

**IN THE  
SUPREME COURT OF OHIO**

	)	
<b>LEAGUE OF WOMEN</b>	)	
<b>VOTERS of OHIO, ET AL.</b>	)	
<b>Relators</b>	)	<b>Case No. 2021-1449</b>
	)	
v.	)	<b>Original Action Pursuant to</b>
	)	<b>Ohio Const., Art. XIX § 3</b>
<b>OHIO REDISTRICTING</b>	)	
<b>COMMISSION, ET. AL.</b>	)	
<b>Respondents</b>	)	
	)	

	)	
<b>REGINA C. ADAMS, ET AL.</b>	)	
<b>Relators</b>	)	<b>Case No. 2021-1428</b>
	)	
v.	)	<b>Original Action Pursuant to</b>
	)	<b>Ohio Const., Art. XIX, § 3</b>
<b>GOVERNOR MIKE DEWINE, ET. AL.</b>	)	
<b>Respondents</b>	)	
	)	

**BRIEF OF AMICUS CURIAE OHIO ENVIRONMENTAL COUNCIL  
IN SUPPORT OF RELATORS**

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## INTRODUCTION

When faced with the direct and present impacts of climate change, the rising costs of water and electricity, and air pollution surrounding their communities, Ohioans cannot afford to wait any longer for fair representation in Congress. Partisan gerrymandering subverts the fundamental values of democracy. It subverts the goals of representation of the people of Ohio in Washington D.C. Ohio can only have a healthy environment if we have a healthy democracy. A partisan gerrymander of our congressional district map is a textbook symptom of an unhealthy democracy. And it ignores the will of Ohio voters.

In 2018, in response to the 2011 redistricting process, Ohio voters rejected partisan gerrymandering and significantly revised Article XIX of the Ohio Constitution. This amendment, passing by a 75% supermajority of Ohio voters, was designed to end gerrymandering. It created a bipartisan process for the creation of Ohio's new congressional redistricting plan. It instructed either the Ohio Redistricting Commission or the Ohio General Assembly to make the maps following certain rules designed to minimize community splits. It also included a bar against partisan gerrymandering when a map did not have partisan support: "The general assembly shall not pass a plan that unduly favors or disfavors a political party or its incumbents." Article XIX, Section 1(C)(3)(a), Ohio Constitution. Similarly, "the general assembly shall not unduly split governmental units, giving preference to keeping whole, in the order named, counties, then townships and municipal corporations." Article XIX, Section 1(C)(3)(b), Ohio Constitution.

Defying constitutional requirements, however, on November 19, 2021, the General Assembly submitted its gerrymandered congressional map to Governor DeWine, who signed it into law less than 24 hours later. The map did not receive any support from the minority party, and in

fact received some votes against it from the members of the majority party.<sup>1</sup> Under the General Assembly's adopted plan, twelve of Ohio's fifteen congressional districts (80%) favor the Republican Party while only 54% of Ohio voters preferred Republicans in statewide races over the past ten years. The new district plan dilutes the power of Ohio voters by intentionally cracking and packing communities to weaken the power of their vote. It directly burdens organizations fighting for issues impacting all Ohioans, and in the case of the Ohio Environmental Council, it significantly disrupts our ability to fight for environmental justice. By passing a gerrymandered map, the General Assembly has violated the Ohio Constitution—and will of the Ohio voters.

The Ohio Environmental Council submits this amicus brief to support the arguments of the relators, ensuring the Ohio Supreme Court understands the importance of the decision before them and its impact on many different organizations, communities, and individuals across the state. Ohioans cannot afford a gerrymandered map, whether it's a four-year or ten-year map. And Ohioans certainly do not deserve to spend more resources fighting for issues they care about simply because one political party has enshrined its power over another. When Ohio has gerrymandered maps, everyone loses.

But most importantly, Ohio communities do not deserve to be sliced and diced in haphazard shapes to serve the whims of partisan interests. The Ohio General Assembly had the opportunity to consider constitutional maps, like the map created by the Ohio Citizens Redistricting Commission, but it ignored these proposed maps beyond hearing their testimony. Instead, by creating a gerrymandered congressional map, the Ohio General Assembly has cracked communities most at risk to environmental harms. If, instead of gerrymandering, the General Assembly created

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<sup>1</sup> Representative Gary Click, Representative Jay Edwards, Representative Kyle Koehler, Representative Nino Vitale, and Representative Paul Zeltwanger, all Republican representatives, voted no on the passed congressional map. See *Ohio Senate Bill 258*, LegiScan, available at: <https://legiscan.com/OH/rollcall/SB258/id/1116318>.

a congressional map designed to keep connected communities together, rather than political parties, everyone wins. The environment wins. Ohio wins.

### **INTERESTS OF AMICUS CURIAE**

At the heart of it all, the Ohio Environmental Council (“OEC”) lends its voice to the legal challenges of the unconstitutional, gerrymandered maps because the environment cannot wait another four years for fair maps in Ohio. Ohioans are facing the direct impacts of climate change right now. Ohioans are seeing their water bills and energy bills rise every month. Ohioans are experiencing extreme weather more and more frequently. Ohioans deserve a congressional delegation who will respond to these needs. For example, “more than six in 10 (63%) Ohio voters think developing more renewable energy sources, such as wind and solar, should be the most important priority for addressing Ohio’s energy needs,” but instead, legislation like HB 6 at the state level guts our renewable portfolio standards. *Poll: Ohio Voters Support Climate Action*, Yale Program on Climate Change Communication, (October 15, 2021), available at: <https://climatecommunication.yale.edu/news-events/poll-ohio-voters-support-climate-action/>. A gerrymandered congressional map that divides communities and enshrines partisan power in Ohio’s congressional delegation runs counter to these goals.

The OEC is a not-for-profit corporation located at 1145 Chesapeake Ave, Suite I, Columbus, OH 43212. For over fifty years, the OEC has fought to ensure clean air and water for all who call Ohio home. It has fought for renewable energy, and taken a stand against the climate crisis. It has protected public lands, and fought for the creation of more public lands for all Ohioans to enjoy. It has held polluters accountable, and applauded communities for taking bold action for the



environment. The OEC believes that all Ohioans fundamentally deserve environmental justice and a voice in our democratic processes, regardless of background, zip code, skin color, national origin, or any other identity.

One of the four pillars of the OEC's work is safeguarding the integrity and accessibility of Ohio's democracy. We recognize that civic engagement is critical in securing long-term environmental protections. The OEC advocates on behalf of a healthy democracy because without a healthy democracy, we cannot create policies that benefit the people of Ohio. Without representatives properly responsive to voters—because their districts have been designed to enshrine their party's influence—the job of organizations like the OEC becomes substantially more difficult. We are directly harmed by gerrymandering, because it insulates partisan politicians from needing to listen to diverse portions of their constituency. Instead, they can listen to special interests who support their campaigns or a small subset of their partisan base. Thus, we support fair representation and fair maps in Ohio, both at the statehouse level and at the federal level, to ensure Ohioans are equally heard.

