICHARDSON

(PHV 25517 pending)

Campaign Legal Center

rweiner@campaignlegalcenter.org

clamar@campaignlegalcenter.org

vrichardson@campaignlegalcenter.org

*Counsel For Amicus Curiae City Of
Cincinnati*

EMILY SMART WOERNER, (0089349)

Deputy City Solicitor

SHANNON PRICE (100744)

Assistant City Solicitor

emily.woerner@cincinnati-oh.gov

shannon.price@cincinnati-oh.gov

*Counsel For Amicus Curiae We Are
Ohio*

JOHN M. HASELEY (0063042)

haseley@goconnorlaw.com

*Counsel For Amicus Curiae Ohio State
Conference Of The NAACP*

**Not admitted to Ohio Bar*

SUBODH CHANDRA (0069233)

DONALD SCREEN (0044070)

subodh.chandra@chandralaw.com

donald.screen@chandralaw.com

JANETTE MCCARTHY WALLACE
(0066257)

ANTHONY P. ASHTON*

ANNA KATHRYN BARNES*

NAACP

jlouard@naacpnet.org

aashton@naacpnet.org

abarnes@naacpnet.org

JON GREENBAUM*

EZRA ROSENBERG*

POOJA CHAUDHURI*

Lawyers' Committee for Civil Rights
Under Law

jgreenbaum@lawyerscommittee.org

erosenberg@lawyerscommittee.org

pchaudhuri@lawyerscommittee.org

Counsel For League of Women Voters

FREDA J. LEVENSON (0045916)

ACLU of Ohio Foundation, Inc.

flevenson@acluohio.org

DAVID J. CAREY (0088787)

ACLU of Ohio Foundation, Inc.

dcarey@acluohio.org

*Counsel For Respondents Senate Presi-
dent Matt Huffman And House Speaker
Robert Cupp*

PHILLIP J. STRACH (PHV-25444)

THOMAS A. FARR (PHV-25461)

JOHN E. BRANCH, III (PHV-25460)

ALYSSA M. RIGGINS (PHV-25441)

GREG MCGUIRE (PHV-25483)

Nelson Mullins Riley & Scarborough
LLP

phil.strach@nelsonmullins.com

tom.farr@nelsonmullins.com

john.branch@nelsonmullins.com

alyssa.riggins@nelsonmullins.com

greg.mcguire@nelsonmullins.com

W. STUART DORNETTE (0002955)

BETH A. BRYAN (0082076)

PHILIP D. WILLIAMSON (0097174)

Taft Stettinus & Hollister LLP

dornette@taftlaw.com

bryan@taftlaw.com

pwilliamson@taftlaw.com

*Counsel For Amicus Curiae David
Niven, Ph.D.*

STEPHANIE M. CHMIEL (0087555)

Counsel of Record

MARY E. CSARNY (0097682)

Thompson Hine LLP

Stephanie.Chmiel@ThompsonHine.com

Mary.Csarny@ThompsonHine.com

Counsel For Respondent Ohio Redistricting Commission Special Counsel To Attorney General Dave Yost

ERIK J. CLARK (0078732)
ASHLEY MERINO (0096853)
Organ Law LLP
1330 Dublin Road
Columbus, Ohio 43215
ejclark@organlegal.com
amerino@organlegal.com

Counsel For Respondents Senator Vernon Sykes And House Minority Leader Emilia Sykes

JOHN GILLIGAN (0024542)
DIANE MENASHE (0070305)
John.Gilligan@icemiller.com
Diane.Menashe@icemiller.com

/s/ Bridget C. Coontz
BRIDGET C. COONTZ (0072919)
Assistant Attorney

