

IN THE SUPREME COURT OF OHIO

Bria Bennett, et al.,

Relators,

v.

Ohio Redistricting Commission, et al.,

Respondents.

Case No. 2021-1198

Original Action Filed Pursuant to Ohio
Constitution, Article XI, Section 9(A)

*[Apportionment Case Pursuant to S. Ct.
Prac. R. 14.03]*

RELATORS' MOTION TO COMPEL EXPEDITED DISCOVERY

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

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

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

Counsel for Relators

Erik J. Clark (0078732)
Ashley Merino (0096853)
ORGAN LAW LLP
1330 Dublin Road
Columbus, Ohio 43215
T: (614) 481-0900
F: (614) 481-0904
ejclark@organlegal.com
amerino@organlegal.com

*Counsel for Respondent Ohio Redistricting
Commission*

Dave Yost
OHIO ATTORNEY GENERAL
Bridget C. Coontz (0072919)
Julie M. Pfeiffer (0069762)
Michael Walton (0092201)
OFFICE OF THE OHIO ATTORNEY GENERAL
30 E. Broad Street, 16th Floor
Columbus, Ohio 43215
T: (614) 466-2872
F: (614) 728-7592
Bridget.Coontz@OhioAGO.gov
Julie.Pfeiffer@OhioAGO.gov
Michael.Walton@OhioAGO.gov

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

W. Stuart Dornette (0002955)
Beth A. Bryan (0082076)
Philip D. Williamson (0097174)
TAFT STETTINIUS & HOLLISTER LLP
425 Walnut St., Suite 1800
Cincinnati, Ohio 45202-3957
T: (513) 381-2838
dornette@taftlaw.com
bryan@taftlaw.com
pwilliamson@taftlaw.com

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

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

Diane Menashe (0070305)
John Gilligan (0024542)
ICE MILLER LLP
250 West Street, Suite 700
Columbus, Ohio 43215
Diane.Menashe@icemiller.com
John.Gilligan@icemiller.com
T: (614) 462-2221
F: (614) 222-3438

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

Relators Bria Bennett, *et al.* hereby move this Court for an order compelling expedited discovery.

In particular, Relators move this Court to order that:

(1) Respondents House Speaker Bob Cupp, Governor Mike DeWine, Secretary of State Frank LaRose, Auditor Keith Faber, and Senate President Matt Huffman (“Republican Respondents”) provide responses and documents responsive to Relators’ requests for production and interrogatories, served on September 28, 2021 (attached as Exhibit A), by October 8, 2021;

(2) Republican Respondents sit for depositions between October 11 and October 21, 2021;

(3) Raymond DiRossi, Director of Budget and Finance for the Ohio Senate Majority, produce documents responsive to the requests attached to the subpoena duces tecum served on him on October 4, 2021 (attached as Exhibit B), by October 11, 2021, and sit for a deposition on October 19, 2021; and

(4) Counsel be permitted the option of taking and/or defending such depositions remotely.¹

Respectfully submitted,

/s/ Donald J. McTigue

Donald J. McTigue (0022849)

Derek S. Clinger (0092075)

MCTIGUE & COLOMBO LLC

545 East Town Street

Columbus, OH 43215

dmctigue@electionlawgroup.com

dclinger@electionlawgroup.com

T: (614) 263-7000

F: (614) 368-6961

¹ As stated in the *League of Women Voters* Relators’ motion, Relators would be amenable to counsel for one of the parties defending such depositions in person, provided the parties agree to certain ground rules.

Abha Khanna (Pro Hac Vice Pending)
Ben Stafford (Pro Hac Vice Pending)
ELIAS LAW GROUP
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Seattle, WA 98101
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bstafford@elias.law
T: (206) 656-0176
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ELIAS LAW GROUP
10 G St NE, Suite 600
Washington, DC 20002
abbranch@elias.law
jjasrasaria@elias.law
sklein@elias.law
T: (202) 968-4490
F: (202) 968-4498

Counsel for Relators

MEMORANDUM IN SUPPORT

This action was filed on September 24, 2021, and the Court issued a scheduling order on September 29, 2021, ordering the parties to file any evidence they intend to present no later than October 22, 2021. In light of this condensed timeline and the importance of the discovery sought by Relators, expedited discovery is appropriate.

To streamline this motion for the Court, Relators respectfully incorporate the reasoning set forth in Relators' Motion to Compel Expedited Discovery, *League of Women Voters, et al. v. Ohio Redistricting Commission, et al.*, Ohio Supreme Court Case No. 2021-1193 (Oct. 5, 2021), and Relators' Motion to Compel Expedited Discovery, *The Ohio Organizing Collective, et al. v. Ohio Redistricting Commission, et al.*, Ohio Supreme Court Case No. 2021-1210 (Oct. 5, 2021).

As the *League of Women Voters* and *The Ohio Organizing Collective* Relators explain in their motions and supporting memoranda, the discovery sought by Relators in each of these matters is essential to the disposition of the cases, and time is of the essence due to the expedited schedule ordered by this Court and the February 2022 candidate filing deadline.

For the foregoing reasons and those stated in the other Relators' motions, Relators respectfully request this Court compel expedited discovery. In particular, relators hereby move this Court to order that:

- (1) Respondents House Speaker Bob Cupp, Governor Mike DeWine, Secretary of State Frank LaRose, Auditor Keith Faber, and Senate President Matt Huffman ("Republican Respondents") provide responses and documents responsive to Relators' requests for production and interrogatories, served on September 28, 2021 (attached as Exhibit A), by October 8, 2021;
- (2) Republican Respondents sit for depositions between October 11 and October 21, 2021;
- (3) Raymond DiRossi, Director of Budget and Finance for the Ohio Senate Majority,

produce documents responsive to the requests attached to the subpoena duces tecum served on him on October 4, 2021 (attached as Exhibit B), by October 11, 2021, and sit for a deposition on October 19, 2021; and

(4) Counsel be permitted the option of taking and/or defending such depositions remotely.