The gerrymandered Congressional district plan harms OEC's members and hinders the organization's work by dividing Ohio's communities in haphazard ways while diluting votes, especially Democrat votes, for the purpose of maintaining a Republican advantage within Ohio's Congressional delegation. The gerrymander results in a Congressional delegation that need not be responsive to Ohioans because their elections are often decided before a vote is even cast. And when lines divide communities experiencing environmental injustices, the members of that community have their voice diluted. Whether they want to elect a Republican, a Democrat, or someone else entirely to represent their interests, their votes are split between two congressional districts.

The congressional district plan adopted in November 2021 (and the statehouse plan adopted in September 2021) perpetuates the need for continued and excess investment in educational efforts regarding Ohio's democratic institutions. Because the gerrymandered plan encourages apathy and discourages voters from engaging in the democratic process, the OEC will need to expend additional resources over the next decade. Communities across Ohio will have a more difficult time advocating for their needs in Congress. The environment will suffer. Ohio will suffer. Our planet will suffer.

## **STATEMENT OF THE FACTS AND CASE**

Amicus Curiae hereby adopts and incorporates by reference the Statement of the Facts and Case delineated by Relators, League of Women Voters, et. al. and Adams, et. al.

## **ARGUMENT**

### **PROPOSITION OF LAW: THE PASSED GERRYMANDERED MAPS VIOLATE ARTICLE XIX, SECTION 3 OF THE OHIO CONSTITUTION.**

- I. By unduly splitting governmental units, especially Ohio's largest counties, the gerrymandered congressional map dilutes the power of Ohio communities most impacted by environmental injustices.**

There are many ways to illustrate the dangers of gerrymandered districts. And when considering whether a district map unduly favors one political party, or unduly divides governmental units, it is worth exploring the impacts of the divisions enshrined in the map. How do the divisions impact the most marginalized communities in Ohio? How do the divisions impact those most at risk to environmental harms? A map designed to ensure similar and connected communities are

represented together would not divide communities facing environmental injustice. A map designed to accurately represent Ohio would follow natural boundaries of counties, townships, and cities, rather than dive around and through communities to design districts intended to further more partisan interests.

To facilitate exploration of the impacts of gerrymandered districts upon Ohio’s Black, Indigenous, and People of Color (BIPOC), especially BIPOC communities most impacted by environmental injustices, we utilized a tool known as EJSCREEN (“EJ Screen”).<sup>2</sup> Developed by the U.S. Environmental Protection Agency (EPA), EJ Screen allows users to visualize environmental harms overlaid upon demographic and economic data, creating interactive maps. These maps tell the stories of communities, often low-income BIPOC communities, who have experienced decades of intentional economic disinvestment, redlining, and zoning decisions.

Sacrifice zones, also known as “fenceline communities,” are composed of low-income communities and communities of color. According to The Guardian, “around a quarter of a million Americans are living in parts of the United States where rates of cancer caused by air pollution exceed the US government’s own limit of ‘acceptable risk.’”<sup>3</sup> A national map of sacrifice zones

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<sup>2</sup> According to the U.S. EPA, “EJSCREEN is an environmental justice mapping and screening tool that provides EPA with a nationally consistent dataset and approach for combining environmental and demographic indicators. EJSCREEN users choose a geographic area; the tool then provides demographic and environmental information for that area. All of the EJSCREEN indicators are publicly-available data. EJSCREEN simply provides a way to display this information and includes a method for combining environmental and demographic indicators into EJ indexes.” *What is EJSCREEN?*, U.S. EPA, Accessed on December 10, 2021, available at: <https://www.epa.gov/ejscreen/what-ejscreen>. “Development of EJSCREEN began in late 2010 and EPA began using an early version in 2012. EJSCREEN was peer reviewed in early 2014, and released to the public in 2015. Since the public release, EJSCREEN has been and will continue to be updated annually with the newest and best data available.” *How was EJSCREEN Developed?* U.S. EPA, Accessed on December 10, 2021, available at: <https://www.epa.gov/ejscreen/how-was-ejscreen-developed>.

<sup>3</sup> Adrienne Matei, *What are ‘Sacrifice Zones’ and why do some Americans live in them?*, The Guardian, Nov. 16, 2021, available at: <https://www.theguardian.com/commentisfree/2021/nov/16/what-are-sacrifice-zones-and-why-do-some-americans-live-in-them>.

created by ProPublica shows that a number of sacrifice zone communities exist across Ohio, especially around Cincinnati and Cleveland.<sup>4</sup>

We used EJ Screen to compare environmental justice communities to the gerrymandered congressional map by uploading the map's shape files. First, we identified communities in Ohio enduring significant exposure to cancer risk, toxic respiratory hazards, wastewater discharge, particulate matter, and other harms. Then, we superimposed the district lines for the gerrymandered congressional map over these harms, illustrating the shared geography of environmental injustice and gerrymandering. In the following sections, we will show how the gerrymandered congressional plan divides communities in Hamilton, Cuyahoga, and Summit Counties.

**A. Proposed congressional Districts 1, 2, and 8 split Hamilton County three ways while simultaneously diluting communities most impacted by environmental harms, like toxic respiratory hazards.**

In Hamilton County, we see District 1, shaped like a bowtie, connecting the city of Cincinnati and western Hamilton County (all the way to the Indiana border) with Warren County to the northeast. The center of District 1 includes many Black communities, especially along the Interstate-75 and Mill Creek corridors of the region. These communities are in the 80th to 100th percentile for toxic respiratory hazards, wastewater discharge, and cancer risk, harms not shared by the rural voters of Warren County or western Hamilton County. (See Figures 1, 2, and 3). A careful look at this map reveals a significant number of Black communities in northern Hamilton County with shared environmental harms as those in District 1, but those communities are instead included in District 8. By dividing these communities with shared environmental harms, the gerrymandered congressional map dilutes their collective voting power to elect a representative to Congress who can address their shared needs.

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<sup>4</sup> Al Shaw & Lylla Younes, *The Most Detailed Map of Cancer-Causing Industrial Air Pollution in the U.S.*, ProPublica, November 2, 2021, available at: <https://projects.propublica.org/toxmap/>.

