

**IN THE SUPREME COURT OF OHIO**

|                                |   |   |
|--------------------------------|---|---|
| THE OHIO ORGANIZING            | : | Case No. 2021-1210                      |
| COLLABORATIVE, <i>et al.</i> , | : |   |
|                                | : |   |
| <i>Petitioners,</i>            | : | <b>APPORTIONMENT CASE</b>               |
|                                | : |   |
| v.                             | : | Filed pursuant to S.Ct.Prac.R. 14.03(A) |
|                                | : | and Section 9 of Article XI of the Ohio |
| OHIO REDISTRICTING             | : | Constitution to challenge a plan of     |
| COMMISSION, <i>et al.</i> ,    | : | apportionment promulgated pursuant to   |
|                                | : | Article XI.                             |
| <i>Respondents.</i>            | : |   |
|                                | : |   |

---

**OBJECTIONS AND REQUEST FOR REMEDIES**

**OF PETITIONERS THE OHIO ORGANIZING COLLABORATIVE, ET AL.**

---

Alicia L. Bannon (PHV 25409-2022)  
Yurij Rudensky (PHV 25422-2022)  
Harry Black (PHV 25544-2022)  
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

Brian A. Sutherland (PHV 25406-2022)  
REED SMITH LLP  
101 Second Street, Suite 1800  
San Francisco, CA 94105  
Tel: (415) 543-8700  
Fax: (415) 391-8269  
bsutherland@reedsmith.com

Peter M. Ellis (0070264)  
*Counsel of Record*  
M. Patrick Yingling (PHV 10145-2022)  
REED SMITH LLP  
10 South Wacker Drive, 40th Floor  
Chicago, IL 60606  
Tel: (312) 207-1000  
Fax: (312) 207-6400  
pellis@reedsmith.com

*Attorneys for Petitioners*  
*The Ohio Organizing Collaborative, et al.*

(listing of counsel for petitioners continued on next page)

Ben R. Fliegel (PHV 25411-2022)  
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 3139-2022)  
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

*Attorneys for Petitioners  
The Ohio Organizing Collaborative, et al.*

(counsel for respondents listed on next page)

## Counsel for Respondents

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  
Tel: (513) 381-2838  
Fax: (513) 381-0205  
dornette@taftlaw.com  
bryan@taftlaw.com  
pwilliamson@taftlaw.com

Phillip J. Strach  
Thomas A. Farr  
John E. Branch, III  
Alyssa M. Riggins  
Greg McGuire  
NELSON MULLINS RILEY &  
SCARBOROUGH LLP  
4140 Parklake Ave., Suite 200  
Raleigh, North Carolina 27612  
Tel: (919) 329-3812  
Fax: (919) 329-3799  
phil.strach@nelsonmullins.com  
tom.farr@nelsonmullins.com  
john.branch@nelsonmullins.com  
alyssa.riggins@nelsonmullins.com  
greg.mcguire@nelsonmullins.com

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

Senator Vernon Sykes, *pro se*  
Sd28@ohiosenate.gov

Minority Leader Allison Russo, *pro se*  
Allison.Russo@ohiohouse.gov  
Rep24@ohiohouse.gov

Erik J. Clark (0078732)  
*Counsel of Record*  
Ashley Merino (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*

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*  
30 E. Broad Street, 16th Floor  
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*

**Counsel for *Amici Curiae***

Subodh Chandra (0069233)  
Donald Screen (0044070)  
*Counsel of Record*  
THE CHANDRA LAW FIRM LLC  
The Chandra Law Building  
1265 West 6th Street  
Cleveland, Ohio 44113  
Tel: (216) 578-1700  
subodh.chandra@chandrafirm.com  
donald.screen@chandrafirm.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) 580-5777  
jlouard@naacpnet.org  
aashton@naacpnet.org  
abarnes@naacpnet.org

Jon Greenbaum\*  
Ezra D. 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

\*Not Admitted to the State Bar of Ohio

*Counsel for Amicus Curiae The Ohio  
State Conference of the NAACP*

Stephanie Marie Chmiel (0087555)  
Mary Elizabeth 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 Amicus Curiae David Niven*

Andrew William Garth (0088905)  
*City Solicitor*  
Emily Smart Woerner (0089349)  
*Deputy City Solicitor*  
Shannon Doyle Price (0100744)  
*Assistant City Solicitor*  
CITY OF CINCINNATI  
801 Plum Street, Room 214  
Cincinnati, Ohio 45202  
Tel.: (513) 352-3307  
Fax: (513) 352-1515  
emily.woerner@cincinnati-oh.gov  
shannon.price@cincinnati-oh.gov

*Counsel for Amicus Curiae City of  
Cincinnati*

Donald C. Brey (0021965)  
Ryan C. Spitzer (0093515)  
ISAAC WILES & BURKHOLDER, LLC  
Two Miranova Place, Suite 700  
Columbus, Ohio 43215-5098  
Tel.: (614) 221-2121  
Facsimile: 614-365-9516  
dbrey@isaacwiles.com

*Counsel for Amicus Curiae Renew Ohio*

**TABLE OF CONTENTS**

|  | <b>Page</b> |
|--|-------------|
| INTRODUCTION .....   | 1           |
| BACKGROUND .....   | 2           |
| OBJECTIONS.....  | 8           |
| I.    The February 24 Plan Violates Section 6(A) .....   | 8           |
| II.   The February 24 Plan Violates Section 6(B) .....   | 12          |
| REMEDIES.....  | 15          |
| I.    This Court Should Declare That The February 24 Plan Is Invalid and Enjoin the<br>Secretary of State from Using It .....  | 15          |
| II.   This Court Should Declare That the Plan Submitted by Professor Jonathan Rodden<br>Meets All of Article XI's Requirements, and Issue Further Orders to Secure the<br>Commission's Compliance with the Ohio Constitution ..... | 17          |
| CONCLUSION.....  | 20          |

## INTRODUCTION

On February 7, 2022, this Court held—for the second time—that the Ohio Redistricting Commission’s General Assembly district plan was unconstitutional under Section 6 of Article XI of the Ohio Constitution and ordered the Commission to adopt a new plan by February 17. The Commission defied that order and let the deadline pass without enacting a plan. Then, in response to the Court’s order to show cause why it should not be held in contempt, the Commission belatedly enacted a third plan that is even more disproportional than the second plan that this Court invalidated. The third plan thus exudes contempt for this Court’s orders and for the people of the State of Ohio—who voted overwhelmingly in 2015 to enshrine proportionality and partisan fairness provisions in the Ohio Constitution.

This Court should declare that the plan adopted on February 24, 2022 (the “February 24 Plan”), violates Sections 6(A) and 6(B) of Article XI and enjoin the use of that plan. And this time, given the Commission’s history of defiance and the constitutional crisis that the Commission has cynically and contemptuously thrust upon this Court, the Court should take additional steps: The Court should declare that the General Assembly district plan prepared by Professor Jonathan Rodden and submitted to Commission by Bria Bennett on February 15, 2022 (the “Rodden Plan”) is fully compliant with the Ohio Constitution. Further, the Court should order the Commission to state whether it will enact the Rodden Plan and, if not, why it refuses to do so. If the Commission declines to enact the Rodden Plan or another plan that is no less proportional and symmetrical, this Court should schedule a contempt hearing to determine the appropriate remedy for the Commission’s refusal to adopt a constitutional plan. If the Court concludes that it cannot secure the Commission’s compliance with the Ohio Constitution, even

with contempt sanctions, then it should declare an impasse, after which a federal court would implement federal remedies, with due respect for state law.

## BACKGROUND

After this Court issued its February 7 opinion, the Commission could have immediately convened, identified an independent map drawer to produce a constitutional map, or considered and voted on independent plans that have been previously vetted in this litigation—including, in particular, the maps drawn by Dr. Rodden, which the Bennett petitioners submitted to the Commission.<sup>1</sup> Instead, the Commission chose to resurrect a partisan gerrymander with the same constitutional infirmities as the January 22, 2022 plan that this Court had already determined to be invalid.

After this Court issued its February 7 opinion, Senator Sykes urged his co-chair, Speaker Cupp, to call a meeting immediately and to meet as frequently as necessary to adopt a plan. Speaker Cupp would not agree to call any meeting, telling Senator Sykes that all of the majority members were unavailable. (2/23/22 Sykes Aff. ¶ 9 & Ex. A)<sup>2</sup> Meanwhile, Senate President Huffman publicly questioned whether drafting a constitutional plan was possible, telling the media (incorrectly) that this Court’s second ruling had imposed new requirements on the

---

<sup>1</sup> On February 18, 2022, the Pennsylvania Supreme Court adopted a Congressional map for Pennsylvania drawn by Dr. Rodden. *See Carter et al. v. Chapman et al.*, No. 7 MM 2022 (Feb. 23, 2022); Kate Huangpu, *Congressional map picked by Pennsylvania Supreme Court unlikely to dramatically alter partisan balance* (Feb. 23, 2022) (discussing the expert report of “Jonathan Rodden, a political science professor at Stanford University who drew the map”), <https://bit.ly/35wBMst>.

<sup>2</sup> *See also* Andy Chow (Statehouse News Bureau), *Commissioners are left waiting for Ohio House Speaker to call next redistricting meeting*, WOUB (Feb. 15, 2022), <https://bit.ly/3M3jvEa>.

Commission that are not in the Ohio Constitution: “[T]here’s additional requirements that weren’t, of course, not in the Constitution and not in the first decision.”<sup>3</sup>

For their part, Senator Sykes and Leader Russo instructed Chris Glassburn to work with the Republican commissioners’ staff to draft constitutionally compliant maps. (2/22/22 Glassburn Aff. ¶ 5) Glassburn made changes to previous maps that he had drawn, communicated with Ray DiRossi and Blake Springhetti (who drafted the previously-adopted maps), and then presented the maps at three meetings with staff from the statewide commissioners. (*Id.* ¶¶ 7-9) DiRossi and Springhetti did not attend any of these meetings. (*Id.* ¶ 10) No one provided any meaningful feedback on the maps that Glassburn presented. (*Id.* ¶ 14) Glassburn uploaded the final version of the maps to the Commission’s website on February 15, 2022. (*Id.* ¶ 15)

On the day that the new General Assembly maps were due, and ten days after the Court issued its February 7 opinion, the Commission finally met for the first time at 1:30 p.m. on February 17. (2/17/22 Hrg Tr., part 1, at 1:18) Leader Russo moved the Commission to adopt the maps that Glassburn had drafted. (*Id.*) No commissioner alleged that the Glassburn maps violated Sections 2, 3, 4, 5, or 7 of Article XI. (*See generally id.*; 2/22/22 Glassburn Aff. ¶ 20) Nor did any commissioner present an alternative plan. Instead, Senate President Huffman expressed concerns regarding the protection of incumbent Republican legislators and criticized several districts as not being sufficiently compact. (2/17/22 Hrg Tr., part 1, at 6:03-28:23, 47:45-59:16) Glassburn avers that this criticism appeared pretextual because the maps that Senate President Huffman had previously offered and supported had districts that were less compact and had overall compactness scores that were lower than the maps he (Glassburn) presented. (2/22/22

---

<sup>3</sup> <https://twitter.com/stateofohioshow/status/1494077932343480328>.

