IN THE SUPREME COURT OF OHIO

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Tracy Beavers,
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Dayton, OH 45426

Iris Meltzer,
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Kent, OH, 44240

Sherry Rose,
241 Whittier Dr.
Kent, OH 44240

Bonnie Bishop,
8160 Sunset Ln. #208
Sylvania, OH, 43560

Relators,

v.

Ohio Redistricting Commission,
Ohio Statehouse
1 Capitol Square
Columbus, Ohio 43215

Michael DeWine,
Riffe Center

Original Action Pursuant to
Ohio Const., Art. XI

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Columbus, OH 43215

Frank LaRose,
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16th Floor
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Keith Faber,
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Columbus, Ohio 43215

Matt Huffman,
Ohio Statehouse
1 Capitol Square
2nd Floor
Columbus, OH 43215

Robert R. Cupp,
77 S. High St.
14th Floor
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Vernon Sykes, and
Senate Building
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Columbus, OH 43215

Emilia S. Sykes,
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Respondents.

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INTRODUCTION

1. Just after midnight on September 16, 2021, with a 5-2 vote along strictly partisan lines, Ohio's Redistricting Commission enacted maps that are intended to, and will, entrench a Republican veto-proof supermajority in both chambers of Ohio's General Assembly for the next four years. This extreme partisan gerrymandering flouts the clear commands of Article XI of the Ohio Constitution that "[n]o general assembly district plan shall be drawn primarily to favor or disfavor a political party," Ohio Const. art. XI, § 6(A), and that the number of seats held by a party in the Ohio General Assembly "shall correspond closely to the statewide preferences of the voters of Ohio" over the previous decade, *id.* § 6(B).

2. Over the past decade, Republicans have received between 46.2% and 59.7% of the statewide vote. *See* Ex. 10, Testimony of Collin Marozzi to Ohio Redistricting Commission at Table 1 (submitted Aug. 27, 2021); *see also* Ex. 9, Ohio Redistricting Commission, *Article XI, Section 8(C)(2) Statement* (Sept. 16, 2021) (according to the Redistricting Commission's own statement, Republicans have only garnered an average 55% of the votes in statewide elections over the past 10 years). But the enacted map draws 67% of the House districts and 69% of the Senate districts to favor Republicans, locking in Republican veto-proof supermajorities in both chambers for the next four years. *See* Ex. 1, Warshaw Aff., at 5, 24–25.

3. This brazen manipulation of district lines for extreme partisan advantage doubly dishonors the voters of this state: by adopting a map that utterly fails to correspond with voters' preferences as manifested by the vote share of the two major parties' candidates over the past decade; and by openly defying a constitutional amendment adopted overwhelmingly by Ohio voters just six years ago, which sought to put an end to precisely this kind of extreme partisan gerrymandering.

4. The constitutional amendment to end partisan gerrymandering arose as a direct response to the severe partisan manipulation of the last decade. The 2011 General Assembly maps were drawn in secrecy, without public oversight or minority party participation, in a location referred to as "the bunker." And under that map, Republicans maintained a hammerlock on supermajority status in elections between 2012 and 2020—at times controlling more than 65% of the seats in the Ohio House of Representatives and 75% of the seats in the Ohio State Senate, even though their statewide vote share over the decade ranged from only 46.2% to 59.7%. *See* Ohio Sec. of State, *131th General Assembly Ohio House of Representatives* (2016), https://bit.ly/2XHuXAp; Ohio Senate, *Senators* (2021), https://bit.ly/3u57eGB; Ex. 10, Testimony of Collin Marozzi to Ohio Redistricting Commission at Table 1 (submitted Aug. 27, 2021).

5. In 2011, a group of voters challenged Ohio's legislative map on the basis of partisan unfairness, but this Court found it lacked the power to act because, at that time, the "words used in Article XI d[id] not explicitly require political neutrality, or for that matter, politically competitive districts or representational fairness, in the apportionment board's creation of state legislative districts. Unlike Ohio, some states specify in either constitutional or statutory language that no apportionment plan shall be drawn with the intent of favoring or disfavoring a political party." *Wilson v. Kasich*, 2012-Ohio-5367, ¶ 14, 134 Ohio St. 3d 221, 225, 981 N.E.2d 814, 820.

6. In response, on November 3, 2015, Ohio voters—by an overwhelming margin of 71.5% to 28.5%—amended the constitution by adding precisely what this Court previously found missing: express constitutional commands that districts not be drawn "to favor or disfavor a political party," and that the distribution of seats "shall correspond closely to the statewide preferences of the voters of Ohio." Ohio Const. art. XI, §§ 6(A), 6(B); *see also* Ohio Sec'y of State, 2015 Official Statewide Election Results (Nov. 3, 2015), https://bit.ly/3hZWnJm. The

express purpose of the amendment was to "[e]nd the partisan process for drawing Ohio House and Senate districts, and replace it with a bipartisan process with the goal of having district boundaries that are more compact and politically competitive." Ohio Sec'y of State, *Issue 1 Ballot Language* (Nov. 2015), https://bit.ly/3ElgrPY. Ohioans were promised that a "yes" vote on the ballot measure amending the constitution would "make sure state legislative districts are drawn to be more competitive and compact, and ensure that <u>no district plan should be drawn to favor or disfavor a political party</u>." Sens. K. Faber & J. Schiavoni and Reps. K. Schuring & M. Curtin, *Vote Yes on Issue 1*, https://bit.ly/3tWHrjR (emphasis in original).

7. The constitutional amendment established the bipartisan Ohio Redistricting Commission, tasked that Commission with redistricting the General Assembly in line with the goals of increasing transparency and ending partisan gerrymandering, and gave this Court jurisdiction to hear claims that the Commission failed to adhere to constitutional standards. *See* Ohio Const., art. XI, § 9.

