

**In The
Supreme Court Of Ohio**

LEAGUE OF WOMEN VOTERS OF OHIO, et al.,	:	
	:	
<i>Relators,</i>	:	Case No. 2021-1193
	:	
v.	:	Original Action Pursuant to
	:	Ohio Const., Art. XI
OHIO REDISTRICTING COMMISSION, et al.,	:	
	:	
<i>Respondents.</i>	:	

BRIA BENNETT, et al.,	:	
	:	
<i>Relators,</i>	:	Case No. 2021-1198
	:	
v.	:	Original Action Pursuant to
	:	Ohio Const., Art. XI
OHIO REDISTRICTING COMMISSION, et al.,	:	
	:	Apportionment Case
<i>Respondents.</i>	:	

OHIO ORGANIZING COLLABORATIVE, et al.,	:	
	:	
<i>Relators,</i>	:	Case No. 2021-1210
	:	
v.	:	Original Action Pursuant to
	:	Ohio Const., Art. XI
OHIO REDISTRICTING COMMISSION, et al.,	:	
	:	Apportionment Case
<i>Respondents.</i>	:	

**RESPONDENTS GOVERNOR MIKE DeWINE, SECRETARY OF STATE FRANK
LAROSE AND AUDITOR OF STATE KEITH FABER'S OMNIBUS RESPONSE TO
RELATORS' REQUEST FOR EXPEDITED DISCOVERY AND MOTION TO COMPEL**

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LEAGUE OF WOMEN VOTERS OF OHIO, et
al.,

Relators,

v.

OHIO REDISTRICTING COMMISSION, et al.,

Respondents.

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: Case No. 2021-1193
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: Original Action Pursuant to
: Ohio Const., Art. XI
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BRIA BENNETT, et al.,

Relators,

v.

OHIO REDISTRICTING COMMISSION, et al.,

Respondents.

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: **Case No. 2021-1198**
:
: **Original Action Pursuant to**
: **Ohio Const., Art. XI**
:
: **Apportionment Case**
:

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Relators,

v.

OHIO REDISTRICTING COMMISSION, et al.,

Respondents.

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: **Case No. 2021-1210**
:
: **Original Action Pursuant to**
: **Ohio Const., Art. XI**
:
: **Apportionment Case**
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I. The Statewide Elected Officials never refused to produce written discovery and will agree to provide it by October 15, 2021.

After waiting over ten days to seek expedited discovery in this case, Relators are playing fast and loose with the way in which discovery in these multiple cases has proceeded thus far. Ohio Governor Mike DeWine, Secretary of State Frank LaRose, and Auditor Keith Faber (“Statewide Elected Officials”) never refused to participate in written discovery in these cases. To the contrary, aware of the press for time, the Statewide Elected Officials are diligently working on their respective responses to that which has been served thus far. Nonetheless, Relators allege that the “Respondents” (collectively) have stated that they will refuse to comply with the discovery requests. *See LWV, et al. v. Ohio Redistricting Commission, et al., Motion for Expedited Discovery*, at 7 (“*LWV Motion*”); *The Ohio Organizing Collaborative, et al. v. Ohio Redistricting Commission, et al., Motion for Expedited Discovery*, at 5 (“*OOC Motion*”). That is simply not true of the Statewide Elected Officials (notably, the *Bennett Relators* do not claim that it is). *See generally Bennett, et al. v. Ohio Redistricting Commission, et al., Motion to Compel Expedited Discovery* (“*Bennett Motion*”).

The Statewide Elected Officials never said that they would not participate in written discovery. To the contrary, the Statewide Elected Officials specifically discussed with Relators’ counsel the possibility of stipulations and requests for admission—in other words, discovery—in lieu of depositions.¹ *See* Exhibit A, October 4, 2021 email chain between R. Fram and B. Coontz. But, with good reason, the Statewide Elected Officials object to the taking of their depositions in

¹ Counsel for the Statewide Elected Officials asked Counsel for League of Women Voters’ and Counsel for the Ohio Organizing Collaborative Relators’ to amend their respective Civ. R. 37(a) certifications to remove misstatements regarding the Statewide Elected Officials’ position regarding discovery. Although both did (to some degree) Counsel for Relators the League of Women Voters’ still contains the misrepresentation that the Statewide Elected Officials claim that discovery is barred. That is not true.

this case as doing so would be unprecedented, unnecessary, and highly disruptive to the Congressional re-districting process which the Commission will be undertaking for the remainder of this month. So, at Relators' very reasonable suggestion, the Statewide Elected Officials were working to negotiate stipulations in lieu of those depositions. They remain willing to continue those discussions, but Relators abruptly cut them off. Rather than respond to the Statewide Officials' latest email regarding those negotiations, Exhibit A, Relators filed the instant motion.