Glassburn Aff. ¶ 22) Senate President Huffman later stated, “Under these circumstances, I don’t believe the commission is able to ascertain a General Assembly district plan in conformity with the provisions of the Ohio Constitution and Ohio State law,” while insinuating that the plan proposed by Leader Russo was a racial gerrymander. (2/7/22 Hrg Tr., part 2, at 11:56-20:54) The Commission voted to reject Leader Russo’s motion to adopt her proposed General Assembly district plan (2/17/22 Hrg Tr., part 1, at 1:29:55-1:30:28), and then declared an “impasse.” (2/17/22 Hrg Tr., part 2, at 36:32-52).

On February 18, this Court ordered the Commission and its members to show cause as to why they should not be held in contempt. On February 22, during a meeting on congressional redistricting, Leader Russo stated, “there’s been mention of discussions, ongoing discussions about potential proposed maps for the state legislative districts. I would note that the minority members of the commission have not so far been involved in if there have been any recent discussions. So I would ask that commissioners make their staff available for us to have those discussions that have not yet taken place, if there are indeed additional legislative maps that the commission would like to put forward either tomorrow or Thursday in regard to the state legislative maps.” (2/22/22 Hrg Tr. at 8:28-9:08)

On February 23, the next day, at the conclusion of the Commission’s meeting (which had focused on congressional redistricting), Leader Russo stated, “I would also note that in the briefs that were filed today [in the Ohio Supreme Court] by the Speaker and the President of the Senate, that it was noted that we would, as a commission, be in a position to vote on a new plan for the state legislative districts this week. And so if there is work being done on a map, I would ask that the majority caucuses please make their staff available to us and for our staff to be able to meet to discuss what these maps may look like.” (2/23/22 Hrg Tr. at 1:10:17-1:11:11)

On February 24, during another meeting on congressional redistricting, Senate President Huffman stated that he wished to propose a General Assembly district plan. (2/24/22 Hrg Tr. at 22:50-24:19) Senator Sykes asked Senate President Huffman if all of the majority members of the Commission were involved in the drafting of the proposed plan. (*Id.* at 24:58-25:11) President Huffman responded, “You know, Senator, I don’t have a daily logger diary of what each of all the other six members of the commission did. Everyone’s had a chance to see it, make comments, suggestions, whatever it may be. So I don’t know the detail of what everybody said and did and when they did it.” (*Id.* at 25:12-25:35)

After a short recess and without debate, Senate President Huffman moved for the adoption of the plan. (2/24/22 Hrg Tr. at 26:22-26:40) In response, Senator Sykes stated, “I am just disappointed. You know, not so much for myself, but disappointed [for] the court and for the people of the state of Ohio. Particularly as it relates to, you know, just the process .... We’ve been told that you’ve been working on this since February the 11th. And we have not had a chance, an opportunity to give any input or have any knowledge about what you’re doing.” (*Id.* at 33:25-34:59) He added that the proposed plan “looks like it puts the minority party in a more inferior position than before” because 19 of the House districts and 5 of the Senate districts that are considered Democratic-leaning are actually toss-up districts in which historical election data suggested that the Democratic candidate would receive between 50 and 52 percent of the vote. (*Id.* at 37:48-39:50)

Speaker Cupp, in response to Senator Sykes, stated, “Is this a new issue you’re raising because that was not 52 percent was not something the court addressed between 51 [and] 52. They addressed it between 50 and 51.” (2/24/22 Hrg Tr. at 41:46) Leader Russo responded by identifying relevant language from this Court’s February 7 opinion: “The commission’s adoption

of a plan that absurdly labels what [are] by any definition, competitive or toss up districts as Democratic leaning, at least when the plan contains no proportional share of similar Republican leaning districts, is demonstrative of an intent to favor the Republican Party.” (*Id.* at 42:06-45:28) She continued, “what you have proposed is a 26 [to 54] split for the house because you have 19 districts that fall between 50 and 52. Amazingly, you’ve actually created a bigger problem because previously you only had 14 that fell within that range .... So I asked the question[:] How have you addressed asymmetry given the full reading of the court’s decision and paragraph forty?” (*Id.*)

Speaker Cupp, having stated his belief that the number of districts between 50 and 51 percent was the sole and proper focus of the symmetry issue, attempted to conclude the discussion with Leader Russo by stating, “I guess you and I are reading that differently. Any further discussion, questions? I think the question the issue you [threw] out is, when do we vote? So do we go ahead and vote now or what?” (2/24/22 Hrg Tr. at 46:43-47:03) Leader Russo stated: “I would ask the commissioners, do the majority of the commissioners believe that this map, which actually worsens partisan asymmetry, it does not improve it, will satisfy the court and show that the commissioners, each member of this commission, when we appear on Tuesday before the court is not contemptuous of the court and does not remain in contempt? Or possibly in contempt.” (*Id.* at 47:04-47:36) Speaker Cupp responded, “Well, as I’ve indicated to the press, I’m not commenting on pending litigation, and I don’t think it’s wise for anybody to do that.” (*Id.* at 47:37-47:49) Leader Russo replied, “I’m sorry, but we’re sitting here because of pending litigation discussing these maps. So I would disagree with that assessment.” (*Id.* at 47:50-48:04)

The Commission then voted 4 to 3 to adopt the plan that President Huffman proposed— with Speaker Cupp, President Huffman, Governor DeWine, and Secretary LaRose voting for the

plan, and Senator Sykes, Leader Russo, and Auditor Faber voting against the plan. (2/24/22 Hrg Tr. at 48:05-58) Auditor Faber stated that the plan introduced and adopted by four Republican commissioners was actually a “gerrymander for the other side,” *i.e.*, an unconstitutional gerrymander in favor of *Democrats*.<sup>4</sup>

The Commission then took another recess to draft the majority and dissenting Section 8(C)(2) statements. After the Commission returned from the recess, Leader Russo read the dissenting statement, emphasizing, “Instead of working together, this map that was passed this evening was drawn entirely by Republican legislators on the commission, without our involvement and without allowing feedback or changes. The court has told us that this is problematic and a sign of partisan intent .... The public has been completely shut out of any meaningful opportunity to analyze these maps, let alone provide testimony. This was not the process contemplated, contemplated by Ohio voters in passing this constitutional reform.” (2/24/22 Hrg Tr. at 1:02:27-1:07:46). Speaker Cupp then read the majority Section 8(C)(2) statement, emphasizing, “The Redistricting Commission addressed the asymmetry holding asymmetry holding identified in *League of Women Voters [II]*. Only five of the ninety nine House districts have a partisan lean between 50 and fifty point ninety nine percent. All other districts have a partisan lean greater than 51 percent. In the Senate map, only two districts have a partisan lean between 50 and fifty point ninety nine percent.” (*Id.* at 1:08:22-1:11:56).

---

<sup>4</sup> <https://www.daytondailynews.com/blog/ohio-politics/auditor-keith-faber-votes-against-republican-lege-plan/8803b8f4-d6c9-49ab-b905-302003f57c51/> (video clip of interview).

## OBJECTIONS

### I. The February 24 Plan Violates Section 6(A)

In its February 7 opinion, this Court stated clearly: “[T]he commission’s adoption of a plan in which the *quality* of partisan favoritism is monolithically disparate is further evidence of a Section 6(A) violation. In other words, in a plan in which every toss-up district is a ‘Democratic district,’ the commission has not applied the term ‘favor’ as used in Section 6(B) equally to the two parties.” *League of Women Voters of Ohio v. Ohio Redistricting Comm.*, Slip Opinion No. 2022-Ohio-342 (“Feb. 7 Opinion”), ¶ 40 (emphasis in original). The Court stated: “The commission’s adoption of a plan that absurdly labels what are by any definition ‘competitive’ or ‘toss-up’ districts as ‘Democratic-leaning’—at least when the plan contains no proportional share of similar ‘Republican-leaning’ districts—is demonstrative of an intent to favor the Republican Party.” (*Id.*) The Commission did not heed this Court’s clear statement and interpretation of Section 6(A), and instead brazenly enacted another plan in which every toss-up district is a Democratic district.

The revised House map includes 19 districts in which Democrats can be estimated to win between 50 and 52 percent of the vote, based on past election data. (Latner ¶¶ 14, 16)<sup>5</sup> The Commission counted all 19 of these districts as “Democratic-leaning.” (Latner ¶ 17) Likewise, the Senate map includes 8 toss-up districts, all counted as Democratic. (Latner ¶ 18) The estimated margin of victory in these toss-up districts is so small, however, that to call them “Democratic-leaning” is an overstatement, individually and in the aggregate, because the

---

<sup>5</sup> The Affidavit of Michael S. Latner is attached to this Objections filing.

probability that voters will elect a Democratic candidate is *almost* the same as the probability that voters will elect a Republican candidate in these districts. (See Latner ¶¶ 8-9) Tellingly, there are *zero* Republican-leaning districts in the equivalent 50-52 percent Republican-leaning range in either the House or Senate map. (Latner ¶ 8)

In an unbiased map, one would expect the “lean” of toss-up districts to be randomly distributed between the two parties, so that the parties would generally split these districts roughly 50/50 over the course of elections due to ebbs and flows in voter support. Here, the distribution is anything but random. (See Latner ¶ 15) In the February 24, 2022 House map, toss-up districts represent more than a third of all districts that the Commission deemed to favor Democrats, and none that favor Republicans. (Latner ¶ 14) Excluding toss-up districts, the House map includes 54 Republican-leaning House districts and only 26 Democratic-leaning ones. (See *id.*) The Senate map is even more extreme, with Democratic and Republican seat shares of 28 and 72 percent, respectively. (See *id.*) This is a highly unusual pattern, both in terms of the number of toss-up districts and in their extreme one-sidedness, and is therefore indicative of intent to favor or disfavor a political party. (Latner ¶¶ 15, 20) Alternative maps, including the Rodden Plan, do not display such one-sidedness. (Latner ¶¶ 20, 29-30)

As one would expect, the February 24 Plan does not cure the severe partisan asymmetry that petitioners and this Court have previously identified. A plan is symmetrical if the number of seats won by a party when it receives a given percentage of the statewide vote is the same for each party. See *League of Women Voters of Ohio v. Ohio Redistricting Comm.*, Slip Opinion No. 2022-Ohio-65 (“Jan. 12 Opinion”), ¶ 122. Conversely, a plan is asymmetrical if one party would win more seats than the other party would win with the same share of votes. For both the first and second plans adopted by the Commission, Dr. Latner showed that Democratic candidates

could be expected to win significantly fewer seats than Republican candidates would win with the same vote share. (Jan. 12 Opinion ¶ 122; Feb. 7 Opinion ¶ 42) Moreover, Ohio's natural geography did not explain the degree of asymmetry that he observed; rather, as Dr. Latner opined, the level of asymmetry he observed was the product of the Commission's intent to favor Republicans and disfavor Democrats.