8. It is necessary and appropriate for this Court to exercise its constitutionally-delegated authority. While the U.S. Supreme Court has held that partisan gerrymandering claims are non-justiciable in federal court, it has also acknowledged that it is the providence of state courts to address the scourge of partisan gerrymandering. *Rucho v. Common Cause*, 139 S. Ct. 2484, 2507 (2019) ("Provisions in state statutes and state constitutions can provide standards and guidance for state courts to apply."). "Indeed, state courts are particularly well-positioned to adjudicate redistricting disputes," and "[s]tate courts' duty to decide constitutional cases applies with full force in the redistricting context." *Common Cause v. Lewis*, N.C. Super. No. 18 CVS 014001, 2019 WL 4569584, at *124–25 (Sep. 03, 2019); *see also League of Women Voters v. Commonwealth*, 645 Pa. 1, 8, 178 A.3d 737, 741 (2018) (Supreme Court of Pennsylvania finding

that it could establish a workable standard for adjudicating partisan gerrymandering claims under the state constitution). *See also Ohio A. Philip Randolph Inst. v. Householder*, 140 S. Ct. 101, 101 (2019) (citing *Rucho v. Common Cause*, 139 S. Ct. 2484 (2019)).

9. There is a long history of state courts finding that partisan gerrymandering violates state constitutional rights. "In Wisconsin, the State Supreme Court declared that the challenged 'apportionment act violates and destroys one of the highest and most sacred rights and privileges of the people of this state, guarantied [sic] to them by the ordinance of 1787 and the constitution, and that is 'equal representation in the legislature.'"' *Ohio A. Philip Randolph Inst. v. Householder*, 373 F. Supp. 3d 978, 1090 (S.D.Ohio 2019) (quoting *State ex rel. Att'y Gen. v. Cunningham*, 81 Wis. 440, 51 N.W. 724, 729 (1892)); *League of Women Voters v. Commonwealth,* 645 Pa. at 8 (Pennsylvania Supreme Court holding that "the 2011 [Congressional] Plan violates Article I, Section 5—the Free and Equal Elections Clause—of the Pennsylvania Constitution" because it is a partisan gerrymander); *Lewis*, 2019 WL 4569584, at *128 (holding that the "extreme partisan gerrymanders" at issue "violate[d] the fundamental constitutional rights of free elections, equal protection, speech, assembly and association").

10. Judicial intervention is necessary because the kind of extreme partisan gerrymandering that has occurred once again in Ohio violates "the core principle of republican government . . . that the voters should choose their representatives, not the other way around." *Ariz. State Legislature v. Ariz. Indep. Redistricting Comm'n*, 135 S. Ct. 2652, 2677 (2015) (internal quotation marks omitted); *see also League of Women Voters v. Commonwealth*, 645 Pa. 1, 8, 178 A.3d 737, 740–41 (2018) ("It is a core principle of our republican form of government "that the voters should choose their representatives, not the other way around."). "A principal danger feared by our country's founders lay in the possibility that the holders of governmental authority would

use official power improperly to perpetuate themselves, or their allies, in office." *Stanson v. Mott*, 17 Cal. 3d 206, 217 (1976) (citing The Federalist Papers, Nos. 52, 53 (Madison), 10 Richardson, Messages and Papers of the Presidents 98–99 (1899) (President Jefferson)). Rather than reflecting voters' actual preferences, elections under gerrymandered systems, like Ohio's General Assembly map, systematically lock in candidates from the legislators' preferred party and discourage electoral competition.

11. Indeed, the distortion of the map enacted last week is just as extreme—and in some ways, even more extreme—than the gerrymander that had finally motivated Ohioans to pass the anti-gerrymandering constitutional amendment.

12. This Court must act expeditiously before Ohio's democracy is distorted yet again. The primary election for candidates for the General Assembly is currently scheduled for May 3, 2022, and the candidate filing deadline is scheduled for February 2, 2022.

13. Relators bring this action to ensure that the fair, neutral, and constitutionally-mandated requirements of Article XI govern the current reapportionment process and the map that will obtain in the 2022 elections.

JURISDICTION

14. This Court has original jurisdiction of this matter under Article XI of the Ohio Constitution. Ohio Const., art. XI, § 9 ("The supreme court of Ohio shall have exclusive, original jurisdiction in all cases arising under this article."). Pursuant to Article XI, Relators seek a determination that the apportionment plan adopted by the Ohio Redistricting Commission is invalid.

PARTIES

A. Relators

15. Relator League of Women Voters of Ohio ("LWVO") is the Ohio chapter of the League of Women Voters of the United States, a nonpartisan, statewide non-profit founded in May 1920, shortly before the ratification of the Nineteenth Amendment in August 1920 granting women's suffrage. With 3,661 members across the state, LWVO and its 29 local Leagues and 4 at-large units are dedicated to empowering citizens and ensuring an effective democracy. The LWVO has members, the vast majority of whom are registered Ohio voters, in all of Ohio's Senate districts and 94 of Ohio's 99 House districts. Ex. 2, Miller Aff. ¶ 4.

16. As part of its mission to empower voters and defend democracy, LWVO aims to shape public policy, to educate the public about policy issues and the functioning of our democracy, and to protect and expand Ohioans' access to elections and their government. Individual LWVO members invest substantial volunteer time in voter education, civic engagement, and voter registration. *Id.* ¶ 5.

17. The gerrymandered general assembly map impairs LWVO's work by deterring and discouraging its members and other Ohio voters from engaging in the political process, thereby making it more difficult for LWVO to engage voters through its education, registration, and outreach efforts. For example, LWVO and its members have struggled to engage and activate self-identified Democratic voters in districts drawn in a manner that favors Republican candidates. When LWVO hosts forums for candidates in districts that are not competitive, it is difficult to get candidates from the favored party to attend. *Id.* ¶ 6.