Respectfully submitted,

/s/ Donald J. McTigue

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

Abha Khanna (Pro Hac Vice Pending)
Ben Stafford (Pro Hac Vice Pending)
ELIAS LAW GROUP
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Seattle, WA 98101
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bstafford@elias.law
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Spencer W. Klein (Pro Hac Vice Pending)
ELIAS LAW GROUP
10 G St NE, Suite 600
Washington, DC 20002
abbranch@elias.law
jjasrasaria@elias.law
sklein@elias.law
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F: (202) 968-4498

Counsel for Relators

MEET AND CONFER CERTIFICATION PURSUANT TO CIV.R. 37

Pursuant to Ohio Rule of Civil Procedure 37(a)(1), counsel for Relators Bria Bennett, *et al.* hereby certify that Relators have, in good faith, conferred with Respondents regarding discovery in this matter, including some Respondents' general objection to all discovery in this matter, a schedule for discovery, and Relators' discovery requests, including written interrogatories, requests for the production of documents, and depositions of fact witnesses.

On September 28, 2021, Relators served the Republican Respondents with requests for the production of documents and written interrogatories. The parties met and conferred by videoconference on October 1, 2021. At that time, and in subsequent email communications, counsel for Relators and for other relators in the contemporaneously filed apportionment cases (Nos. 2021-1193 and 2021-1210) made Respondents aware of Relators' intent to take the depositions of Respondents. To date, Respondents have not produced documents, answered Relators' interrogatories, or assented to depositions. Instead, counsel for Respondents Cupp and Huffman asserts that discovery is not authorized in this case. Counsel for Respondents Cupp and Huffman also represented that they would have a potential objection to any subpoena of Mr. DiRossi.

Counsel certifies that notwithstanding the parties' efforts, the parties are unable to resolve this dispute regarding the availability of discovery and Relators' discovery requests.

Respectfully submitted,

/s/ Donald J. McTigue

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

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bstafford@elias.law
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Washington, DC 20002
abbranch@elias.law
jjasrasaria@elias.law
sklein@elias.law
T: (202) 968-4490
F: (202) 968-4498

Counsel for Relators

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was sent via email this 5th day of October, 2021 to the following:

Erik Clark, ejclark@organlegal.com
Ashley Merino, amerino@organlegal.com
Counsel for Respondent Ohio Redistricting Commission

Bridget Coontz, Bridget.Coontz@OhioAGO.gov
Julie Pfeiffer, Julie. Pfeiffer@OhioAGO.gov
Michael Walton, Michael.Walton@OhioAGO.gov
Counsel for Respondents Ohio Governor Mike DeWine, Ohio Secretary of State Frank LaRose, and Ohio Auditor Keith Faber

W. Stuart Dornette, dornette@taftlaw.com
Beth A. Bryan, bryan@taftlaw.com
Philip D. Williamson, pwilliamson@taftlaw.com
Phillip J. Strach, phil.strach@nelsonmullins.com
Thomas A. Farr, tom.farr@nelsonmullins.com
John E. Branch, III, john.branch@nelsonmullins.com
Alyssa M. Riggins, alyssa.riggins@nelsonmullins.com

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

Diane Menashe, diane.menashe@icemiller.com
John Gilligan, john.gilligan@icemiller.com

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

/s/ Donald J. McTigue
Donald J. McTigue (0022849)

Exhibit A

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**RELATORS' FIRST SET OF INTERROGATORIES AND REQUESTS FOR
PRODUCTION, PROPOUNDED TO RESPONDENTS HOUSE SPEAKER BOB CUPP,
GOVERNOR MIKE DEWINE, SECRETARY OF STATE FRANK LAROSE, AUDITOR
KEITH FABER, AND SENATE PRESIDENT MATT HUFFMAN**

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

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10 G St NE, Suite 600
Washington, DC 20002
abbranch@elias.law
jjasrasaria@elias.law
sklein@elias.law
T: (202) 968-4490
F: (202) 968-4498

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

Counsel for Relators

Erik J. Clark (0078732)
Ashley Merino (0096853)
ORGAN LAW LLP
1330 Dublin Road
Columbus, Ohio 43215
T: (614) 481-0900
F: (614) 481-0904
ejclark@organlegal.com
amerino@organlegal.com

Counsel for Respondent Ohio Redistricting Commission

Dave Yost
OHIO ATTORNEY GENERAL
Bridget C. Coontz (0072919)
Julie M. Pfeiffer (0069762)
OFFICE OF THE OHIO ATTORNEY GENERAL
30 E. Broad Street, 16th Floor
Columbus, Ohio 43215
T: (614) 466-2872
F: (614) 728-7592
Bridget.Coontz@OhioAGO.gov
Julie.Pfeiffer@OhioAGO.gov

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

W. Stuart Dornette (0002955)
Beth A. Bryan (0082076)
Philip D. Williamson (0097174)
TAFT STETTINIUS & HOLLISTER LLP
425 Walnut St., Suite 1800
Cincinnati, Ohio 45202-3957
T: (513) 381-2838
dornette@taftlaw.com
bryan@taftlaw.com
pwilliamson@taftlaw.com

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

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

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Pursuant to Rules 26, 33, and 34 of the Ohio Rules of Civil Procedure, Relators hereby propound to Respondents House Speaker Bob Cupp, Governor Mike DeWine, Secretary of State Frank LaRose, Auditor Keith Faber, and Senate President Matt Huffman the following: (1) interrogatories, to be answered in writing, under oath and (2) requests for production of documents, both of which are to be responded to by October 8, 2021. Documents responsive to the following requests shall be produced to the offices of McTigue & Colombo LLC, 545 East Town Street, Columbus, OH 43215.