The same is true again. As Dr. Latner shows in his affidavit attached to these objections, with 50 percent of the statewide vote, Democratic voters would expect to win approximately 44 percent of House seats and 45 percent of Senate seats. (Latner ¶¶ 28-29) By contrast, Republicans would expect to win 53 percent of House seats and 52 percent of Senate seats with 50 percent of the statewide vote. (*Id.*) Republicans also have more safe districts, where they earn 5 percent more than their statewide vote average (47) than do Democrats (34), indicating that Republican voters are allocated more efficiently than Democratic ones. (Latner ¶ 27)

The level of partisan asymmetry in the February 24 Plan is statistically significant and unjustified, as demonstrated by the fact that other maps submitted to the Commission, including Dr. Rodden's maps, exhibit considerably less partisan asymmetry. (*See* Latner ¶¶ 30-31) Given that it was possible to adopt a plan without such severe partisan asymmetry, the Commission had an obligation to do so. (Jan. 12 Opinion ¶ 88)

The Commission's predominant partisan intent to favor Republicans is also evident from the *process*, or lack thereof, that it followed here. During the prior two rounds of map-drawing, Senate President Huffman and House Speaker Cupp directed their Republican caucus staffers to draft the maps. In its January 12 opinion, the Court explained that "[t]his is not the process that Article XI contemplates" because "Section 1(C) provides that the commission 'shall draft the

proposed plan in the matter prescribed in Article XI, and Section 1(B)(2) allows the commission to hire its own staff to do so” and “despite this language, the commission itself did not engage in any map drawing or hire independent staff to do so.” (Jan. 12 Opinion ¶ 119) Instead of following the Constitution, “the legislative caucuses of the two major political parties—*i.e.*, the groups with the most self-interest in protecting their own members—drew maps for the commission to consider.” (*Id.*) In its February 7 opinion, the Court noted that “[a]s before, ‘the commission itself did not engage in any map drawing or hire independent staff to do so.’” (Feb. 7 Opinion ¶ 34 (quoting Jan. 12 Opinion ¶ 119))

This time around was more of the same: the majority of the Commission offered only more partisan map drawing, conducted out of public view and without input from the minority members of the Commission. The Republicans on the Commission gave the Democrats on the Commission only a few hours to review the proposed plan. In the days leading up to February 24, based on what she learned through media statements and the Republican commissioners’ court filings, Leader Russo stated that if the Republicans on the Commission were planning to propose a plan, she and Senator Sykes (and their staffs) wished to be included in the process. (2/22/22 Hrg Tr. at 8:28-9:08; 2/23/22 Hrg Tr. at 1:10:17-1:11:11) But that did not happen. Senator Sykes said to the Republican commissioners, “We’ve been told that you’ve been working on this since February the 11th. And we have not had a chance, an opportunity to give any input or have any knowledge about what you’re doing.” (2/24/22 Hrg Tr. at 33:25-34:59) Leader Russo later stated, “Instead of working together, this map that was passed this evening was drawn entirely by Republican legislators on the commission, without our involvement and without allowing feedback or changes.” (*Id.* at 1:02:27-1:07:46).

The same point that this Court recognized as relevant to the Section 6(A) analysis twice previously is relevant again: ““When a single party exclusively controls the redistricting process, it should not be difficult to prove that the likely political consequences of the reapportionment were intended.”” (Feb. 7 Opinion ¶ 31; Jan. 12 Opinion ¶ 120) A single party again controlled the process, and that single party again drew the maps primarily to disfavor the other party, flouting this Court’s orders and the requirements of the Ohio Constitution. The partisan majority appears to regard this Court’s orders as purely advisory, and has shown no intention of drafting maps as a Commission, with participation by all commissioners.

Because the majority has once again enacted a plan to favor Republicans at the expense of Democrats, the plan violates Section 6(A) of Article XI of the Ohio Constitution.

## **II. The February 24 Plan Violates Section 6(B)**

Section 6(B) provides that “[t]he statewide proportion of districts whose voters, based on statewide state and federal partisan general election results during the last ten years, favor each political party shall correspond closely to the statewide preferences of the voters of Ohio.” Ohio Constitution, Article XI, Section 6(B). The Court explained in its February 7 opinion that the Commission must interpret and apply the term “favor” so that the proportion of districts whose voters favor each political party corresponds closely to statewide voter preferences. (Feb. 7 Opinion ¶ 61) Thus, toss-up or competitive districts must either be excluded from the proportionality assessment or be allocated to each party in close proportion to its statewide vote share. (Feb. 7 Opinion ¶ 62)

The Commission has failed to follow this Court’s test, and thus failed to attempt to meet Section 6(B)’s standard. Once again, “the quality and degree of favoritism in each party’s

allocated districts is grossly disparate.” (Feb. 7 Opinion ¶ 61) It’s not even close. In order to win seats proportional to their statewide vote share, Democrats need to win every single toss-up district. If they win only half, along with *all* of the “safe”/non-toss-up Democratic-leaning districts, then they would win only 36 House seats out of 99 (about 36 percent). This is no better than the performance they could reasonably expect under each of the previously adopted unconstitutional plans, which similarly were likely to result in the election of Republican candidates in about 64.4 percent of all General Assembly districts. (Jan. 12 Opinion ¶ 105; Feb. 7 Opinion ¶ 40) By contrast, none of the districts counted as “Republican-leaning” are toss-up districts. (Latner ¶¶ 17, 20 & Tables 3-4) In fact, if Republicans receive 56 percent of the statewide vote (an improvement of 2 percent from the proportionality benchmark), they can expect to win 74 percent of House districts—a veto-proof supermajority. (*Id.*) Conversely, if the Democrats improve by the same 2 percent statewide, they would see *no* seat increases, much less could they expect a 19-seat gain. (*Id.*)

The revised Senate map follows the same pattern; in fact, Dr. Latner’s analysis shows that it performs even worse on measures of proportionality than the prior Senate map performed. (Latner ¶ 18) The Senate map has 8 districts that barely lean Democratic and no corresponding Republican toss-up districts. Both the number and partisan lean of these districts is designed to greatly benefit Republicans. With a two-point swing in favor of Republicans (*i.e.*, with 56% of the statewide vote), Republicans would be expected to win a 79% supermajority of Senate seats. (*Id.*) By contrast, a two-point swing in favor of Democrats would make no difference at all, much less would it produce a 8-seat swing in their favor. (*Id.*)

Echoing Speaker Cupp’s comments at the February 24 meeting, the majority’s Section 8(C)(2) statement argues that the February 24 Plan is constitutionally compliant because it

moved some Democratic-leaning seats out of the estimated 50 to 51 percent range and into the 51 to 52 percent range. (2/24/22 Hrg. Tr. 39:51-42:06) If the Commission makes that argument here, this Court should reject it. The Court obviously did not establish a bright-line rule providing that the Commission may disfavor Democratic voters as much as it likes, so long as it does not classify too many districts in the 50 to 51 percent range as Democratic-leaning. Rather, the Court’s February 7 opinion concluded that the map drawers and the Commission deliberately and improperly created weak Democratic districts while eliminating weak Republican districts by moving a number of competitive Republican-leaning districts into the “50 and 52 percent” range. (Feb. 7 Opinion ¶ 36; *see id.* ¶ 37) The Court also found that “the commission knowingly adopted a plan in which all the House districts whose voters favor Republicans do so at vote shares of 52.6 percent and above, while more than a quarter (12 out of 42) of the House districts whose voters ‘favor’ Democrats do so at a vote share between 50 and 51 percent ...” (Feb. 7 Opinion ¶ 40) In other words, the Commission’s intent to gerrymander was evident because no Republican-leaning district had an expected vote share below 52.6 percent, while numerous Democratic-leaning districts had an expected vote share below 52.6 percent. The problem was the asymmetry in the number of toss-up districts for each side, not the precise percentages, and if nothing else, this Court’s opinion strongly indicates that relevant “toss-up” percentage is at least 52.6 percent, which comports with common sense and experience, as well the general understanding of “toss-up” districts in political science literature. (*See* Latner ¶ 14 & n.5) As Dr. Latner’s affidavit demonstrates, limiting the analysis to the 50-51 percent range obscures the clear and asymmetric pattern of Democratic-leaning toss-up districts that fall right above 51 percent. (Latner ¶ 16 & n.8, & Figure 1)

Finally, there can be no dispute that the Commission did not exclude toss-up districts from its proportionality assessment. If the Commission had excluded toss-up districts, the revised House plan would yield respective Democratic and Republican seat shares of 32.5 and 67.5 percent. (Latner ¶ 14) Compared to statewide vote shares, these seat shares produce a disproportionality of 14%. (*Id.*) For the February 24 Senate map, as Dr. Latner observes, “the disproportionality is even more pronounced.” (*Id.*) Once toss-up districts are removed, the respective Democratic and Republican seat shares of 28 and 72 percent produce a disproportionality of 18 percent. (*Id.*) In fact, the plan is disproportionate even if “toss-up district” is defined to mean districts in which a political party’s vote share is expected to fall in the 50 to 51 percent range. (Latner ¶ 16 & n.8) For all these reasons, the plan again violates Section 6(B) of Article XI of the Ohio Constitution.

## **REMEDIES**

### **I. This Court Should Declare That The February 24 Plan Is Invalid and Enjoin the Secretary of State from Using It**

As it has done twice previously (Jan. 12 Opinion ¶ 135; Feb. 7 Opinion ¶ 67), this Court should declare that the plan enacted by the Ohio Redistricting Commission is invalid and order it to enact a new one. This time, moreover, the Court must go further to secure compliance with the Ohio Constitution and protect the voters of the State of Ohio. The controlling members of the Commission have now flouted constitutional requirements and ignored this Court’s rulings on multiple occasions. Without swift and decisive action, the Commission will succeed in nullifying this Court’s authority through open defiance, a result that will cause lasting damage to the rule of law in Ohio.