Contrary to Relators' representation, the Statewide Elected Officials were not at an impasse. *See* Amended Civ. R. 37(A) Certification of Freda Levenson. The Relators simply stopped responding to them. Now, Relators want expedited discovery. They cannot credibly claim to have been diligent in their request, as they waited over ten days after filing their Complaints to make it. And, they are not yet finished serving discovery. Two days ago, the League of Women Voters Relators served their second set of discovery requests on the Statewide Elected Officials, to which they want responses by October 8, 2021. *See* Exhibit B, email from R. Houston; *and see LWV Motion*, p. 2, ¶ 6. Said differently, Relators are demanding responses to comprehensive discovery in just four days. That is entirely unreasonable. It is also the exact same schedule for written discovery that this Court previously denied. *Compare, Motion of Relators for Scheduling Order*, at 6 (seeking written discovery cut-off of October 8, 2021), with September 29, 2021 Briefing Schedule Entry.

Nonetheless, the Statewide Elected Officials are already preparing responses to the written discovery propounded to each in each case. But, they object to the expedited discovery schedule for doing so proposed by Relators. Massive amounts of discovery have trickled into the Statewide Elected Officials at different times. The current tally on interrogatories, requests for productions,

requests for admission, and deposition notices issued to the Statewide Election Officials is as follows:

Case Name	LWV	OOC	Bennett	Total
Total Interrogatories	36	27	21	84
Total RFPs	48	N/A	12	60
Total RFAs	77	N/A	N/A	77
Deposition Notices	3	3	N/A	6

Sorting through who has asked what and responding appropriately takes time and the Statewide Elected Officials never said that they would not do it. In fact, they are willing to do it quickly, but not on the unnecessarily expedited (and belatedly requested) schedule proposed by the Relators. The Statewide Elected Officials agree to produce written discovery by **October 15, 2021**, a full week in advance of the deadline for submitting evidence in this case.

II. Because the Statewide Elected Officials are not refusing written discovery, Relators' Motion to Compel should be denied.

Because the Statewide Elected Officials are—and always were—willing to provide written discovery to Relators, there is nothing to compel. There was no basis for filing the instant motions against the Statewide Elected Officials in the first place. This is especially true here, where Relators are seeking to compel the responses *that are not even due yet*. That is, all of the Relators served written discovery demanding responses by October 8, 2021. *See Exhibits to LWV Motion, OOC Motion, & Bennett Motion*. So, Relators are correct that as of the filing of their motion to compel, the Statewide Elected Officials have not yet responded to discovery. Relators did not ask them to. What this comes down to is that Relators are asking for what was already denied – an

October 8, 2021 cut-off for written discovery. Only now they're calling it a motion to compel. It should again be denied.

III. Relators have not met their burden of showing that they are entitled to depose high-ranking government officials.

Relators' respective motions to compel the depositions of Ohio Governor Mike DeWine, Secretary of State Frank LaRose and Auditor Keith Faber likewise fail. The United States Supreme Court has consistently discouraged the practice of deposing high-ranking government officials as it is against public policy. *See United States v. Morgan*, 313 U.S. 409, 422 (1941). Numerous other courts have followed suit. *See e.g., Bogan v. City of Boston*, 489 F.3d 417, 423-424 (1st Cir. 2007) (upholding the issuance of a protective order, which precluded the plaintiffs from deposing a mayor); *Kyle Eng. Co. v. Kleppe*, 600 F.2d 226, 231 (9th Cir. 1979) (affirming the trial court's decision to vacate the notice of deposition for the administrator of a state agency); *Sweeney v. Bond*, 669 F.2d 542, 546 (8th Cir. 1982), *cert. denied sub nom. Schenberg v. Bond*, 459 U.S. 878, 103 S.Ct. 174, 74 L.Ed.2d 143 (1982) (refusing to allow plaintiffs to depose the Governor of Missouri). This logical policy is necessary to prevent high ranking government officials from being subjected to an undue burden of intrusive discovery and compelled testimony that interrupts the day-to-day operations of government. *See In re Stone*, 986 F.2d 898, 904 (5th Cir. 1993). Accordingly, courts only permit the compelled testimony of high-ranking government officials in extreme and extraordinary circumstances. *See e.g., State ex rel. Summit County Republican Party Exec. Comm. v. Brunner*, 117 Ohio St. 3d 1210, 2008-Ohio-1035, 883 N.E.2d 452, ¶ 3 (2008); *see also In re Office of Inspector Gen.*, 933 F.2d 276, 278 (5th Cir.1991) ("exceptional circumstances must exist before the involuntary depositions of high agency officials are permitted").

