

IN THE SUPREME COURT OF OHIO

Bria Bennett, et al., :
 :
 Relators, : **Case No. 2021-1198**
 :
 v. : **Original Action Filed Pursuant to Ohio**
 : **Constitution, Article XI, Section 9(A)**
 :
 Ohio Redistricting :
 Commission, et al., : **[Apportionment Case Pursuant to S. Ct.**
 : **Prac. R. 14.03]**
 :
 Respondents. :
 :
 :

**RESPONDENT SENATOR VERNON SYKES’
ANSWER TO RELATORS’ COMPLAINT**

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Respondent Sen. Vernon Sykes (“Sen. Sykes” or “Respondent”), by his attorneys, hereby answers and asserts the following affirmative defenses to the Complaint filed by Relators Bria Bennett *et al.*, according to the numbered paragraphs therein, as follows:

INTRODUCTION

1. Relators bring this action to challenge the constitutionality of Ohio’s General Assembly reapportionment plan (the “2021 Commission Plan”) under Article XI of the Ohio Constitution, which provides the process and rules for reapportionment of Ohio’s General Assembly districts.

ANSWER: In response to Paragraph 1, Respondent states that the Complaint speaks for itself, and thus no response is required to Relators’ characterization of it.

2. Last decade, after the 2010 Census, the Republican majority in the Ohio legislature used its control over redistricting to entrench itself in power. Ohio is and was a “purple” state, but, in 2011, mapmakers purposefully drew gerrymandered maps to maximize Republican performance. What resulted is what was intended: Republican supermajorities grossly at odds with voter preferences.

ANSWER: Respondent admits the allegations of Paragraph 2.

3. Ohio voters strongly objected. And they took action to ensure that voters could choose their state representatives and senators, rather than continuing to allow legislators to choose their voters. Accordingly, in 2015, Ohio voters approved the “Fair Districts Amendments” by an overwhelming majority, expressing an unequivocal desire, purpose, and directive to increase transparency and decrease partisanship in the state legislative redistricting process. The Amendments enshrined reforms in the Ohio Constitution that touch every aspect of redistricting—from composition of the body responsible for apportionment, to procedures used in approving new districts, to substantive criteria for maps, to judicial review of final plans.

ANSWER: Insofar as the “Fair Districts Amendments” referenced therein are the same amendments defined in Paragraphs 43-45, Respondent admits the allegations of Paragraph 3.

4. Notably, the Ohio Constitution now forbids partisan gerrymandering. First, it mandates that the Ohio Redistricting Commission “shall attempt” to draw a General Assembly plan in which “[t]he statewide proportion of districts whose voters, based on statewide state and federal partisan general election results during the last ten years, favor each political party shall correspond closely to the statewide preferences of the voters of Ohio.” Ohio Constitution, Article XI, Section 6(B).

ANSWER: Respondent admits the allegations of Paragraph 4.

5. Second, the same section of the Constitution also prescribes that the Ohio Redistricting Commission “shall attempt” to meet the following standard: “No general assembly district plan shall be drawn primarily to favor or disfavor a political party.” *Id.* Section 6(A).

ANSWER: Respondent admits the allegations of Paragraph 5.

6. The Ohio Constitution thus requires the Commission to draw fair maps that respect traditional redistricting criteria and attempt to achieve partisan proportionality. This reflects a wholesale reversal of the status quo: gerrymandered maps.

ANSWER: Respondent admits the allegations of Paragraph 6.

7. In seeking to preserve that status quo, the 2021 Commission has treated Ohio voters—and the Ohio Constitution—with contempt. The Commission flatly ignored constitutional deadlines for releasing its proposed maps. Rather than drawing those maps in the light of day after public comment, it adopted maps drawn in secret by the Republican legislative caucuses and presented to the full Commission the same day they were unveiled to the public. And in blatant violation of its constitutional mandate, the Commission adopted maps without even *considering* a

standard for proportional representation until *after* voting to approve the maps. The Commission's disregard of constitutional mandates had its desired effect: the 2021 Commission Plan will preserve the existing Republican supermajority, whereas even the most begrudging attempt to comply with the constitutional directive of proportional representation would give voters an opportunity to elect Democratic legislators in at least 45 percent of General Assembly districts.