18. Concern about the prospect of a gerrymandered general assembly map has forced LWVO during 2021 to divert staff responsibilities, member efforts, and financial resources to an advocacy campaign for fair districts. If LWVO and its members could rely on a nonpartisan

process to produce fair maps and competitive districts, those resources would otherwise have been devoted to LWVO's traditional nonpartisan voter education services and programs. *Id.* ¶ 7.

19. Instead, LWVO has been forced to expend money and time advocating for fair districts. This advocacy by members and staff includes attending and testifying at multiple hearings across the state, mobilizing voter communications with elected officials, and organizing lobbying visits and rallies at the Statehouse in Columbus, among other efforts. During the 2021 redistricting cycle, LWVO helped sponsor a competition for citizens to draw redistricting maps that privileged good governance aims over partisan ends. LWVO has deployed all of its staff members on redistricting-related work, hired a new staff person to work strictly on redistricting, and hired a mapping expert to run the citizen map-drawing competition and analyze the Ohio Redistricting Commission map proposals as they became available. *Id.* ¶ 8.

20. In addition, fundraising by LWVO for its traditional programs has suffered during 2021 due to the fair districts campaign. Financial supporters of LWVO have been forced to choose between supporting LWVO's traditional programs and funding the advocacy campaign for fair districts in 2021. As an example, LWVO's fundraising for Women's Equality Day is down roughly 40 percent in 2021 compared to 2020. *Id.* ¶ 9.

21. LWVO is suing on its own behalf as well as in its capacity as representative of its members in order to seek a constitutional map. *Id.* ¶ 14.

22. Relator Ohio A. Philip Randolph Institute ("APRI") is the Ohio chapter of the A. Philip Randolph Institute, a national organization for African-American trade unionists and community activists, with eight chapters across Ohio and hundreds of members and volunteers statewide. Ex. 3, Washington Aff. ¶¶ 4–5.

23. While APRI supports a variety of charitable ventures unrelated to voting, the bulk of APRI's work is focused on voter education, registration, civic engagement, and outreach efforts. These efforts have continued during the COVID-19 pandemic, with APRI leadership and members conducting in-person and virtual voter outreach and voter education events, and partnering with churches to educate the public about absentee voting. *Id.* at ¶¶ 4–5, 7–8.

24. The gerrymandered general assembly map impairs APRI's work by deterring and discouraging its members and other Ohio voters from engaging in the political process, thereby making it more difficult for APRI to engage voters through its education, registration, and outreach efforts. At voter outreach events throughout 2021, both in person and virtual, APRI representatives have routinely heard attendees reiterate that because of gerrymandering, they believe nothing will ever change and they will never get a fair district map where their votes will matter. As a result, it is more difficult for APRI members to get people engaged. *Id.* ¶¶ 9–10.

25. The prospect of another gerrymandered map has consumed APRI's time and resources throughout 2021 that would otherwise have gone to traditional voter registration and outreach efforts, and that APRI would not have had to divert if its members could rely on Ohio's process to produce nonpartisan, fair maps. For example, APRI members have invested time and energy testifying at redistricting hearings in response to the Commission's proposed maps, at times forcing them to cancel or set aside other activities. In addition, APRI members have been forced to educate citizens and answer countless questions about the redistricting process, what "packing" and "cracking" are, why there is an initiative for fair districts and what its goals are, why their neighborhoods have been chopped up in unprecedented ways, and why a system has been designed that leads them to feel that their votes do not count. *Id.* ¶¶ 11–13.

26. Members of the public frequently contact APRI with questions about gerrymandering and similar issues, because they cannot get through to their elected representatives or get an answer from them. Responding to questions about redistricting also takes up a significant amount of APRI's time and resources. *Id.* at ¶ 14.

27. APRI is suing on its own behalf as well as in its capacity as representative of its members in order to seek a constitutional map. *Id.* ¶ 15.

28. Relator Tom Harry is a United States citizen, registered to vote in the State of Ohio, and an active Ohio voter. He is a Democratic voter, has supported Democratic state legislative candidates for Ohio's State House of Representatives and Senate in the past, and plans to support such candidates in the future. Relator Harry lives at 9116 N Creek Lane, Dayton, Ohio 45458, which is in Ohio House District 37 and Ohio Senate District 6. Relator Harry's interests in electing members of the General Assembly under a fair map have been prejudiced by the maps that Respondents adopted. The improper partisan unfairness of the maps that Respondents adopted has resulted in an illegally large number of districts whose voters have supported Republican candidates. House District 37 is amongst those improperly drawn districts.

29. Relator Tracy Beavers is a United States citizen, registered to vote in the State of Ohio, and an active Ohio voter. She is a Democratic voter, has supported Democratic state legislative candidates for Ohio's State House of Representatives and Senate in the past, and plans to support such candidates in the future. Relator Beavers is an active member of the League of Women Voters of Ohio. Relator Beavers lives at 1030 W Comet Road, New Franklin, Ohio 44216, which is in Ohio House District 31 and Ohio Senate District 27. Relator Beavers' interests in electing members of the General Assembly under a fair map have been prejudiced by the maps that Respondents adopted. The improper partisan unfairness of the maps that Respondents adopted

has resulted in an illegally large number of districts whose voters have supported Republican candidates. House District 31 and Senate District 27 are amongst those improperly drawn districts.

30. Relator Valerie Lee is a United States citizen, registered to vote in the State of Ohio, and an active Ohio voter. She is a Democratic voter, has supported Democratic state legislative candidates for Ohio's State House of Representatives and Senate in the past, and plans to support such candidates in the future. Relator Valerie Lee is an active member of the League of Women Voters of Ohio. Relator Lee lives at 5000 Sycamore Woods Boulevard, Dayton, Ohio 45426, which is in Ohio House District 39 and Ohio Senate District 5. Relator Lee's interests in electing members of the General Assembly under a fair map have been prejudiced by the maps that Respondents adopted. The improper partisan unfairness of the maps that Respondents adopted has resulted in an illegally large number of districts whose voters have supported Republican candidates. House District 39 and Senate District 5 are amongst those improperly drawn districts.