DEFINITIONS AND INSTRUCTIONS

A. The following terms shall have the meanings indicated below:

- (1) The terms “Respondents,” “you,” and “your” shall mean: House Speaker Bob Cupp, Governor Mike DeWine, Secretary of State Frank LaRose, Auditor Keith Faber, and Senate President Matt Huffman individually, as a member of the Ohio Redistricting Commission, and in your capacities as House Speaker, Governor, Secretary of State, Auditor, and Senate President, respectively, as well as your present and former agents, assigns, employees, partners, successors, predecessors, associates, personnel, attorneys, and other persons or entities acting or purporting to act on your behalf.
- (2) The term “Commission” shall mean the Ohio Redistricting Commission.
- (3) The term “9/9 plan” shall mean the General Assembly maps presented by Senate President Matt Huffman to the Ohio Redistricting Commission on September 9, 2021, or any drafts thereof.
- (4) The term “9/16 plan” shall mean the General Assembly maps proposed by Senate President Matt Huffman to the Ohio Redistricting Commission on September 15, 2021, and approved on September 16, 2021, or any drafts thereof.
- (5) The term “map drawer” shall mean anyone who assisted in the creation of the 9/9 or 9/16 plans, regardless of whether or not they were compensated for their services.
- (6) The term “Section 8(C)(2) statement” shall mean the statement, disseminated to the public by the Commission on September 16, 2021, purporting to explain (as required under Article XI Section 8(C)(2) of the Ohio Constitution for maps approved by a simple majority) “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, as described in division (B) of Section 6 of [Article XI].”

- (7) The term “Describe” shall mean to set forth fully and unambiguously every fact that relates to the answer called for by the Interrogatory of which you have knowledge and to identify each individual or entity with knowledge or information that relates to your answer, and when used in reference to a factual or legal contention, to describe the full factual and legal basis for the contention, and to identify any and all persons that you believe have knowledge about each such fact or document.
- (8) The term “person” shall mean and include natural persons, governmental entities, proprietorships, corporations, partnerships, joint ventures, and each other form of organization, entity, or association.
- (9) The term “identify” shall mean, with respect to any natural person, to state his or her full name, present or last known residential address, present or last known business address, and telephone number(s).
- (10) The term “identify” shall mean, with respect to any business organization, corporation or other legal entity, to state its full name, present or last known address, principal place of business, and telephone number.
- (11) The term “identify” shall mean, with respect to any document, to state the date of the document and the type of the document (e.g., letter, memorandum, telegram, chart, photograph, sound reproduction, etc.), to identify the person(s) who prepared the document, to identify any person(s) who signed the document, to identify any person(s) to whom the document was sent, to identify the present location and custodian of the document, and to describe the contents of the document.
- (12) The term “document” is used in the broadest possible sense and shall mean, without limitation, any kind of written, printed, recorded or graphic matter, however produced or reproduced, of any kind or description, whether sent or received or neither, including originals, copies and drafts and both sides of originals, copies and drafts, and including but not limited to papers, books, letters, correspondence, telegrams, cables, telex messages, electronic messages or electronic mail (whether or not stored or recorded on-line or off-line in archive storage), financial statements, memoranda, notes, notations, work papers, transcripts, minutes, reports and recordings of telephone conversations or other conversations, or of interviews, or of conferences or other meetings, affidavits, statements, summaries, opinions, reports, studies, analyses, evaluations, contracts, agreements, journals, statistical records, desk calendars, appointment books, diaries, expense account records, lists, tabulations, summaries, sound recordings, videotapes, word processing disks and/or memory or archive systems, computer disks and/or memory or archive systems, computer printouts, data processing input and output, magnetic tapes, magnetic disks, microfilms, all other records kept by electronic, magnetic, photographic, optical or mechanical means, and things similar to any of the foregoing, however denominated.

- (13) The term “communication” shall mean the transmission of any verbal or nonverbal, written or non-written message, information, sign, symbol, or behavior, and shall include the process by which such transmission occurs.
- (14) The terms “relating to” and “concerning” shall mean referring to, related to, regarding, consisting of, pertaining to, reflecting, evidencing, describing, constituting, or being in any way logically or factually connected with the matter discussed, including any connection, direct or indirect, whatsoever with the requested topic, without limitation, unless otherwise specified in the Request.
- B. All interrogatories should be answered based on the knowledge of Respondents and/or any of Respondents’ attorneys, agents, and representatives.
- C. Where an interrogatory calls for the answer in more than one part, each part shall be separately answered so as to be fully understandable. If you object to any part of an interrogatory, answer all parts of such interrogatory as to which you do not object, and as to each part to which you do object, set forth the basis for the objection.
- D. The singular number and masculine gender shall include, and be applied as, the plural or the feminine gender or neuter, and vice-versa, as the circumstances of the particular interrogatory may make appropriate.
- E. These interrogatories are continuing so as to require further and supplemental responses if Respondents receive or discover additional information between the time of original response and the time of any hearing, trial, or other presentation of evidence in this matter.
- F. If you deem any request for documents to call for the production of privileged or otherwise nondisclosable materials and you assert such claim, furnish a list at the time of production identifying each document so withheld together with the following information:
- (1) the reason for withholding each such document or material, stated with sufficient particularity so as to permit the Court to adjudicate the validity of the claimed privilege;
 - (2) a statement of the facts constituting the basis for any claim of privilege or other ground of non-disclosure; and
 - (3) a brief description of each such document or other material, including:
 - (a) the date of the document;
 - (b) the name of its author(s) or preparer(s) and an identification by employment and title of each such person(s);
 - (c) the name of each person to whom the document or other material was sent or

who has had access to, or custody of, the document or other material, together with an identification of each such person(s);

- (d) the paragraph of this request to which the document or other material is responsive; and
- (e) in the case of any document or other material that relates in any way to a meeting or conversation, identification of such meeting or conversation and the persons attending or participating in such meeting or conversation.

