

**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

Original Action Pursuant to Ohio Const.,
Art. XI

Apportionment Case

BRIA BENNETT, *et al.*,

Relators,

v.

OHIO REDISTRICTING COMMISSION, *et al.*,

Respondents.

Case No. 2021-1198

Original Action Pursuant to Ohio Const.,
Art. XI

Apportionment Case

THE OHIO ORGANIZING COLLABORATIVE, *et al.*,

Relators,

v.

OHIO REDISTRICTING COMMISSION, *et al.*,

Respondents.

Case No. 2021-1210

Original Action Pursuant to Ohio Const.,
Art. XI

Apportionment Case

**SUPPLEMENTAL BRIEF OF RESPONDENT THE OHIO REDISTRICTING
COMMISSION**

Freda J. Levenson (0045916)
Counsel of Record
ACLU OF OHIO FOUNDATION, INC.
4506 Chester Avenue
Cleveland, Ohio 44103
614.586.1972. x125
flevenson@acluohio.org

Dave Yost
Ohio Attorney General

Erik J. Clark (0078732)
Counsel of Record
Ashley T. Merino (0096853)
ORGAN LAW LLP
1330 Dublin Road

David J. Carey (0088787)
ACLU OF OHIO FOUNDATION, INC.
1108 City Park Avenue, Suite 203
Columbus, Ohio 43206
614.586.1972. x2004
dcarey@aclu.org

T. Alora Thomas (PHV 22010)
Julie A. Ebenstein (PHV 25423)
AMERICAN CIVIL LIBERTIES UNION
125 Broad Street
New York, New York 10004
212.519.7866.
athomas@aclu.org
jebenstein@aclu.org

Robert D. Fram (PHV 25414-2021)
Joshua Gonzalez (PHV 25424-2021)
Juliana Goldrosen (PHV 25193-2021)
David Denuyl (PHV 25452-2021)
Donald Brown (PHV 25480-2021)
COVINGTON & BURLING LLP
Salesforce Tower
415 Mission Street, Suite 5400
San Francisco, California 94105-2533
415.591.6000
rfram@cov.com
JGonzalez@cov.com
jgoldrosen@cov.com
ddenuyl@cov.com
dwbrown@cov.com

Megan C. Keenan (PHV 25410-2021)
James Smith
Laura B. Bender (PHV 25192-2021)
Alexander Thomson (PHV 25462-2021)
COVINGTON & BURLING LLP
850 Tenth Street, NW
Washington, DC 20001-4956
202.662.6000
mkeenan@cov.com
jmsmith@cov.com
bbender@cov.com
ajthomson@cov.com

Columbus, Ohio 43215
614.481.0900
614.481.0904 (facsimile)
ejclark@organlegal.com
amerino@organlegal.com

Special Counsel to Attorney General
Dave Yost

*Counsel for Respondent The Ohio
Redistricting Commission*

Dave Yost
Ohio Attorney General

Bridget C. Coontz (0072919)
Counsel of Record

Julie M. Pfeiffer (006762)
Michael A. Walton (0092201)
Michael J. Hendershot (0081842)
OFFICE OF THE OHIO ATTORNEY
GENERAL
30 E. Broad Street, 16th Floor
Columbus, Ohio 43215
614.466.2872
614.782.7592 (facsimile)
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*

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
513.381.2838
513.381.0205 (facsimile)
dornette@taftlaw.com
bryan@taftlaw.com
pwilliamson@taftlaw.com

Madison Arent
COVINGTON & BURLING LLP
The New York Times Building
620 Eighth Avenue
New York, New York 10018-1405
212.841.1000
marent@cov.com

Anupam Sharma (PHV 25418-2021)
James Hovard (PHV 25420-2021)
Yiye Fu (PHV 25419-2021)
COVINGTON & BURLING LLP
3000 El Camino Real
5 Palo Alto, Square, 10th Floor
Palo Alto, California 94306-2112
650.632.4700
650.632.4800 (facsimile)
asharma@cov.com
jhovard@cov.com
yfu@cov.com

*Counsel for Relators League of Women Voters
of Ohio, et al., in Case No. 2012-1193*

Donald J. McTigue (0022849)
Counsel of Record
Derek S. Clinger (0092075)
MCTIGUE & COLOMBO LLC
545 East Town Street
Columbus, Ohio 43215
614.263.7000
614.368.6961 (facsimile)
dmctigue@electionlawgroup.com
dclinger@electionlawgroup.com

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
202.968.4490
202.968.4498 (facsimile)
abranh@elias.law
jjasrasaria@elias.law
sklein@elias.law