That is, state and federal courts have held that a highly-placed governmental official should not be forced to testify unless a clear showing is made that such a proceeding is essential to prevent prejudice or injustice to the party requesting it. *See Brunner*, 117 Ohio St. 3d 1210, 2008-Ohio-1035, 883 N.E.2d 452 at ¶ 4, quoting *Monti v. State*, 151 Vt. 609, 613, 563 A.2d 629, 632; *Halderman v. Pennhurst State Sch. & Hosp.*, 559 F.Supp. 153, 157 (E.D.Pa.1982) (“Department heads and similarly high-ranking officials should not ordinarily be compelled to testify unless it has been established that the testimony to be elicited is necessary and relevant and unavailable from a lesser ranking officer.”). To determine if such circumstances exist, this Court has adopted the test outlined in *Mont. Id.* Under this framework,

‘trial courts should weigh the necessity to depose or examine an executive official against, among other factors, the substantiality of the case in which the deposition is requested; the degree to which the witness has first-hand knowledge or direct involvement; the probable length of the deposition and the effect on government business if the official must attend the deposition; and *whether less onerous discovery procedures provide the information sought.*’

Id., quoting *Monti*, 151 Vt. at 613 (*emphasis added*).

Here, there can be no question that the Governor, the Auditor of State, and the Secretary of State are all high-ranking government officers. *See Brunner*, 117 Ohio St. 3d 1210, 2008-Ohio-1035, 883 N.E.2d 452 at ¶¶ 5-8 (applying the *Monti* test to the Secretary). Because they are, there is no presumption that they can be deposed and the burden of proving that they can is on Relators. *Monti*, 151 Vt. at 613. “[T]his heightened scrutiny is designed to strictly limit the intrusions that would burden the public official’s efforts to advance the effective and efficient operation of the public agency.” *Hamed v. Wayne Cty.*, 271 Mich. App. 106, 111, 719 N.W.2d 612 (2006). In other words, it protects the officials from having to constantly prepare and testify in litigation, particularly given the frequency with which such officials are likely to be named in lawsuits. *In re United States of America*, 985 F.2d 510, 512 (11th Cir. 1993). At a minimum, this requires that

the requesting party show that the official “possesses particular information necessary to the development or maintenance of the party’s case which cannot reasonably be obtained by another discovery mechanism.” *Sykes v. Brown*, 90 F.R.D. 77, 78 (E.D. Pa. 1981). Relators have not met that burden here.

A. Substantiality of the case

There can be no doubt that this case is substantial. But, this Court’s inquiry does not end there. Turning to the other factors that it must consider, Relators’ motion to compel the Statewide Elected Officials’ depositions fails.

B. Degree to which the witness has first-hand knowledge or direct involvement.

At issue in this case is the constitutionality of Ohio’s legislative district map. Neither the Governor, the Secretary of State nor the Auditor of State drew the map or participated in any way in its creation. Nor are any of them singularly responsible for its passage – and they don’t have to be. In accordance with Article XI of the Ohio Constitution the map must be approved by a majority vote of the Ohio Redistricting Commission. The Commission followed that process and Relators do not claim otherwise. Nor do the Relators claim that any one member of the Commission violated the Ohio Constitution by voting for or against the map that was ultimately approved. Nor can they. Because under the Ohio Constitution the question is whether the map violates certain standards. Why a member of the Commission voted one way or another, or what they thought when they voted, has no bearing on whether it ultimately is. Regardless, how each member voted and their respective statements regarding their votes are available in the transcript of the Redistricting Commission meeting.