The day after this Court issued its order authorizing the petitioners to file objections to the February 24 Plan, Senate President Huffman and Speaker Cupp ordered the Secretary of State to implement the February 24 Plan for the May 3, 2022 primary elections.<sup>6</sup> In particular, Secretary LaRose issued a directive to all county boards of elections, stating, “all boards must immediately begin the process of reprogramming their voter registration systems with the February 24, 2022 General Assembly district maps.”<sup>7</sup> Secretary LaRose argued that this order was not contrary to this Court’s ruling, but added, “This new General Assembly district plan adopted by the Ohio Redistricting Commission was filed with my office and is presumed valid.”<sup>8</sup> But the Secretary and the Commission also knew that their revised plan was virtually no different from, and in some ways even worse than, the plan that this Court already invalidated on February 7. The majority commissioners’ order to begin implementing the February 24 Plan, notwithstanding the patent unconstitutionality of that plan under this Court’s prior orders, is just an attempt to lay the groundwork for an argument that the election is already underway, such that a court should not intervene in this cycle.

Section 9(B) authorizes this Court to declare that a plan is invalid and to order the Commission to adopt a new plan. (Jan. 12 Opinion ¶¶ 95-97 & n.11) This Court also has inherent authority to issue injunctions and “do all things reasonably necessary to the administration of justice in the case before it.” *See City of Norwood v. Horney*, 110 Ohio St. 3d 353, 2006-Ohio-3799, 853 N.E.2d 1115, ¶ 119 (quoting *Smother's v. Lewis*, 672 S.W.2d 62, 64-65 (Ky. 1984)).

---

<sup>6</sup> *See* Ohio Secretary of State, Directive No. 2022-26 (Feb. 26, 2022), <https://www.ohiosos.gov/globalassets/elections/directives/2022/directive-2022-26.pdf>.

<sup>7</sup> *Id.* at 3.

<sup>8</sup> *Id.* at 2.

And “courts have inherent authority—authority that has existed since the very beginning of the common law—to compel obedience of their lawfully issued orders.” *Cramer v. Petrie*, 70 Ohio St.3d 131, 133, 637 N.E.2d 882 (1994). In short, this Court has the power to order any and all relief necessary to carry out its February 7 and February 25 orders permitting petitioners to file objections to the most-recently enacted plan, which plainly contemplated that the plan would be subject to further review in this Court, and not immediately implemented throughout the State.

Because the Secretary of State’s order directing the county boards of elections to use the February 24 Plan is flatly inconsistent with this Court’s orders, this Court should not only declare that the February 24 Plan is invalid, but also enjoin the Secretary of State from implementing the February 24 Plan or any other plan that is still subject to judicial review in this Court. Given the majority commissioners’ demonstrated willingness to implement a plan that is still subject to review, such an order is necessary to protect this Court’s jurisdiction and necessary to the administration of justice in this case.

## **II. This Court Should Declare That the Plan Submitted by Professor Jonathan Rodden Meets All of Article XI’s Requirements, and Issue Further Orders to Secure the Commission’s Compliance with the Ohio Constitution**

The Commission has always had alternatives to the partisan gerrymanders it sought to impose on Ohio. At the beginning, the Ohio Citizens Redistricting Commission, the Democratic caucus, and others submitted maps for the Commission’s consideration. During litigation, Professors Kosuke Imai and Jonathan Rodden showed that drawing maps with much less asymmetry and disproportionality was entirely possible. The majority members of the Commission spotted minor technical issues in certain proposed plans that easily could have been

fixed, had they cared to do so. Those technical issues have been fixed and the proposed maps submitted by Dr. Rodden, in particular, have been heavily vetted by the parties through several iterations. Based on our view of the entire record, and Dr. Latner’s review (Latner ¶ 4), the Ohio Organizing Collaborative petitioners contend that the Rodden Plan, which petitioner Bria Bennett submitted on February 15, 2022,<sup>9</sup> is fully constitutional in all respects.

To address the Commission’s manifest failure to adopt a constitutional plan and its contempt for this Court’s rulings, this Court should review the Rodden Plan now, based on the evidence before it, for two reasons. First, the Rodden Plan is relevant evidence to prove that drawing a plan that complies with Section 6 of Article XI is possible, and therefore establishes that the Commission *can* and *must* adopt a plan that complies with Section 6. (Jan. 12 Opinion ¶ 88) Second, the Commission apparently needs even clearer guidance as to what constitutes a constitutional plan. There is such a plan before the Commission and this Court now, and the Court should say so. Such a declaration from the Court may enable the Commission to do the right thing and pass a constitutional plan. Or if the Commission chooses continued intransigence and impasse, this Court’s statement will enable a federal court to have an exemplar of maps that comply with Ohio law during impasse litigation.

The Commission may argue that petitioners are requesting an advisory opinion, but this Court should reject that argument. This Court has already held that Dr. Rodden’s maps are relevant evidence for assessing whether the Commission could have drawn a more proportional plan, as well as for establishing intent. (Feb. 7 Opinion ¶¶ 45, 47, 54) Implicit in these rulings was a determination that Dr. Rodden’s plan showed that compliance with the Ohio Constitution

---

<sup>9</sup> <https://redistricting.ohio.gov/assets/district-maps/district-map-773.zip>.

was possible, and that respondents had failed to put forward credible evidence to the contrary. This Court should reiterate these rulings, which are relevant to show that the Commission's February 24 Plan is invalid, and make *explicit* that the Rodden Plan fully complies with the Ohio Constitution. *See Allen v. Totes/Isotoner Corp.*, 123 Ohio St. 3d 216, 2009-Ohio-4231, 915 N.E.2d 622, ¶¶ 19-21 (O'Connor, J., concurring in judgment only) (reaching question of great importance that was intertwined with merits of appeal "to provide guidance and to answer the questions posed in this controversy").

Passing on the validity of the Rodden Plan is not only clearly relevant, but also aids in the administration of justice and enables this Court to carry out its orders, including its orders to direct the Commission to enact a new plan. Even if Ohio voters intended to leave this Court powerless to impose a remedy in the form of judicially-drawn maps in the event of a standoff with the Commission, which itself seems doubtful, nothing in Article XI suggests that this Court cannot provide guidance to the Commission as to what alternatives are constitutional under Ohio law. Thus, the Court should declare that based on the evidence before it, the Rodden Plan is valid, and direct the Commission to state whether it will adopt the Rodden Plan, and if not, why it contends that the Rodden Plan does not comply with the Ohio Constitution.

As all are aware, Ohio needs time to administer its elections, and thus needs a final judicial resolution of this dispute. Thus, this Court should direct the Commission to state whether it will adopt the Rodden Plan, or another plan that no less proportional and symmetrical than the Rodden Plan, within two business days after this Court issues its order on these objections. The Commission and its lawyers have had access to the Rodden Plan and previous iterations of that plan for months; deciding whether to adopt it should not be technically challenging. Adopting that plan, would, of course, bring this litigation to a final conclusion.

And if the Commission refuses to adopt a constitutional plan, there is still time for this Court to schedule a contempt hearing to determine the appropriate remedy for the Commission's refusal to adopt a constitutional plan. As this Court has noted, the General Assembly has the authority "to ease the pressure that the commission's failure to adopt a constitutional redistricting plan has placed on the secretary of state and on county boards of elections by moving the primary election, should that action become necessary." (Feb. 7 Opinion ¶ 66) Should it become necessary, this Court can also direct the Secretary of State and General Assembly to make the required adjustments. Thus, the prospect of further proceedings should not deter this Court from invalidating the Commission's plan, enjoining its use, and making all rulings necessary and proper to carry its order into effect.

## **CONCLUSION**

Because of its unwillingness to comply with this Court's rulings, the Commission has created a crisis. But there is a path forward. This Court should invalidate and enjoin the use of the February 24 Plan, declare that the Rodden Plan is valid, and direct the Commission to state whether it will adopt the Rodden Plan and if not, why it refuses to do so. It should retain jurisdiction should further relief be necessary, and if the Commission refuses to enact a constitutional plan, the Court should schedule a contempt hearing to determine appropriate sanctions. As a last resort, if this Court determines that it cannot secure compliance with its rulings, then it should declare an impasse, after which a federal court will provide federal remedies, with due respect for this Court's rulings on the meaning of Ohio law.

Dated: February 28, 2022

Respectfully submitted,

*/s/ Brian A. Sutherland*

---

Alicia L. Bannon (PHV 25409-2022)  
Yurij Rudensky (PHV 25422-2022)  
Harry Black (PHV 25544-2022)  
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

Brian A. Sutherland (PHV 25406-2022)  
REED SMITH LLP  
101 Second Street, Suite 1800  
San Francisco, CA 94105  
Tel: (415) 543-8700  
Fax: (415) 391-8269  
bsutherland@reedsmith.com

Peter M. Ellis (0070264)  
*Counsel of Record*  
M. Patrick Yingling (PHV 10145-2022)  
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 25411-2022)  
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 3139-2022)  
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

*Attorneys for Petitioners  
The Ohio Organizing Collaborative, et al.*

## CERTIFICATE OF SERVICE

I, Danielle L. Stewart, hereby certify that on February 28, 2022, I caused a true and correct copy of the foregoing Objections and Request for Remedies of Petitioners The Ohio Organizing Collaborative, et al. to be served by email upon the counsel listed below:

### Counsel for Respondents

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  
Tel: (513) 381-2838  
Fax: (513) 381-0205  
dornette@taftlaw.com  
bryan@taftlaw.com  
pwilliamson@taftlaw.com

Phillip J. Strach  
Thomas A. Farr  
John E. Branch, III  
Alyssa M. Riggins  
Greg McGuire  
NELSON MULLINS RILEY &  
SCARBOROUGH LLP  
4140 Parklake Ave., Suite 200  
Raleigh, North Carolina 27612  
Tel: (919) 329-3812  
Fax: (919) 329-3799  
phil.strach@nelsonmullins.com  
tom.farr@nelsonmullins.com  
john.branch@nelsonmullins.com  
alyssa.riggins@nelsonmullins.com  
greg.mcguire@nelsonmullins.com

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

*(counsel listing continued on next page)*

Erik J. Clark (0078732)  
*Counsel of Record*  
Ashley Merino (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*

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*  
30 E. Broad Street, 16th Floor  
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*