31. Relator Iris Meltzer is a United States citizen, registered to vote in the State of Ohio, and an active Ohio voter. She is a Democratic voter, has supported Democratic state legislative candidates for Ohio's State House of Representatives and Senate in the past, and plans to support such candidates in the future. Relator Meltzer is an active member of the League of Women Voters of Ohio. Relator Meltzer lives at 1012 Vine Street, Kent, Ohio, 44240 which is in Ohio House District 72 and Ohio Senate District 32. Relator Meltzer's interests in electing members of the General Assembly under a fair map have been prejudiced by the maps that Respondents adopted. The improper partisan unfairness of the maps that Respondents adopted has resulted in an illegally large number of districts whose voters have supported Republican candidates. House District 72 and Senate District 32 are amongst those improperly drawn districts.

32. Relator Sherry Rose is a United States citizen, registered to vote in the State of Ohio, and an active Ohio voter. She is a Democratic voter, has supported Democratic state legislative candidates for Ohio's State House of Representatives and Senate in the past, and plans to support such candidates in the future. Relator Rose is an active member of the League of Women Voters of Ohio. Relator Rose lives at 241 Whittier Drive, Kent, Ohio 44240, which is in Ohio House District 72 and Ohio Senate District 32. Relator Rose's interests in electing members of the General Assembly under a fair map have been prejudiced by the maps that Respondents adopted. The improper partisan unfairness of the maps that Respondents adopted has resulted in an illegally large number of districts whose voters have supported Republican candidates. House District 72 and Senate District 32 are amongst those improperly drawn districts.

33. Relator Bonnie Bishop is a United States citizen, registered to vote in the State of Ohio, and an active Ohio voter. She is a Democratic voter, has supported Democratic state legislative candidates for Ohio's State House of Representatives and Senate in the past, and plans to support such candidates in the future. Relator Bishop is an active member of the League of Women Voters of Ohio, and former President of the League of Women Voters of Toledo-Lucas County. Relator Bishop lives at 8160 Sunset Lane #208, Sylvania, Ohio, 43560, which is in Ohio House District 43 and Ohio Senate District 2. Relator Bishop's interests in electing members of the General Assembly under a fair map have been prejudiced by the maps that Respondents adopted. The improper partisan unfairness of the maps that Respondents adopted has resulted in an illegally large number of districts whose voters have supported Republican candidates. House District 43 and Senate District 2 are amongst those improperly drawn districts.

34. The maps that Respondents adopted deprive Relators and all similarly situated individuals of rights guaranteed to them under Article XI of the Ohio Constitution.

B. Respondents

35. Respondents are the Ohio Redistricting Commission and the members of the Ohio Redistricting Commission, namely Ohio Governor Michael DeWine, Ohio Secretary of State Frank LaRose, Ohio Auditor Keith Faber, President of the Ohio Senate Matt Huffman, Speaker of the Ohio House Robert R. Cupp, Ohio Senator Vernon Sykes, and Minority Leader of the Ohio House Emilia Sykes.

LEGAL BACKGROUND

A. Article XI

36. "Prior to the [Ohio] Constitution of 1851, the apportionments of legislative districts had been made by the General Assembly with the result that oftentimes political advantage was sought to be gained by the party in power. Accordingly, Article XI was incorporated in the Constitution for the purpose of correcting the evils of former days." *State ex rel. Herbert v. Bricker*, 139 Ohio St. 499, 508, 41 N.E.2d 377 (Ohio 1942). "The objective sought by the constitutional provisions was the prevention of gerrymandering." *Id.* at 509.

37. The Article XI in Ohio's 1851 Constitution aimed to prevent gerrymandering by imposing new constraints on Ohio's redistricting process and transferring the process from the General Assembly to the Ohio Apportionment Board.

38. Earlier incarnations of Article XI, however, proved insufficient to prevent partisan gerrymandering, as this Court determined that it lacked clear commands regarding partisan fairness. *Wilson*, 2012-Ohio-5367, ¶ 14, 134 Ohio St. 3d at 225, 981 N.E.2d at 820. In response, the voters of Ohio overwhelmingly passed a constitutional amendment in 2015, amending Article XI in several respects. First, the amended Article XI established the Ohio Redistricting Commission, which is responsible for redistricting the State's House and Senate Districts in compliance with Article XI of the Ohio Constitution. The Commission consists of seven members:

the Governor, the Auditor of State, the Secretary of State; one person appointed by the Speaker of the House of Representatives, one person appointed by the legislative leader of the largest political party in the House of Representatives of which the Speaker of the House is not a member, one person appointed by the president of the Senate, and one person appointed by the legislative leader of the largest political party in the Senate of which the president of the Senate is not a member. Ohio Const., art. XI, § 1(A).

39. "The affirmative vote of four members of the commission, including at least two members of the commission who represent each of the two largest political parties represented in the general assembly shall be required to adopt any general assembly district plan." *Id.* § 1(B)(3). "If the Ohio redistricting commission fails to adopt a final general assembly district plan not later than the first day of September [2021], the commission shall introduce a proposed general assembly district plan by a simple majority vote of the commission." *Id.* § 8(A)(1).

40. Article XI imposes detailed guidelines for redistricting that include objective, rules for the reapportionment process, as well as mandates that the commission be guided by partisan fairness, and eschew any quest for unfair partisan advantage.

a) Commission Process and Deadlines: Section 1

41. "The affirmative vote of four members of the commission"—"including at least two" opposition party members of the commission—"shall be required to adopt any general assembly district plan." *Id.* § 1(B)(3).