District 1 Respiratory Hazard Index EJ Score

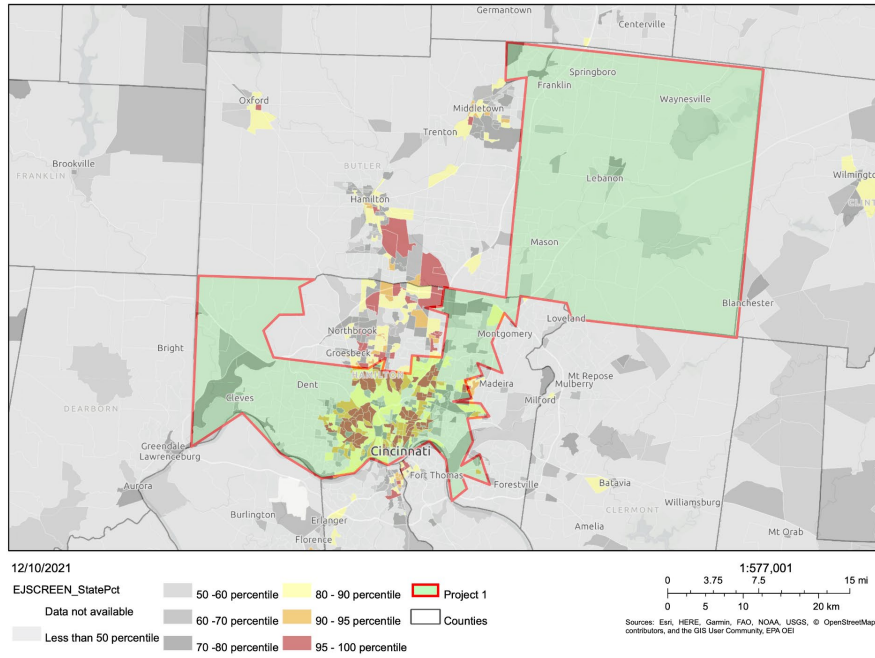


Figure 1<sup>5</sup>

Congressional Southeast Ohio Hazardous Waste Proximity EJ Score

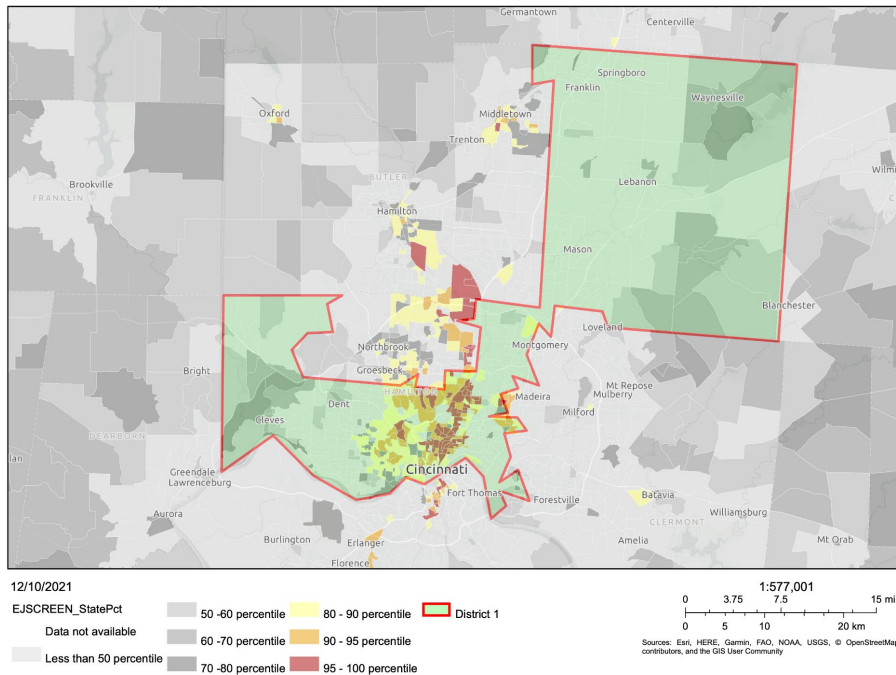
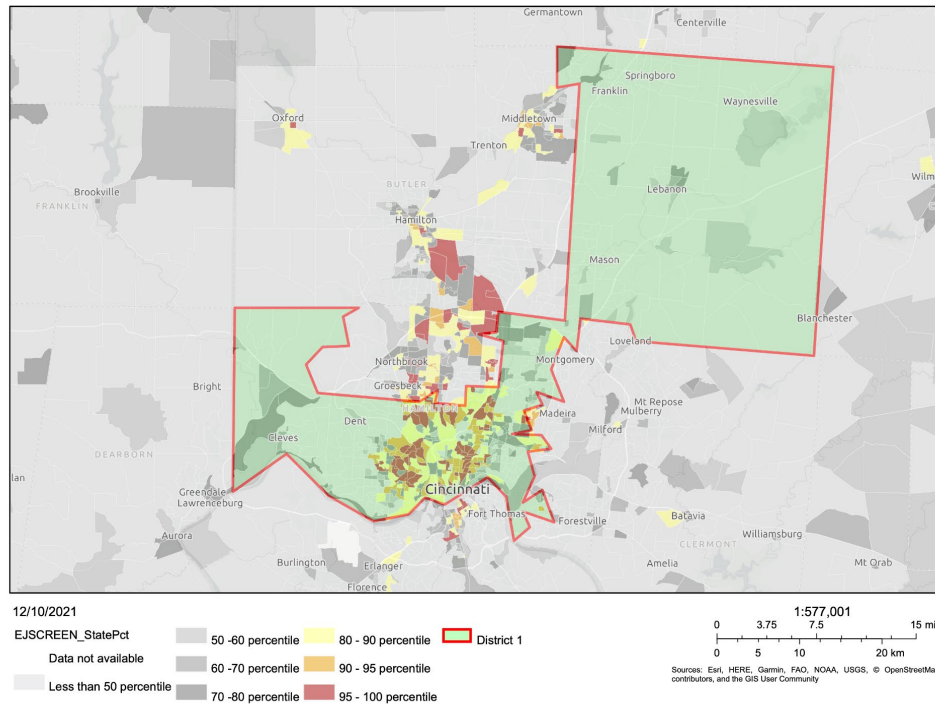


Figure 2

<sup>5</sup> Figures 1, 2, 3, 4, 5, and 6 were created by superimposing Ohio's new district lines over EJ Screen's data. We then generated an image and labeled it accordingly.

### Congressional Southeast Ohio Cancer Risk EJ Score



**Figure 3**

District 1’s design is particularly striking because it is absolutely unnecessary. District 1 could easily be contained entirely within Hamilton County, including those communities in its northern section that share the experiences and risks of their neighbors. Hamilton County contains 830,639 people as of the April 1, 2020 Census. The ratio of representation for Ohio is 786,630 (districts must be within about 0.75% of that number), so a full congressional district could easily fit within the county boundaries. By including Warren County in District 1, map drawers created a district that leans Republican, carving up communities impacted by environmental injustice as a result.