- G. With respect to each document request, Relators request that Respondents identify and produce all documents that are known to Respondents or that Respondents can locate or discover that are in Respondents' possession, custody or control, from whatever source derived, which, directly or indirectly, relate, refer or pertain to the subject matter of the request made, including, without limitation, all such documents in the files (whether they be denominated personal, business or any other files) in the possession, custody or control of Respondents or, as applicable, of Respondents' employees, agents, representatives or other persons acting on Respondents' behalf or under Respondents' control.
- H. Relators request that Respondents produce all responsive documents and other materials in an orderly manner (and with appropriate markings or other identification) so that Relators will be able to identify the source of the document or other material, the file in which the document or other material was maintained, the person to whom such file belongs, and the specific request to which the document or other material is responsive.
- I. These requests shall be deemed to be continuing so as to require further and supplemental production if Respondents receive or discover additional documents or other material between the time of original production and the time of any hearing, trial, or other presentation of evidence in this matter.
- J. All documents are to be produced in electronic form. Documents produced electronically should be produced in native format with all metadata intact. For any election or voter data file, please produce in CSV format if available. If this is not available, please produce in PDF format. For other documents, to the extent documents can be accurately represented in black and white, they should be produced in single-page Tagged Image File Format ("TIFF"), together with any related field-delimited load files (e.g., Concordance DAT, CSV, OPT, LOG). Each TIFF document shall be produced with an image load file in standard Opticon (*.log) format that reflects the parent / child relationship and also includes the beginning Bates number; ending Bates number; beginning Attachment Bates number; ending Attaching Bates number; custodian; date sent (for email messages); date modified (for email and non-email messages) where information is available; author (for email and non-email messages); and subject (for email messages). The TIFF images shall also be accompanied by extracted text or, for those files that do not have extracted text upon being processed (such as hard copy documents), optical character recognition ("OCR") text data; such extracted text or OCR text data shall be provided in document level form and named after the TIFF image. Documents that contain redactions shall be OCR'd after the redaction is applied to the image, and the

OCR will be produced in place of extracted text at the document level. Notwithstanding the foregoing, the parties may negotiate a separate production format (including native format) for any documents not reasonably producible or readable as standard image files, such as audio files or large spreadsheets.

- K. For documents produced in TIFF format that originated in electronic form, metadata shall be included with the data load files described above and shall include (at a minimum) the following information: file name (including extension); original file path; page count; creation date and time; last saved date and time; last modified date and time; author; custodian of the document (that is, the custodian from whom the document was collected or, if collected from a shared drive or server, the name of the shared drive or server); and MD5 hash value. In addition, for email documents, the data load files shall also include the following metadata: sent date; sent time; received date; received time; “to” name(s) and address(es); “from” name and address; “cc” name(s) and address(es); “bcc” name(s) and address(es); subject; names of attachment(s); and attachment(s) count. All images and load files must be named or put in folders in such a manner that all records can be imported without modification of any path or file name information.
- L. If a responsive Communication, Document, or tangible thing has been prepared in copies that are not identical, or if additional copies have been made that are no longer identical, or if original identical copies are no longer identical by reason of subsequent notations on the front or back of pages thereto, each non-identical copy is a separate Communication, Document, or tangible thing and shall be produced.
- M. Produce any password-protected documents with any applicable passwords.

INTERROGATORIES

INTERROGATORY #1

Identify and describe any persons who received compensation for services rendered in the creation of any Ohio General Assembly map that the Commission considered and/or adopted.

ANSWER:

INTERROGATORY #2

Identify all individuals with whom you and/or the Commission communicated about the 9/9 or 9/16 plan.

ANSWER:

INTERROGATORY #3

Identify all data and information about potential or actual Ohio General Assembly districts to which the map drawer(s) had access during the process of drawing the Commission's proposed or adopted maps, including but not limited to data or information showing partisan performance, incumbent addresses, and racial demographics.

ANSWER:

INTERROGATORY #4

Identify all measures through which the map drawer(s) filtered data while drawing the Commission's proposed or adopted maps, including but not limited to partisan performance indices, voting age population by race, and incumbent addresses.

ANSWER:

INTERROGATORY #5

Identify and describe all dates, times, places, and attendees of any meeting at which state legislative redistricting was discussed with the knowledge of at least one Commission member.

ANSWER:

INTERROGATORY #6

Identify and describe any persons whom you consulted in drafting the Section 8(C)(2) statement.

ANSWER:

INTERROGATORY #7

Identify and describe the timeline by which you drafted the Section 8(C)(2) statement, including (without limitation), when the first draft of the statement was started and when a draft of the statement was circulated to other members on the Commission. If you did not participate in drafting the Section 8(C)(2) statement, please identify the date and time at which you first reviewed the statement.

ANSWER:

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VERIFICATION

STATE OF OHIO :
 : **SS.**
COUNTY OF _____ :

I, _____, being first duly sworn, depose and say that the foregoing answers to the First Set of Interrogatories propounded by Relators are true and complete to the best of my knowledge, information, and belief.

Sworn to before me and subscribed in my presence this _____ day of _____,
_____.

Notary Public

COMMISSION
EXPIRATION:

REQUEST FOR PRODUCTION OF DOCUMENTS

1. All documents and communications related to the Section 8(C)(2) statement, including (without limitation) time-stamped drafts of the document.

ANSWER:

2. All documents and communications containing or relating to instructions given to the map drawer(s) with respect to creating the 9/9 and 9/16 plans.

ANSWER:

3. All documents and communications concerning the 9/9 and 9/16 plans, including (as specified in the definition above) any drafts thereof.

ANSWER:

4. All documents and communications concerning information or data viewed by the map drawer(s) regarding the 9/9 or 9/16 plans prior to the presentation of such maps to the Commission.

