

IN THE SUPREME COURT OF OHIO

Regina C. Adams

14360 Rockside Rd.
Maple Heights, OH 44137

Bria Bennett

2977 Dunstan Dr. NW
Warren, OH 44485

Kathleen M. Brinkman

400 Pike St. Unit 809
Cincinnati, OH 45202

Martha Clark

4439 Filbrun Ln.
Trotwood, OH 45426

Susanne L. Dyke

2558 Guilford Rd.
Cleveland Heights, OH 44118

Carrie Kubicki

13201 Vermillion Rd.
Amherst, OH 44001

Dana Miller

1211 Dana Dr.
Oxford, OH 45056

Meryl Neiman

2115 Clifton Ave.
Columbus, OH 43209

Holly Oyster

21370 Harrisburg Westville Rd.
Alliance, OH 44601

Constance Rubin

3088 Whitewood St. NW
North Canton, OH 44720

Solveig Spjeldnes

87 University Estates Blvd.
Athens, OH 45701

Case No. _____

Original Action Filed Pursuant to Ohio
Constitution, Article XIX, Section 3(A)

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

Relators,

v.

**Governor Mike DeWine, in his official
capacity as Governor and Member of the Ohio
Redistricting Commission**
Riffe Ctr. 30th Floor
77 South High St.
Columbus, OH 43215

**Secretary of State Frank LaRose, in his official
capacity as Secretary of State and Member of
the Ohio Redistricting Commission**
22 North Fourth St. 16th Floor
Columbus, OH 43215

**House Speaker Robert R. Cupp, in his official
capacity as Speaker of the Ohio House of
Representatives and Co-Chair of the Ohio
Redistricting Commission**
77 South High St. 14th Floor
Columbus, OH 43215

**Senate President Matt Huffman, in his official
capacity as President of the Ohio Senate and
Member of the Ohio Redistricting Commission**
1 Capitol Sq. 2nd Floor
Columbus, OH 43215

**Senator Vernon Sykes, in his official capacity
as Co-Chair of the Ohio Redistricting
Commission**
1 Capitol Sq. Ground Floor
Columbus, OH 43215

**House Minority Leader Emilia Sykes, in her
official capacity as Member of the Ohio
Redistricting Commission**
77 South High St. 14th Floor
Columbus, OH 43215

**Auditor Keith Faber, in his official capacity as
Member of the Ohio Redistricting Commission**
88 East Broad St. 5th Floor
Columbus, OH 43215

Ohio Redistricting Commission
1 Capitol Sq.
Columbus, OH 43215

Respondents.

**RELATORS' COMPLAINT
IN ORIGINAL ACTION**

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

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

Counsel for Respondents

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

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

Counsel for Relators

INTRODUCTION

1. Relators bring this action to challenge the constitutionality of Ohio’s congressional reapportionment plan (the “2021 Congressional Plan” or the “Plan”) under Article XIX of the Ohio Constitution, which sets forth strict anti-gerrymandering requirements for congressional maps that, like this one, were passed without bipartisan support.

2. Article XIX’s directive is mandatory and unequivocal: When passing a map without bipartisan support, the General Assembly “*shall not* pass a plan that unduly favors or disfavors a political party or its incumbents” and “*shall not* unduly split governmental units.” Ohio Constitution, Article XIX, Section 1(C)(3) (emphasis added). The General Assembly and Governor DeWine’s disregard for that mandate is equally clear: They enacted a congressional plan under which Democrats can expect to win just three of Ohio’s 15 congressional seats, making the 2021 Congressional Plan even more rigged than its predecessor and an outlier among partisan gerrymanders nationwide. To achieve this remarkable result, the map-drawers subordinated traditional redistricting criteria, tore communities of interest apart, and diluted the voting power of Black Ohioans. [Exhibit 41, Aff. of Dr. Jonathan Rodden (“Rodden Aff.”) ¶ 18-19, 55-83.]

3. The General Assembly and the Governor blatantly disregarded that, in 2018, Ohioans voted three to one to amend the Ohio Constitution to eliminate the pernicious gerrymandering of Ohio’s congressional districts. [Exhibit 1.] These changes came in response to decades of partisan redistricting by the General Assembly, culminating in the 2011 cycle, in which Republican officials shut Democratic officials out of the process and drew maps in secret and in concert with Republican incumbents in Washington. [Exhibit 2.]

4. The 2011 congressional plan split communities with shared interests and paired those with little in common. Districts such as the “Snake on the Lake” entered the rogues’ gallery

of nationally renowned gerrymanders. [Exhibit 3.] In the first elections held under the new map in 2012, Republicans won an astounding 12 of the 16 congressional seats, despite Democrats winning the presidential and U.S. Senate races in Ohio by more than 100,000 votes each. [Rodden Aff. ¶ 2, 13, 14, 17.]

5. Ohioans roundly rejected this status quo by writing Article XIX into the Ohio Constitution. Among other things, Article XIX requires bipartisan support in either the General Assembly or the Ohio Redistricting Commission (in the event that the General Assembly fails to pass a bipartisan map) to pass a congressional plan that lasts for a full ten years.

6. If bipartisan support for a congressional plan is not achieved, Article XIX contains an impasse procedure, whereby the General Assembly may approve a map by a simple majority. However, such a map lasts only four years and, as noted above, is subject to additional substantive requirements designed to safeguard against partisan gerrymandering. *See supra* ¶ 2.

7. Regrettably, the General Assembly has once again enacted a rank partisan gerrymander—one that violates both the letter and the spirit of the 2018 reforms.

8. Despite Article XIX’s clear command that it pass a bipartisan map by the end of September 2021, the General Assembly did not so much as hold a hearing on redistricting before that deadline. [Exhibit 4.] Instead, knowing that it could not pass a map in September without significant Democratic support, the Republican caucuses bided their time, plainly intending to pass a simple-majority map in November.

9. The Ohio Redistricting Commission (the “Commission”) is intended to serve as a backstop, empowered to draw a map in October if the General Assembly fails to pass a map in September. Specifically, under Article XIX, the Commission is required to pass a map by the last day of October. But the Commission cannot meet without the consent of both its co-chairs.

Commission Co-Chair House Speaker Robert Cupp ignored Co-Chair Senator Vernon Sykes' entreaties to schedule Commission meetings. As a result, for the entirety of October, the Commission laid dormant: No hearings were held, and no maps were considered. Finally, in the waning days of the month, the Commission held one pro forma hearing, announcing beforehand that it would not vote on a map. [Exhibit 5.]

10. November is the final month in which a congressional plan can be adopted—and the first during which Republicans could ram through a plan of their choosing without any Democratic votes. Accordingly, as soon as November began, each chamber's Republican caucus promptly introduced a map. These maps put the 2011 gerrymander to shame. Both maps cut across communities of interest, split counties, cities, and townships, and included district lines that twisted and turned for no reason other than to ensure maximum Republican advantage. And ensure Republican advantage they would: Both plans contained only two districts likely to vote Democratic, thus cutting the already miniscule Democratic delegation from Ohio in half. [Exhibit 6.]

11. The process by which maps were considered was a disgraceful subversion of constitutional reforms designed to ensure meaningful public comment before a congressional districting plan is adopted. At most committee hearings, members of the public wishing to speak were required to submit testimony at least 24 hours in advance. However, the Republican caucuses introduced maps just hours before committees gavelled into session and only in image form. [Exhibits 7, 8.] This meant that interested parties could only guess at the location of district lines and had no meaningful ability to comment on the maps in front of them. What's more, this 24-hour-in-advance requirement only applied to the public: The sponsors of the maps were not required to submit written testimony at all, and in many cases they declined to do so. The General

Assembly's process of considering congressional maps thus made clear that it had no interest in giving the people any meaningful voice in how congressional districts are drawn.

12. Finally, with little notice to the public, the General Assembly introduced a unified Republican proposal with roughly the same partisan breakdown as the earlier proposals (*worse* than the 2011 plan), which was then promptly rammed through each chamber on party-line votes. [Exhibit 9.]

13. The 2021 Congressional Plan violates Article XIX. It unduly favors Republicans by running roughshod over communities of interest and carefully splitting political subdivisions to dilute the votes of Democrats and Black communities. In comparison, several other maps submitted to the General Assembly beat or matched the 2021 Congressional Plan on every single objective redistricting criterion, from compactness to subdivision splits to keeping communities together. [Rodden Aff. ¶ 55-83.] The only measure on which those other maps couldn't compete with Republican proposals was the only one the General Assembly cared about: the partisan advantage bestowed on Republicans.