Nonetheless, Relators claim to need to depose only those who voted for the maps to show that they did not “attempt” to meet certain standards, and therefore failed to comply with Article XI, Section 6 of the Ohio Constitution. To justify the requested depositions, they claim to need discovery

into those “attempts”. But applying Relators’ logic, if the Commission need only “attempt” to comply with Article IX, Section 6, it is not required to succeed. Theoretically, it could make every “attempt” to comply with Section 6, fail, and still not violate the Article XI Section 6. That simply makes no sense, and that is not what the Constitution dictates. Thus, the parties will disagree over whether Relators even plead a viable legal claim. In any event, whether the attempt lead to success—as Relators seem to claim it must—is evidenced by the maps themselves. And, the Statewide Elected Officials did not draw the maps. Dueling experts and map drawers will provide first-hand and direct knowledge as to their constitutionality. Discovery from them is fair game. Depositions of Statewide Elected Officials without such knowledge are not.

C. The probable length of the deposition and the effect on government business if the official is required to attend the deposition.

Relators have no intention of making these depositions short. In fact, they represented that the Statewide Elected Officials’ depositions could be “limited” to four hours *only if* they also stipulated to statements made at the Commission Hearing. *See* Exhibit A. Said differently, Relators intend to depose the Statewide Elected Officials for much longer than four hours. But, preparing and sitting for, then reviewing the transcript of even a four-hour deposition (which seems to be Relators’ best-case scenario) takes a significant amount of time. And, according to their proposed schedule the Statewide Elected Officials are supposed to do all of this while simultaneously working to respond to written expedited discovery. Discovery cannot be the Statewide Elected Officials’ full-time job. They are willing to respond to written discovery but will be crippled in fulfilling their many other responsibilities if depositions are also ordered.

The impact of depositions on Congressional re-districting can also not be understated. The Statewide Elected Officials are *still* part of the Ohio Redistricting Commission that is *still* responsible for finalizing United States Congressional maps by October 31, 2021. Ohio Const.

Art. XIX, Sec. 1. To that end, Co-Chair Sykes has proposed to Co-Chair Cupp holding at least four hearings in Columbus, Cincinnati, Cleveland, and Toledo before October 19, 2021. Exhibit C, October 5, 2021 letter from Senator Vernon Sykes to Speaker Bob Cupp. The depositions that Relators propose directly conflict with Co-Chair Sykes' proposed schedule. The Statewide Elected Officials cannot meaningfully participate in congressional re-districting while also sitting for depositions. Relators failed to meet their burden of demonstrating that they should be made to.

If depositions of the Statewide Elected Officials are ordered in this case, they should be limited to one hour, should be done virtually, should be limited to *relevant* topics not covered in the written discovery (if there are any), the number of attorneys permitted to question the witnesses should similarly be limited and repetitive and duplicative questioning should be expressively forbidden.

D. Whether less onerous discovery procedures provide the information sought.

Responding to 84 interrogatories, 60 requests for production of documents and 77 requests for admission, *see* Table at p. 3, is onerous, particularly since the legal issue in each case is the same—whether a district plan must also comply with Art. XI, Section 6 if the plan complies with Section 2, 3, 4, 5, and 7, and if so, whether the approved plan violates Section 6. But, the Statewide Elected Officials are willing to respond. The expansive written discovery to which they will respond explores the Statewide Elected Officials' participation (or lack thereof) in the creation, drafting and introduction of the general assembly district maps. It will provide the same information that Relators seek via depositions and providing it is far less onerous than requiring the Statewide Elected Officials to prepare and sit for a deposition. Relators do not even want to look at the answers before determining whether they will actually need to conduct depositions. Instead, they assume, and they ask this Court to assume, that their eighty-four interrogatories, seventy-seven requests for admission, and sixty requests for production of documents *per*

Statewide Elected Official will not adequately provide the information they seek. Relators are not entitled to depose high-ranking government officials simply because they assume they will not.

Written discovery is not the only tool available to Relators to help avoid onerous depositions. During an October 1, 2021 meet and confer conference Counsel for Relators suggested that stipulations regarding the admissibility of the *Statewide Elected Official's* public comments might alleviate the need for a deposition. In a follow-up email Relators changed their position and suggested stipulations *and* a four-hour deposition of the *Statewide Elected Officials*. See Exhibit A. When pressed about deposition topics they simply did not respond.