Senator Vernon Sykes, *pro se*  
Sd28@ohiosenate.gov

Minority Leader Allison Russo, *pro se*  
Allison.Russo@ohiohouse.gov  
Rep24@ohiohouse.gov

### **Counsel for *Amici Curiae***

Subodh Chandra (0069233)  
Donald Screen (0044070)  
*Counsel of Record*  
THE CHANDRA LAW FIRM LLC  
The Chandra Law Building  
1265 West 6<sup>th</sup> 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) 580-5777  
jlouard@naacpnet.org  
aashton@naacpnet.org  
abarnes@naacpnet.org  
\*Not Admitted to the State Bar of Ohio

*Counsel for Amicus Curiae The Ohio  
State Conference of the NAACP*

*(counsel listing continued on next page)*

Stephanie Marie Chmiel (0087555)  
Mary Elizabeth 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 Amicus Curiae David Niven*

Andrew William Garth (0088905)  
*City Solicitor*  
Emily Smart Woerner (0089349)  
*Deputy City Solicitor*  
Shannon Doyle Price (0100744)  
*Assistant City Solicitor*  
CITY OF CINCINNATI  
801 Plum Street, Room 214  
Cincinnati, Ohio 45202  
Tel.: (513) 352-3307  
Fax: (513) 352-1515  
emily.woerner@cincinnati-oh.gov  
shannon.price@cincinnati-oh.gov

*Counsel for Amicus Curiae City of  
Cincinnati*

Jon Greenbaum\*  
Ezra D. 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  
\*Not Admitted to the State Bar of Ohio

*Counsel for Amicus Curiae The Ohio  
State Conference of the NAACP*

Dated: February 28, 2022

By: /s/ Danielle L. Stewart  
Danielle L. Stewart  
Ohio Sup. Ct. Reg. No. 0084086  
Reed Smith LLP  
Reed Smith Centre  
225 Fifth Avenue  
Pittsburgh, PA 15222  
Tel: 412-288-4583  
Fax: 412-288-3063  
dstewart@reedsmith.com

*Attorneys for Petitioners  
The Ohio Organizing Collaborative, et al.*

Donald C. Brey (0021965)  
Ryan C. Spitzer (0093515)  
ISAAC WILES & BURKHOLDER, LLC  
Two Miranova Place, Suite 700  
Columbus, Ohio 43215-5098  
Tel.: (614) 221-2121  
Facsimile: 614-365-9516  
dbrey@isaacwiles.com

*Counsel for Amicus Curiae Renew Ohio*



3. I have previously submitted an affidavit and expert report to this Court concerning the compliance of the General Assembly district plan adopted by the Ohio Redistricting Commission on September 15, 2021 (the “Original Plan”), and an affidavit regarding the revised General Assembly district plan adopted by the Ohio Redistricting Commission on January 22, 2022 (the “First Revised Plan”). I now submit a subsequent affidavit to assess the second revised General Assembly district plan adopted by the Ohio Redistricting Commission on February 24, 2022 (the “Second Revised Plan”).<sup>1</sup>

4. Specifically, I have been asked to analyze the Second Revised Plan for compliance with Article XI of the Ohio Constitution. To conduct this analysis, I rely on total population data from the 2010 and 2020 Decennial Census and 2016-2020 election data from the Voting and Election Science Team (VEST) datahub.<sup>2</sup> These data, including shapefile data, are publicly available through several repositories and mapping projects.<sup>3</sup> I have also reviewed several other plans for comparison, including the Ohio Citizens’ Redistricting Commission plan (“OCRC”) and a plan submitted on February 15, 2022 by Ms. Bria Bennett, one of the named petitioners in *Bennett, et al. v. Ohio Redistricting Commission, et al.*, No. 2021-1198, which was the third plan prepared by Dr. Jonathan Rodden in this litigation (“Rodden III”). In a letter to the Ohio Redistricting Commission dated February 15, 2022, counsel for the petitioners in *Bennett and League of Women Voters* stated that the Rodden III plan “fully complies” with Article XI, Section 3’s line-drawing requirements and Article XI, Section 5’s requirements for the numbering of state Senate districts. I have also independently reviewed the Rodden III plan

---

<sup>1</sup> These plans both include maps for the state House and Senate. References below to these individual maps will retain this nomenclature, e.g. “Original House,” “First Revised Senate” and “Second Revised House”.

<sup>2</sup> <https://dataverse.harvard.edu/dataverse/electionscience>.

<sup>3</sup> I obtained data from the following:

Redistricting Data Hub: <https://redistrictingdatahub.org/data/about-our-data/#pl>.

Dave’s Redistricting App: <https://davesredistricting.org/>.

for constitutional compliance. I have not identified any deviations from these line-drawing and numbering requirements. The February 15, 2022 letter, and all of the above-referenced plans, are available for download on the Ohio Redistricting Commission’s website.<sup>4</sup>

5. I am receiving compensation for my study and testimony at an hourly rate of \$250 per hour. My compensation is in no way dependent on the outcome of the dispute.

#### **SUMMARY OF MY OPINIONS**

6. The Second Revised Plan continues to run afoul of principles of proportionality, in a manner very similar to the Ohio Supreme Court’s findings with respect to the First Revised Plan. In fact, when considering the plan’s heavy reliance on toss-up districts, the Second Revised Plan shows greater disproportionality than even the First Revised Plan. Alternative plans, including Rodden III, achieve substantially greater proportionality and partisan symmetry while also complying with the line-drawing and numbering requirements of the Ohio Constitution.

7. Nominally, the Second Revised Plan creates 54 Republican leaning House districts and 45 Democratic leaning House districts. However, this summary statistic is misleading because 19 of the seats that favor Democrats are actually toss-up districts, while *none* of the seats that favor Republicans fall into this category. In other words, 19 out of the 45 Democratic-leaning districts have been drawn to be between 50 and 52 percent or less Democratic, while there are *zero* Republican-leaning districts that fall into this toss-up category. Excluding toss-ups, 33 percent of the House seats favor Democrats, while 68 percent of those seats favor Republicans, yielding a difference in proportionality from statewide vote shares of 14 percent. Compared to the First Revised Plan, which created 14 such toss-ups, the Second

---

<sup>4</sup> <https://www.redistricting.ohio.gov/maps>

Revised House map actually performs worse with a two-point vote swing, as a result of the five additional toss-ups.

8. The Senate map functions similarly. The Second Revised Plan nominally creates 18 Republican leaning districts and 15 Democratic leaning districts, but 8 of the Democratic districts are toss-ups, while once again *none* of the Republican districts fall into that category. Excluding toss-ups, 28 percent of the Second Revised Senate seats favor Democrats, while 72 percent of those seats favor Republicans, creating a disproportionality from statewide voting averages of 18 percent. Like the House map, the Second Revised Senate map performs worse than its predecessor with a two-point vote swing.

9. A truly proportional districting plan yields proportional shares of seats for votes across a range of possible outcomes. The Second Revised Plan is designed to approximate proportionality for a single election outcome, i.e., one in which Democrats earn 46 percent of the statewide vote while Republicans earn 54 percent. But statistically speaking, the likelihood of an election with that exact result is small. Rather, ebbs and flows in partisan vote share are to be expected. A small two percentage point shift in the electorate in favor of Republicans, which is a more likely scenario, would be expected to wipe out 19 Democratic House seats and 8 Democratic Senate seats, giving Republicans 74 percent of House seats and 79 percent of Senate seats—a supermajority in both chambers. Equivalent shifts among voters in favor of Democrats would not yield *any* additional seats, much less the extreme gains that Republicans would see. Because of the plan’s asymmetric reliance on toss-up districts, it sets a performance ceiling for Democrats and a performance floor for Republicans. It therefore performs like a “winner-take-all” gerrymander but with only a one-way ratchet in favor of Republicans.

10. The Second Revised Plan also produces significant asymmetry, and therefore continues to systemically disfavor Democratic voters. The Second Revised Plan does little to improve on the significant asymmetry of either the Original Plan or the First Revised Plan, which is a direct outgrowth of what appears to be a minimalist approach to meeting proportionality standards in Section 6(B).

11. Viable comparison plans submitted to the Commission, including the Rodden III plan, create at least 42 percent Democratic House and Senate districts, including toss-ups, and would not produce extreme disproportionality under likely two-point swing election scenarios. These comparison plans also achieve substantially greater partisan symmetry in both the House and Senate.

#### ANALYSIS AND OPINIONS

##### **I. The Proportion of Districts in the Second Revised Plan That Favor Each Political Party Does Not Correspond with the Statewide Preferences of the Voters of Ohio**

12. To conduct the proportionality analysis, I employed the same methodology and used the same data sources as those I employed in my earlier affidavit and expert report, as modified by guidance from the Ohio Supreme Court in its February 7, 2022 opinion: “[C]ompetitive districts . . . must either be excluded from the proportionality assessment or be allocated to each party in close proportion to its statewide vote share.” Slip. Op. 2022-Ohio-342, ¶ 62.

13. I proceeded in four steps. First, I calculated the statewide preferences of the voters of Ohio, based on available statewide state and federal partisan general election results during the last ten years. Second, I calculated the statewide proportion of districts whose voters favor each political party, as well as the proportion of toss-up districts, based on the same set of statewide elections. I did this for the House and the Senate maps in the Second Revised Plan as

well as for the First Revised Plan, the Original Plan, and alternative plans submitted to the Commission (Rodden III, OCRC). Then, to determine whether the statewide election figures “closely correspond” to the partisan seat shares from the plans, I calculated the difference between those two figures. Finally, I compared the difference between statewide election figures and partisan seat shares in the prior plans and alternative plans.

**a. Proportionality When Toss-Up Districts Are Excluded**

14. Tables 1 and 2 display statewide vote share. The tables lay out the Democratic (DEM) and Republican (GOP) seats and seat share for the respective House and Senate Second Revised Plans, as well as the toss-up districts that are estimated to yield vote shares from 48 to 52 percent for either party. (Districts within the range of 48-52 percent for either party are generally considered highly competitive or toss-up districts.<sup>5</sup>) Excluding the toss-up districts, the Second Revised House Plan yields respective Democratic and Republican seat shares of 33 and 68 percent. Compared to statewide vote shares, these seat shares produce a disproportionality of 14%. For the Second Revised Senate Plan, the disproportionality is even more pronounced. Once toss-up districts are removed, the respective Democratic and Republican seat shares of 28 and 72 percent produce a disproportionality of 18 percent.