14. By the same token, the 2021 Congressional Plan unduly splits governmental units. In the urban areas of southwest and northeast Ohio in particular, the plan splits counties unnecessarily for the patently transparent purpose of minimizing Democratic voting power—particularly that of Black voters. [*Id.* ¶ 63-68, 74-75.]

15. Nonetheless, Governor DeWine completed the final step required for the Plan's enactment on a Saturday morning, two days after it passed through the General Assembly. He added to the bill his signature (without which it would not be effective) and his praise, breaking his own 2018 campaign promise that “[Article XIX’s] rules are pretty clear—the voters said that the redistricting process should be done in a bipartisan way and when I am governor there will be

an expectation that the new district maps honor the voters' wishes." [Exhibit 10.]

16. Article XIX was added to the Constitution by an overwhelming majority of voters, who through their votes expressed their desire to have the opportunity to meaningfully participate in the democratic process by living and voting in districts that are drawn fairly. In enacting the 2021 Congressional Plan, the General Assembly—and Governor DeWine—seek to turn the clock back to before 2018, when it had free rein to gerrymander maps as it wished. However, the legal regime has changed, and the Court should not countenance the General Assembly's and the Governor's attempt to flout the wishes of Ohio voters. Instead, it should enforce the Constitution's express prohibitions on partisan gerrymandering and undue subdivision splits by striking down the 2021 Congressional Plan and ordering the General Assembly to enact a plan that complies with Article XIX.

NATURE OF THE ACTION AND JURISDICTION

17. This is an apportionment case commenced pursuant to this Court's original and exclusive jurisdiction under Article XIX, Section 3 of the Ohio Constitution.

18. Pursuant to Article XIX, Relators seek a determination that the 2021 Congressional Plan is invalid.

19. Further, because Respondents' failure to abide by Article XIX's constitutional mandate was in bad faith, Relators seek an award of reasonable attorneys' fees.

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

PARTIES

21. Respondents include each Ohio elected official and entity with responsibility for approving, implementing, and (should the Court find for Relators) remedying Ohio's

congressional plan, such that all necessary parties are before the Court.

22. Respondent Mike DeWine is the Governor of Ohio and a member of the Commission, *see infra* ¶ 26, and is sued in his official capacity. Governor DeWine signed the 2021 Congressional Plan, attached as Exhibit A to Dr. Rodden’s affidavit, into law.

23. Respondent Frank LaRose is the Ohio Secretary of State and a member of the Commission, *see infra* ¶ 26, and is sued in his official capacity. He is the chief election officer in Ohio responsible for overseeing election administration pursuant to Ohio Rev. Code Ann. § 3501.04.

24. Respondent Bob Cupp is the Speaker of the Ohio House of Representatives and a member of the Commission, *see infra* ¶ 26, and is sued in his official capacity. The General Assembly has primary authority for drawing Ohio’s congressional districts, passed the 2021 Congressional Plan, and is responsible for remedying a plan in the first instance if a court deems it invalid.

25. Respondent Matt Huffman is the President of the Ohio State Senate and a member of the Commission, *see infra* ¶ 26, and is sued in his official capacity. The General Assembly has primary authority for drawing Ohio’s congressional districts, passed the 2021 Congressional Plan, and is responsible for remedying a plan in the first instance if a court deems it invalid.

26. The Commission and its seven members—Co-Chair House Speaker Bob Cupp, Co-Chair Senator Vernon Sykes, Governor Mike DeWine, Secretary of State Frank LaRose, Auditor Keith Faber, Senate President Matt Huffman, and House Minority Leader Emilia Sykes—are each sued in their official capacity. They have secondary authority for drawing Ohio’s congressional districts, failed to adopt a plan in October 2021, and are responsible for remedying an invalid plan if the General Assembly misses its deadline to do so.

27. Relators are Ohio electors who live in districts that were drawn in violation of Article XIX.

28. Relator Regina Adams lives at 14360 Rockside Rd., Maple Heights, OH 44137, which is in District 11 in the 2021 Congressional Plan.

29. Relator Bria Bennett lives at 2977 Dunstan Dr. NW, Warren, OH 44485, which is in District 6 in the 2021 Congressional Plan.

30. Relator Kathleen M. Brinkman lives at 400 Pike St. Unit 809, Cincinnati, OH 45202, which is in District 1 in the 2021 Congressional Plan.

31. Relator Martha Clark lives at 4439 Filbrun Ln., Trotwood, OH 45426, which is in District 10 in the 2021 Congressional Plan.

32. Relator Susanne L. Dyke lives at 2558 Guilford Rd., Cleveland Heights, OH 44118, which is in District 11 in the 2021 Congressional Plan.

33. Relator Carrie Kubicki lives at 13201 Vermillion Rd., Amherst, OH 44001, which is in District 5 in the 2021 Congressional Plan.

34. Relator Dana Miller lives at 1211 Dana Dr., Oxford, OH 45056, which is in District 8 in the 2021 Congressional Plan.

35. Relator Meryl Neiman lives at 2115 Clifton Ave., Columbus, OH 43209, which is in District 3 in the 2021 Congressional Plan.

36. Relator Holly Oyster lives at 21370 Harrisburg Westville Rd., Alliance, OH 44601, which is in District 6 in the 2021 Congressional Plan.

37. Relator Constance Rubin lives at 3088 Whitewood St. NW, North Canton, OH 44720, which is in District 7 in the 2021 Congressional Plan.

38. Relator Solveig Spjeldnes lives at 87 University Estates Blvd., Athens, OH 45701,

which is in District 12 in the 2021 Congressional Plan.

39. Relator Everett Totty lives at 145 S. St. Clair St. Unit 28, Toledo, OH 43604, which is in District 9 in the 2021 Congressional Plan.

LEGAL BACKGROUND

40. Article XIX of the Ohio Constitution, as adopted in 2018, sets forth the procedures and requirements for congressional redistricting in Ohio.

41. Article XIX creates a three-step process for redistricting, along with an impasse procedure to be used as a last resort if bipartisan compromise cannot be achieved. Under Article XIX, Section 1(A), the General Assembly is required to “pass a congressional district plan in the form of a bill by the affirmative vote of three-fifths of the members of each house,” including the vote of “at least one-half of the members of each of the two largest political parties represented in that house,” here the Democratic and Republican Parties. The General Assembly must do so by the last day of September in a year ending in one.

42. If the General Assembly cannot pass a bipartisan plan by the end of September, the process moves to the Ohio Redistricting Commission, a commission established under Article XI and consisting of the Governor, Secretary of State, Auditor of State, as well as appointees of the caucus leaders for the two largest parties in each of the two houses of the General Assembly. Ohio Constitution, Article XI, Section 1(A); *id.*, Article XIX, Section 1(B). The Commission must similarly pass a plan with bipartisan support, with a majority consisting of at least two members of the Commission representing each of the two largest political parties in the General Assembly. *Id.* If it cannot do so by the end of October, the process moves back to the General Assembly. *Id.*

43. If the process returns to the General Assembly for the next round, the bipartisanship requirements are lower. At this stage, while the General Assembly still needs three-fifths of each

chamber to vote for a congressional map, it only needs one-third of the members of each of the largest political parties in each chamber. *Id.*, Section 1(C)(2).

44. Finally, if the General Assembly cannot achieve even this minimal threshold of bipartisanship, Article XIX, Section(C)(3) provides a last-resort impasse procedure. Under that provision, the General Assembly may pass a congressional plan by a simple majority, but that plan will only remain in effect for four years (i.e., two election cycles) and certain substantive requirements will apply that do not apply to bipartisan plans.

45. As relevant here, first, “[t]he general assembly shall not pass a plan that unduly favors or disfavors a political party or its incumbents.” *Id.*, Section 1(C)(3)(a).

46. Second, “[t]he general assembly shall not unduly split governmental units, giving preference to keeping whole, in the order named, counties, then townships and municipal corporations.” *Id.*, Section 1(C)(3)(b).

47. Notably, when it passes a simple-majority plan, the General Assembly must “include in the plan an explanation of the plan’s compliance” with the three requirements described above. *Id.*, Section 1(C)(3)(d).

48. Article XIX, Section 3(A) grants this Court “exclusive, original jurisdiction in all cases arising under” Article XIX.

49. In the event this Court issues an order declaring a congressional plan invalid, the General Assembly must pass a congressional plan within thirty days of the issuance of the order. *Id.*, Section 3(B)(1).

50. If the General Assembly cannot meet this deadline, the Ohio Redistricting Commission is reconstituted and must pass a plan within thirty days of the deadline described in Section 3(B)(1). *Id.*, Section 3(B)(2).

51. Thus, in the event this Court issues an order declaring a congressional plan invalid, a plan must be filed with the secretary of state by one of the two authorities charged with congressional redistricting no later than 60 days after the order is issued.