Phillip J. Strach (PHV 2544-2021)
Thomas A. Farr (PHV 25461)
John E. Branch, III (PHV 25460)
Alyssa M. Riggins (PHV 25441-2021)
Greg McGuire (PHV 25483)
NELSON MULLINS RILEY &
SCARBOROUGH LLP
4140 Parklake Avenue, Suite 200
Raleigh, North Carolina 27612
919.329.3800
919.329.3799 (facsimile)
phil.strach@nelsonmullins.com
tom.farr@nelsonmullins.com
john.branch@nelsonmullins.com
alyssa.riggins@nelsonmullins.com
greg.mcguire@nelsonmullins.com

*Counsel for Respondents Matt Huffman,
President of the Ohio Senate, and Robert R.
Cupp, Speaker of the Ohio House of
Representatives*

Diane Menashe (0070305)
Counsel of Record
John Gilligan (0024542)
ICE MILLER LLP
250 West Street, Suite 700
Columbus, Ohio 43215
614.462.6500
614.222.3468 (facsimile)
Diane.Menashe@icemiller.com
John.Gilligan@icemiller.com

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

Abha Khanna (PHV 2189-2021)
William B. Stafford (PHV 25433-2021)
ELIAS LAW GROUP
1700 Seventh Ave, Suite 2100
Seattle, Washington 98101
206.656.0176
206.656.0180 (facsimile)
akhanna@elias.law
bstafford@elias.law

*Counsel for Relators Bria Bennett, et al., in
Case No. 2021-1198*

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, Illinois 60606
312.207.1000
312.207.6400 (facsimile)
pellis@reedsmith.com
mpyingling@reedsmith.com
nsalazar@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, New York 10271
646.292.8310
212.463.7308 (facsimile)
alicia.bannon@nyu.edu
rudenskyy@brennan.law.nyu.edu
herensteine@brennan.law.nyu.edu

Ben R. Fliegel (PHV 25411-2021)
REED SMITH LLP
355 South Grand Avenue, Suite 2900

Los Angeles, California 90071
213.457.8000
213.457.8080 (facsimile)
bfliegel@reedsmith.com

Brad A. Funari (PHV 3139-2021)
Danielle L. Stewart (0084086)
REED SMITH LLP
225 Fifth Avenue
Pittsburgh, Pennsylvania 15222
412.288.4583
412.288.3063 (facsimile)
bfunari@reedsmith.com
dstewart@reedsmith.com

Brian A. Sutherland (PHV 25406-2021)
REED SMITH LLP
101 Second Street, Suite 1800
San Francisco, California 94105
415.543.8700
415.391.8269 (facsimile)
bsutherland@reedsmith.com

*Counsel for Relators Ohio Organizing
Collaborative, et al., in Case No. 2021-1210*

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INTRODUCTION

On December 13, 2021, this Court ordered the parties in this matter to address the following issue: “What impact, if any, does Article XI, Section 8(C)(1) of the Ohio Constitution have on the Supreme Court of Ohio’s authority to grant the relief requested by relators when the Ohio Redistricting Commission [the “Commission”] adopted the district plan by a simple majority vote of the commission?” As explained herein, Section 8(C)(1) neither expands nor limits the Court’s remedial authority, which is set forth solely in Section 9(D). As Section 9(D)(3)(c) establishes, if a plan is enacted under Section 8(C), the Court must use a specific test to determine whether it should invalidate a plan—a test that requires a significant threshold violation of Section 2, 3, 4, 5, or 7 of Article XI that materially affects the ability of the plan to achieve proportionality under Section 6(B) before this Court is authorized to invalidate any plan. Relators allege no violation of Section 2, 3, 4, 5, or 7. Finally, Section 8(C)(1) impacts this Court’s analysis because it provides its own automatic remedy for plans that fail to achieve sufficient minority-member support. Such a plan lasts only four years (or six years if it replaces a four-year plan) instead of 10 years for a plan with sufficient minority-member support. This automatic remedy is a strong incentive to enact plans with bipartisan support. It is a non-judicial consequence that further confirms that, as Section 9(D) establishes, this Court is not authorized to invalidate plans based on alleged violations of Section 6 standing alone.

ARGUMENT

As set forth in Respondents’ original merit briefs, Section 9(D) is the sole grant of remedial power to this Court for violations of Article XI of the Ohio Constitution. Specifically, Section 9(D) establishes that this Court’s is not authorized to disturb a Commission-enacted general-assembly plan unless the Court finds one or more violations of Sections 2, 3, 4, 5, and/or 7 of Article XI. Ohio Const. art. XI, § 9(D)(3).