ANSWER:

RETRIEVED FROM DEMOCRACYDOCS.COM

Respectfully submitted,

/s/ Donald J. McTigue

Donald J. McTigue* (0022849)

**Counsel of Record*

Derek S. Clinger (0092075)

MCTIGUE & COLOMBO LLC

545 East Town Street

Columbus, OH 43215

dmctigue@electionlawgroup.com

dclinger@electionlawgroup.com

T: (614) 263-7000

F: (614) 368-6961

Abha Khanna (Pro Hac Vice Pending)

Ben Stafford (Pro Hac Vice Pending)

ELIAS LAW GROUP

1700 Seventh Ave, Suite 2100

Seattle, WA 98101

akhanna@elias.law

bstafford@elias.law

T: (206) 656-0176

F: (206) 656-0180

Aria C. Branch (Pro Hac Vice Pending)

Jyoti Jasrasaria (Pro Hac Vice Pending)

Spencer W. Klein (Pro Hac Vice Pending)

ELIAS LAW GROUP

10 G St NE, Suite 600

Washington, DC 20002

abranch@elias.law

jjasrasaria@elias.law

sklein@elias.law

T: (202) 968-4490

F: (202) 968-4498

Counsel for Relators

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was sent via email this 28th day of September, 2021 to the following:

Erik Clark, ejclark@organlegal.com

Ashley Merino, amerino@organlegal.com

Counsel for Respondent Ohio Redistricting Commission

Bridget Coontz, Bridget.Coontz@OhioAGO.gov

Julie Pfeiffer, Julie. Pfeiffer @OhioAGO.gov

Counsel for Respondents Ohio Governor Mike DeWine, Ohio Secretary of State Frank LaRose, and Ohio Auditor Keith Faber

W. Stuart Dornette, dornette@taftlaw.com

Beth A. Bryan, bryan@taftlaw.com

Philip D. Williamson, pwilliamson@taftlaw.com

Phillip J. Strach, phillip.strach@nelsonmullins.com

Thomas A. Farr, tom.farr@nelsonmullins.com

John E. Branch, III, john.branch@nelsonmullins.com

Alyssa M. Riggins, alyssa.riggins@nelsonmullins.com

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

/s/ Derek S. Clinger

Derek S. Clinger (0092075)

Exhibit B

RETRIEVED FROM DEMOCRACYDOCKET.COM

IN THE SUPREME COURT OF OHIO

Bria Bennett, et al.,

Relators,

v.

Ohio Redistricting Commission, et al.,

Respondents.

Case No. 2021-1198

Original Action Filed Pursuant to Ohio
Constitution, Article XI, Section 9(A)

*[Apportionment Case Pursuant to S. Ct.
Prac. R. 14.03]*

RELATORS' NOTICE OF FILING OF SUBPOENAS

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

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

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

Counsel for Relators

Erik J. Clark (0078732)
Ashley Merino (0096853)
ORGAN LAW LLP
1330 Dublin Road
Columbus, Ohio 43215
T: (614) 481-0900
F: (614) 481-0904
ejclark@organlegal.com
amerino@organlegal.com

*Counsel for Respondent Ohio Redistricting
Commission*

Dave Yost
OHIO ATTORNEY GENERAL
Bridget C. Coontz (0072919)
Julie M. Pfeiffer (0069762)
Michael Walton (0092201)
OFFICE OF THE OHIO ATTORNEY GENERAL
30 E. Broad Street, 16th Floor
Columbus, Ohio 43215
T: (614) 466-2872
F: (614) 728-7592
Bridget.Coontz@OhioAGO.gov
Julie.Pfeiffer@OhioAGO.gov
Michael.Walton@OhioAGO.gov

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

W. Stuart Dornette (0002955)
Beth A. Bryan (0082076)
Philip D. Williamson (0097174)
TAFT STETTINIUS & HOLLISTER LLP
425 Walnut St., Suite 1800
Cincinnati, Ohio 45202-3957
T: (513) 381-2838
dornette@taftlaw.com
bryan@taftlaw.com
pwilliamson@taftlaw.com

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

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

Diane Menashe (0070305)
John Gilligan (0024542)
ICE MILLER LLP
250 West Street, Suite 700
Columbus, Ohio 43215
Diane.Menashe@icemiller.com
John.Gilligan@icemiller.com
T: (614) 462-2221
F: (614) 222-3438

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

Relators hereby give notice of filing of the following two subpoenas that were served upon Raymond DiRossi on October 4, 2021: (1) a subpoena duces tecum, a copy of which is attached as Exhibit A; and (2) a subpoena to testify at a deposition, a copy of which is attached as Exhibit B. Written notice of the subpoenas, including copies of the subpoenas and payments for witness and mileage fees, were promptly served on counsel for all other parties in this action in accordance with Civ. R. 45(A)(3).

Respectfully submitted,

/s Derek S. Clinger

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

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

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

Counsel for Relators

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was sent via email this 5th day of October, 2021 to the following:

Erik Clark, ejclark@organlegal.com
Ashley Merino, amerino@organlegal.com
Counsel for Respondent Ohio Redistricting Commission

Bridget Coontz, Bridget.Coontz@OhioAGO.gov
Julie Pfeiffer, Julie. Pfeiffer@OhioAGO.gov
Michael Walton, Michael.Walton@OhioAGO.gov
Counsel for Respondents Ohio Governor Mike DeWine, Ohio Secretary of State Frank LaRose, and Ohio Auditor Keith Faber

W. Stuart Dornette, dornette@taftlaw.com
Beth A. Bryan, bryan@taftlaw.com
Philip D. Williamson, pwilliamson@taftlaw.com
Phillip J. Strach, phil.strach@nelsonmullins.com
Thomas A. Farr, tom.farr@nelsonmullins.com
John E. Branch, III, john.branch@nelsonmullins.com
Alyssa M. Riggins, alyssa.riggins@nelsonmullins.com

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

Diane Menashe, diane.menashe@icemiller.com
John Gilligan, john.gilligan@icemiller.com

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

/s/ Derek S. Clinger
Derek S. Clinger (0092075)

EXHIBIT A

RETRIEVED FROM DEMOCRACYDOCKET.COM

IN THE SUPREME COURT OF OHIO

Bria Bennett, *et al.*,

Relators,

v.

Ohio Redistricting Commission, *et al.*,

Respondents.

Case No. 2021-1198

Original Action Filed Pursuant to Ohio
Constitution, Article XI, Section 9(A)

[Apportionment Case Pursuant to S. Ct.
Prac. R. 14.03]

SUBPOENA DUCES TECUM

TO:

Ray DiRossi
Name

5732 Springburn Dr., Dublin, Ohio 43017
Address

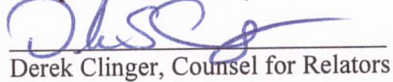
You are hereby commanded to be and appear at

McTigue & Colombo LLC
545 East Town Street
Columbus, OH 43215

on the 11th day of October 2021 at 10:00 a.m.,
and:

☒ Produce the documents, electronically stored information, or tangible things identified in Attachment A.