Stipulations in lieu of depositions were Relators' idea, and it was a good one. The *Statewide Elected Officials'* statements regarding their respective votes are amenable to stipulations, as they are on record in transcripts of the meetings of the Redistricting Commission. The *Statewide Elected Officials* remain willing to enter into stipulations regarding those statements, as doing so is far less onerous than depositions. Relators are not entitled to depositions by simply avoiding this less-onerous option.

It is inherently onerous to require the Governor, the Auditor of State and Secretary of State to respond to expansive written discovery, only to require them to sit for depositions that will cover the exact same ground. Relators have not met their burden of proving otherwise and their motion to compel should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 6, 2021, the foregoing *Respondents Governor Mike DeWine, Secretary Of State Frank LaRose And Auditor Of State Keith Faber's Omnibus Response To Relators' Request For Expedited Discovery And Motion To Compel* was filed electronically. I further certify that a copy of the foregoing has been served via the electronic mail upon the following counsel for Relators.

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Exhibit A

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From: Bridget Coontz
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Subject: RE: Discovery Proposal Regarding Certain Party Statements

Good Morning,

Going back to my initial question, for what other subjects do you anticipate needing additional deposition testimony?

Thanks!
Bridget



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Sent: Sunday, October 3, 2021 9:02 PM
To: Bridget Coontz <Bridget.Coontz@OhioAGO.gov>
Cc: Erik J. Clark <ejclark@organlegal.com>; Julie Pfeiffer <Julie.Pfeiffer@OhioAGO.gov>; Freda Levenson <flevenson@acluohio.org>; Ashley Merino <amerino@organlegal.com>; dornette@taftlaw.com; bryan@taftlaw.com; pwilliamson@taftlaw.com; Phil Strach <phil.strach@nelsonmullins.com>; Tom Farr <tom.farr@nelsonmullins.com>; John Branch <john.branch@nelsonmullins.com>; Alyssa Riggins <alyssa.riggins@nelsonmullins.com>; Paul.Disantis@ohiohouse.gov; Frank.Strigari@ohiosenate.gov; Cc: Jyoti Jasrasaria <jjasrasaria@elias.law>; Sutherland, Brian A. <BSutherland@ReedSmith.com>; Alora Thomas <athomas@aclu.org>; Julie Ebenstein <jebenstein@aclu.org>; Alicia Bannon <bannona@brennan.law.nyu.edu>; Yuriy Rudensky <rudensky@brennan.law.nyu.edu>; Ethan Herenstein <herensteine@brennan.law.nyu.edu>; Abha Khanna <akhanna@elias.law>; Ben Stafford <bstafford@elias.law>; Spencer Klein <sklein@elias.law>; Yingling, M. Patrick <MPYingling@ReedSmith.com>; Fliegel, Benjamin R. <BFliegel@ReedSmith.com>; Stewart, Danielle L. <DStewart@ReedSmith.com>; Funari, Brad A. <BFunari@ReedSmith.com>; Salazar, Natalie R. <NSalazar@reedsmith.com>; Keenan, Megan <MKeenan@cov.com>; González, Joshua <JGonzalez@cov.com>; David Carey <dcarey@acluohio.org>
Subject: RE: Discovery Proposal Regarding Certain Party Statements

Dear Ms. Coontz,

We believe that the process of agreeing to the admissibility of certain statements (as well as the transcripts of the public hearings) can usefully streamline the depositions of your clients. To that end, we are willing to limit the number of hours that certain of your clients would need to sit for a deposition, assuming we can reach an appropriate agreement on the items we have identified. These limitations would apply to all three cases.

In particular, we would be willing to limit the depositions of Governor DeWine, Auditor Faber, and Secretary of State LaRose to four hours each. (So there is no misunderstanding, we do so while reserving the right to take the depositions of Senate President Huffman and House Speaker Cupp for a full day).

We look forward to hearing from you as to whether this proposal is acceptable.