Section 8(C), including section 8(C)(1) specifically, neither expands nor limits this Court's remedial power as set forth in Section 9(D). Nonetheless, Section 9(D) does establish that Section 8(C) is relevant to the Court's remedial analysis. The test for whether to invalidate a plan or order amendments to it is different depending on whether the plan was adopted under Section 8(C). If the plan at issue is *not* adopted under Section 8(C), and violations of Section 2, 3, 4, 5, or 7 require amending fewer than six House districts and fewer than two Senate districts, then the Court must order the Commission to amend the plan to correct the violations. Ohio Const. art. XI, § 9(D)(3)(a). If the plan at issue is *not* adopted under Section 8(C), and if the violations require amending six or more House districts and/or two or more Senate districts, then the Court shall declare the plan invalid and order the Commission to adopt a new plan. Ohio Const. art. XI, § 9(D)(3)(b). On the other hand, if the plan *is* adopted under Section 8(C), then Section 9(D)(3)(c) requires the Court to order the Commission to adopt a new plan if it finds *both* of the following:

- (i) The plan significantly violates those requirements [i.e., Sections 2, 3, 4, 5, or 7] in a manner that materially affects the ability of the plan to contain districts whose voters favor political parties in an overall proportion that corresponds closely to the statewide political party preferences of the voters of Ohio, as described in [Section 6(B)] of this article.
- (ii) 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 does not correspond closely to the statewide preferences of the voters of Ohio.

Ohio Const. art. XI, § 9(D)(3)(c).

Thus, Section 8(C) does have an impact on the Court's remedial authority, but only indirectly through Section 9(D). In a case such as this, where the plan was adopted under Section 8(C), the Court must proceed under Section 9(D)(3)(c), engaging in the two-pronged analysis relating to Section 6(B)'s proportionality standard. Even then, however, the Court must

find that the plan “significantly violates” Sections 2, 3, 4, 5, or 7, and that, among other things, the significant violation of “those requirements”—not any alleged violation of Section 6(B) standing alone—“materially affects” the ability of the plan to achieve Section 6(B) proportionality.

Rather than establish any remedial authority for Article XI violations, Section 8(C) establishes the duration of a plan enacted by a simple majority vote without minority-party support. If a plan is enacted *with* the support of at least two minority-party members, then the plan remains in effect essentially for 10 years. Ohio Const. art. XI, § 8(B) (such plan “shall remain effective until the next year ending in the numeral one, except as provided in Section 9 of this article.”). If a plan is enacted by a simple majority *without* the support of at least two minority-party members, then the plan shall remain in effect essentially for four years. Ohio Const. art. XI, § 8(C)(1)(a) (such a plan “shall remain effective until two general elections for the house of representatives have occurred under the plan.”). Then, after that four-year plan expires, if the next plan is likewise approved by a simple majority without the support of at least two minority-party members, that second plan will remain in effect essentially for the remaining six years following the original four-year plan. Ohio Const. art. XI, § 8(C)(1)(b) (such a plan “shall remain effective until a year ending in the numeral one, except as provided in Section 9 of this article.”). Thus, rather than establish this Court’s remedial authority, Sections 8(B) and 8(C) set forth the duration of plans based on whether they receive sufficient minority-member support.

It is notable that Sections 8(B) and 8(C) mention Section 9 itself. Specifically, Sections 8(B) and Section C(1)(B) establish a 10-year or six-year duration, respectively, “except as provided in Section 9 of this article.” But Section 8(C)(1)(a), applicable to the map at issue in these cases, establishes a four-year duration without adding the phrase “except as provided in

Section 9 of this article.” Despite this difference in language, the language of Section 9(D)(3)(c)—the controlling provision specifically addressing this Court’s remedial power—allows this Court to invalidate a four-year map if a threshold significant violation of Section 2, 3, 4, 5, or 7 materially affects the map’s proportionality under Section 6(B). Section 9(D)(3)(c) applies any time this Court is “considering a plan adopted under division (C) of Section 8.” This language does not distinguish between four-year plans adopted under Section 8(C)(1)(a) and six-year plans adopted under Section 8(C)(1)(b). Rather, it applies to any map enacted under Section 8(C) generally. Thus, as Respondents set forth in their original merit briefs, this Court is not completely without power to consider Section 6(B) proportionality. It may consider Section 6(B) proportionality when reviewing a four-year (or six-year) map, but only if it *first* finds a threshold “significant” violation of Sections 2, 3, 4, 5, or 7. As explained in Respondents’ original merit briefs, Relators are wrong to assert that other provisions in Article XI, such as Section 9(B) or perhaps Section 6 itself, expand this Court’s remedial power beyond that set forth in the remedy provision of Section 9(D). The same is true for Section 8(C)(1). It does not alter the remedial power set forth in Section 9(D).