ANSWER: Respondent admits that as a result of the conduct by the Republican majority of the Commission, the Commission failed to meet its constitutional deadlines. Answering further, Respondent admits that the 2021 Commission Plan (the "Plan") was designed to preserve the Republican super majority in the Ohio General Assembly, whereas a map that complied with the provisions of Article XI, Section 6, would have established districts favoring Democrats in at least 45% of the state's districts with the remaining 55% favoring Republicans. Respondent denies any remaining allegations of Paragraph 7.

8. The Commission's post hoc rationalization explaining how such a blatantly partisan plan meets the Constitution's proportional fairness standard defies logic and further demonstrates that the Commission did not even *attempt* to meet any intelligible standard of proportionality during the mapmaking process. Using the Commission's indefensible reasoning, it would have been permissible to draw a plan in which 81 percent or more of the state's districts favor Republican candidates, despite the fact that Republicans win only about 54 percent of the statewide vote on average.

ANSWER: In response to Paragraph 8, Respondent states: that he voted against the District Plan proposed by Republican members of the Commission; that neither the District Plan nor the actions of the Republican Commissioners complied with the Ohio Constitution; and

therefore, Respondent and House Minority Leader Emilia Sykes voted against the Republicans' proposed District Plan.

9. Maps submitted to the Commission by the public demonstrated that the Commission could have met the standard of partisan proportionality while adhering to all other constitutional requirements. Indeed, the Commission-adopted maps ignored or subordinated traditional redistricting criteria and the interests of communities of color in order to give Ohio Republicans continuing supermajority control of the statehouse.

ANSWER: In response to Paragraph 9, Respondent states that he voted against the District Plan proposed by Republican members of the Commission because neither the process for drawing the map nor the map itself complied with the Ohio Constitution. Further, the Commission was presented with multiple maps that did comply with the Ohio Constitution, but the majority-Republican members of the Commission refused to adopt, or even consider, any of those plans. Respondent admits that the Plan was adopted by a 5-2 party-line vote, with Respondent and House Minority Leader Emilia Sykes voting against the Republicans' proposal.

10. Partisan gerrymandering is an existential threat to our democracy, and it violates the Ohio Constitution, as amended by more than 71 percent of Ohioans just six years ago. As the Florida Supreme Court held when considering the effect of a similar redistricting amendment in its own state, courts have an "important duty to honor and effectuate the intent of the voters in passing [this] groundbreaking constitutional amendment . . . because the people . . . have, through their constitution, entrusted that responsibility to the judiciary." *League of Women Voters of Fla. v. Detzner*, 172 So. 3d 363, 416 (Fla. 2015).

ANSWER: In response to Paragraph 10, Respondent admits that Partisan gerrymandering is a threat to our democracy, and it violates the Ohio Constitution, as amended by

more than 71 percent of Ohioans just six years ago. Answering further, Respondent states that the remaining allegations of Paragraph 10 rely upon the written opinion of the Florida Supreme Court, which opinion speaks for itself and thus no response is required to Relators' characterization of it.

11. Multiple commissioners bemoaned the plan they voted to adopt. Secretary of State Frank LaRose remarked, "I'm casting my 'yes' vote with great unease." State Auditor Keith Faber added that the plan was not "that bad" but was "not that good either." Governor Mike DeWine expressed his view that the Commission "could have produced a more clearly constitutional bill. That's not the bill we have in front of us." Governor DeWine added that he was "not judging the bill one way or another. That's up to a court to do." [Exhibit 1.]

ANSWER: In response to Paragraph 11, Respondent states that Exhibit 1 speaks for itself and requires no response. Respondent is without knowledge or information sufficient to form a belief as to the truth of any remaining allegations of Paragraph 11, and therefore denies same.

12. The Commission has shown itself to be unwilling to adhere to the Fair Districts Amendments. It left compliance with the Ohio Constitution "up to [this] court to do." And so, Relators must seek relief before this Court.