---

<sup>5</sup> The Princeton Gerrymandering Project considers vote shares between 46.5-53.5 to be “competitive”: <https://gerrymander.princeton.edu/redistricting-report-card-methodology>. Other sources consider elections within a 5-point margin to be competitive: <https://www.washingtonpost.com/politics/2021/11/23/gerrymandering-redistricting-competitive-house-districts/>. Within the world of election forecasting, survey sampling, and models of election outcomes, a margin of error of plus or minus 3 points is typical and considered “too close to call.” See Pew Research, “Five Key Things to Know About the Margin of Error in Election Polls”: <https://www.pewresearch.org/fact-tank/2016/09/08/understanding-the-margin-of-error-in-election-polls/>. The choice of defining 48-52 percent as a toss-up thus reflects a balanced approach that is more restrictive than conventional interpretations of “competitive” but not so restrictive as to obscure meaningful patterns. On the predictability of close elections, see Justin Grimmer, et.al., “Are Close Elections Random?” <https://web.stanford.edu/~jgrimmer/CEF.pdf>.

TABLE 1

### Proportionality of Second Revised House Map

|   | VOTE SHARE | SEATS | SEAT SHARE | SEAT SHARE W/OUT TOSS-UPS | DIFFERENCE |
|---|------------|-------|------------|---------------------------|------------|
| DEM   | 46%        | 26    | 26%        | 33%                       | -14%       |
| GOP   | 54%        | 54    | 55%        | 68%                       | 14%        |
| Toss-ups (48-52%)                           |            | 19    | 19%        |                           |            |
| <b>Disproportionality without toss-ups:</b> |            |       |            |                           | <b>14%</b> |

TABLE 2

### Proportionality of Second Revised Senate Map

|   | VOTE SHARE | SEATS | SEAT SHARE | SEAT SHARE W/OUT TOSS-UPS | DIFFERENCE |
|---|------------|-------|------------|---------------------------|------------|
| DEM   | 46%        | 7     | 21%        | 28%                       | -18%       |
| GOP   | 54%        | 18    | 55%        | 72%                       | 18%        |
| Toss-up (48-52%)                            |            | 8     | 24%        |                           |            |
| <b>Disproportionality without toss-ups:</b> |            |       |            |                           | <b>18%</b> |

#### b. Proportionality When Toss-Up Districts Are Included

15. As noted above, the Second Revised Plan has a significant and unusually large number of House and Senate districts that lean Democratic by razor-thin margins.<sup>6</sup> If the “lean” of the districts is unbiased, or randomly distributed between the two parties, it is reasonable to expect the parties to split these districts roughly 50/50 over the course of elections due to ebbs and flows in voter support. However, the design of the toss-up districts in the Second Revised Plan looks anything but random.

<sup>6</sup> Under a normal distribution, about 7 percent of districts would fall into this “toss-up” range. i.e., 7 House seats and 2 Senate seats.

16. Tables 3 and 4 display the results of my analysis when toss-up districts are allocated to each party, including the impact of minor (2 percent) uniform vote swings for the Second Revised Plan, the First Revised Plan, the Original Plan, the Rodden III Plan and the OCRC Plan for both chambers. For the Second Revised House Plan, the number of toss-up districts is extremely large (19), even higher than the 14 such districts in the First Revised House Plan.<sup>7</sup> See Table 3. Note that alternative plans contain only 3 to 4 toss-ups, which is what would be expected across a normal distribution.<sup>8</sup>

17. Subtracting 2 percent from the Republican vote shares in each district and adding it to the Democratic vote shows that such a vote swing would result in *zero* additional Democratic seats, because Democrats are already favored to win all 19 toss-ups in the Second Revised Plan. However, the same minor vote swing toward Republicans would give them all 19 seats, or a 74 percent supermajority of seats with 56 percent of the vote. This is the same underlying design found in the First Revised Plan, only worse. Notably, under either of the alternative plans, both parties would benefit from minor vote swings in their favor, as should be the case under a fair plan.

---

<sup>7</sup> To guard against biasing my analysis in favor of finding greater disproportionality or asymmetry against the minority party, districts with .005 percent or less difference between party vote shares were allocated to the Democratic Party. Therefore, one House district with a 49.99 Democratic vote share was counted as a Democratic toss-up. This allocation choice does not have an impact on my overall analysis.

<sup>8</sup> In its 8(C)(2) statement, the Commission observed that 5 House and 3 Senate districts have partisan leans between 50 and 50.99 percent. This figure is misleading, because it obscures the clear and asymmetric pattern of Democratic-favoring toss-up districts that fall right above 50.99 percent in both chambers, including three additional districts in the House that range from 51.0 to 51.4 percent. Furthermore, even on the Commission's own terms, the Second Revised Plan is disproportional. All 8 of these seats lean Democratic, with no corresponding Republican-favoring seats. Thus, a vote shift of only 1 percent in favor of Republicans would yield Republicans 8 additional seats, while a corresponding 1 percent shift in favor of Democrats would yield no additional Democratic seats.

TABLE 3

### Swing Analysis of Revised, Original, and Alternative House Maps

| PLAN        | SEAT SHARES W/ TOSS-UPS (D/R) | TOSS-UPS (D/R) | +2%D SWING | SEAT SHARES W/ +2%D SWING | +2%R SWING | SEAT SHARES W/ +2%R SWING |
|-------------|-------------------------------|----------------|------------|---------------------------|------------|---------------------------|
| 2nd Revised | 45%/55%                       | 19/0           | no change  | 45%/55%                   | +19R       | 26%/74%                   |
| 1st Revised | 42%/58%                       | 14/0           | no change  | 42%/58%                   | +14R       | 28%/72%                   |
| Original    | 35%/65%                       | 3/2            | +2D        | 37%/63%                   | +3R        | 34%/66%                   |
| Rodden III  | 42%/58%                       | 2/1            | +1D        | 43%/57%                   | +2R        | 40%/60%                   |
| OCRC        | 42%/58%                       | 2/1            | +1D        | 44%/56%                   | +2R        | 41%/59%                   |

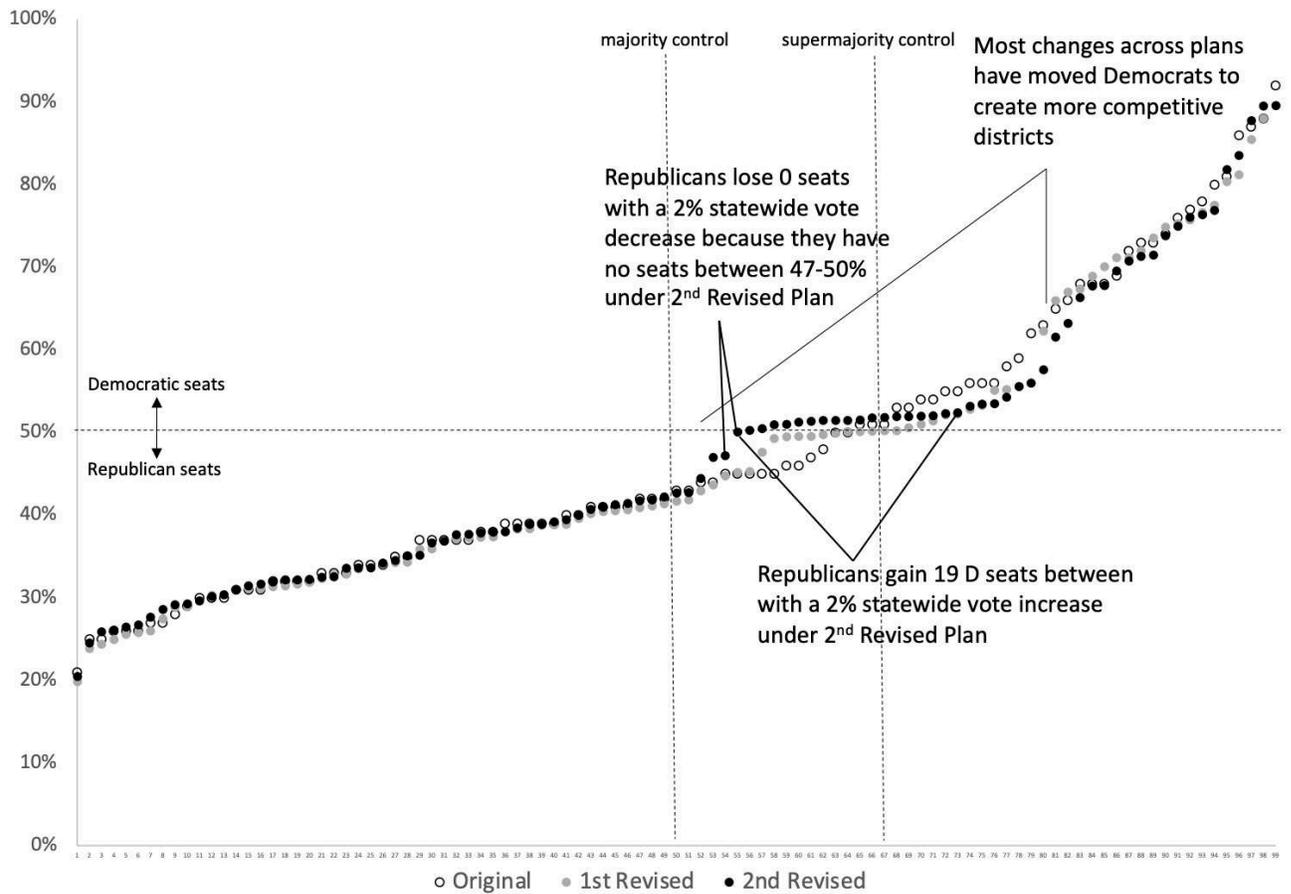
18. The same pattern is revealed in the Second Revised Senate Plan. See Table 4. Indeed, I find that the Second Revised Senate Plan, which has 8 districts that barely lean Democratic and no corresponding Republican toss-up districts, performs worse than the First Revised Plan. Both the number and partisan lean of these districts is designed to benefit Republicans. With a two-point swing in favor of Republicans, Republicans are expected to win a 79% supermajority of Senate seats. By contrast, the Democratic Senate seat share would remain at 45% with an analogous 2 percent vote swing in their favor. Simply put, for the same increase in vote share, we observe a 34 percent advantage for Republicans in terms of the seats they are projected to win.