**B. Proposed congressional Districts 7, 11, 13, and 14 are drawn in a way that maximize partisan interests while needlessly dividing regions Summit and Cuyahoga County.**

In northeastern Ohio, specifically Summit County and Cuyahoga County, the divisions have similar narratives. In particular, Akron in Summit County is included in District 13 with rural

Medina County and western suburbs of Cleveland. The rest of Summit County is included in District 7, spanning from Hudson in northern Summit County down through Canton and west to Ashland. District 11 includes all of Cleveland, in addition to a few of its suburbs. District 14 includes the northeastern counties of Ohio, western Cuyahoga County, and portions of south-central Cuyahoga County. As a result, Summit County is divided once, even though it has a population of 540,428, and could exist within its own district. Cuyahoga County, divided twice, could be divided only once.

If Summit County and Cuyahoga County must be divided in these ways—though there isn't necessarily a reason to do so—the divisions must have logical reasons. The divisions should not occur to achieve partisan interests. And in linking communities, the communities connected should have shared interests and experiences. In drawing a map designed to enshrine partisan interests, the map drawers missed an opportunity to link Akron with communities with similar environmental concerns. For example, both Akron and Canton experience similar impacts from lead paint, hazardous waste, and wastewater discharges. *See* Figures 4, 5 and 6. Canton is included in District 7, while Akron is included in District 13. Another similarly situated community—Youngstown to the east in the northern most portions of District 6—also has significant environmental impacts from the same indicators, and could have been included in a district with one of the other northern communities, like Akron or Canton.

Northeast Ohio Lead Paint Indicator EJ Score

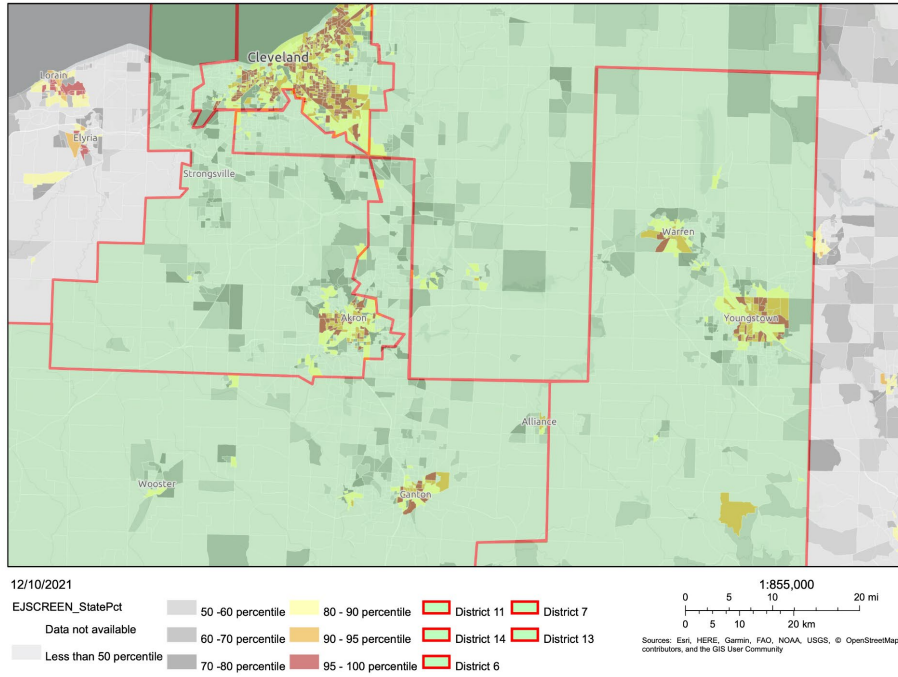


Figure 4

Northeast Ohio Hazardous Waste Proximity EJ Score

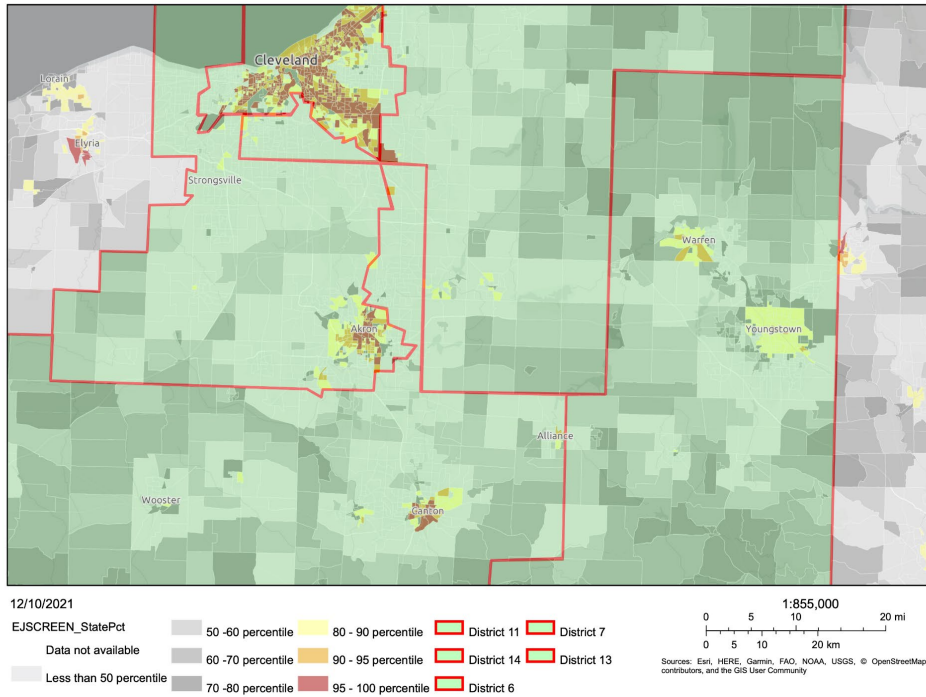
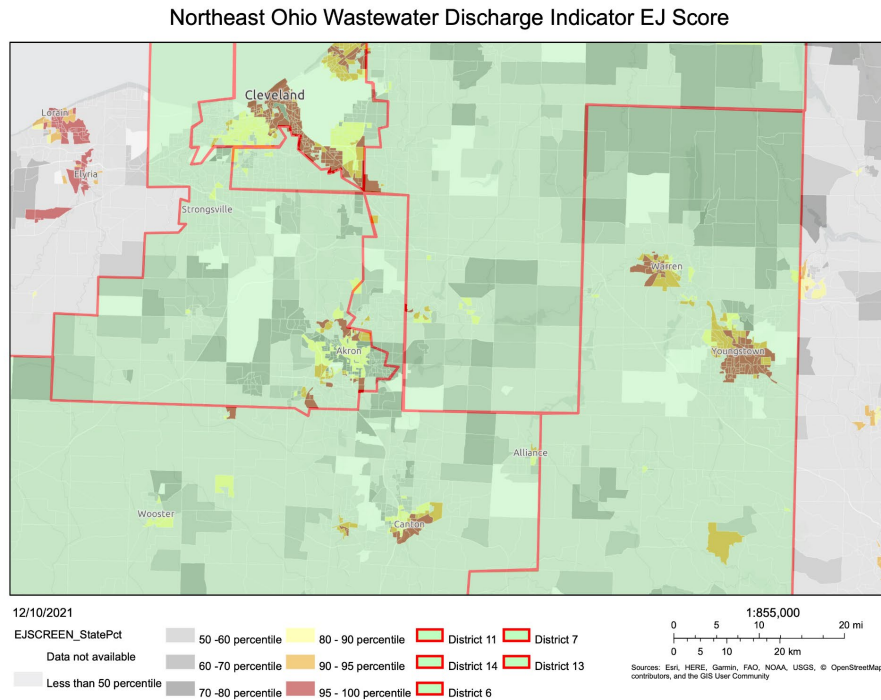