52. Regardless of which entity ultimately remedies the invalid plan, the remedial congressional plan “shall remedy any legal defects in the previous plan identified by the court but shall include no changes to the previous plan other than those made in order to remedy those defects.” *Id.*, Section 3(B)(1) & (2).

FACTS

A. Before 2018, Ohio’s congressional redistricting process lacked transparency and frequently produced gerrymandered congressional maps.

53. Prior to the enactment of Article XIX, the Ohio Constitution contained no provisions on congressional redistricting.

54. In cycle after cycle, the lack of clear rules led to a redistricting process that was chaotic and opaque, producing gerrymandered maps that minimized the power of whichever party did not control redistricting in the state. [Exhibit 11.]

55. Under the old regime, every 10 years the General Assembly would convene, move maps forward with little or no bipartisan support, and ultimately enact maps that favored the party in power. [Exhibit 11.]

56. This dynamic reached its apotheosis in 2011. When congressional redistricting began that year, Republicans controlled the state House, Senate, and Governorship. This gave Republicans unbridled power to enact a congressional map of their choice. [Exhibit 11.]

57. Hoping to evade public scrutiny, Republicans drew maps behind closed doors. Early in the redistricting process, Republican Senate staffer Raymond DiRossi famously booked a 91-day stay at a Doubletree Hotel across the street from the statehouse that was nicknamed “the

bunker.” There, Republican congressional incumbents, party operatives, and Republican members of the General Assembly met privately to give their input and ensure that the maps ultimately presented for consideration maximized Republican chances of victory. They developed a map likely to result in 12 Republican-controlled districts and only four Democratic-controlled districts. [Exhibit 2.]

58. Republican incumbents’ control of redistricting was so absolute that at some point in the mapmaking process they moved beyond merely guaranteeing wins in the maximum number of seats to making sure top Republican donors remained in their districts. This, of course, led to a map that sacrificed traditional redistricting criteria, such as compactness, for blatant partisan advantage. In fact, one district was drawn to include an unpopulated tract of land that contained only the headquarters of an influential corporation; the incumbent did not want to lose out on the company’s donations. [Exhibit 2.]

59. Republican mapmakers made sure to keep the congressional map “in the can” until Republicans were ready to vote on it. This was consistent with a presentation given by Republican consultant John Morgan at an event hosted by the Republican National Committee in Spring 2010 and attended by several Ohio Republican operatives, in which he instructed mapmakers that, when it came to the redistricting process, they should “keep it secret, keep it safe.” [Exhibit 2]; *see also Ohio A. Philip Randolph Inst. v. Householder*, 373 F. Supp. 3d 978, 998-99 (S.D. Ohio 2019) *vacated and remanded sub nom, Chabot v. Ohio A. Philip Randolph Inst.*, 140 S. Ct. 102 (2019).

60. On September 13, 2011, the congressional map was introduced. After a false start in which an enacted map was nearly overturned by a referendum, the General Assembly approved a map, which the Governor signed into law shortly thereafter. *Id.* at 1005. The final map signed into law was an egregious Republican gerrymander. It effectively guaranteed Republicans a 12-4

advantage. To achieve this strikingly lopsided advantage, mapmakers repeated the same pattern in all urban areas in the state: Democratic voters were either “packed” into overwhelmingly Democratic districts or “cracked” into districts with strong Republican anchors to cancel out any Democratic votes. [Exhibit 2]; *see also Ohio A. Philip Randolph Inst.*, 373 F. Supp. 3d at 994. As a three-judge panel hearing a partisan gerrymandering claim against the 2011 map would later recognize, mapmakers “designed these districts with one overarching goal in mind—the creation of an Ohio congressional map that would reliably elect twelve Republican representatives and four Democratic representatives.” *Id.*

61. Sure enough, that was exactly what happened. In 2012, the first congressional elections were held under the 2011 map. Democrats won the races for President and United States Senator in Ohio with margins of over 100,000 votes each. However, Democrats won only four out of 12 congressional seats. What followed was the electoral equivalent of the movie *Groundhog Day*: In every subsequent election held under the map, the same 12 districts went to Republicans and the same four went to Democrats. [Rodden Aff. ¶ 14, 17]

62. A three-judge panel of federal judges struck down the 2011 map as a partisan gerrymander in May 2019. *Id.* Without reaching the merits, the U.S. Supreme Court reversed that decision on justiciability grounds in light of its opinion in *Rucho v. Common Cause*, which found that partisan gerrymandering is non-justiciable in federal courts but noted specifically that “[t]he [s]tates . . . are actively addressing the issue.” 139 S. Ct. 2484, 2507 (2019). The fact remains that the 2011 map “dilute[d] the votes of Democratic voters by packing and cracking them into districts that are so skewed toward one party that the electoral outcome is predetermined.” *Ohio A. Philip Randolph Inst.*, 373 F. Supp. 3d at 994.

B. Ohioans enact Article XIX to end congressional partisan gerrymandering.

63. Following the embarrassment of the 2011 cycle, Ohioans soundly expressed their disapproval of partisan gerrymandered congressional maps.

64. On January 16, 2018, Senate Joint Resolution 5 (S.J.R. 5), a bill to reform congressional redistricting, was introduced by Republican Senator Matt Huffman in the Ohio Senate. [Exhibits 12, 13.]

65. Initially, the bill was not well-received. As noted by many stakeholders speaking in opposition to the bill, the as-introduced version did nothing to stop partisan gerrymandering. [Exhibit 14.]

66. Legislators responded by amending S.J.R. 5. Prior to being reported out by the Senate Government Oversight and Reform Committee, S.J.R. 5 was amended to include a provision stating that if the General Assembly passes a plan by a simple majority, the following standard applies (among others): “[T]he general assembly shall not pass a plan that unduly favors or disfavors a party or its incumbents.” [Exhibit 15.]

67. With the inclusion of this amendment, as well as a few others, S.J.R. 5 gained widespread bipartisan support. In less than three weeks, the bill was unanimously approved by the Senate, reported out of committee in the House, and approved in the House by a vote of 83 to 10. [Exhibit 12.] The legislation then headed to the ballot for a vote on May 8, 2018 as Issue 1.

68. The ballot question that voters were to consider in 2018 created a regime regulating congressional redistricting where none existed before. Whereas the General Assembly could previously enact a congressional redistricting plan like any other piece of legislation, under the new Article XIX, congressional redistricting proceeds in three phases, incentivizing bipartisanship and moving back and forth from the General Assembly to the Commission. *See supra* ¶ 41-43.

69. As outlined above, if the General Assembly passes a simple-majority map, it is not

permitted to “pass a plan that unduly favors or disfavors a political party or its incumbents.” Ohio Constitution, Article XIX, Section 1(C)(3)(a). Second, the General Assembly may not “unduly split governmental units, giving preference to keeping whole, in the order named, counties, then townships and municipal corporations.” *Id.*, Section 1(C)(3)(b). Both provisions reflect skepticism of simple-majority plans: The first, explicitly, and the second, by preventing mapmakers from unabashedly splitting subdivisions in order to obtain partisan advantage. Additionally, the General Assembly must show its work: When it passes a congressional map by a simple majority, it is required to include “an explanation of the plan’s compliance” with the requirements described above. *Id.*, Section 1(C)(3)(d).

70. In addition to these impasse requirements, the new amendments impose certain line-drawing mandates on the body responsible for redistricting irrespective of the method of the plan’s ultimate passage or its level of bipartisan support. These include requirements for population equality, contiguity, and keeping subdivisions whole. *See id.*, Section 2.

71. Prior to placing a question on the ballot, Ohio law requires a ballot board to approve proposed language for the question. As part of this process, proponents of the question submit a statement in support of this measure to the board. For Issue 1, the statement in support was submitted by a bipartisan group of legislators, including Senator Huffman and then-Representative (now Senator) Kirk Schuring. In their statement in support, the proponents explained that Issue 1 would create “A FAIR, BIPARTISAN, and TRANSPARENT PROCESS.” According to the proponents, Issue 1 would “establish fair standards for drawing congressional districts through its requirement of **bipartisan approval, or use of strict anti-gerrymandering criteria.**” Issue 1 would also, according to the proponents, “help keep our communities together by limiting the number of splits of counties, cities, and townships,” and would ensure transparency by “requir[ing]

multiple public meetings before adopting a proposed plan for congressional districts” and “allowing members of the public to submit a plan for congressional districts.” [Exhibit 16.]

72. The ballot board approved the following language for placement on the ballot that May [Exhibit 17]:

Issue 1

TITLE

Proposed Constitutional Amendment

Proposed Constitutional Amendment Proposed by Joint Resolution of the General Assembly

To amend the version of Section 1 of Article XI that is scheduled to take effect January 1, 2021, and to enact Sections 1, 2, and 3 of Article XIX of the Constitution of the State of Ohio to establish a process for congressional redistricting.