42. The Commission was required to hold three hearings "before adopting, but after introducing, a proposed plan." *Id.* §1(B)(3)(c).

43. The Commission was to adopt a plan by September 1, 2021.

44. If the Commission was unable to reach consensus with the two opposition members by September 1, 2021, it could use the impasse procedure. Under the impasse procedure, the

Commission could introduce a proposed General Assembly plan by simple majority vote. *Id*. §8(A)(1).

45. At least one hearing was required after the introduction of a simple majority map, in which the public could give testimony and there could be amendments to the plan. *Id*. § 8(A)(2).

46. Under the impasse procedure, the Commission had until September 15, 2021 to adopt a final map. *Id*. § 8(A)(3).

47. If a plan were adopted with the two members of the opposition party voting in favor of the plan, it would be in force for 10 years. *Id*. § 8(B).

48. A plan adopted by a simple majority vote, without at least two of the opposition party members, would be in force for only four years. *Id*. § 8(C)(1)(a).

49. When a simple majority four-year plan is adopted, the Commission "***shall include*** a statement explaining what the commission determined to be the statewide preferences of the voters of Ohio and the manner in which the statewide proportion of districts in the plan whose voters, based on statewide state and federal partisan general election results during the last ten years, favor each political party corresponds closely to those preferences." *Id*. § 8(C)(2) (emphasis added).

50. Further, "[a]t the time the plan is adopted, a member of the commission who does not vote in favor of the plan may submit a declaration of the member's opinion concerning the statement included with the plan." *Id.*

b) Political Fairness: Section 6

51. In addition to the Section 8 requirement for a statement by the Commissioners who enact a simple majority map, explaining how they considered statewide voter preferences in drawing their map, Section 6 mandates that the Commission be guided by political fairness in the drawing of all maps under Article XI.

52. Section 6 provides that the Commission "shall attempt to draw a general assembly district plan that meets all of the following standards":

> (A) ***No*** general assembly district plan ***shall be drawn*** primarily to favor or disfavor a political party.
>
> (B) The statewide proportion of districts whose voters, based on statewide state and federal partisan general election results during the last ten years, favor each political party ***shall*** correspond closely to the statewide preferences of the voters of Ohio.

Id. § 6 (emphasis added).

53. The provisions of Section 6(a) and Section 6(b) are complementary. Together, they require that map drawers not draw maps to the favor of one party or another, and one way that favoritism can be measured is through the deviation from statewide vote share in statewide elections over the past decade.

54. Section 6 further provides that all maps "shall be compact." *Id*. § 6(C).

c) Jurisdiction: Section 9

55. Article XI, Section 9 gives this Court "exclusive, original jurisdiction in all cases arising under this article" without limitation. *Id.* § 9(A).

56. Section 9(B) states that, "[i]n the event that any section of this constitution relating to redistricting, any general assembly district plan made by the Ohio redistricting commission, or any district is determined to be invalid by an unappealed final order of a court of competent jurisdiction then, notwithstanding any other provisions of this constitution, the commission shall be reconstituted as provided in Section 1 of this article, convene, and ascertain and determine a general assembly district plan in conformity with such provisions of this constitution as are then valid, including establishing terms of office and election of members of the general assembly from districts designated in the plan, to be used until the next time for redistricting under this article in conformity with such provisions of this constitution as are then valid." *Id.* § 9(B).

57. Section 9(B) thereby provides the global remedy for any case in which the court determines that the plan or any district is "invalid," including on the basis of Section 6 of Article XI. It provides that where this Court determines that a plan is "invalid" that it shall direct that the Redistricting Commission shall be reconstituted so as to "ascertain and determine a general assembly district plan" that conforms with the terms of the Ohio Constitution. Article XI, Section 6 —and its specific partisan fairness requirements—is precisely just such a constitutional provision with which a plan must comply.

58. There are additional remedies set forth in Section 9 for violations of specified articles. In particular, Section 9(D)(3) provides specific remedies to be applied when a plan includes violations of Sections 2, 3, 4, 5, or 7 of Article XI. It provides that if those other sections are violated that this Court can direct three different remedies: (a) the correction of isolated errors, *see* § 9(D)(3)(a); (b) a direction that an entirely new map be enacted (if certain numerical requirements are met (*i.e.,* 6 invalid House districts and/or 2 invalid Senate districts), *see* § 9(D)(3)(b); or (c) a direction, even where these numerical minima are not met, that an entirely new map be enacted whenever a violation of Section 2,3,4,5 or 7 results in partisan unfairness, *see* § 9(D(3)(c)). That the Constitution went out of its way to make sure that partisan fairness considerations have extra weight in Section 9(D)(3)(c)—requiring an entirely new statewide map just for one instance of a municipal split infraction—only underscores the importance of those considerations to Article XI.

FACTS

A. Respondents Engaged in an Unduly Partisan Process.

59. The State of Ohio has a history of gerrymandered maps. The maps that came out of Ohio's 2011 decennial apportionment process were particularly gerrymandered. For example, in 2012 elections, the year the map was new, Democratic candidates won 50.2% of the statewide

vote, but they won only 39.4% of Ohio's state house seats. *See* Ex. 1, Warshaw Aff., at 18. This bias persisted: Democrats won 45.6% of the votes, but only 35.4% of the seats, in the 2020 state house elections. *Id*. The extreme seat bias was the result not of political geography, but of a manipulated process. *Id.* at 18–22.