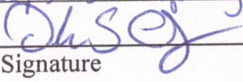
Subpoena Issued By:


Derek Clinger, Counsel for Relators

(0092075)
Supreme Ct. No.

(614) 263-7000
Phone No.

dclinger@electionlawgroup.com
Email Address

Return of Service: I received this subpoena on the 4th day of October 2021, and served the above party
by leaving at place of residence 5732 Springburn Dr., Dublin, OH 43017, with
Derek Clinger  10/4/2021
Name Signature Date

NOTE: READ ALL INFORMATION ON THE SECOND PAGE OF THIS SUBPOENA

Mr.
DiRossi's
Wife,
at approximately
4:22 p.m.

Rule 45. Ohio Rules of Civil Procedure, Parts C & D:

(C) Protection of persons subject to subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena.

(2)(a) A person commanded to produce under divisions (A)(1)(b), (iii), (iv), (v), or (vi) of this rule need not appear in person at the place of production or inspection unless commanded to attend and give testimony at a deposition, hearing, or trial.

(b) Subject to division (D)(2) of this rule, a person commanded to produce under divisions (A)(1)(b), (iii), (iv), (v), or (vi) of this rule may, within fourteen days after service of the subpoena or before the time specified for compliance if such time is less than fourteen days after service, serve upon the party or attorney designated in the subpoena written objections to production. If objection is made, the party serving the subpoena shall not be entitled to production except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena, upon notice to the person commanded to produce, may move at any time for an order to compel the production. An order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the production commanded.

(3) On timely motion, the court from which the subpoena was issued shall quash or modify the subpoena, or order appearance or production only under specified conditions, if the subpoena does any of the following:

(a) Fails to allow reasonable time to comply;

(b) Requires disclosure of privileged or otherwise protected matter and no exception or waiver applies;

(c) Requires disclosure of a fact known or opinion held by an expert not retained or specially employed by any party in anticipation of litigation or preparation for trial as described by Civ.R. 26(B)(5), if the fact or opinion does not describe specific events or occurrences in dispute and results from study by that expert that was not made at the request of any party;

(d) Subjects a person to undue burden.

(4) Before filing a motion pursuant to division (C)(3)(d) of this rule, a person resisting discovery under this rule shall attempt to resolve any claim of undue burden through discussions with the issuing attorney. A motion filed pursuant to division (C)(3)(d) of this rule shall be supported by an affidavit of the subpoenaed person or a certificate of that person's attorney of the efforts made to resolve any claim of undue burden.

(5) If a motion is made under division (C)(3)(c) or (C)(3)(d) of this rule, the court shall quash or modify the subpoena unless the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated.

(D) Duties in responding to subpoena.

(1) A person responding to a subpoena to produce documents shall, at the person's option, produce them as they are kept in the usual course of business or organized and labeled to correspond with the categories in the subpoena. A person producing documents or electronically stored information pursuant to a subpoena for them shall permit their inspection and copying by all parties present at the time and place set in the subpoena for inspection and copying.

(2) If a request does not specify the form or forms for producing electronically stored information, a person responding to a subpoena may produce the information in a form or forms in which the information is ordinarily maintained if that form is reasonably useable, or in any form that is reasonably useable. Unless ordered by the court or agreed to by the person subpoenaed, a person responding to a subpoena need not produce the same electronically stored information in more than one form.

(3) A person need not provide discovery of electronically stored information when the production imposes undue burden or expense. On motion to compel discovery or for a protective order, the person from whom electronically stored information is sought must show that the information is not reasonably accessible because of undue burden or expense. If a showing of undue burden or expense is made, the court may nonetheless order production of electronically stored information if the requesting party shows good cause. The court shall consider the factors in Civ. R. 26(B)(4) when determining if good cause exists. In ordering production of electronically stored information, the court may specify the format, extent, timing, allocation of expenses and other conditions for the discovery of the electronically stored information.

(4) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(5) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a receiving party must promptly return, sequester, or destroy the specified information and any copies within the party's possession, custody or control. A party may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim of privilege or of protection as trial preparation material. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

ATTACHMENT A

RETRIEVED FROM DEMOCRACYDOCKET.COM

Pursuant to Rules 26 and 45 of the Ohio Rules of Civil Procedure, Relators hereby propound to Ray DiRossi a subpoena duces tecum, which is to be responded to by October 11, 2021. Documents responsive to the following requests shall be produced to the offices of McTigue & Colombo LLC, 545 East Town Street, Columbus, OH 43215.

DEFINITIONS AND INSTRUCTIONS

A. The following terms shall have the meanings indicated below:

- (1) The terms “you,” and “your” shall mean Ray DiRossi, in your capacity as an individual, employee or consultant for the Ohio Redistricting Commission, and Director of Budget and Finance for the Ohio Senate Majority, as well as your present and former agents, assigns, employees, partners, successors, predecessors, associates, personnel, attorneys, and other persons or entities acting or purporting to act on your behalf.
- (2) The term “Commission” shall mean the Ohio Redistricting Commission.
- (3) The term “9/9 plan” shall mean the General Assembly maps presented by Senate President Matt Huffman to the Ohio Redistricting Commission on September 9, 2021, or any drafts thereof.
- (4) The term “9/16 plan” shall mean the General Assembly maps proposed by Senate President Matt Huffman to the Ohio Redistricting Commission on September 15, 2021, and approved on September 16, 2021, or any drafts thereof.
- (5) The term “Section 8(C)(2) statement” shall mean the statement, disseminated to the public by the Commission on September 16, 2021, purporting to explain (as required under Article XI Section 8(C)(2) of the Ohio Constitution for maps approved by a simple majority) “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, as described in division (B) of Section 6 of [Article XI].”
- (6) The term “person” shall mean and include natural persons, governmental entities, proprietorships, corporations, partnerships, joint ventures, and each other form of organization, entity or association.
- (7) The term “document” is used in the broadest possible sense and shall mean, without limitation, any kind of written, printed, recorded or graphic matter, however produced