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

The proposed amendment would:

- End the partisan process for drawing congressional districts, and replace it with a process with the goals of promoting bipartisanship, keeping local communities together, and having district boundaries that are more compact.
- Ensure a transparent process by requiring public hearings and allowing public submission of proposed plans.
- Require the General Assembly or the Ohio Redistricting Commission to adopt new congressional districts by a bipartisan vote for the plan to be effective for the full 10-year period.
- Require that if a plan is adopted by the General Assembly without significant bipartisan support, it cannot be effective for the entire 10-year period and must comply with explicit anti-gerrymandering requirements.

If passed, the amendment will become effective immediately.

	YES	SHALL THE AMENDMENT BE APPROVED?
	NO	

73. One opinion piece from the run-up to the vote on Issue 1 encapsulated the many statements made in support of the measure. Now-Secretary of State and Respondent LaRose, who supported the reforms as a state senator, wrote, “Under the current process, the party with the majority draws the maps as they see fit, with no need for input from the minority party. . . . The voters of Ohio wanted us to put people before partisanship and work to address this seemingly intractable problem. Thankfully, we did.” He continued, “I want my party to win elections because we have better candidates and better ideas—not because we use modern GIS mapping software and pinpoint-accurate polling data to draw district lines better than the other party.” The piece concluded with a vignette from the nation’s founding: Benjamin Franklin, when asked following the 1787 Constitutional Convention what form of government the United States would adopt, responded, “a Republic, if you can keep it.” If the amendment is adopted, LaRose wrote, “it will ultimately fall to the people charged with carrying out this process to do so in the same spirit of compromise with which it was drafted. We’ve created a balanced redistricting process, it will be up to the people of Ohio to keep it.” [Exhibit 18.]

74. Voters headed to the polls to vote on redistricting reform on May 8, 2018. By an overwhelming margin of 75% to 25%, voters approved Issue 1. [Exhibit 1.] The voters had done their part to ensure that Ohio’s congressional maps would be fair going forward. It now fell to the General Assembly and the Commission to follow the new law.

C. The 2021 congressional redistricting process ignored the new reforms, lacked transparency, and produced gerrymandered congressional maps.

1. The General Assembly and Commission sat on their hands for two months as Ohioans waited for proposed congressional maps.

75. The 2020 census revealed that Ohio would be entitled to 15 congressional districts for the next 10 years, one fewer than its prior 16. [Exhibit 4.]

76. As prescribed by Article XIX, the General Assembly was tasked with approving a bipartisan map with boundaries for each of these 15 districts in the first instance.

77. Despite promises of transparency and bipartisanship, the congressional redistricting process got off to an inauspicious start. As September 2021 passed, the General Assembly said nothing about congressional redistricting. Slowly, it became apparent that the General Assembly would not even convene a hearing to discuss congressional redistricting before blowing through its first September 30 deadline. [Exhibit 4.]

78. On September 29, the Senate Democratic caucus unveiled a congressional map, formally introduced by Senate Minority Leader Kenny Yuko and Senator Sykes. [Exhibit 19.] That map was not taken up for consideration in committee, and neither Senate nor House Republicans introduced a map of their own.

79. Instead, that same day, Senate President Huffman announced that the General Assembly would not meet the September 30 deadline. [Exhibit 20.] The process therefore moved to the Commission.

80. The Commission likewise did nothing. The prior month, during state legislative redistricting, Commissioner LaRose expressed disappointment at how that process had not unfolded in the bipartisan manner he envisioned. “I believe October 1st we’ll be back to work here with a new mission, drawing congressional districts for the state of Ohio. And when we are, this process will be different. It is not going to work this way next time,” he said at the time. [Exhibit 21.] He was right, the congressional process *was* different. Instead of running a partisan process in which gerrymandered maps were drawn in secret by the Republican legislative leaders and then rubberstamped by the Republican Commissioners, the Commission simply did nothing at all. As October dragged on, no member of the General Assembly or Commission submitted a map for

consideration. [Exhibit 5.]

81. On October 28, 2021, the Commission at last held its first and only hearing on congressional redistricting at the statehouse. The hearing was pro forma. Indeed, before the hearing was held, Co-Chair Cupp stated that the Commission would miss its October 31 deadline, would not be adopting a map, and would leave the process to the General Assembly. [Exhibit 5.] After the hearing concluded, the Commission took no further action. The second constitutional deadline of October 31 came and went, and the public was no closer to seeing a likely congressional map. [Exhibit 22.]

2. The House and Senate Republican caucuses introduced egregiously gerrymandered maps with no notice to the public, in an inaccessible format, and with no meaningful opportunity for the public to comment.

82. As discussed, November is the first month in which the General Assembly may pass a partisan map with a simple majority. And so, after running out the clock on redistricting processes requiring bipartisanship, the General Assembly finally sprang into action.

83. On the first day of November, the House Government Oversight Committee and the Senate Local Government and Elections Committee announced that hearings on redistricting proposals would be held on November 3, although no new maps were disseminated in advance of those hearings. As the two hearings gaveled into session, Republicans in each house introduced proposed congressional maps. [Exhibit 6.] This was the first the public (or Democratic members of the General Assembly) had seen of any Republican proposal. The timing of the proposals guaranteed that no meaningful testimony on the maps could be given, since all testimony was required to have been submitted at least 24 hours in advance of the hearings. [Exhibits 7, 8.]

84. Both maps were extreme partisan gerrymanders. [Exhibit 6.] Because the maps were never released in a format that was capable of being viewed in mapping software, it is difficult

to precisely gauge the maps' performance on metrics like partisanship and compactness. [Exhibits 7, 8.] But such precision is unnecessary to see the extreme partisan nature of the maps. According to public reproductions of the maps in Dave's Redistricting App traced from the photos the Republican legislators provided, both maps create only two solidly Democratic districts, while the remaining districts either lean Republican or heavily favor Republicans. [Exhibit 6.]

85. The House Republican proposal was presented at the House Government and Oversight Committee hearing at 9:30 a.m. on November 3, 2021. Members of the Committee were shown the proposal 15 minutes before the start of the hearing. When a Democratic member requested a recess to review the maps, the chair overruled her and began the hearing. The map was presented by sponsor Representative Scott Oelslager. When members of the Committee asked Representative Oelslager substantive questions about the map, such as whether the map's subdivision splits comply with Article XIX, whether the map kept communities together, or why certain districts were non-compact, he responded that he was not in a position to answer "technical questions." Representative Oelslager explained that this was because he did not draw the map. Instead, that work was done by House staffer Blake Springhetti, who was not made available to give testimony on the map. [Exhibit 7.]

86. Representatives also complained that the map was in a format that did not allow for meaningful analysis. [Exhibit 7.] Indeed, the House proposal was released as a grainy PDF image, in which county, city, and township splits could not be evaluated, nor could partisan composition be determined by anything other than guesswork. Although the House proposal did include a "block assignment file," the file consisted of a 5,882-page PDF listing each Ohio census block and the district to which it was assigned, a format that was effectively unusable in any mapping program and appeared designed to make it difficult to analyze the proposal accurately. [Exhibit

23.]

87. The Senate proposal was even less accessible. The map was made available to Committee members and the public at the moment the Senate Local Government and Elections Committee gavelled to order. [Exhibit 8.] The only format the map was available in was a PDF image. [Exhibit 23.] Neither proposal was made available in a more accessible format prior to the Joint Committee gaveling to order on November 10.

88. Neither sponsor for the Senate or House Republican proposal submitted written testimony in advance of their appearance. One member of the House Government Oversight Committee noted at the November 3 hearing that this practice was incongruous with the requirement that the public submit testimony 24 hours in advance, and requested the chair waive this requirement. The chair demurred. [Exhibit 7.]

89. Public testimony on the Republican proposals was uniformly negative. Not a single individual testified as a proponent in favor of the Senate Republican proposal. [Exhibit 24.]¹ At committee hearings on November 4, 8, 9, and 10, community members spoke in opposition to the Republican proposals. Speakers noted that the maps unnecessarily split the state's largest counties, thereby dividing communities of interest, [Exhibit 25], and did not reflect the partisan preferences of Ohio's voters [Exhibit 26].

3. The General Assembly convened a Joint Committee that saw near-uniform public opposition to the proposed Republican plans.

90. Under Article XIX, Section 1(G), “[b]efore the general assembly passes a congressional district plan under any division of this section, a joint committee of the general assembly shall hold at least two public committee hearings concerning a proposed plan.”