ANSWER: In response to Paragraph 12, Respondent states that he voted against the District Plan proposed by Republican members of the Commission which was inconsistent with the Fair District Amendments (as defined in Paragraphs 43-45 of the Complaint) and failed to comply with the provisions of the Ohio Constitution. Respondent admits that the Plan was adopted by a 5-2 party-line vote, with Respondent and House Minority Leader Emilia Sykes voting against the Republicans' proposal.

NATURE OF THE ACTION AND JURISDICTION

13. This is an apportionment case commenced pursuant to this Court's original and exclusive jurisdiction under Article XI, Section 9 of the Ohio Constitution.

ANSWER: In response to Paragraph 13, Respondent states that the Complaint speaks for itself, and thus no response is required to Relators' characterization of it.

14. Pursuant to Article XI, Relators seek a determination that the 2021 Commission Plan is invalid.

ANSWER: In response to Paragraph 14, Respondent states that the Complaint speaks for itself, and thus no response is required to Relators' characterization of it.

15. Further, because the Commission's failure to abide by its constitutional mandate was in bad faith, Relators seek an award of reasonable attorneys' fees.

ANSWER: In response to Paragraph 15, Respondent states that he voted against the District Plan proposed by Republican members of the Commission, and that neither the Plan nor the conduct of the five Republican Commissioners, satisfied the requirements of the Ohio Constitution their obligations under the Ohio Constitution. Respondent admits that the Plan was adopted by a 5-2 party-line vote, with Respondent and House Minority Leader Emilia Sykes voting against the Republicans' proposal.

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

ANSWER: In response to Paragraph 16, Respondent states that the allegations are not directed at Respondent, and thus no response is required. Respondent denies any remaining allegations of Paragraph 16.

PARTIES

17. Respondents are the Ohio Redistricting Commission (the "Commission") and its seven members: Co-Chair House Speaker Bob Cupp, Co-Chair Senator Vernon Sykes, Governor Mike DeWine, Secretary of State Frank LaRose, Auditor Keith Faber, Senate President Matt

Huffman, and House Minority Leader Emilia Sykes. The Commission voted to approve the 2021 Commission Plan, attached as Exhibit A, and is responsible for creating a new constitutionally-compliant reapportionment plan under Article XI of the Ohio Constitution.

ANSWER: In response to Paragraph 17, Respondent admits that he and the other six individuals listed comprise the Commission, and that the Commission is responsible for creating a constitutionally-compliant reapportionment plan under Article XI of the Ohio Constitution. Answering further, Respondent denies voting for the 2021 Commission Plan attached to the Complaint as Exhibit A (the “District Plan” or the “Plan”). Respondent states that he voted against the District Plan proposed by Republican members of the Commission which was adopted by a 5-2 party-line vote, with Respondent and House Minority Leader Emilia Sykes voting against the Republicans’ proposal.

18. Relators are Ohio electors who live in districts that were drawn in violation of Article XI.

ANSWER: Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation of Paragraph 18, and therefore denies same.

19. Relator Bria Bennett lives at 795 Lane West Rd. SW, Warren, OH 44481, which is in Ohio House District 65 and Ohio Senate District 28 in the 2021 Commission Plan.

ANSWER: Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation of Paragraph 19, and therefore denies same.

20. Relator Regina Adams lives at 14360 Rockside Rd., Maple Heights, OH 44137, which is in Ohio House District 22 and Ohio Senate District 21 in the 2021 Commission Plan.

ANSWER: Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation of Paragraph 20, and therefore denies same.

21. Relator Kathleen M. Brinkman lives at 400 Pike St. Unit 809, Cincinnati, OH 45202, which is in Ohio House District 24 and Ohio Senate District 9 in the 2021 Commission Plan.

ANSWER: Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation of Paragraph 21, and therefore denies same.

22. Relator Martha Clark lives at 4439 Filbrun Ln., Trotwood, OH 45426, which is in Ohio House District 39 and Ohio Senate District 5 in the 2021 Commission Plan.

ANSWER: Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation of Paragraph 22, and therefore denies same.

23. Relator Susanne L. Dyke lives at 2558 Guilford Rd., Cleveland Heights, OH 44118, which is in Ohio House District 21 and Ohio Senate District 21 in the 2021 Commission Plan.