Rob

Robert Fram

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Salesforce Tower, 415 Mission Street, Suite 5400
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COVINGTON

From: Bridget Coontz <Bridget.Coontz@OhioAGO.gov>
Sent: Saturday, October 2, 2021 7:33 AM
To: Fram, Robert <rfram@cov.com>
Cc: Erik J. Clark <ejclark@organlegal.com>; Julie Pfeiffer <Julie.Pfeiffer@OhioAGO.gov>; Freda Levenson <flevenson@acluohio.org>; Ashley Merino <amerino@organlegal.com>; dornette@taftlaw.com; bryan@taftlaw.com; pwilliamson@taftlaw.com; Phil Strach <phil.strach@nelsonmullins.com>; Tom Farr <tom.farr@nelsonmullins.com>; John Branch <john.branch@nelsonmullins.com>; Alyssa Riggins <alyssa.riggins@nelsonmullins.com>; Paul.Disantis@ohiohouse.gov; Frank.Strigari@ohiosenate.gov; Cc: Jyoti Jasrasaria <jjasrasaria@elias.law>; Sutherland, Brian A. <BSutherland@ReedSmith.com>; Alora Thomas <athomas@aclu.org>; Julie Ebenstein <jebenstein@aclu.org>; Alicia Bannon <bannon@brennan.law.nyu.edu>; Yuri Rudensky <rudensky@brennan.law.nyu.edu>; Ethan Herenstein <herensteine@brennan.law.nyu.edu>; Abha Khanna <akhanna@elias.law>; Ben Stafford <bstafford@elias.law>; Spencer Klein <sklein@elias.law>; Yingling, M. Patrick <MPYingling@ReedSmith.com>; Fliegel, Benjamin R. <BFliegel@ReedSmith.com>; Stewart, Danielle L. <DStewart@ReedSmith.com>; Funari, Brad A. <BFunari@ReedSmith.com>; Salazar, Natalie R. <NSalazar@reedsmith.com>; Keenan, Megan <MKeenan@cov.com>; González, Joshua <JGonzalez@cov.com>; David Carey <dcarey@acluohio.org>
Subject: RE: Discovery Proposal Regarding Certain Party Statements

EXTERNAL

Good Morning,

I will forward these statements to my clients but am not sure that we will be able to reach an agreement if you are taking the position that, even if stipulations can be reached, depositions would still be necessary. Your reservation of rights to that effect defeats the purpose of the stipulation. For what other subjects do you anticipate needing deposition testimony? And, from which of my clients do you anticipate needing it?

Thanks,
Bridget



Bridget C. Coontz
Section Chief – Constitutional Offices Section
Office of Ohio Attorney General Dave Yost
Office number: 614-728-2035
Fax number: 866-914-1621
Bridget.Coontz@OhioAttorneyGeneral.gov

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From: Fram, Robert <rfram@cov.com>
Sent: Friday, October 1, 2021 8:53 PM
To: Bridget Coontz <Bridget.Coontz@OhioAGO.gov>
Cc: Erik J. Clark <ejclark@organlegal.com>; Julie Pfeiffer <Julie.Pfeiffer@OhioAGO.gov>; Freda Levenson <flevenson@acluohio.org>; Ashley Merino <amerino@organlegal.com>; dornette@taftlaw.com; bryan@taftlaw.com; pwilliamson@taftlaw.com; Phil Strach <phil.strach@nelsonmullins.com>; Tom Farr <tom.farr@nelsonmullins.com>; John Branch <john.branch@nelsonmullins.com>; Alyssa Riggins <alyssa.riggins@nelsonmullins.com>; Paul.Disantis@ohiohouse.gov; Frank.Strigari@ohiosenate.gov; Cc: Jyoti Jasrasaria <jjasrasaria@elias.law>; Fram, Robert <rfram@cov.com>; Sutherland, Brian A. <BSutherland@ReedSmith.com>; Alora Thomas <athomas@aclu.org>; Julie Ebenstein <jebenstein@aclu.org>; Alicia Bannon <bannona@brennan.law.nyu.edu>; Yuriy Rudensky <rudensky@brennan.law.nyu.edu>; Ethan Herenstein <herenstein@brennan.law.nyu.edu>; Abha Khanna <akhanna@elias.law>; Ben Stafford <bstafford@elias.law>; Spencer Klein <sklein@elias.law>; Yingling, M. Patrick <MPYingling@ReedSmith.com>; Fliegel, Benjamin R. <BFliegel@ReedSmith.com>; Stewart, Danielle L. <DStewart@ReedSmith.com>; Funari, Brad A. <BFunari@ReedSmith.com>; Salazar, Natalie R. <NSalazar@reedsmith.com>; Keenan, Megan <MKeenan@cov.com>; González, Joshua <JGonzalez@cov.com>; David Carey <dcarey@acluohio.org>
Subject: Discovery Proposal Regarding Certain Party Statements

Dear Ms. Coontz

We have compiled statements by your clients as to which we are seeking a discovery agreement. See below. In addition we are seeking an agreement regarding all of the statements they made on the record during the public hearings.