¹ Although one individual commenting on November 4 was listed as a proponent, their submitted testimony criticizes the Republican Senate proposal.

91. On November 5, the General Assembly announced that a Joint Committee on Redistricting would convene on November 10.

92. The Joint Committee consisted of four Republican elected officials—Senator Theresa Gavarone as Co-Chair, Representative Shane Wilkin as Co-Chair, Senator Rob McColley, and Representative Oelslager—and two Democratic elected officials—Senate Minority Leader Yuko and Representative Beth Liston. [Exhibit 27.]

93. At the November 10 hearing, Democratic leaders introduced an amended map. [Exhibit 28.] No other congressional proposals were presented during the November 10 hearing.

94. Six members of the public testified at the November 10 hearing. None of those individuals testified in support of the proposed Republican maps. [Exhibit 28.]

95. The Joint Committee held a second hearing on November 12. More than 20 members of the public spoke in opposition to the proposed Republican plans at the hearing. [Exhibit 29.]

96. At the conclusion of the November 12 hearing, Representative Liston inquired as to whether the Joint Committee would continue to meet and whether the Joint Committee would present a unified proposal. Co-Chair Wilkin provided no information on those points and abruptly adjourned the Committee. [Exhibit 29.]

4. The General Assembly adopted a congressional map that is even more gerrymandered than the 2011 map.

97. Having checked the constitutionally required box of holding two Joint Committee hearings, the process reached its inevitable dénouement: a new partisan gerrymander to replace the 2011 partisan gerrymander. Late in the evening on November 15, Senate Republicans, led by Senator McColley, introduced an amended map as a substitute bill. [Exhibit 30.] The map was, yet again, only released as a PDF image, and members of the public would be expected to submit

comments on the new plan the next morning. [Exhibit 31.] In its findings, the legislation claimed the map included six “safe” Republican seats, two “safe” Democratic seats, and seven “competitive” seats. [Exhibit 32.]

98. These findings do not stand up to scrutiny. In reality, the plan systematically and unduly favors Republicans. As set forth in the affidavit of expert of Dr. Jonathan Rodden, considering precinct-level election results from all statewide elections from 2016 to 2020, Republicans have an *even better* chance of winning a supermajority of seats than they did under the map adopted in 2011. [Rodden Aff. ¶ 14-19.] Of the seven supposedly “competitive” districts, six advantage Republicans, many decidedly so, with Republicans favored to win by more than 12 percentage points in one such district. [*Id.* ¶ 14.]

99. Moreover, under these exact same indices, the map in place from 2011-2020 contained districts with partisan index spreads as close (or closer) than those of the districts now characterized as “competitive.” And even then, the party favored by the partisan index won every single one of those districts in each election held under the 2011 map. [*Id.* at ¶ 14, 17.]

100. Dr. Rodden ultimately concludes that Democrats can anticipate winning three out of 15 seats under the 2021 Congressional Plan. This represents 20% of the seats and, remarkably, fewer seats than Democrats won under the severely gerrymandered 2011 plan. [*Id.* ¶ 16-19.]

101. Nonetheless, the Senate Local Government and Elections Committee considered the bill, heard public testimony from only nine individuals (all in opposition), and approved it with a vote of 5-2 along partisan lines. [Exhibit 31.]

102. Notably, the Joint Committee, which previously met to consider other proposals on November 12, never gaveled back in to consider this new amendment before it was put on the agenda for consideration in the Senate Local Government and Elections Committee. Thus,

although Article XIX, Section 1(G) required the Joint Committee to hold two public hearings before the General Assembly passed a congressional plan, the Joint Committee never held *any* hearings regarding the 2021 Congressional Plan.

103. Instead, the Senate Rules Committee voted to put the map on the floor later in the day, and the bill was then rushed to the Senate floor where Republicans approved it unanimously, without the support of any of their Democratic colleagues. [Exhibit 33.]

104. After the bill moved to the House, House Republican leadership tasked the House Government Oversight Committee with considering the 2021 Congressional Plan. In what he described as “the Democratic caucus’s desire to have a 10-year map, keep the largest counties whole, keep communities of interest together, make compact districts, and reflect the voting interests of Ohio voters,” Representative Richard Brown offered an amendment to the 2021 Congressional Plan as “a compromise on congressional maps.” Chair Wilkin rejected Representative Brown’s proposed amendment as “out of order.” He then immediately allowed Senator McColley to present the 2021 Congressional Plan, which Senator McColley claimed (inaccurately) was “the most competitive map offered by any caucus to date.” The Committee then referred the bill to the full House of Representatives on an 8-5 party-line vote. [Exhibit 34.]

105. The next day, the full House of Representatives passed the bill 55 to 36. Several Republicans joined the Democrats in voting against the bill. [Exhibit 35.] These included Representatives Click, Edwards, Koehler, and Vitale. Responding to an Ohio Capitol reporter, Republican Representative Kyle Koehler stated that he voted against the bill because both his Republican and Democratic constituents objected to how the bill carved the city of Springfield—the county seat of Clark County—out of Clark County. “I can’t think of a time I have ever had all my constituents agree on one issue,” aside from their opposition to the splitting of Clark County,

he said. [Exhibit 36.]

106. In the final bill, the General Assembly included a section describing the Plan’s alleged compliance with Article XIX, Section 1(C)(3)(a)-(c), as required by Section 1(C)(3)(d). [Exhibit 32.] On all accounts, the statement is deficient and misleading.

107. As an initial matter, the General Assembly justifies its compliance with each requirement by comparing the 2021 Congressional Plan to the 2011 plan—a plan that was not subject to Article XIX’s requirements at all and is therefore an inapposite benchmark. [Exhibit 32.] Any of the alternative plans submitted during the 2021 cycle by the Democratic caucuses or members of the public would be more apt comparators.

108. Second, to support its compliance with Section 1(C)(3)(a), the General Assembly relies primarily on the number of “competitive” districts in its Plan. [Exhibit 32.] However, not only does it fail to provide any analysis (or even definition) of competitiveness, *see supra* ¶ 98, but “competitiveness” is not mentioned anywhere in Section 1(C)(3)(a).

109. Third, the General Assembly inaccurately describes the Plan’s treatment of incumbents by claiming that two Republican incumbents are paired in the Cincinnati-based District 1 [Exhibit 32.] Despite the fact that the two incumbents are technically “paired in one district” based on their residential addresses, one of the two has already announced his intention to run in a neighboring district, *see infra* ¶ 123, which includes a large part of his current district and leaves him unpaired with any incumbent of any party.

110. Fourth, the General Assembly reports only the total number of governmental units that are split in the plan (e.g., the number of counties that are split), rather than the number of times such units are split. For example, if the plan splits a county twice, the statement would only count this as a single county split for purposes of the plan-wide split count. Nor does the statement

explain why such splits were necessary on an individual basis. [Exhibit 32.]

111. Finally, the General Assembly makes essentially no effort to explain or justify the compactness of its districts (or lack thereof) besides remarking that a “visual inspection” shows that it is more compact than the 2011 plan, which was notorious for its oddly shaped, non-compact districts. [Exhibit 32.]

112. These deficiencies aside, on November 19, the General Assembly sent the bill to Governor DeWine, and he signed it into law fewer than 24 hours after it hit his desk. Governor DeWine’s actions in his dual but distinct roles as a member of the Ohio Redistricting Commission and as the signing authority for the General Assembly’s legislation are emblematic of a deeply cynical process that betrayed the 2018 redistricting reforms that he once championed. [Exhibit 37.] Governor DeWine neither introduced a map before the Commission nor endeavored to verify his claim that the 2021 Congressional Plan sent to him for signature made “the most progress to produce a fair, compact, and competitive map” when “compared to the other proposals offered from House and Senate caucuses.” [Exhibit 10.] Indeed, that claim is patently false.

5. The General Assembly adopted a congressional map that violates the Ohio Constitution.

113. Because the 2021 Congressional Plan was approved by the General Assembly without any Democratic votes, it is subject to the additional impasse requirements of Section 1(C)(3) of Article XIX. Under those requirements, in relevant part, the plan may not unduly favor one party or its incumbents and may not unduly split political subdivisions.

114. The 2021 Congressional Plan fails to meet either of these requirements.

a. The 2021 Congressional Plan unduly favors the Republican Party and its incumbents, while disfavoring the Democratic Party.

115. The 2021 Congressional Plan unduly favors the Republican Party.

116. As described in Dr. Rodden’s affidavit, the 2021 Congressional Plan is likely to award Republicans 12 out of 15 (or 80%) of Ohio’s congressional seats. [Rodden Aff. ¶ 14-19.]