Beyond this technical explanation of the interplay between Sections 8(C)(1) and Section 9, Section 8(C)(1) has another impact on this Court’s analysis of Relators’ claims. Specifically, Section 8(C)(1) in essence establishes its *own* automatic non-judicial remedy for any map that does not achieve sufficient minority-party support. If minority-party members of the Commission believe that a proposed map is not sufficiently proportional to statewide voter preference, they will undoubtedly withhold their support, as they did in these cases. This comes with the significant consequence that even if the Commission enacts the map by a simple majority, the map will last only four years. Four years later, majority-party members may find

themselves in the minority, and the next map may be enacted by a simple majority over their objection. This strong incentive is at the heart of the reform that Ohioans enacted in amending Article XI. Rather than authorizing Court involvement in cases alleging Section-6 violations standing alone, the Ohio Constitution incentivizes the majority party to attempt to achieve bipartisan support. If it cannot, its enacted map will last a fraction of the time it otherwise would. Accordingly, Section 8(C)(1) confirms that Section 6 is not without consequence, another reason this Court should not read into Section 9, or any other provision, any remedial authority that exceeds the plain text of Section 9(D).

CONCLUSION

For the reasons set forth in Respondents' original merit briefs and the reasons stated above, Respondent The Ohio Redistricting Commission respectfully requests that the Court dismiss the complaints in all three above-captioned cases with prejudice.

Dated: December 17, 2021

Respectfully submitted,

Dave Yost
Ohio Attorney General

/s Erik J. Clark
Erik J. Clark (0078732)
Counsel of Record
Ashley Merino (0096853)
ORGAN LAW LLP
1330 Dublin Road
Columbus, Ohio 43215
614.481.0900
614.481.0904 (facsimile)
ejclark@organlegal.com
amerino@organlegal.com

Special Counsel to Attorney General Dave
Yost

*Counsel for Respondent The Ohio
Redistricting Commission*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on December 17, 2021, a copy of the foregoing was served by electronic mail upon the following:

Freda J. Levenson, Esq.
Counsel of Record
ACLU OF OHIO FOUNDATION, INC.
4506 Chester Avenue
Cleveland, Ohio 44103
614.586.1972. x125
flevenson@acluohio.org

David J. Carey, Esq.
ACLU OF OHIO FOUNDATION, INC.
1108 City Park Avenue, Suite 203
Columbus, Ohio 43206
614.586.1972. x2004
dcarey@aclu.org

Alora Thomas, Esq.
Julie A. Ebenstein, Esq.
AMERICAN CIVIL LIBERTIES UNION
125 Broad Street
New York, New York 10004
212.519.7866.
athomas@aclu.org
jebenstein@aclu.org

Robert D. Fram, Esq.
Joshua Gonzalez, Esq.
Juliana Goldrosen, Esq.
David Denuyl, Esq.
Donald Brown, Esq.
COVINGTON & BURLING LLP
415 Mission Street, Suite 5400
San Francisco, California 94105-2533
rfram@cov.com
JGonzalez@cov.com
jgoldrosen@cov.com
ddenuyl@cov.com
dwbrown@cov.com

Dave Yost
Ohio Attorney General

Bridget C. Coontz, Esq.
Counsel of Record
Julie M. Pfeiffer, Esq.
Michael A. Walton, Esq.
Michael J. Hendershot, Esq.
OFFICE OF THE OHIO ATTORNEY
GENERAL
30 E. Broad Street, 16th Floor
Columbus, Ohio 43215
614.466.2872
614.782.7592 (facsimile)
Bridget.Coontz@OhioAGO.gov
Julie.Pfeiffer@OhioAGO.gov
Michael.Walton@OhioAGO.gov
Michael.Henderson@OhioAGO.gov

*Counsel for Respondents Ohio Governor
DeWine, Ohio Secretary of State LaRose,
and Ohio Auditor Faber*

W. Stuart Dornette, Esq.
Beth A. Bryan, Esq.
Philip D. Williamson, Esq.
TAFT STETTINIUS & HOLLISTER LLP
425 Walnut St., Suite 1800
Cincinnati, Ohio 45202-3957
513.381.2838
513.381.0205 (facsimile)
dornette@taftlaw.com
bryan@taftlaw.com
pwilliamson@taftlaw.com

Phillip J. Strach, Esq.
Thomas A. Farr, Esq.
John E. Branch, III, Esq.
Alyssa M. Riggins, Esq.