We are asking that you please confirm by Monday morning:

(a) That the specific statements identified below may be introduced into evidence without objection as to hearsay, authenticity or foundation. You would reserve any relevance objections as to the content of the statement (but not based on how they were made, when they were made, and/or whether they were made by the person acting in the course of their official responsibilities).

(b) That any statements made on the record that are part of the transcripts of the hearings are similarly admissible subject only to relevance objections as to the content of those

statements. The transcripts at issue are now on the Commission's website at <https://redistricting.ohio.gov/meetings>

Finally, we want to make clear that while an agreement on these points would avoid the need to take a deposition on the points covered by our agreement, at present we do not waive the right to take a deposition of one or more of these individuals on separate subjects.

We look forward to your response Monday morning.

Best regards,

Rob

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The statements at issue are all statements made on the record during the public hearings, including without limitation the following (the citations are to the transcripts attached to our Complaint (as part of Exhibit 7), with one exception, to a website, as noted below):

- Governor DeWine:
 - "I'm deeply disappointed at where we are tonight. I'm very, very sorry that we are where we are. Uh, I know, I know that this committee could've produced a more clearly constitutional bill. But that's not the bill that we have in front of us. I have felt throughout this process that there was a compromise to be had, that the bill could be improved, become much more clearly constitutional. That we could produce a bill that all seven members ... A map that all seven members of this committee could vote for and that we would have a 10 year map. I was wrong." Ex. 7, Tr. of Sept. 15, 2021 Hrg., at 11.
 - "We know that this matter will be in court. I'm not judging the bill one way or another, that's up for ... Up to a court to do. What I do, what I am sure in my heart is that this committee cou-, could've come up with a bill that was much more clearly, clearly constitutional. And I'm sorry we did not do that." Ex. 7, Tr. of Sept. 15, 2021 Hrg., at 11.
 - "Our job is to make (the redistricting plan) as constitutional as we can, and I thought we could have done better, but ultimately...no matter what this commission did, we knew this was going to end up going into court." Susan Tebben, *Huffman Defends his Maps, Redistricting Process Despite No Bipartisan Support*, Ohio Capital Journal (Sept. 17, 2021), <https://bit.ly/3nWEwqf>.

- Auditor Faber:

- "Um, when you get to this aspirational section here, I think that's where we need to have a lot more discussion as apply, how it applies across the maps." Ex. 5, Tr. Of Sept. 9, 2021 Morning Hrg., at 23.
- "I will tell you there's some disappointment in my view, as the way some of the counties are split in Northwest Ohio, that's just the way the cookie crumbles some would say. But the reality is compared to some of the other maps, we've had a choice to go with this map isn't that bad. It's not that good either." Ex. 7, Tr. of Sept. 15, 2021 Hrg., at 14.
- Secretary of State LaRose:
 - "I'm casting my yes vote with great unease. I fear, I fear we're going to be back in this room very soon. This map has many shortcomings, but they pale in comparison to the shortcomings of this process. It didn't have to be this way. It didn't have to be this way." Ex. 7, Tr. of Sept. 15, 2021 Hrg., at 10. Ex. 7, Tr. of Sept. 15, 2021 Hrg., at 10.
 - "I, for one have been asking for the rationale for days, is there a reason why that wasn't shared with us until now?" Ex. 7, Tr. of Sept. 15, 2021 Hrg., at 17.
 - "So I've been trying to understand, as we've been talking to members of your staff and you yourself, how you believe that you're reaching the representational fairness or proportionality requirement in section six. And so I've been asking, 'How do you calculate those numbers? What do you consider that proportionality?' And I've not gotten an answer until tonight, but I would assume that this has been guiding the map-making process for a long time. Was there 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.