or reproduced, of any kind or description, whether sent or received or neither, including originals, copies and drafts and both sides of originals, copies and drafts, and including but not limited to papers, books, letters, correspondence, telegrams, cables, telex messages, electronic messages or electronic mail (whether or not stored or recorded on-line or off-line in archive storage), financial statements, memoranda, notes, notations, work papers, transcripts, minutes, reports and recordings of telephone conversations or other conversations, or of interviews, or of conferences or other meetings, affidavits, statements, summaries, opinions, reports, studies, analyses, evaluations, contracts, agreements, journals, statistical records, desk calendars, appointment books, diaries, expense account records, lists, tabulations, summaries, sound recordings, videotapes, word processing disks and/or memory or archive systems, computer disks and/or memory or archive systems, computer printouts, data processing input and output, magnetic tapes, magnetic disks, microfilms, all other records kept by electronic, magnetic, photographic, optical or mechanical means, and things similar to any of the foregoing, however denominated.

- (8) The term "communication" shall mean the transmission of any verbal or nonverbal, written or non-written message, information, sign, symbol, or behavior, and shall include the process by which such transmission occurs.
 - (9) The terms "relating to" and "concerning" shall mean referring to, related to, regarding, consisting of, pertaining to, reflecting, evidencing, describing, constituting, or being in any way logically or factually connected with the matter discussed, including any connection, direct or indirect, whatsoever with the requested topic, without limitation, unless otherwise specified in the Request.
- D. The singular number and masculine gender shall include, and be applied as, the plural or the feminine gender or neuter, and vice-versa, as the circumstances of the particular request may make appropriate.
- E. These requests are continuing so as to require further and supplemental responses if Respondents receive or discover additional information between the time of original response and the time of any hearing, trial, or other presentation of evidence in this matter.
- F. If you deem any request for documents to call for the production of privileged or otherwise nondisclosable materials and you assert such claim, furnish a list at the time of production identifying each document so withheld together with the following information:
- (1) the reason for withholding each such document or material, stated with sufficient particularity so as to permit the Court to adjudicate the validity of the claimed privilege;
 - (2) a statement of the facts constituting the basis for any claim of privilege or other ground of non-disclosure; and
 - (3) a brief description of each such document or other material, including:

- (a) the date of the document;
 - (b) the name of its author(s) or preparer(s) and an identification by employment and title of each such person(s);
 - (c) the name of each person to whom the document or other material was sent or who has had access to, or custody of, the document or other material, together with an identification of each such person(s);
 - (d) the paragraph of this request to which the document or other material is responsive; and
 - (e) in the case of any document or other material that relates in any way to a meeting or conversation, identification of such meeting or conversation and the persons attending or participating in such meeting or conversation.
- G. With respect to each document request, Relators request that Respondents identify and produce all documents that are known to Respondents or that Respondents can locate or discover that are in Respondents' possession, custody or control, from whatever source derived, which, directly or indirectly, relate, refer or pertain to the subject matter of the request made, including, without limitation, all such documents in the files (whether they be denominated personal, business or any other files) in the possession, custody or control of Respondents or, as applicable, of Respondents' employees, agents, representatives or other persons acting on Respondents' behalf or under Respondents' control.
- H. Relators request that Respondents produce all responsive documents and other materials in an orderly manner (and with appropriate markings or other identification) so that Relators will be able to identify the source of the document or other material, the file in which the document or other material was maintained, the person to whom such file belongs, and the specific request to which the document or other material is responsive.
- I. These requests shall be deemed to be continuing so as to require further and supplemental production if Respondents receive or discover additional documents or other material between the time of original production and the time of any hearing, trial, or other presentation of evidence in this matter.
- J. All documents are to be produced in electronic form. Documents produced electronically should be produced in native format with all metadata intact. For any election or voter data file, please produce in CSV format if available. If this is not available, please produce in PDF format. For other documents, to the extent documents can be accurately represented in black and white, they should be produced in single-page Tagged Image File Format ("TIFF"), together with any related field-delimited load files (e.g., Concordance DAT, CSV, OPT, LOG). Each TIFF document shall be produced with an image load file in standard Opticon (*.log) format that reflects the parent / child relationship and also includes the beginning Bates number; ending Bates number; beginning Attachment Bates number; ending Attaching Bates

number; custodian; date sent (for email messages); date modified (for email and non-email messages) where information is available; author (for email and non-email messages); and subject (for email messages). The TIFF images shall also be accompanied by extracted text or, for those files that do not have extracted text upon being processed (such as hard copy documents), optical character recognition ("OCR") text data; such extracted text or OCR text data shall be provided in document level form and named after the TIFF image. Documents that contain redactions shall be OCR'd after the redaction is applied to the image, and the OCR will be produced in place of extracted text at the document level. Notwithstanding the foregoing, the parties may negotiate a separate production format (including native format) for any documents not reasonably producible or readable as standard image files, such as audio files or large spreadsheets.

- K. For documents produced in TIFF format that originated in electronic form, metadata shall be included with the data load files described above and shall include (at a minimum) the following information: file name (including extension); original file path; page count; creation date and time; last saved date and time; last modified date and time; author; custodian of the document (that is, the custodian from whom the document was collected or, if collected from a shared drive or server, the name of the shared drive or server); and MD5 hash value. In addition, for email documents, the data load files shall also include the following metadata: sent date; sent time; received date; received time; "to" name(s) and address(es); "from" name and address; "cc" name(s) and address(es); "bcc" name(s) and address(es); subject; names of attachment(s); and attachment(s) count. All images and load files must be named or put in folders in such a manner that all records can be imported without modification of any path or file name information.
- L. If a responsive Communication, Document, or tangible thing has been prepared in copies that are not identical, or if additional copies have been made that are no longer identical, or if original identical copies are no longer identical by reason of subsequent notations on the front or back of pages thereto, each non-identical copy is a separate Communication, Document, or tangible thing and shall be produced.
- M. Produce any password-protected documents with any applicable passwords.