Figure 5



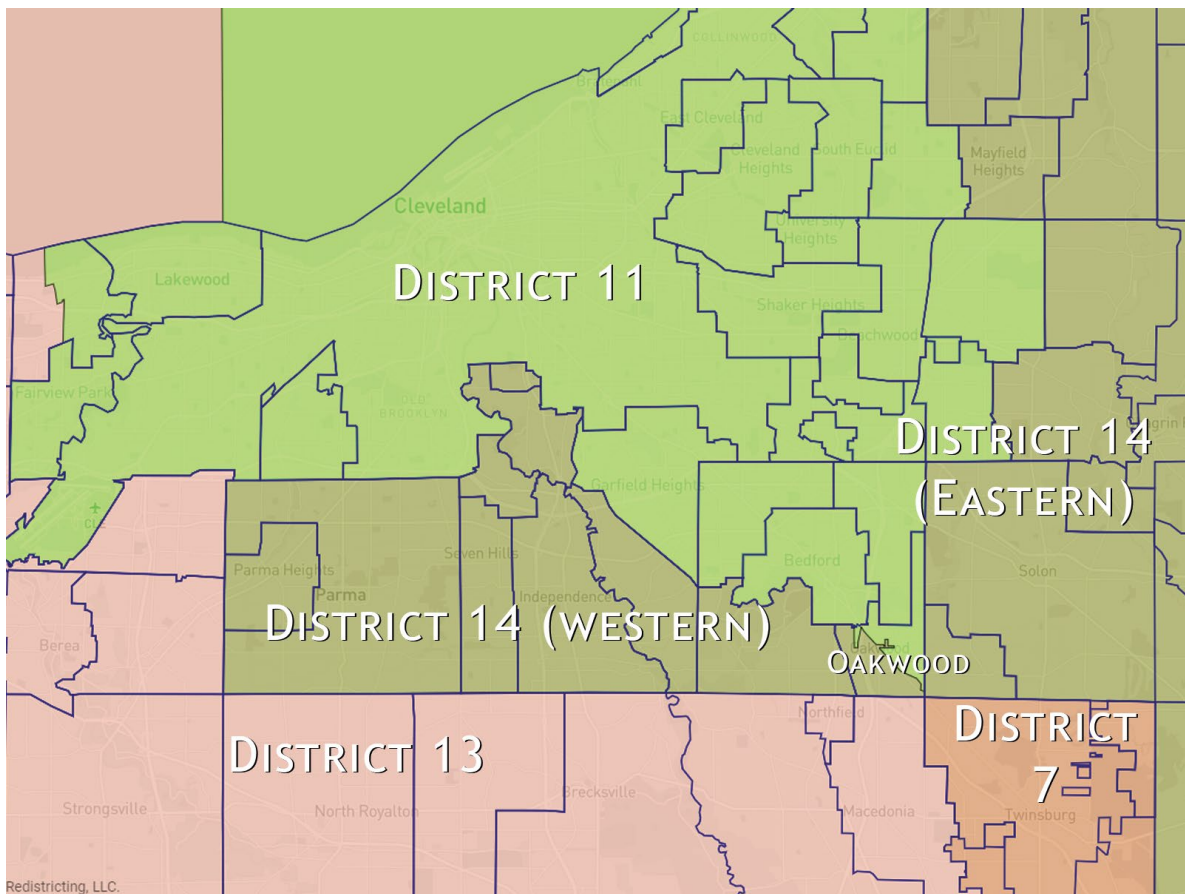


**Figure 6**

One example of the environmental hazards faced by Youngstown regards its EPA mandate related to storm water. The city has been under a consent decree since 2002, specifically “to re-vamp its sewer system, which was built before the 1972 Clean Water Act mandated protections for streams and waterways . . . the issue is expected to get worse as climate change brings stronger rainfall to the region.”<sup>6</sup> As illustrated in Figure 6, other communities in northeast Ohio, like Akron and Canton, experience disproportionate harms from wastewater discharges. When it comes to congressional representation, these realities for Youngstown are particularly important, because the community can receive federal dollars to support environmental projects, like the \$80 million received from the American Rescue Plan. *Id.*

<sup>6</sup> Diana Kruzman, *Youngstown’s sewage plan, already behind schedule, goes back to the drawing board*, Mahoning Matters, October 21, 2021, available at: <https://www.mahoningmatters.com/local-news/youngstowns-sewage-plan-already-behind-schedule-goes-back-4533079>.

In southern Cuyahoga County, the town of Oakwood is divided in half to allow Cuyahoga County to be divided three times. See Figure 7. It's worth emphasizing this split of Oakwood because it's one of the few municipal corporation splits in the entire map. Through the split, District 14 includes sections of western Cuyahoga County and reaches into south-central Cuyahoga County. Without the split of Oakwood, those southern sections of Cuyahoga County would need to be included in a different district due to contiguous rules in Article XIX. In the April 2020 Census, Cuyahoga County had 1,264,817 residents, meaning the county only truly requires one congressional district split.



**Figure 7**

Combined, the interplay of all of these districts to create a northeast Ohio with two Democrat districts and two Republican districts has the effect of failing to link similarly situated communities in the same district. The construction of these districts in northeast Ohio all work together to create the map's overarching partisan advantage while having other additional consequences to the people living in those communities. Akron, Canton, and Youngstown are all major communities experiencing particular environmental harms. All three communities have a Black population above the state average. And all three communities are included in separate districts that include significant swaths of rural Ohio, counties with separate and distinct environmental experiences, such as how they acquire and distribute drinking water.