60. The process used by the Redistricting Commission mirrors the process that was used in 2011 to draw the map. The prior manipulated apportionment process was outlined in detail in the three-judge federal panel in *Ohio A. Philip Randolph Inst. v. Householder*. While the litigation focused on the congressional process, both the congressional and state legislative maps were drawn using the same process at the same time. *Ohio A. Philip Randolph Inst. v. Householder*, 18-cv-357 (S.D. Ohio), Dkt 230-12 (Ray DiRossi Deposition Tr.) at 52:14–53:14, 63:21–64:14, 89:14–90:3, 95:7–15, 164:11–15, 178:6–13, 232:24–233:6, 276:20–277:3. Based on the court's review of extensive evidence, the panel found that "partisan intent predominated" the map drawing process. *Ohio A. Philip Randolph Inst. v. Householder*, 373 F. Supp. 3d at 1099. The court specifically credited "evidence of the timeline and logistics of the map-drawing process, the map drawers' heavy use of partisan data, contemporaneous statements made by the map drawers about their efforts, the characteristics of the map itself (including the irregular shape of the districts, their lack of compactness, and the high number of county and municipality splits), and finally, the outlier partisan effects that the map has produced since its enactment." *Id*.

61. One procedural issue that the three-judge panel found particularly relevant was that "[t]here was a severe disconnect between the outward face of the map-drawing process and its true inner workings." *Id.* at 1099–1100. While the process was supposed to be conducted by the bipartisan apportionment board, in reality the map was drawn in secret by partisan actors. *Id*.

62. The 2021 state redistricting process was just as flawed and as infected with partisan bias as the 2011 state redistricting process. The 2021 Ohio Redistricting Commission was convened on August 6, 2021. There were only two Democrats on the Commission; the rest of the members were from the Republican Party. As in 2011, all deliberations happened behind closed doors and the process was controlled by one party.

63. Despite the constitutional mandate that any general assembly district plan must be adopted, including with the support of at least two Democratic members of the Commission, by September 1, 2021, Ohio Const., art. XI, §§ 1(B)(3), 1(C), the Republicans failed to even present a map until nine days after that constitutional deadline.

64. In flouting the constitutional deadlines of Section 1 of Article XI, the Republican members of the Commission repeatedly invoked the delayed release of the Census data as a rationale. Ex. 5, Tr. of Sept. 9, 2021 Morning Hrg., at 3, 12, 13; Ex. 6, Tr. of Sept. 9, 2021 Afternoon Hrg., at 5–6. But this delayed data did not come as a surprise to the Commission—the Commission had been well aware by early 2021 that the Census data would be received later than usual. In fact, Ohio Republican leadership filed a lawsuit seeking an earlier release of Census data, but withdrew their request when the Census Bureau announced that it would be able to produce Census data by August 16, 2021, over a month earlier than the previously-announced release date of September 30, 2021. With full awareness of both this new release date and its constitutionally-mandated deadline to adopt a general assembly district plan, the Republican administration specifically represented to the Sixth Circuit that, "[a]lthough Ohio would prefer to get its data sooner, Ohio agrees that an August 16 delivery would allow it to complete its redistricting process." *Ohio v. Raimondo*, 848 F. App'x 187, 188 (6th Cir. 2021).

65. On September 9, 2021, the Republican members of the Commission presented a map through the testimony of Ray DiRossi, the chief map drawer. The map was introduced at the first of two hearings that day, which took place at 10:00 A.M.

66. DiRossi has a long history in the state of drawing Republican maps and was one of two chief map drawers of the gerrymandered map in 2011. *Ohio A. Philip Randolph Inst.*, 373 F. Supp. 3d at 995–96 (describing how DiRossi served "as [one of] the principal on-the-ground map drawers" and left his position in government to serve as a Republican consultant in order to draw the map). In 2011, DiRossi secured a room at the DoubleTree Hotel in Columbus, and dubbed it the "bunker." Only Republicans had access to the bunker while he was drawing his maps. *Id*.

67. This time around, DiRossi once again worked at the direction of only the Republican members of the Commission, with no input or oversight from the Democratic members.

68. This dynamic first became clear at the Commission's August 31, 2021 hearing. Having never been consulted by Republican members of the Commission about drawing a proposed map, the Democratic members of the Commission presented a proposed map on August 31, 2021, in advance of the Commission's constitutional deadline. At that time, the Republican members of the Commission refused to inform the Democratic members as to when they would be introducing any separate map, but one Republican member, Senate President Matt Huffman, indicated that he was "not prepared to discuss" the constitutionality of the Democrats' proposed map because he would "rather have our version of . . . the Senate Democrats' expert here today . . . to talk about that." Ex. 4, Tr. of Aug. 31, 2021 Hrg., at 9. House Minority Leader Emilia Sykes indicated that she had "not been privy to any of those conversations" regarding other maps that Commission members were working on, and she asked what, if anything, she could "expect in

terms of participating" in the drawing of other maps the Commission would consider. *Id.* at 8. No Republican member indicated that she would be included or that her input would be considered in drawing an alternative map.

69. At the Commission hearing on September 9, 2021, it became clear that the Republicans' expert was DiRossi. At that September 9 hearing, DiRossi testified that he had been "directed," by General Assembly leadership, "not to use" any "racial data or demographic data" when drawing the map. Ex. 5, Tr. of Sept. 9, 2021 Morning Hrg., at 8. In response, House Minority Leader Emilia Sykes—who is part of General Assembly leadership as the Leader of the Democrats in the Ohio House—asked who directed him thus, and indicated she was not privy to any request that DiRossi ignore racial data. *Id.* at 9.

70. Mr. DiRossi also stated that the Republican representatives and staffers responsible for drafting this map were "conducting an analysis of the election data contemplated by the constitution," but that analysis was "ongoing," and was "not complete" at the time that this map was proposed to the Commission. Ex. 5, Tr. of Sept. 9, 2021 Morning Hrg., at 8.