TABLE 4

### Swing Analysis of Revised, Original, and Alternative Senate Maps

| PLAN        | SEAT SHARES W/ TOSS-UPS (D/R) | TOSS-UPS (D/R) | +2%D SWING | SEAT SHARES W/ +2%D SWING | +2%R SWING | SEAT SHARES W/ +2%R SWING |
|-------------|-------------------------------|----------------|------------|---------------------------|------------|---------------------------|
| 2nd Revised | 45%/55%                       | 8/0            | no change  | 45%/55%                   | +8R        | 21%/79%                   |
| 1st Revised | 39%/61%                       | 3/2            | +2D        | 45%/55%                   | +3R        | 30%/70%                   |
| Original    | 27%/73%                       | 0/2            | +2D        | 33%/64%                   | no change  | 27%/73%                   |
| Rodden III  | 42%/58%                       | 2/1            | +1D        | 44%/56%                   | +2R        | 36%/64%                   |
| OCRC        | 42%/58%                       | 2/1            | +1D        | 44%/56%                   | +2R        | 36%/64%                   |

19. A comparison of the Original, First Revised, and Second Revised House plans shows how this “one winner takes all, one winner takes none” strategy evolved. Figure 1 displays the Democratic vote shares for the 99 House districts, in order of increasing vote share, for all three plans. There are several meaningful differences between the Original, and the First and Second Revised Plans. In the Original House Plan (hollow dots), Republicans created safe seats pushing up to the supermajority seat range (right of the “majority control” marker), by packing Democrats into many uncompetitive districts. This resulted in both high disproportionality and asymmetry. On the first revision, a number of extremely competitive Democratic districts appear, seemingly improving proportionality. Those seats are the visibly flat set of gray dots around the 50 percent line, which then dip down below 50 percent well before the 50<sup>th</sup> seat (majority control). That drop off, and the larger drop off seen in the Second Revised Plan (black dots), shows how there are no close seats for Democrats to pick up. You can also see that most of the movement of voters between districts across the plans involved moving Democrats from safer seats into more competitive seats. By contrast, there has been virtually no partisan change in the safely drawn Republican seats.



**Figure 1: District Level Vote Shares in House Plans**

20. This unusual pattern suggests the Commission intended to use toss-up districts that are nominally Democratic to create an illusion of increased proportionality without producing a map that would produce proportionate outcomes. That this was a deliberate choice by the Commission is underscored by existence of alternative plans, including Rodden III, that achieve proportionality without relying on an unusually high number of Democratic toss-up districts, as well as by the persistent asymmetry and failure of the Second Revised Plan to meet partisan fairness, which is discussed further below.

## II. The Revised Plan Favors Republican Voters and Disfavors Democratic Voters

21. To conduct the partisan fairness analysis, I used the same statistical and comparative partisan symmetry analysis as in my prior affidavits and expert reports.

22. First, I determined the degree to which the Revised Plan exhibits asymmetry in the allocation of votes to seats between the parties. Second, I compared asymmetries across the above-mentioned comparison plans. Such comparison is helpful because it demonstrates that the Commission could have introduced and adopted a less biased remedial plan.

23. Partisan symmetry is a broadly accepted metric used by political scientists to measure partisan bias.<sup>9</sup> The principle of partisan symmetry requires that a districting system award the same number of seats to each party's candidates for the same share of statewide votes that they receive. The question posed by a partisan symmetry analysis, in other words, is how many more (or fewer) seats does one party get for some share of the statewide vote as compared to what another party gets for that same statewide vote share.

24. Scientifically, accepted measures of partisan symmetry follow logically from the principle that an electoral system should treat the parties and their voters equally and that the party that wins the most votes should win the most seats.<sup>10</sup> As before, I estimate symmetry in two ways: (1) a simple numeric formula ( $S$ ) that can be calculated by hand,<sup>11</sup> and (2) a computational model of symmetry with statistical confidence intervals. The computational symmetry models estimate symmetry in the seats-votes function across a range of vote shares,

---

<sup>9</sup> Barry Burden and Corwin Smidt, "Evaluating Legislative Districts Using Measures of Partisan Bias and Simulations," *Sage Open*, 10, 4, 2020; <https://doi.org/10.1177/2158244020981054>; Anthony J McGann, Charles Anthony Smith, Michael Latner, Alex Keena, "A Discernable and Manageable Standard for Partisan Gerrymandering" *Election Law Journal*, 14, 4, 2015; John F. Nagle. "Measures of Partisan Bias for Legislating Fair Elections", *Election Law Journal*: 2015. pp. 346-360. <http://doi.org/10.1089/elj.2015.0311>.

<sup>10</sup> McGann, et.al., "A Discernable and Manageable Standard for Partisan Gerrymandering".

<sup>11</sup> This metric was first developed by Anthony McGann, during the writing of *Gerrymandering the States*, p. 30.

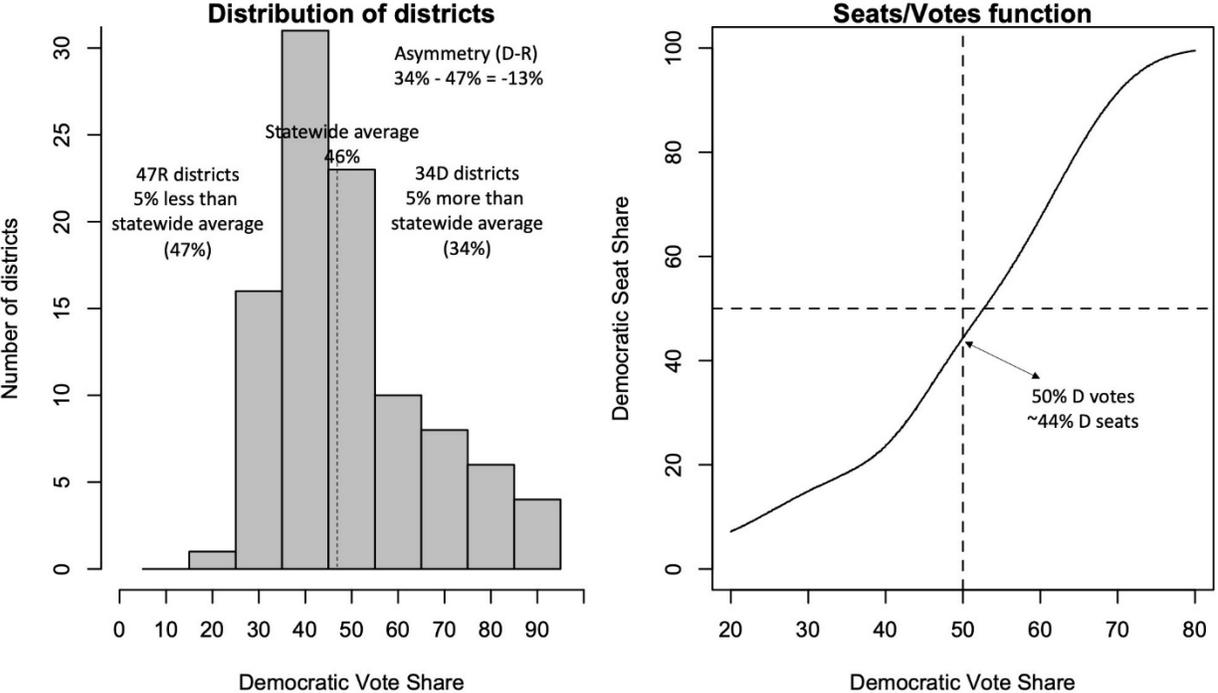
which in this case is between 45 and 55 percent, while  $S$  measures symmetry in the distribution of support for parties across the districts that each party wins.

25. To calculate the simple measure of symmetry,  $S$ , I take the districts that are 5 percent above or below the statewide average of party support and determine what proportion of those districts favor Democrats and what proportion favor Republicans. That is, a plan's bias under  $S$  equals the proportion of seats with Democratic vote share above five percent of the Democratic average minus the proportion of seats with Republican vote share above five percent of the Republican average. Put simply,  $S$  tells you whether a districting plan creates more Republican or Democratic leaning districts relative to the party's statewide average. A negative value for  $S$  means Republicans are advantaged while a positive value means Democrats are advantaged. In this report, simple  $S$  symmetry is charted graphically in the form of histograms. A symmetrical plan would show similar distributions of districts on either side of the vertical line denoting the average vote share; an asymmetrical plan would give the favored party more districts past the line denoting the average vote share for the party.

26. For the computational models, I calculate partisan symmetry for the plans, but instead of assuming uniform vote swing across districts, I impute random "noise" (up to five points) in 1,000 simulations of district vote distributions to reflect the idiosyncrasies and perturbations that occur in real elections over time. The procedure also allows me to calculate confidence intervals to provide estimates of statistical significance. In this report, the computational model is charted as a seats/votes  $S$ -curve function.

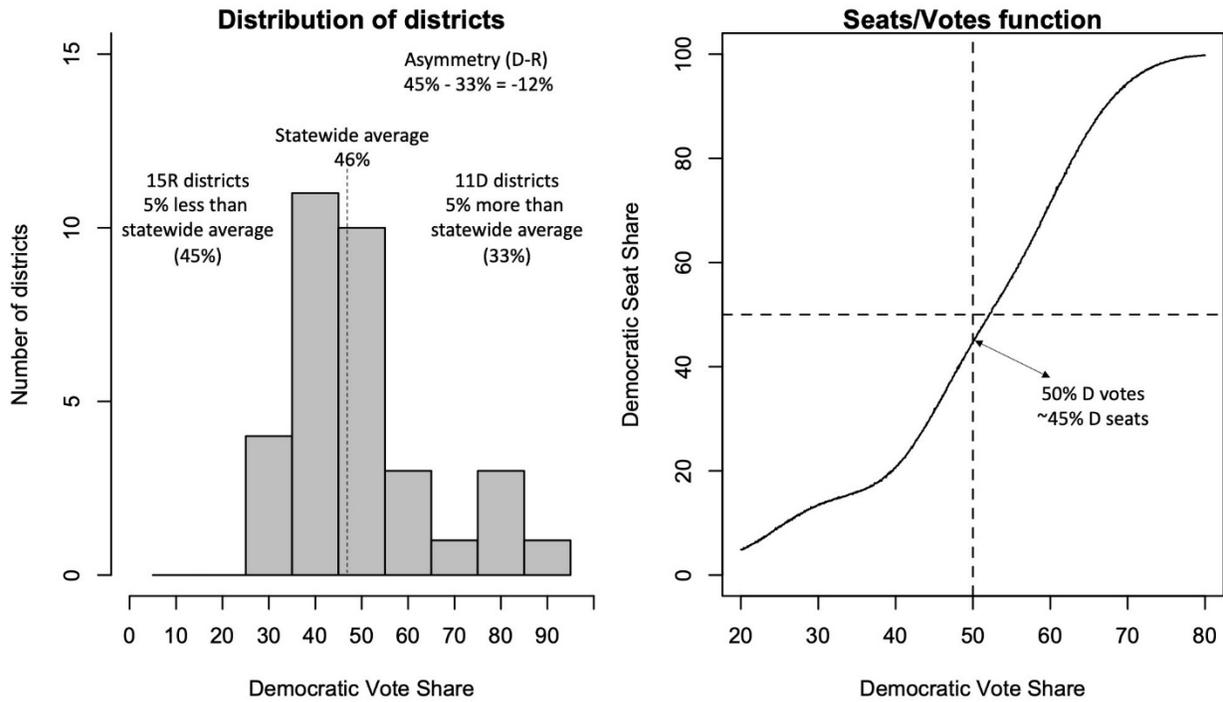
27. Figure 2 below displays a histogram of the allocation of seats for the Second Revised House plan, as well as the estimated seats/votes function. The histogram illustrates the skew in the allocation of seats, where more Democratic seats are won in overwhelmingly

Democratic districts (80 percent vote share and above) with virtually no corollary Republican districts. This results in more wasted votes for Democrats. As a result, under the Second Revised House plan, Democratic voters would only expect to win approximately 44 percent of House seats with 50 percent of statewide votes, as shown in the seats/votes function. By contrast, Republicans would expect to win approximately 53 percent of House seats with 50 percent of the statewide vote. Relative to their statewide vote share, Republicans have more districts where they earn 5 percent more than their statewide vote average (47) than Democrats (34), which means their voters are allocated more efficiently under the Second Revised House plan. As indicated in Figure 1, while the number of seats where Democrats win 5 percent more than their statewide vote average has increased, somewhat improving symmetry, the number of safe Republican seats has not changed from the Original Plan (47).