**II. The gerrymandered congressional map violates the Ohio constitution by unduly favoring one party and unduly splitting governmental units.**

We have identified three initial examples showing how the gerrymandered congressional map impacts Ohio's communities and illogically divides them. These harms emphasize the importance of the Ohio Supreme Court upholding the constitutional mandate created by Ohio voters in May 2018—no more partisan gerrymandering, among a number of other rules for the creation of a congressional map. In this case, the relators argue for two specific constitutional violations. Because the General Assembly passed the map with a simple majority, rather than with bipartisan support, the constitution triggers additional safeguards on behalf of Ohioans, all found in Article XIX, Section 1(C)(3). Under Section 1(C)(3)(a), a congressional map may not unduly favor or disfavor a party or its incumbents. Additionally, under Section 1(C)(3)(b), the map may not unduly split governmental units, “keeping whole, in the order named, counties, then townships and municipal corporations.” The passed gerrymandered congressional map violates both sections. In passing a map designed to enshrine partisan power, the General Assembly reveals its insidious reason for disregarding Ohio's communities.

**A. The gerrymandered congressional map violates Article XIX, Section 1(C)(3)(a) by unduly favoring one party and its incumbents over another.**

The gerrymandered congressional map passed by the Ohio General Assembly violates Article XIX, Section 1(C)(3)(a), and its violations are obvious by a simple observation of the data. The explicit, mandatory language in the Constitution says “the general assembly shall not pass a plan that unduly favors or disfavors a political party or its incumbents.” *Id.* The Ohio Constitution does not include a definition in Article XIX for what it means to “unduly favor or disfavor” a political party. However, language in Article XI of the Ohio Constitution can be used as a guide for what it might mean.

The Ohio Supreme Court should utilize the proportionality requirement placed upon statehouse maps in Article XI of the Ohio Constitution. When the Ohio Redistricting Commission passes its map for General Assembly districts, its predicted partisan makeup must closely correspond with “the statewide proportion of districts whose voters, based on statewide state and federal partisan general election results during the last ten years.” Article XI, Section 6(B), Ohio Constitution. The drive for Ohio voters to pass both the 2015 constitutional amendment, creating the current language in Article XI, and Article XIX, created in 2018, should not be ignored by this Court. These two amendments should be interpreted together and as complementary to one another.

Thus, in the five general elections since 2011, Republican candidates have received 54.3% of the votes cast by Ohio voters, while Democratic candidates have received 45.7%. To uphold the language of Article XIX, Section 1(C)(3)(a)—to ensure a congressional plan does not unduly favor or disfavor a political party or its incumbents—the partisan make-up of Ohio’s congressional districts should match the 54.3% / 45.7% split. A proposed map with eight districts leaning Republican and seven districts leaning Democrat would match those statewide voting preferences.

The passed gerrymandered congressional map creates a map with twelve districts leaning Republican and three districts leaning Democrat. That ultimate result is not in dispute; every analysis reaches the same conclusion. There is simply no justification for creating a map so heavily skewed in favor of one political party over another. The respondents will likely attempt a number of arguments, but they are all ex post facto explanations.

**B. The gerrymandered congressional map violates Article XIX, Section 1(C)(3)(b) by unduly splitting governmental units, resulting in disproportionate dilution of community power in Ohio’s largest counties.**

In an effort to distort the map to favor one political party, the map unduly divides Ohio’s largest counties and the communities within them most impacted by environmental injustices. A congressional district map “shall not unduly split governmental units, giving preference to keeping whole, in the order named, counties, then townships and municipal corporations.” Article XIX, Section 1(C)(3)(b), Ohio Constitution. The use of the word “unduly” implies that any splits of governmental units must further some other interest—natural interests include other requirements like approximate population requirements and rules regarding keeping how communities should be kept together. *See* Article XIX, Section 2, Ohio Constitution (detailing the various requirements a congressional plan must meet and the discretionary decisions map drawers may make, and under what circumstances they can make them).

We have already established the disproportionate impacts experienced by communities across Ohio divided in haphazard ways. The Ohio Supreme Court must consider where splits in the passed gerrymandered congressional map occurred, and whether the justifications are sufficient. In each of our examples, the only plausible explanation for how the General Assembly divided counties was to pursue partisan gain, an unconstitutional reason for splitting counties.

Hamilton County is likely the most egregious split, as it is divided into three different districts when the county only has 830,639 people. Article XIX, Section 2 includes additional standards for how a map shall be drawn. Of note, “the authority drawing the districts shall attempt to include at least one whole county in each congressional district. This division does not apply to a congressional district that is contained entirely within one county.” Article XIX, Section 2(B)(8), Ohio Constitution. Hamilton County could include an entire district within its borders, which would keep its similarly situated communities, especially Black communities, together in one district. The partisan makeup of that district would likely be Democrat.<sup>7</sup> Instead, the passed gerrymandered congressional map ensures all three districts touching Hamilton County lean Republican. The lines were meticulously drawn to ensure this outcome.

In northeast Ohio, the interplay between Districts 7, 11, 13, and 14 result in two Democrat-leaning districts in the region, two of the three Democrat-leaning districts in the map. This is primarily accomplished by dividing Cuyahoga County into three districts and Summit County into two districts. Because Article XIX, Section 1(C)(3)(b) gives a preferential order for splits in district creation, with the goal of keeping counties whole first, additional splits of counties like Cuyahoga County or Summit County are not necessary nor should they be the first choice, especially if the county has already been split once. The respondents must have an affirmative justification for why they elected to divide Summit County once and Cuyahoga County twice, rather than splitting Cuyahoga County once and keeping Summit County whole. The simplest explanation stems from the partisan makeup of the congressional map, and its undue favor for Republican candidates.

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<sup>7</sup> For example, the congressional district map created by the Ohio Citizens Redistricting Commission creates a Cincinnati district fully contained within Hamilton County. The district would have a Black Voting Age Population of 26.26%, and a total People of Color Voting Age Population of 35.48%. This District 1 would be a Democratic-leaning district. *Official Report to the Ohio General Assembly*, Ohio Citizens Redistricting Commission, September 2021, at 19, available at: <https://ohredistrict.org/assets/images/unity-maps/OCRC-Congressional-Report.pdf> For more information about the OCRC’s map, see Section III of this brief.

When we take a particularly close look at the county splits in Cuyahoga County, the gerrymandered congressional map actually splits a municipal corporation in order to achieve the three-district division. Oakwood, a suburb of Cleveland in southern Cuyahoga County, is divided in half in order to connect District 14's two sections of Cuyahoga County. Not only does this create strangely shaped districts, it assists in ensuring northeastern Ohio only has two Democrat-leaning districts, rather than possibly three.