71. In the second hearing on September 9, 2021, in a 5-2 vote along partisan lines, the Commission voted to introduce the Republicans' map that had been proposed at the 10:00 A.M. meeting as the official proposed map of the Commission. Ex. 6, Tr. of Sept. 9, 2021 Afternoon Hrg., at 2, 7–8. Not only did the Commission embrace the Republicans' map as its proposed plan over the objection of its Democratic members, but it selected the Republicans' map as the Commission's proposed plan before giving the public any meaningful opportunity to look at, much less review, the map.

72. The map was first presented to the public at 10:00 A.M., and the Commission selected that map as its proposed plan the same day at its 2:00 P.M. hearing. Both hearings had

been announced with only one day's notice. Many witnesses testified that they were provided insufficient notice to fully participate and did not have enough time to view the map in order to provide feedback. *See* Ex. 5, Tr. of Sept. 9, 2021 Morning Hrg.; Ex. 6, Tr. of Sept. 9, 2021 Afternoon Hrg.

73. Similarly, in 2011, the Court found that the maps had been drawn in secret and only shared at the last moment with little opportunity for engagement from the opposition party or public. *Ohio A. Philip Randolph Inst.*, 373 F. Supp. 3d. at 1100.

74. On the evening of September 15, 2021, Senate President Huffman introduced an amendment to the Republican-proposed map that the Commission had passed on September 9, revising several district boundaries. Within ten minutes of its introduction, the Commission had passed the amendment along party lines. Just after midnight on September 16, 2021, the Commission voted—again in a 5-2 vote along party lines—to adopt the Republicans' amended map, introduced less than an hour earlier, as the general assembly plan for the next four years.

75. Though most of the Republicans' process took place behind closed doors, Republican Commission members made public statements revealing that their map was plainly unduly partisan, candidly admitting that their map would not stand up to scrutiny under Article XI of the Ohio Constitution.

76. Governor DeWine expressed regret and doubt about of the legality of the final maps at the Commission's final hearing, stating he was "sure" the Commission could have reached an outcome "that was much more clearly constitutional," Ex. 7, Tr. of Sept. 15, 2021 Hrg., at 11. In a separate statement after the vote, Governor DeWine likewise said that the Commission's "job is to make [the redistricting plan] as constitutional as we can, and ***I thought we could have done***

better." Susan Tebben, *Huffman Defends his Maps, Redistricting Process Despite No Bipartisan Support*, Ohio Capital Journal (Sept. 17, 2021), https://bit.ly/3nWEwqf (emphasis added).

77. Secretary of State LaRose similarly lamented at the final meeting that the Commission's "***map has many shortcomings,***" and expressed "fear we're going to be back in this room very soon." Ex. 7, Tr. of Sept. 15, 2021 Hrg., at 10 (emphasis added).

78. Auditor Faber acknowledged that the Commission's map was "***not that good.***" Ex. 7, Tr. of Sept. 15, 2021 Hrg., at 14 (emphasis added).

79. Because the Republicans' amended map did not receive the support of two members of the minority party, the Commission was required under Article XI, Section 8(C)(2) to adopt a "statement explaining what the commission determined to be the statewide preferences of the voters of Ohio and the manner in which the statewide proportion of districts in the plan whose voters, based on statewide state and federal partisan general election results during the last ten years, favor each political party corresponds closely to those preferences."

80. During the Commission's hearings, witnesses frequently cited the importance of these Section 6(B) requirements, and asked how compliance with this constitutional requirement would be determined. *See, e.g.*, Ex. 5, Tr. of Sept. 9, 2021 Morning Hrg.; Ex. 6, Tr. of Sept. 9, 2021 Afternoon Hrg. Republican Commission members did not provide any clear explanation of how this provision should be interpreted, however, or how their maps would comply with this requirement: Auditor Faber even dismissed the requirements of Section 6 as "aspirational." Ex. 5, Tr. Of Sept. 9, 2021 Morning Hrg., at 23. During the Commission's final meeting on September 15, in fact, Secretary of State LaRose expressed concern that he had been "been asking for the rationale [for compliance with Section 6(B)] for days" but had "not gotten an answer until tonight,"

and asked whether "there [was] a reason for, for not sort of sharing this sooner to sort of guide the conversations as we've been having them." Ex. 7, Tr. of Sept. 15, 2021 Hrg., at 17.

81. At the final meeting, Senate President Huffman introduced a statement to comply with Section 8(C)(2), which he said "was prepared probably in the last five or six hours," and was "simply listing all" of the partisan metrics that could be "considered" to determine compliance with Section 6(B). Ex. 7, Tr. of Sept. 15, 2021 Hrg., at 17. Senate President Huffman's statement was adopted by the Commission along a 5-2 party-line vote. The statement did not provide a constitutionally valid, or even credible, justification for the enacted map, but was bald sophistry. *See infra* ¶¶ 87–88.

B. Respondents' Partisan Process Created Unduly Partisan Results.

82. This extremely partisan process described above yielded predictably partisan results. In violation of Article XI, the maps that Respondents adopted on September 16, 2021 were drawn primarily to favor Republicans and disfavor Democrats, and the statewide proportion of districts whose voters favor each political party does not correspond closely to the statewide preferences of the voters of Ohio. These violations are detailed in the causes of action below.

83. Beyond the procedural irregularities, the extremity of the skew of the map itself illustrates that Republican members of the Commission sought to ensure that the enacted plan would favor their party, even if doing so violated Article XI.