Megan C. Keenan, Esq.
James Smith, Esq.
L. Brady Bender, Esq.
Alexander Thomson, Esq.
COVINGTON & BURLING LLP
One CityCenter
850 Tenth Street, NW
Washington, DC 20001-4956
202.662.6000
mkeen@cov.com
jmsmith@cov.com
bbender@cov.com
ajthomson@cov.com

Madison Arent, Esq.
COVINGTON & BURLING LLP
The New York Times Building
620 Eighth Avenue
New York, New York 10018-1405
212.841.1000
marent@cov.com

Anupam Sharma, Esq.
James Hovard, Esq.
Yiye Fu, Esq.
COVINGTON & BURLING LLP
3000 El Camino Real
5 Palo Alto, Square, 10th Floor
Palo Alto, California 94306-2112
650.632.4700
asharma@cov.com
jhovard@cov.com
yfu@cov.com

*Counsel for Relators League of Women Voters
of Ohio, et al., in Case No. 2021-1193*

Donald J. McTigue, Esq.
Counsel of Record
Derek S. Clinger, Esq.
MCTIGUE & COLOMBO LLC
545 East Town Street
Columbus, Ohio 43215
614.263.7000
614.368.6961 (facsimile)

Greg McGuire, Esq.
NELSON MULLINS RILEY &
SCARBOROUGH LLP
4140 Parklake Avenue, Suite 200
Raleigh, North Carolina 27612
919.329.3800
919.329.3799 (facsimile)
phil.strach@nelsonmullins.com
tom.farr@nelsonmullins.com
john.branch@nelsonmullins.com
alyssa.riggins@nelsonmullins.com
greg.mcguire@nelsonmullins.com

*Counsel for Respondents Matt Huffman,
President of the Ohio Senate, and Robert R.
Cupp, Speaker of the Ohio House of
Representatives*

Diane Menashe, Esq.
Counsel of Record
John Gilligan, Esq.
ICE MILLER LLP
250 West Street, Suite 700
Columbus, Ohio 43215
614.462.6500
614.222.3468 (facsimile)
Diane.Menashe@icemiller.com
John.Gilligan@icemiller.com

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

dmctigue@electionlawgroup.com
dclinger@electionlawgroup.com

Aria C. Branch, Esq.
Jyoti Jasrasaria, Esq.
Spencer W. Klein, Esq.
ELIAS LAW GROUP
10 G St NE, Suite 600
Washington, DC 20002
202.968.4490
202.968.4498 (facsimile)
abranch@elias.law
jjasrasaria@elias.law
sklein@elias.law

Abha Khanna, Esq.
William B. Stafford, Esq.
ELIAS LAW GROUP
1700 Seventh Ave, Suite 2100
Seattle, Washington 98101
206.656.0176
206.656.0180 (facsimile)
akhanna@elias.law
bstafford@elias.law

*Counsel for Relators Bria Bennett, et al., in
Case No. 2021-1198*

Peter M. Ellis, Esq.
Counsel of Record
M. Patrick Yingling, Esq.
Natalie R. Salazar, Esq.
REED SMITH LLP
10 South Wacker Drive, 40th Floor
Chicago, Illinois 60606
312.207.1000
312.207.6400 (facsimile)
pellis@reedsmith.com
mpyingling@reedsmith.com
nsalazar@reedsmith.com

Alicia L. Bannon, Esq.
Yurij Rudensky, Esq.
Michael Li, Esq.
Ethan Herenstein, Esq.
BRENNAN CENTER FOR JUSTICE

AT NYU SCHOOL OF LAW
120 Broadway, Suite 1750
New York, New York 10271
646.292.8310
212.463.7308 (facsimile)
alicia.bannon@nyu.edu
rudensky@brennan.law.nyu.edu
herensteine@brennan.law.nyu.edu

Ben R. Fliegel, Esq.
REED SMITH LLP
355 South Grand Avenue, Suite 2900
Los Angeles, California 90071
213.457.8000
213.457.8080 (facsimile)
bfliegel@reedsmith.com

Brad A. Funari, Esq.
Danielle L. Stewart, Esq.
REED SMITH LLP
225 Fifth Avenue
Pittsburgh, Pennsylvania 15222
412.288.4583
412.288.3063 (facsimile)
bfunari@reedsmith.com
dstewart@reedsmith.com

Brian A. Sutherland, Esq.
REED SMITH LLP
101 Second Street, Suite 1800
San Francisco, California 94105
415.543.8700
415.391.8269 (facsimile)
bsutherland@reedsmith.com

*Counsel for Relators Ohio Organizing
Collaborative, et al., in Case No. 2021-1210*

/s Erik J. Clark
*One of the Attorneys for Respondent The
Ohio Redistricting Commission*