**C. The gerrymandered congressional map cannot use “equal population” requirements as a defense for its map’s violations of 1(C)(3)(a) and (b).**

The respondents will likely defend the partisan makeup and county splits of the gerrymandered congressional map by claiming all of it was necessary to meet the “equal population” requirement of the Ohio Constitution. Specifically, “the whole population of the state . . . shall be divided by the number of congressional districts apportioned to the state . . . and the quotient shall be the congressional ratio of representation for the next ten years.” Article XIX, Section 2(A)(2), Ohio Constitution. However, all provisions of the Ohio Constitution must be read through the context of the U.S. Constitution, and the equal population requirement does not require *exact* apportionment. In *Reynolds v. Sims*, the U.S. Supreme Court established the “substantially equal” rule. *Reynolds v. Sims*, 377 U.S. 533, 568 (1964) (“The Equal Protection Clause demands no less than substantially equal state legislative representation for all citizens, of all places as well as of all races”). The U.S. Supreme Court said in *Tennant v. Jefferson County Commission* that “substantially equal” does not mean “exactly equal,” finding that a West Virginia congressional map whose districts varied by an average of 0.79% was constitutional because its divergences were necessary to meet legitimate state goals. *See Tennant v. Jefferson Cty. Comm.*, 567 U.S. 758, 765 (2012) (“Given the small ‘size of the deviations,’ as balanced against ‘the importance of the State’s interests, the consistency with which the plan as a whole reflects those interests,’ and the lack of

available ‘alternatives that might substantially vindicate those interests yet approximate population equality more closely,’ *citation omitted*, [the West Virginia Plan] is justified by the State’s legitimate objectives”). Ohio’s Constitution has established a number of legitimate state goals that would justify divergences—specifically the mandatory provisions in Article XIX, Section 1(C)(3). Pursuing precisely equal districts *at all costs* as a justification to ignore other legitimate state interests—like avoiding partisan gerrymandering—is as bad as wildly varying populations to subvert the “one person, one vote” rule derived from the Equal Protection Clause of the U.S. Constitution.

**D. The gerrymandered congressional map cannot argue that a map with eight or nine Republican-leaning districts “disfavors” Republican incumbents.**

The respondents may also defend their map by arguing that any map with eight or nine Republican-leaning districts, rather than twelve (or a number close to twelve), would disfavor Republican incumbents. During testimony, at least one member of the Ohio General Assembly put forth this argument. On its face, this argument is flawed. *See Exhibits to Complaint - Volume 2 of 2*, Case No. 2021-1428: *Regina C. Adams, et al. v. Governor Mike DeWine, et al*, at 24, available at [https://www.supremecourt.ohio.gov/pdf\\_viewer/pdf\\_viewer.aspx?pdf=913688.pdf](https://www.supremecourt.ohio.gov/pdf_viewer/pdf_viewer.aspx?pdf=913688.pdf). Senator Rob McColley, questioning Kathleen Clyde when she was presenting a map created by the Ohio Citizens Redistricting Commission, said: “there’s potentially 10 incumbents placed in districts with each other . . . there are four republicans that are placed in districts with each other, and in combinations that are not required . . . one could make an argument that the burden of incumbents being put together and the districts having to find new representatives goes against [the Ohio Constitution].” *Id.*

The current congressional map of Ohio, passed in 2011, unduly favors the Republican Party. For the past ten years, Ohio has sent twelve Republicans to Congress and four Democrats,



resulting in twelve Republican “incumbents.” Essentially, arguing that every Republican incumbent must be protected in a new map is tantamount to arguing for generational gerrymandering. Once a map is gerrymandered, in order to not “disfavor” incumbents, the map must remain gerrymandered.

Rather, the Ohio Supreme Court should read the provision protecting incumbents as working in the context of all of Article XIX. If a map favors a particular political party over another as justification for favoring its incumbents, that is “undue” favor. A map that results in more proportional representation, furthering the anti-partisan gerrymandering impetus for both Article XIX and Article XI, will necessarily result in impact to a few incumbents of the party already benefiting from gerrymandering.

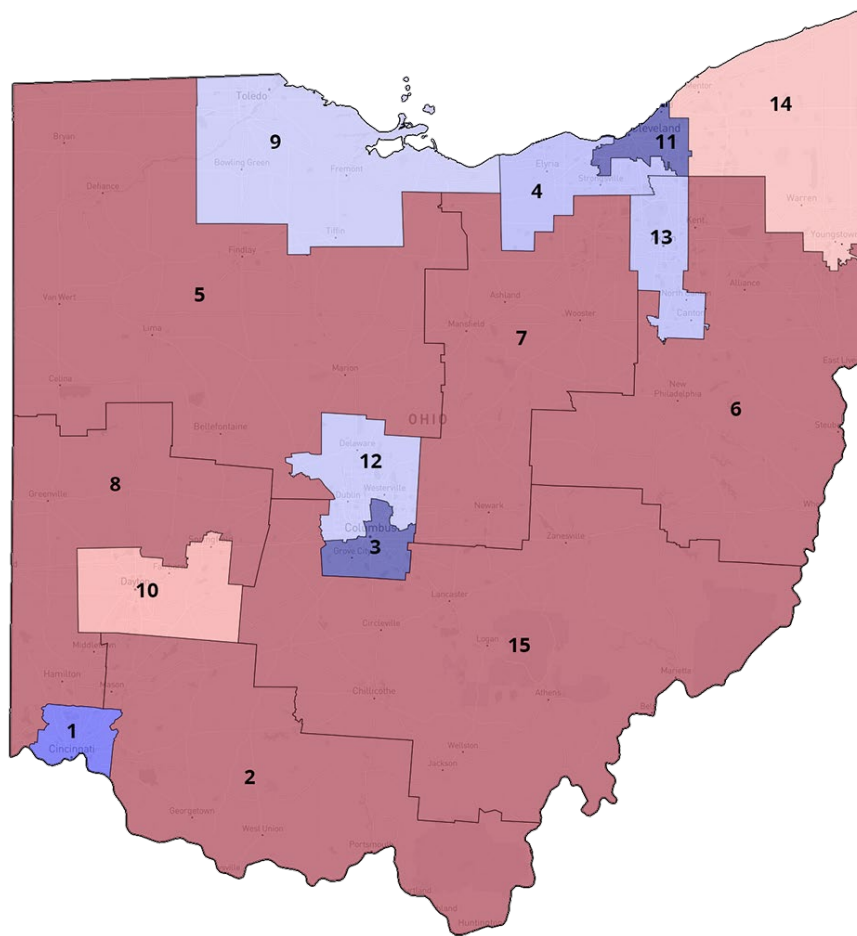
### **III. Alternative, constitutional maps illustrate the extreme partisan gerrymandering accomplished by the adopted congressional map.**

While the Ohio General Assembly short-circuited opportunities for testimony in the congressional redistricting process, when testimony was given, legislators did receive information on maps that did not unduly split counties and did not favor one political party over another. In particular, the Ohio Citizens Redistricting Commission (“OCRC”)<sup>8</sup> developed a congressional map. *See Figure 8.* The OCRC conducted listening sessions throughout the state starting in May, culminating in citizen-derived principles for map drawing and the creation of both statehouse and