117. Under a variety of metrics that political scientists use to measure undue partisanship in redistricting, the 2021 Congressional Plan strongly and unduly favors Republicans and Republican incumbents. [*Id.* ¶ 22-49.]

118. For example, one metric used by Dr. Rodden to measure partisan bias is the efficiency gap. Simply stated, the efficiency gap measures the number of votes that are likely to be “wasted” under a given congressional plan. “Wasted votes” are understood as votes either in excess of what was needed for a party to win a particular district or the number of votes cast for a party that loses in a district. The efficiency gap is the difference between the wasted votes received by one party and the wasted votes received by another, divided by the total number of votes. Partisan gerrymanders create large numbers of wasted votes by ensuring that the minority party wins by very large margins in a small number of districts while losing by closer (but comfortable) margins in many more districts. The larger the efficiency gap in a given plan, the greater the partisan bias. [*Id.* ¶ 36-39.]

119. Using data from statewide partisan elections in Ohio from 2016 to 2020 and aggregating precinct-level data from that set to the level of districts in the 2021 Congressional Plan, Dr. Rodden concludes that the plan has a 24% efficiency gap in favor of Republicans—a figure reflecting an extraordinary pro-Republican bias. Dr. Rodden further shows that the efficiency gap in the 2021 Congressional Plan is an outlier compared to other states; its only peers are extreme gerrymanders from the 2010 redistricting cycle and (with only two exceptions) it beats out even those gerrymanders. [*Id.* ¶ 40-43.]

120. Another sign of the 2021 Congressional Plan’s strong pro-Republican bias is the

lack of any match between the outcomes it is likely to produce and average statewide electoral outcomes. As discussed, the 2021 Congressional Plan is most likely to result in Republicans winning 80% of the state's congressional seats. However, considering statewide elections from 2016 to 2020, Republicans receive around 53% of the votes on average, whereas Democrats have received 47% of the statewide vote share.² [*Id.* ¶ 13.]

121. To facilitate cross-state comparison, Dr. Rodden takes Republicans' average vote share based on U.S. Senate and presidential elections from 2016 through 2020. Next, Dr. Rodden compares the 2021 Congressional Plan to Ohio's peer states, namely, states that are generally competitive statewide and have more than four congressional districts (e.g., North Carolina, Florida, Pennsylvania, Colorado, Arizona, Wisconsin). Considering this data, the 2021 Congressional Plan has a larger spread between statewide vote share and Congressional seats awarded than any other comparable state, with the sole exception of Oregon's map passed two decades ago. [*Id.* ¶ 22-26 & n.10.]

122. The 2021 Congressional Plan similarly unduly favors Republican incumbents. As Dr. Rodden notes in his affidavit, of the 12 Republican incumbents that held seats under the 2011 plan, 11 continue to enjoy Republican majorities in their districts based on the electoral data described above. The only exception to this is Congressman Anthony Gonzalez, who announced his retirement this year and will not be seeking reelection. [*Id.* ¶ 50.]

123. The districts in southwest Ohio are no exception to this rule. Nominally, the Cincinnati-based District 1 double-bunks Republican incumbents Steve Chabot and Brad

² If elections as far back as 2012 are considered, Republicans receive a slightly higher 54% of the statewide vote, on average. However, because Dr. Rodden did not have access to precinct level data for elections before 2016, he was unable to use such data to determine the likely partisan outcomes in a given district, and the corresponding statewide figures therefore cannot be used as a benchmark to compare against district results. [Rodden Aff. ¶ 18 & n.7.]

Wenstrup in a district that leans Republican by 2.2%. [*Id.* ¶ 14.] In actuality, however, the 2021 Congressional Plan creates the “open” safe Republican District 2. The new District 2 contains a substantial portion of the current District 2, which Congressman Wenstrup presently represents. It was therefore plain during the bill’s consideration that Congressman Wenstrup would seek election in Ohio’s District 2 and win with ease. Indeed, before Governor DeWine even signed the bill into law, Congressman Wenstrup publicly declared his intent to run for reelection in the new District 2. [Exhibit 38.] As for District 1, Congressman Chabot has consistently outperformed partisan indices. And, in any event, District 1 represents a “best case” scenario for Republicans: Article XIX prohibited Republicans from carving up Cincinnati as they had before; nonetheless, by cracking Black communities in Hamilton County, *see infra* ¶ 129-30, Republicans kept the district as Republican-friendly as possible. [Rodden Aff. ¶ 63-67.]

124. The 2021 Congressional Plan is not so kind to Democratic incumbents. Of the four incumbents under the plan, one (Congressman Tim Ryan, who has announced a run for the U.S. Senate) is placed in a safely Republican district already held by a Republican incumbent. Another, Congresswoman Marcy Kaptur, is placed in a Republican-majority district with very little of the territory from her previous district. [*Id.* ¶ 54.]

125. Notably, although Ohio lost a congressional district after the 2020 Census, it was far from inevitable that a Democrat incumbent would lose a seat. Rather, although two-thirds of Ohio counties lost population over the past decade, Columbus and Cincinnati (both of which lean Democratic) gained population—largely due to an increase in the Black, Latino, and Asian populations. [Exhibit 39.]

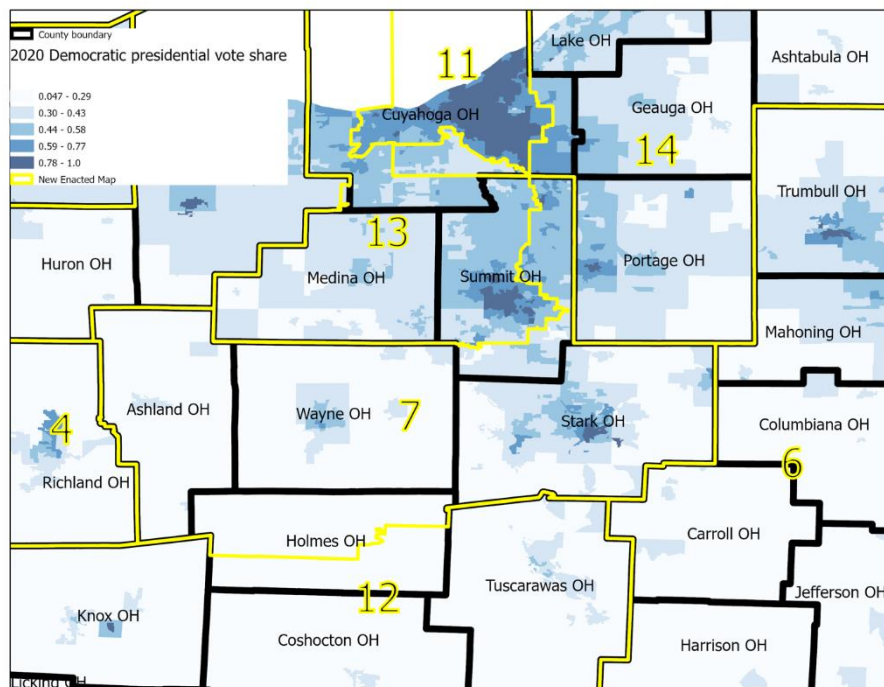
b. The 2021 Congressional Plan unduly splits governmental units.

126. In service of the partisan ends described above, the 2021 Congressional Plan

unnecessarily splits counties in metropolitan areas.

127. For example, in northeast Ohio, the legislature needlessly splits Summit County in order to divide the city of Akron from some of its Democratic suburbs, thereby ensuring the latter are submerged in the safe Republican District 7. A bit north from there, after packing as many Democratic votes as possible into the Cleveland-based District 11, the 2021 Congressional Plan carves two more contorted districts out of Cuyahoga County. District 14 begins in several cities just south of Cleveland, running eastward through a narrow corridor that at one point consists of a *single census block* (without which the district would not even be contiguous) and expanding south to include Portage County, and north and east to include Geauga and Ashtabula Counties. [Rodden Aff. ¶ 74-75.]