DOCUMENTS TO BE PRODUCED

1. All documents and communications concerning the drawing of General Assembly districts following the 2020 census.
2. All documents or communications concerning any payments made to you, whether directly or indirectly (including through a company that you own and/or operate in whole or part) for your work in relation to creating the 9/9 and 9/16 plans.
3. All documents and communications concerning the procurement of space for any purpose related to drawing Ohio's state legislative districts, including invoices, receipts, and booking confirmations for stays at any hotel, Airbnb, or other short-term lodging.
4. All documents and communications concerning any factors you considered in the creation of the 9/9 and 9/16 plans.
5. All documents and communications concerning any instructions you received in the creation of the 9/9 and 9/16 plans.
6. All documents and communications concerning the 9/9 and 9/16 plans, including (as specified in the definition above) any drafts thereof.
7. All documents and communications concerning information or data you viewed regarding the 9/9 or 9/16 plans prior to the presentation of such maps to the Commission.
8. Documents sufficient to establish all persons who assisted you in the creation of the 9/9 and 9/16 plans.
9. All documents and communications related to the Section 8(C)(2) statement, including (without limitation) time-stamped drafts of the document.

EXHIBIT B

RETRIEVED FROM DEMOCRACYDOCKET.COM

IN THE SUPREME COURT OF OHIO

Bria Bennett, *et al.*,

Relators,

v.

Ohio Redistricting Commission, *et al.*,

Respondents.

Case No. 2021-1198

Original Action Filed Pursuant to Ohio
Constitution, Article XI, Section 9(A)

[Apportionment Case Pursuant to S. Ct.
Prac. R. 14.03]

SUBPOENA TO TESTIFY AT DEPOSITION

TO:

Ray DiRossi
Name

5732 Springburn Dr., Dublin, Ohio 43017
Address

You are hereby commanded to be and appear at

McTigue & Colombo LLC
545 East Town Street
Columbus, OH 43215

on the 19th day of October 2021 at 10:00 a.m.,
and:

☒ Attend and give testimony at a deposition that will be recorded by video and stenographic means.

Subpoena Issued By:

Derek Clinger (0092075) (614) 263-7000 dclinger@electionlawgroup.com
Derek Clinger, Counsel for Relators Supreme Ct. No. Phone No. Email Address

Return of Service: I received this subpoena on the 4th day of October 2021, and served the above party
by leaving at place of residence, 5732 Springburn Dr., Dublin, OH 43017, with
Derek Clinger Derek Clinger 10/4/2021
Name Signature Date

NOTE: READ ALL INFORMATION ON THE SECOND PAGE OF THIS SUBPOENA

Mr. DiRossi's wife,
at approximately
4:22pm.

Rule 45. Ohio Rules of Civil Procedure, Parts C & D:

(C) Protection of persons subject to subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena.

(2)(a) A person commanded to produce under divisions (A)(1)(b), (iii), (iv), (v), or (vi) of this rule need not appear in person at the place of production or inspection unless commanded to attend and give testimony at a deposition, hearing, or trial.

(b) Subject to division (D)(2) of this rule, a person commanded to produce under divisions (A)(1)(b), (iii), (iv), (v), or (vi) of this rule may, within fourteen days after service of the subpoena or before the time specified for compliance if such time is less than fourteen days after service, serve upon the party or attorney designated in the subpoena written objections to production. If objection is made, the party serving the subpoena shall not be entitled to production except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena, upon notice to the person commanded to produce, may move at any time for an order to compel the production. An order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the production commanded.

(3) On timely motion, the court from which the subpoena was issued shall quash or modify the subpoena, or order appearance or production only under specified conditions, if the subpoena does any of the following:

(a) Fails to allow reasonable time to comply;

(b) Requires disclosure of privileged or otherwise protected matter and no exception or waiver applies;

(c) Requires disclosure of a fact known or opinion held by an expert not retained or specially employed by any party in anticipation of litigation or preparation for trial as described by Civ.R. 26(B)(5), if the fact or opinion does not describe specific events or occurrences in dispute and results from study by that expert that was not made at the request of any party;

(d) Subjects a person to undue burden.

(4) Before filing a motion pursuant to division (C)(3)(d) of this rule, a person resisting discovery under this rule shall attempt to resolve any claim of undue burden through discussions with the issuing attorney. A motion filed pursuant to division (C)(3)(d) of this rule shall be supported by an affidavit of the subpoenaed person or a certificate of that person's attorney of the efforts made to resolve any claim of undue burden.

(5) If a motion is made under division (C)(3)(c) or (C)(3)(d) of this rule, the court shall quash or modify the subpoena unless the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated.

(D) Duties in responding to subpoena.

(1) A person responding to a subpoena to produce documents shall, at the person's option, produce them as they are kept in the usual course of business or organized and labeled to correspond with the categories in the subpoena. A person producing documents or electronically stored information pursuant to a subpoena for them shall permit their inspection and copying by all parties present at the time and place set in the subpoena for inspection and copying.

(2) If a request does not specify the form or forms for producing electronically stored information, a person responding to a subpoena may produce the information in a form or forms in which the information is ordinarily maintained if that form is reasonably useable, or in any form that is reasonably useable. Unless ordered by the court or agreed to by the person subpoenaed, a person responding to a subpoena need not produce the same electronically stored information in more than one form.

(3) A person need not provide discovery of electronically stored information when the production imposes undue burden or expense. On motion to compel discovery or for a protective order, the person from whom electronically stored information is sought must show that the information is not reasonably accessible because of undue burden or expense. If a showing of undue burden or expense is made, the court may nonetheless order production of electronically stored information if the requesting party shows good cause. The court shall consider the factors in Civ. R. 26(B)(4) when determining if good cause exists. In ordering production of electronically stored information, the court may specify the format, extent, timing, allocation of expenses and other conditions for the discovery of the electronically stored information.

(4) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(5) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a receiving party must promptly return, sequester, or destroy the specified information and any copies within the party's possession, custody or control. A party may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim of privilege or of protection as trial preparation material. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.