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<sup>8</sup> “The Ohio Citizens Redistricting Commission (OCRC) is an independent, diverse, non-partisan commission made up of 16 volunteer members, including interested citizens, academics, community leaders, current and former elected officials, attorneys, and representatives from sponsor organizations. Members were deliberately chosen to reflect the diversity of Ohio, and include persons of color, persons of all ages and backgrounds, persons from the LGBTQ community, and persons from different regions of the state.” *Official Report to the Ohio General Assembly*, Ohio Citizens Redistricting Commission, September 2021, at 4, available at: <https://ohredistrict.org/assets/images/unity-maps/OCRC-Congressional-Report.pdf>. “The OCRC had three main goals: model a thorough and robust engagement process for developing legislative districts, including reaching out specifically to minority and underrepresented communities, develop and demonstrate citizen-derived principles of redistricting, and draw ‘unity maps,’ meaning maps based on constitutional requirements, citizen-derived principles of redistricting, and an aggregation of a wide variety of preferences that came out of public input.” *Id.*

legislative maps. As a result, the OCRC created a congressional map and submitted it to the General Assembly.<sup>9</sup> The Ohio Citizens Redistricting Commission created and presented a constitutional map to the Ohio Redistricting Commission and Ohio General Assembly that did not favor one political party and its incumbents, nor did it unduly split governmental units.



**Figure 8 - Ohio Citizens Redistricting Commission Congressional Map**

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<sup>9</sup> The OCRC also submitted its map to the Ohio Redistricting Commission at the one hearing held to consider congressional maps from Ohio residents. See Jim Gaines, *Redistricting commission to miss deadline, state lawmakers to try again*, Dayton Daily News, October 29, 2021, available at: <https://www.daytondailynews.com/local/redistricting-commission-to-miss-deadline-state-lawmakers-to-try-again/L7Y2WLVN6FASXL5YH2SSY674RA/> “The Ohio Redistricting Commission held its only meeting to review new congressional district maps on Thursday, with members acknowledging they would not consider any maps for approval, throwing the process back to the General Assembly. More than 50 people showed up to the public hearing at the Ohio Statehouse, with close to half wearing Fair Districts Ohio shirts. Members of that group, the Ohio Citizens Redistricting Commission and a few others took turns — usually running over their 10-minute limit — presenting the maps they’d created and urging commissioners to act.” *Id.*

The OEC presents this map to the Court to ensure it sees an example of what other maps could have been considered by the General Assembly. Importantly, the map addresses many of the environmental justice concerns discussed in our brief. Hamilton County includes a district entirely within its borders, including the Black communities excluded from District 1 in the gerrymandered congressional map. In northeast Ohio, Summit County is included entirely within District 13, and connects Akron with Canton, two similarly situated communities. Cuyahoga County is only divided once, including Cleveland with its eastern suburbs and the rest of Cuyahoga County with Lorain County to the west. Youngstown is included in District 14 with the remainder of the northwestern lake counties.

In its report to the General Assembly, the OCRC described its process as “relying on public input about how best to protect communities of interest across the state.” *Official Report to the Ohio General Assembly, Ohio Citizens Redistricting Commission*, September 2021, at 14, available at <https://ohredistrict.org/assets/images/unity-maps/OCRC-Congressional-Report.pdf>. The OCRC heard hundreds of witnesses testify “about the importance of keeping their neighborhoods and communities together.” *Id.* The OCRC then used “qualitative community of interest data” to keep together, within district boundaries, communities of interest. *Id.* This sort of information would have been used, then, to inform the OCRC’s decision to keep counties like Summit County whole and limit the number of splits in counties like Hamilton or Cuyahoga.

A first glance at the OCRC’s map should illustrate how it accurately represents the various regions of Ohio. Franklin County includes District 3, and District 12 includes the northern sections of Franklin County with similarly situated communities in Delaware County, the next most populous county in Central Ohio. Lucas County is contained within District 9, and includes other similarly situated districts along Lake Erie and associated watersheds. The northwestern rural counties

of Ohio are all contained within District 5, while many of the southwestern rural counties are included within District 8. The southern Ohio counties are included in District 2, while southeastern Ohio has District 15. Central northeastern Ohio has District 7, and eastern Ohio has District 6. And of course, Cuyahoga County and Summit County, as well as nearby communities, have Districts 4, 11, 13, and 14. As a result, the OCRC’s “proposed map has eight districts that lean over 50% Republican and 7 districts that lean over 50% Democratic.” *Id.* at 13. This outcome closely corresponds “with the 54% / 46% partisan make-up of Ohio’s voters over the last 10 years.” *Id.*

The OEC presents the OCRC’s map to illustrate how a group can listen to community input on how a map should be drawn while meeting the rules in Article XIX, particularly the anti-gerrymandering provisions of Section 1(C)(3).<sup>10</sup> The General Assembly’s map, in contrast, is drawn without consideration of community input. Committees heard hours of testimony in committee hearings throughout November, and the testimony was nearly unanimous in its opposition to the gerrymandered congressional map. The map was passed with little modification.

## CONCLUSION

The OEC knows the Ohio Supreme Court understands the significance of its decision both in this case and in the case reviewing the statehouse district plan. We have provided our amicus brief to further contextualize the impacts of partisan gerrymandering, especially upon BIPOC communities significantly impacted by environmental injustices. Partisan gerrymandering impacts every Ohioan, whether they are Republican, Democrat, Independent, or any other political persua-

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<sup>10</sup> Unfortunately, the General Assembly’s process did not create any meaningful way for citizen groups to submit maps for consideration and have committees vote on those maps.

sion. When one party disproportionately controls seats, whether in Congress or in Columbus, Ohioans aren't properly represented in our political systems. Ohioans feel unheard, and they feel disenfranchised. When a map divides communities and separates them from other similarly situated communities, it dilutes their collective voice.

These impacts are all the outfall of the partisan gerrymander conducted by the Ohio General Assembly in November and a decade ago. The legal arguments are straightforward. A map resulting in twelve districts leaning Republican, and three districts leaning Democratic, unduly favors one party over another, violating Article XIX, Section 1(C)(3)(a). A map that unduly splits populous counties like Hamilton County and Cuyahoga County into three districts in order to dilute partisan votes in those regions violates Article XIX, Section 1(C)(3)(b). The Respondents may attempt to defend their maps by relying on equal population requirements and incumbency protections, but these arguments are spurious. When creating a map that proportionally represents Ohioans, like the OCRC map, is quite possible, the Court's decision should be a simple decision.

Therefore, we ask the Ohio Supreme Court to rule in favor of the relators by finding the passed gerrymandered map unconstitutional and granting the requested relief. If instead of gerrymandering, the General Assembly created a congressional map designed to keep similar and connected communities together, rather than political parties, everyone wins. The environment wins. Ohio wins.

Respectfully submitted,

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I hereby certify that a copy of the foregoing *Brief of Amicus Curiae [insert name]* in *Support of Relators* was served upon the following parties of record via electronic transmission this December 13, 2021.

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