**Figure 2: Second Revised House Map Asymmetry**

28. Figure 3 shows a similar pattern for the Second Revised Senate Plan. Because Democrats are concentrated into fewer districts, they are expected to win approximately 45 percent of seats with 50 percent of the statewide vote. By contrast, Republicans are expected to win approximately 52 percent of Senate seats with 50 percent of the statewide vote. Republicans also have more safe seats. Republicans win 15 seats (45 percent) with more than 5 percent of their statewide vote share, compared to 11 seats (33 percent) for Democrats.



**Figure 3: Second Revised Senate Map Asymmetry**

29. Most importantly, the asymmetry in both the Second Revised House and Senate maps is, at best, a marginal improvement over the Original and First Revised Plans, but still lags far behind the alternative plans in fairness. See Tables 5 and 6.

TABLE 5

### Asymmetry in Revised, Original, and Alternative House Maps

| PLAN        | SIMPLE S | ASYMMETRY | (95% CONFIDENCE) |
|-------------|----------|-----------|------------------|
| 2nd Revised | -13      | -11.60    | (5.94)           |
| 1st Revised | -13      | -13.90    | (5.76)           |
| Original    | -15      | -15.39    | (5.87)           |
| Rodden III  | -6       | -8.40     | (5.38)           |
| OCRC        | -6       | -7.90     | (5.50)           |

TABLE 6

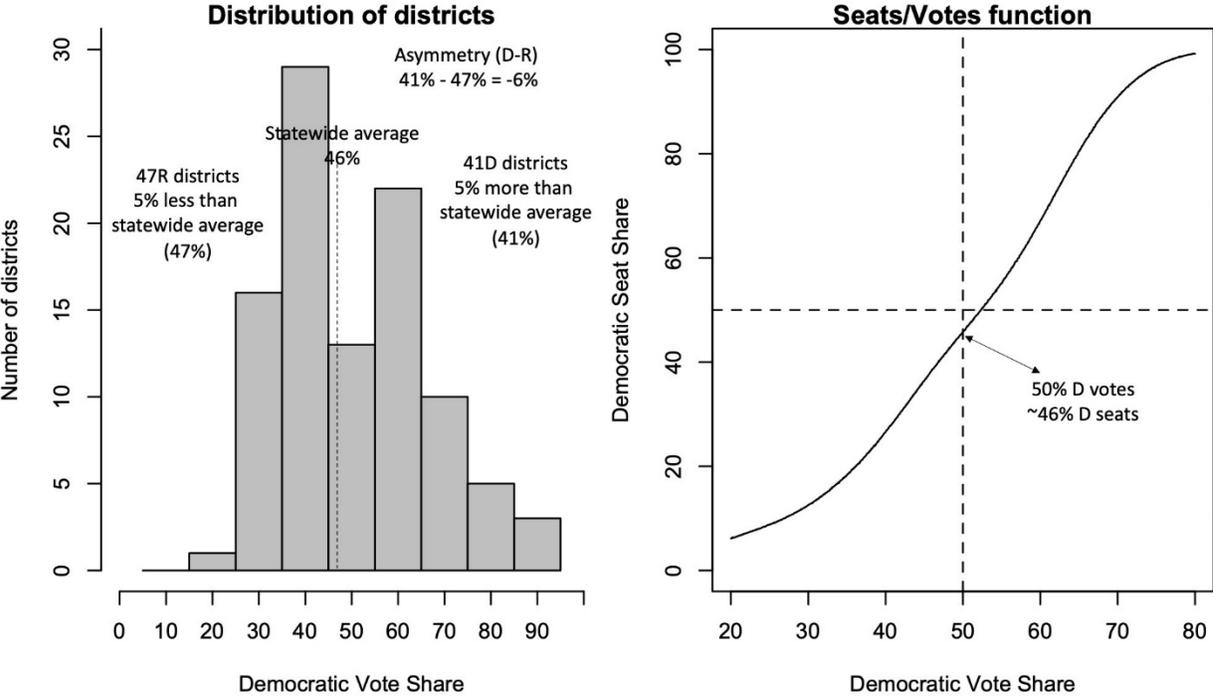
### Asymmetry in Revised, Original, and Alternative Senate Maps

| PLAN        | SIMPLE S | ASYMMETRY | (95% CONFIDENCE) |
|-------------|----------|-----------|------------------|
| 2nd Revised | -12      | -11.10    | (10.2)           |
| 1st Revised | -18      | -15.70    | (10.54)          |
| Original    | -15      | -17.34    | (10.48)          |
| Rodden III  | -9       | -6.40     | (9.89)           |
| OCRC        | -9       | -7.10     | (9.2)            |

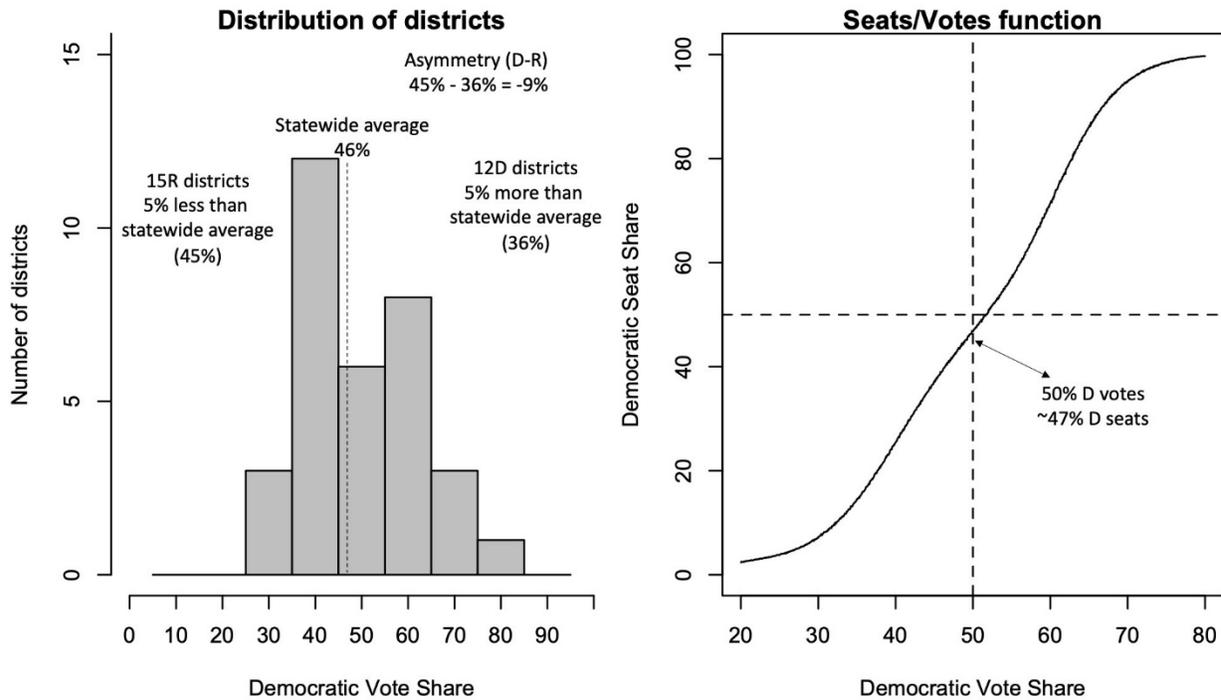
30. The commission did not need to create yet another asymmetric plan, as evidenced by the fact that the Rodden III plan is more symmetric than the Second Revised Plan at a statistically significant level.<sup>12</sup> If we compare the estimated symmetry scores of -11.6 and -8.4, from the sample of computational simulations used to generate those average scores, we can say with 95 percent confidence that the Second Revised House Plan will produce greater asymmetries than the Rodden III plan. Histograms also show that both the Rodden III House

<sup>12</sup> T-test = 25.329, df = 1992.4, p-value < 2.2e-16

and Senate plans are visibly more symmetric, with greater parity in the percentage of seats where each party wins more than its statewide average. Under the Rodden III plan, Democrats and Republicans are expected to receive similar seat shares with 50 percent of votes, as the seats/votes curve is visibly closer to the 50 percent votes/seats intersection. In addition, there is no statistically significant asymmetry in the Rodden III Senate Plan.



**Figure 4: Rodden III House Map Asymmetry**



**Figure 5: Rodden III Senate Map Asymmetry**

31. My conclusion with respect to the Second Revised Plan echoes my earlier conclusions regarding the Original and First Revised Plans. The Commission has repeatedly failed to produce a fair districting plan, and this effort is no different. Indeed, under likely election scenarios the Second Revised Plan performs worse than the First Revised Plan because there are greater number of Democratic-leaning toss-up districts (and still no Republican-leaning toss-up districts). This is not an inevitable function of Ohio's political geography, as evidenced by the performance of the Rodden III plan. Moreover, given the number of alternative plans that Commission members have had access to, and given the multiple attempts to mimic proportionality through the asymmetric use of toss-up districts, I must conclude that the Second Revised Plan reflects an intent to maximize partisan advantage over fairness.

*Michael S. Latner*

---

Michael S. Latner

See attached Notarial Certificate