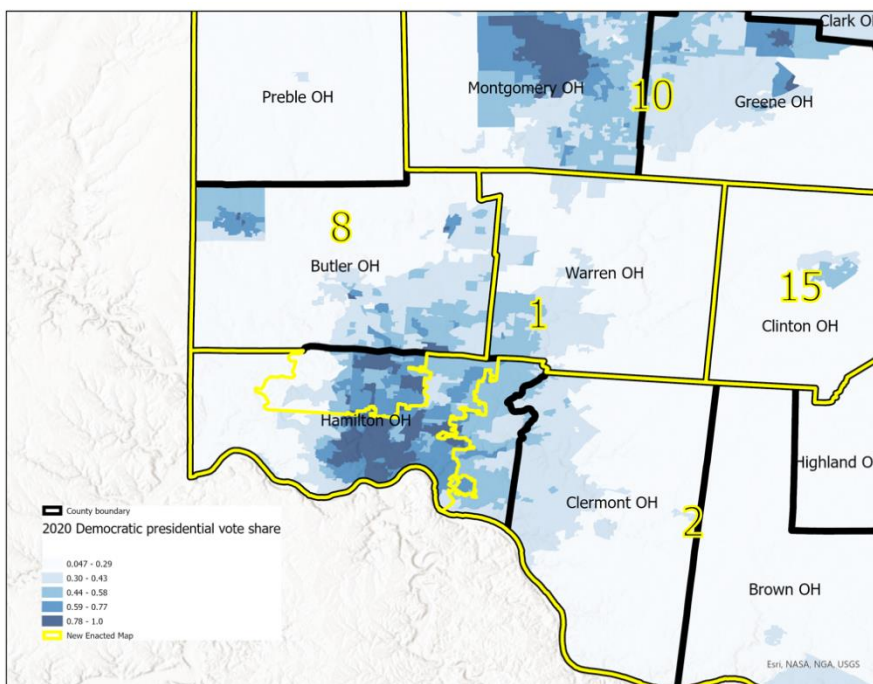
Partisanship and the Boundaries of the Enacted Plan, Northeast Ohio



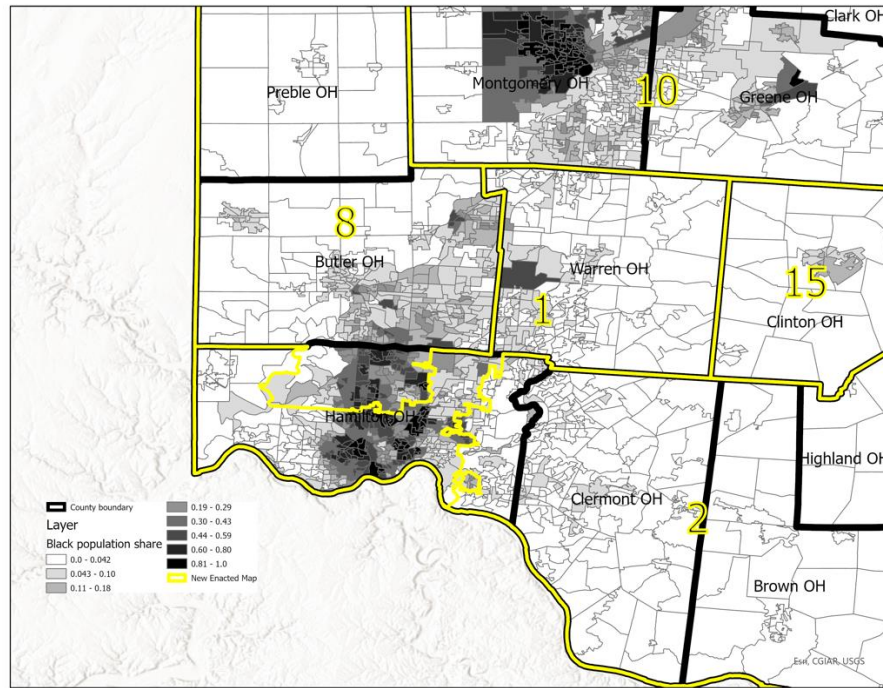
128. These splits were wholly unnecessary, as demonstrated by alternative plans submitted to the General Assembly. In both Democratic proposals as well as the proposal of the Ohio Citizens' Redistricting Commission ("OCRC"), Summit County is kept whole and Cuyahoga County, which is too large to fit in a single congressional district, is divided only once. [*Id.* ¶ 74.]

129. The 2021 Plan's splits in southwest Ohio are similarly egregious. The alternative plans described above each place the Cincinnati metropolitan area in a single, compact district wholly within Hamilton County, keeping Cincinnati's Black community together and splitting Hamilton County only once. The 2021 Congressional Plan, by contrast, tears Hamilton County into three districts, not one of which is wholly contained within Hamilton County, embodying a clear partisan ploy. [*Id.* ¶ 63-64.]

Partisanship and the Enacted Plan's Districts, Hamilton County and Surroundings



Race and the Enacted Plan's Districts, Hamilton County and Surroundings



130. Each district pairs diverse, Democratic-leaning portions of Hamilton County with far-flung rural areas, with the effect of both whitewashing each district and submerging the Hamilton County vote within Republican-leaning districts. First, the Black community of northern Hamilton County is combined with rural counties to the north to form District 8, with its northern boundary 85 miles from Hamilton County, resulting in a safe Republican district. Next, Cincinnati is combined with Warren County via a narrow corridor in northeast Hamilton County to form District 1. Finally, the eastern suburbs of Cincinnati are combined with rural counties—stretching all the way to the eastern border of the state—to form the heavily Republican District 2. By hacking apart Hamilton County—where voters favored the Democratic nominee for President by a margin of over 15% in 2020 [Exhibit 40]—the General Assembly artfully creates two safe Republican and one Republican-leaning district. No conceivable reason explains the 2021 Congressional Plan's rending of Hamilton County beyond a desire to gain partisan advantage. [Rodden Aff. ¶ 14, 63-68.]

FIRST CAUSE OF ACTION—Violation of Article XIX, Section 1(C)(3)(a) of the Ohio Constitution

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

132. The 2021 Congressional Plan was passed by a simple majority of the General Assembly without bipartisan support. As such, it is subject to the requirements of Article XIX Section 1(C)(3).

133. These requirements include the requirement of Section 1(C)(3)(a), which prohibits the General Assembly from passing a plan “that unduly favors or disfavors *a political party* or its *incumbents*.” (emphasis added).

134. The 2021 Congressional Plan unduly favors the Republican Party and its incumbents, while disfavoring the Democratic Party and its incumbents. The partisan breakdown of the 2021 Congressional Plan is 12 Republican seats to three Democratic seats. This result, which is an extreme partisan gerrymander in favor of Republicans by any measure, is achieved by the packing and cracking of political subdivisions and communities of color.

135. Of the 12 districts currently held by Republican incumbents, all but one remains likely to vote Republican, with the exception of District 13, which is held by a retiring incumbent and only slightly tilts toward the Democratic Party. Meanwhile, among the already disproportionately small four-member Democratic delegation, two members are now more likely than not to fail to gain reelection under the 2021 Congressional Plan. In one district, a Democratic incumbent is paired with a Republican incumbent in a solid red district. In another, the Democratic incumbent is placed in a dramatically reconfigured district that leans Republican.

136. Countless other plans presented to the General Assembly, including the House and Senate Democratic proposals, comply with all requirements of Article XIX, while at the same time

keeping communities together and achieving a partisan balance that resembles voter preferences.

137. The 2021 Congressional Plan’s differential treatment of Democrats and Republicans, as well as its artfully precise splits of communities and carefully constructed district boundaries, makes clear that the plan not only unduly favors the Republican Party and its incumbents in its effect, but also in its intent.

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

139. Respondents acted in bad faith in adopting a plan in contravention of Article XIX, Section 1(C)(3)(a), as evidenced by its failure to adhere to Article XIX’s procedural requirements and its “contrived attempts to justify an untenable position” with respect to whether the 2021 Congressional Plan meets the requirements listed in Section 1(C)(3). *See State ex rel. The Fairfield Leader v. Ricketts*, 56 Ohio St. 3d 97, 104, 564 N.E.2d 486, 493 (1990).

SECOND CAUSE OF ACTION—Violation of Article XIX, Section 1(C)(3)(b) of the Ohio Constitution

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

141. The 2021 Congressional Plan was passed by a simple majority of the General Assembly without bipartisan support. As such, it is subject to the requirements of Article XIX Section 1(C)(3).

142. These requirements include Section 1(C)(3)(b), which states that the “general assembly shall not unduly split governmental units, giving preference to keeping whole, in the order named, counties, then townships and municipal corporations.”

143. The 2021 Congressional Plan unduly splits governmental units. The 2021 Congressional Plan excessively divides communities in northeast and southwest Ohio, despite that

no other redistricting criterion (constitutional or otherwise) requires it to do so—as demonstrated by the map put forward by the Senate Democrats, for example. As such, those splits are undue.