Robert Fram

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Exhibit B

RETRIEVED FROM DEMOCRACYDOCKET.COM

Bridget Coontz

From: Houston, Rohna <rhouston@cov.com>
Sent: Monday, October 4, 2021 10:55 PM
To: Bridget Coontz; Julie Pfeiffer; Michael Walton
Cc: Arent, Madison P; Bender, Brady; Brown, Donald; Denuyl, David S; Fram, Robert; Fu, Yale; Goldrosen, Juliana; González, Joshua; Houston, Rohna; Hovard, James; Keenan, Megan; Plumer, Kimberly; Sharma, Anupam; Smith, James (Jay); Stanton, David; Thomson, Alex; 'flevenson@acluohio.org'; 'DCarey@acluohio.org'; 'athomas@aclu.org'; 'jebenstein@aclu.org'; 'kmiller1@aclu.org'; 'TSabo@acluohio.org'; 'MPerez@aclu.org'
Subject: League of Women Voters of Ohio, et al. v. Ohio Redistricting Commission, et al. - Case No. 2021-1193
Attachments: Notice of Deposition of Ohio Secretary of State LaRose_COV.pdf; 2020.10.4 First Set of RFAs to Auditor of State Faber.docx; 2020.10.4 First Set of RFAs to Respondent Secretary of State LaRose.docx; 2021.10.04 First Set of RFAs to Governor DeWine.docx; 2021.10.04 Second Set of Interrogatories to Auditor Faber.docx; 2021.10.04 Second Set of Interrogatories to Governor DeWine.docx; 2021.10.04 Second Set of Interrogatories to Secretary of State LaRose.docx; 2021.10.4 First Set of RFAs to Auditor Faber - Exhibits.pdf; 2021.10.4 First Set of RFAs to Governor DeWine - Exhibits .pdf; 2021.10.4 First Set of RFAs to Secretary of State LaRose - Exhibits.pdf; Notice of Deposition of Ohio Auditor Faber_COV.pdf; Notice of Deposition of Ohio Governor DeWine_COV.pdf

Dear Counsel,

Please see the attached for service.

Best Regards,

Rohna Houston

Rohna Houston

Senior Paralegal

Covington & Burling LLP
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COVINGTON

Exhibit C

RETRIEVED FROM DEMOCRACYDOCKET.COM



Ohio Senate
Senate Building
1 Capitol Square
Columbus, Ohio 43215
(614) 466-4074

Dr. Vernon Sykes
Ohio State Senator
28th Senate District

October 5, 2021

The Honorable Bob Cupp
Co-Chair, Ohio Redistricting Commission
Ohio House of Representatives
77 South High Street, 14th Floor
Columbus, Ohio 43215

Dear Speaker Cupp,

As a co-chair of the Ohio Redistricting Commission, I write today to urge the scheduling of public hearings for the consideration of congressional redistricting.

As you are aware, the Ohio General Assembly failed to adopt a congressional redistricting plan by September 30, and the Ohio Redistricting Commission now has until October 31 to adopt a redistricting plan. During legislative redistricting, the Ohio Redistricting Commission held 13 hearings for members of the public to testify. During those meetings, we discouraged witnesses from testifying on congressional redistricting, as the primary purpose of our August and September meetings was to accept testimony on state legislative redistricting. We also told members of the public they would have an opportunity later to testify on congressional redistricting.

That time has now arrived. Over 40 congressional maps have been submitted to the Ohio Redistricting Commission website. Leader Yuko and I have also submitted our own congressional redistricting map. As co-chairs of the Redistricting Commission, we must schedule hearings as soon as possible so we can begin receiving public testimony on all congressional maps that have been submitted, as well as on other topics related to congressional redistricting.

I propose that, at a minimum, we hold hearings in Columbus, Cincinnati, Toledo and Cleveland. I suggest the following dates: Tuesday, October 12; Thursday, October 14; Saturday, October 16; and Tuesday, October 19. The Commission also received repeated requests that its meetings be accessible outside of normal work hours. I would suggest that some of the meetings be held in the evening.

This proposed schedule would also reserve the last week of October for additional Commission meetings, which are required under Article XIX § 1 of the Ohio Constitution, after a plan has been proposed by the Commission but before any final adoption.

I look forward to working with you to set a meeting schedule that enables the Commission to fulfill its constitutional duty and to develop a schedule that responds to the public's great desire for a meaningful, transparent process for drawing congressional districts.

Sincerely,

A handwritten signature in black ink, appearing to read "Vernon Sykes", with a stylized flourish at the end.

Vernon Sykes, Co-Chair
Ohio Redistricting Commission

cc: Ohio Redistricting Commission members

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