84. Despite Section 6's requirement that the map "correspond closely" with the manifest leanings of the electorate, the enacted map, and the Huffman statement accompanying it, reveal the majority's rejection of Section 6, and their disdain for the voters of Ohio or their well-established preferences. Over the past decade, Republicans have received between 46.2% and 59.7% of the statewide vote. *See* Ex. 10, Testimony of Collin Marozzi to Ohio Redistricting Commission at Table 1 (submitted Aug. 27, 2021); *see also* Ex. 9, Ohio Redistricting Commission,

Article XI, Section 8(C)(2) Statement (Sept. 16, 2021) (according to the Redistricting Commission's own statement, Republicans have only garnered an average 55% of the votes in statewide elections over the past 10 years). In the past decade, Democrats have won on average 45.5% of the statewide two-party vote. Ex. 1, Warshaw Aff., at 5, 24–25. Yet, they are only projected to win an approximate 32% to 33% of the seats in the Ohio House and 29% to 31% of the seats in the Ohio Senate—numbers that are just as disproportional as the 2012-2020 gerrymandered map—and in the Senate, even *more* disproportionate. *Id.* at 24–25.

85. Nor can Respondents reasonably contend that they even "attempted" to meet the requirements of Section 6. The blatant partisan unfairness of the enacted map belies any such contention.

86. Moreover, as the Cooper Affidavit makes plain, it was wholly possible to enact a map that complied with the other provisions of Article XI without violating the partisan fairness requirements of Section 6. Ex. 8, Cooper Aff. ¶¶ 20, 22. These alternative maps highlight that disproportionately advantaging Republicans was not necessary to achieve equal population requirements or other compelling state interests, but rather was done in order to advance the partisan aims of the Commission's Republican majority.

87. In the Commission's statement concerning how it considered the statewide voter preferences, it stated that "the Commission determined that Republican candidates won thirteen out of sixteen of those elections resulting in a statewide proportion of voters favoring statewide Republican candidates of 81 % and a statewide proportion of voters favoring statewide Democratic candidates of 19%." Ex. 9, Ohio Redistricting Commission, *Article XI, Section 8(C)(2) Statement* (Sept. 16, 2021).

88. The Commission's suggestion that it could somehow comply with Section 6(B) by counting up the number of elections in which Republican candidates were victorious finds no support in the language of Section 6(B). Rather, that provision expressly states that partisan fairness is to be determined by comparing two measures: (1) the proportion of ***districts*** in the plan whose ***voters*** favor a political party, based on statewide elections over the past ten years; and (2) the statewide preferences of the ***voters*** of Ohio. To suggest that one should merely count up the number of elections that Republicans won to determine the statewide preferences of the voters effectively means that all of the votes cast for a Democrat in an election count for nothing. Under the Commission's methodology, if the Republicans won 100% of the elections, each by 51% of the vote, then instead of constituting 51% of the statewide voter preferences, the Republicans would supposedly constitute 100% of the statewide voter preferences and that all the voters in the state preferred Republican candidates. Accordingly, under the Commission's approach, the Republicans would be entitled to 100% of the seats in the General Assembly rather than 51%. Such a methodology tortures Section 6(B) beyond any reasonable construction. *See also* Warshaw Aff. § 4.1 (noting that, under the Commission's explanation, "[I]f Republicans had won each statewide election with 50.1% of the vote, the statewide proportion of voters favoring Republican candidates is 100%. Thus, Republicans would be entitled to win 100% of the legislative seats. It makes much more sense that the text of Section 6(B)'s proportionality requirement instead implies that Republicans are entitled to 50.1% of the legislative seats if they win 50.1% of the votes.").

89. Accordingly, it is clear that the Commission did not draw a map that complied with the requirements of Article XI, Section 6, and in fact intentionally rejected Section 6.

FIRST CAUSE OF ACTION
Violation of Article XI

(The Districts of the Ohio House of Representatives)

90. Relators restate and incorporate by reference the allegations of paragraphs 1 through 89 above as though fully set forth in this Paragraph.

91. The House map that Respondents adopted is invalid because it violates Section 6 of Article XI in several ways. The House map that Respondents adopted violates Section 6(a) as it was drawn primarily to favor the Republican Party, which is demonstrated through statements made by the members of the Commission, the map drawing process, and the extreme nature of the partisan skew of the map. *See, e.g.* Ex. 1, Warshaw Aff. at 23–28 (describing the partisan skew of the map). The House map that Respondents adopted further does not comply with the requirement of Article XI, Section 6(B), because the statewide proportion of districts whose voters, based on statewide state and federal partisan general election results during the last ten years, favor each political party does not correspond closely to the statewide preferences of the voters of Ohio. *See* Ex. 1, Warshaw Aff. at 23–28.

SECOND CAUSE OF ACTION
Violation of Article XI

(The Districts of the Ohio Senate)

92. Relators restate and incorporate by reference the allegations of paragraphs 1 through 91 above as though fully set forth in this Paragraph.

93. The Senate map that Respondents adopted is invalid because it violates Section 6 of Article XI in several ways. The Senate map that Respondents adopted violates Section 6(a) as it was drawn primarily to favor the Republican Party, which is demonstrated through the procedure of the map drawing process and the partisan bias metrics of the map. *See* Ex. 1, Warshaw Aff., at 23–28. The Senate map that Respondents adopted further does not comply with the requirement

of Article XI, Section 6(B), because the statewide proportion of districts whose voters, based on statewide state and federal partisan general election results during the last ten years, favor each political party does not correspond closely to the statewide preferences of the voters of Ohio. *See* Ex. 1, Warshaw Aff., at 23–28.

PRAYER FOR RELIEF

Accordingly, Relators respectfully request that this Court:

1. Declare that the maps that Respondents adopted are invalid for failure to comply with Article XI of the Ohio Constitution;

2. Order the Commission to adopt a new general assembly district plan or, at a minimum, to amend the maps that Respondents adopted to correct the violations, as contemplated in Article XI, Section 9(B);

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

4. Hold hearings, consider briefing and evidence, and otherwise take actions necessary to adopt redistricting plans for the state of Ohio or to direct the Commission as to plans to be adopted;

5. 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 plans adopted by the Commission pursuant to the Ohio Constitution; and

6. 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 Freda J. Levenson

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