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

145. Respondents acted in bad faith in adopting a plan in contravention of Section 1(C)(3)(b), *see supra* ¶ 139.

PRAYER FOR RELIEF

Accordingly, Relators respectfully request that this Court:

A. Declare that the apportionment plan adopted by Respondents is invalid for failure to comply with Article XIX of the Ohio Constitution;

B. Issue a permanent injunction and judgment barring Respondents from calling, holding, supervising, administering, or certifying any elections under the 2021 Congressional Plan, as Relators have no adequate remedy at law and will be irreparably harmed by the continued violation of their constitutional rights;

C. Hold hearings, consider briefing and evidence, and otherwise take actions necessary to direct the Respondents as to characteristics of a plan to be adopted;

D. Retain jurisdiction of this action to render any and all further orders that the Court may from time to time deem appropriate, including, but not limited to, determining the validity of any new redistricting plan adopted by Respondents pursuant to the Ohio Constitution and taking measures necessary, such as modifying election-related deadlines, to ensure the 2022 election is conducted pursuant to a constitutional plan; and

E. Grant such other or further relief the Court deems appropriate, including, but not limited to, an award of Relators' attorneys' fees and reasonable costs.

Respectfully submitted,

/s Donald J. McTigue

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

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

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

Counsel for Relators

IN THE SUPREME COURT OF OHIO

Regina Adams, *et al.*,

Relators,

v.

Governor Mike DeWine, *et al.*,

Respondents.

Case No. _____

Original Action Filed Pursuant to Ohio
Constitution, Article XIX, Section 3(A)

VERIFICATION OF DEREK S. CLINGER

Franklin County

/ss

State of Ohio

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

1. I am an attorney at law licensed to practice in the State of Ohio, and I serve as legal counsel to the Relators in this action.
2. Exhibit 1 to the Complaint is a true and correct copy of election results for Issue 1 from the May 8, 2018 Primary Election Official Canvass on Secretary of State Frank LaRose's website.
3. Exhibit 2 to the Complaint is a true and correct copy of the Ohio Campaign for Accountable Redistricting's Ohio Redistricting Transparency Report, entitled "The Elephant in the Room."
4. Exhibit 3 to the Complaint is a true and correct copy of a February 13, 2021 article in The Blade by Liz Skalka, entitled "With new maps coming in 2021, days are numbered for Ohio's gerrymandered 'snake on a lake'."
5. Exhibit 4 to the Complaint is a true and correct copy of an October 1, 2021 article in Springfield Sun-News by Jim Gaines, entitled "Ohio lawmakers miss deadline to draw new congressional districts. What's next?"
6. Exhibit 5 to the Complaint is a true and correct copy of an October 27, 2021 article in Cleveland.com by Andrew Tobias, entitled "Ohio Redistricting Commission to hold meeting, but won't approve congressional maps before adjourning."


7. Exhibit 6 to the Complaint is a true and correct copy of a November 3, 2021 article in The Statehouse News Bureau by Andy Chow, entitled "Democratic lawmakers unveil Congressional map proposals."
8. Exhibit 7 to the Complaint is a true and correct transcription of the House Government Oversight Committee's November 3, 2021 hearing.
9. Exhibit 8 to the Complaint is a true and correct transcription of the Senate Local Government and Elections Committee's November 3, 2021 hearing.
10. Exhibit 9 to the Complaint is a true and correct copy of a November 19, 2021 article in The Ohio Capital Journal by Nick Evans, entitled "Ohio House approves congressional maps largely along party lines."
11. Exhibit 10 to the Complaint is a true and correct copy of a November 20, 2021 article in The Columbus Dispatch by Laura A. Bischoff, entitled "Gov. DeWine approves congressional map over objections of voting rights groups, Democrats."
12. Exhibit 11 to the Complaint is a true and correct copy of a report from the League of Women Voters of Ohio and Common Cause Ohio, entitled "Ohio's Gerrymandering Problem: Why Haven't We Fixed This Yet?"
13. Exhibit 12 to the Complaint is a true and correct copy of the Ohio Legislative Service Commission's final analysis of S.J.R. 5, as adopted by the 132nd General Assembly.
14. Exhibit 13 to the Complaint is a true and correct copy of S.J.R. 5, as introduced during the 132nd General Assembly Regular Session (2017-2018).
15. Exhibit 14 to the Complaint is a true and correct copy of the League of Women Voters of Ohio's January 23, 2018 testimony on S.J.R. 5.
16. Exhibit 15 to the Complaint is a true and correct copy of S.J.R. 5, as reported by the Senate Government Oversight and Reform Committee.
17. Exhibit 16 to the Complaint is a true and correct copy of the bipartisan statement submitted to the Ohio Ballot Board for approval for ballot language for Issue 1.
18. Exhibit 17 to the Complaint is a true and correct copy of the certified ballot language for Issue 1.
19. Exhibit 18 to the Complaint is a true and correct copy of a February 18, 2018 opinion piece in Cleveland.com by Frank LaRose, entitled "Ohio's historic congressional redistricting reform."
20. Exhibit 19 to the Complaint is a true and correct copy of a September 30, 2021 article in The Ohio Capital Journal by Susan Tebben, entitled "Senate Dems propose congressional map."

21. Exhibit 20 to the Complaint is a true and correct copy of a September 30, 2021 article in The Associated Press by Farnoush Amiri, entitled "Ohio lawmakers set to miss another redistricting deadline."
22. Exhibit 21 to the Complaint is a true and correct copy of a transcription of the Ohio Redistricting Commission's September 15, 2021 meeting
23. Exhibit 22 to the Complaint is a true and correct copy of a November 1, 2021 article in The Hill by Reid Wilson, entitled "Ohio redistricting commission gives up on US House map."
24. Exhibit 23 to the Complaint is a true and correct copy of a November 3, 2021 Daily Kos Elections Live Digest by David Nir, entitled "OH Redistricting."
25. Exhibit 24 to the Complaint is a true and correct copy of the Senate Local Government and Elections Committee webpage listing the names of individuals who submitted testimony regarding S.B. No. 237 and S.B. No. 258.
26. Exhibit 25 to the Complaint is a true and correct copy of written testimony submitted by Catherine Turcer at the Senate Local Government and Elections Committee's November 8, 2021 hearing.
27. Exhibit 26 to the Complaint is a true and correct copy of written testimony submitted by Andrea Yagoda at the Senate Local Government and Elections Committee's November 8, 2021 hearing.
28. Exhibit 27 to the Complaint is a true and correct copy of the General Assembly's announcement of a meeting of the Joint Committee on Congressional Redistricting.
29. Exhibit 28 to the Complaint is a true and correct transcription of the Joint Committee on Congressional Redistricting's November 10, 2021 hearing.
30. Exhibit 29 to the Complaint is a true and correct transcription of the Joint Committee on Congressional Redistricting's November 12, 2021 hearing.
31. Exhibit 30 to the Complaint is a true and correct copy of a November 16, 2021 article in The Statehouse News Bureau by Andy Chow, entitled "Proposed Congressional maps show different approaches to representation in Ohio."
32. Exhibit 31 to the Complaint is a true and correct transcription of the Senate Local Government and Elections Committee's November 16, 2021 hearing.
33. Exhibit 32 to the Complaint is a true and correct copy of pages 901 through 903 of S.B. 258.
34. Exhibit 33 to the Complaint is a true and correct transcription of the Senate's November 16, 2021 floor debate.
35. Exhibit 34 to the Complaint is a true and correct transcription of the House Government Oversight Committee's November 17, 2021 hearing.

36. Exhibit 35 to the Complaint is a true and correct transcription of the House's November 18, 2021 floor debate.
37. Exhibit 36 to the Complaint is a true and correct copy of a November 19, 2021 article in Ohio Public Radio by Andy Chow, entitled "Ohio House Approves Congressional District Map, Now Heads To Gov. DeWine."
38. Exhibit 37 to the Complaint is a true and correct copy of an October 23, 2018 article in The Cincinnati Enquirer by Jackie Borchardt, entitled "Gerrymandering: The secret issue Ohio will vote on in the midterm election."
39. Exhibit 38 to the Complaint is a true and correct copy of a November 19, 2021 article in The Highland County Press, entitled "Rep. Wenstrup announces intent to seek re-election in 2nd District."
40. Exhibit 39 to the Complaint is a true and correct copy of an August 12, 2021 article in The Columbus Dispatch by Mark Ferencik, Bill Bush, and Marc Kovac, entitled "Census: Two-thirds of Ohio counties lose population; Columbus passes 900,000 residents."
41. Exhibit 40 to the Complaint is a true and correct copy of the 2020 presidential election results in Hamilton County.
42. Exhibit 41 to the Complaint is a true and correct copy of the expert affidavit of Dr. Jonathan Rodden.
43. I have read the Complaint filed in this action and affirm that the factual allegations contained therein are true.


Derek S. Clinger

Sworn to before me this 22 day of November, 2021.


Notary Public
MICHAEL J. MATTHEW, Attorney At Law
Notary Public - State of Ohio
My Commission has no expiration date.
Section 147.03 R.C.

My commission expires _____