ANSWER: Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation of Paragraph 23, and therefore denies same.

24. Relator Carrie Kubicki lives at 13201 Vermillion Rd., Amherst, OH 44001, which is in Ohio House District 53 and Ohio Senate District 13 in the 2021 Commission Plan.

ANSWER: Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation of Paragraph 24, and therefore denies same.

25. Relator Meryl Neiman lives at 2115 Clifton Ave., Columbus, OH 43209, which is in Ohio House District 1 and Ohio Senate District 15 in the 2021 Commission Plan.

ANSWER: Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation of Paragraph 25, and therefore denies same.

26. Relator Holly Oyster lives at 21370 Harrisburg Westville Rd., Alliance, OH 44601, which is in Ohio House District 59 and Ohio Senate District 33 in the 2021 Commission Plan.

ANSWER: Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation of Paragraph 26, and therefore denies same.

27. Relator Constance Rubin lives at 3088 Whitewood St. NW, North Canton, OH 44720, which is in Ohio House District 48 and Ohio Senate District 29 in the 2021 Commission Plan.

ANSWER: Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation of Paragraph 27, and therefore denies same.

28. Relator Everett Totty lives at 145 S. St. Clair St. Unit 28, Toledo, OH 43604, which is in Ohio House District 41 and Ohio Senate District 11 in the 2021 Commission Plan.

ANSWER: Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation of Paragraph 28, and therefore denies same.

LEGAL BACKGROUND

29. The Commission is responsible for redistricting the State's House and Senate districts in compliance with Article XI of the Ohio Constitution.

ANSWER: Respondent admits the allegations of Paragraph 29.

30. Article XI sets forth procedural and substantive requirements that the Commission must follow in drawing state legislative maps, with the purpose of providing fair criteria for the reapportionment process and ensuring transparency.

ANSWER: In response to Paragraph 30, Respondent states that Article XI speaks for itself, and thus no response is required to Relators' characterization of it.

31. Article XI, Section 1 requires "the affirmative vote of four members of the commission, including at least two members of the commission who represent each of the two largest political parties represented in the general assembly" to adopt a state legislative plan for ten years.

ANSWER: In response to Paragraph 31, Respondent states that Article XI speaks for itself, and thus no response is required to Relators' characterization of it.

32. Article XI, Section 1 further requires the Commission to adopt a general assembly district plan not later than September 1 of a year ending in the numeral one. Prior to approving a plan, the Commission is to release maps for the House and Senate and then hold three hearings on the proposed plan in meetings "open to the public" and "broadcast by electronic means of transmission using a medium readily accessible to the general public."

ANSWER: In response to Paragraph 32, Respondent states that Article XI speaks for itself, and thus no response is required to Relators' characterization of it.

33. Article XI, Section 2 provides that "[e]ach house of representatives district shall be entitled to a single representative in each general assembly" and "[e]ach senate district shall be entitled to a single senator in each general assembly."

ANSWER: In response to Paragraph 33, Respondent states that Article XI speaks for itself, and thus no response is required to Relators' characterization of it.

34. Article XI, Section 3 explains the process for determining the "ratio of representation in the house of representatives and in the senate" based on the "whole population of the state, as determined by the federal decennial census." It also requires that the population of each district not deviate from that ideal ratio more than five percent.

ANSWER: In response to Paragraph 34, Respondent states that Article XI speaks for itself, and thus no response is required to Relators' characterization of it.

35. Article XI, Section 3 then provides that "[a]ny general assembly district plan adopted by the commission shall comply with all applicable provisions of the constitutions of Ohio and the United States and of federal law." In doing so, Section 3 incorporates all relevant

provisions of the Ohio Constitution, as well as the requirements of the Fourteenth Amendment to the United States Constitution and the federal Voting Rights Act.

ANSWER: In response to Paragraph 35, Respondent states that Article XI speaks for itself, and thus no response is required to Relators' characterization of it.

36. Section 3 also mandates that "[e]very general assembly district shall be composed of contiguous territory, and the boundary of each district shall be a single nonintersecting continuous line."

ANSWER: In response to Paragraph 36, Respondent states that Article XI speaks for itself, and thus no response is required to Relators' characterization of it.

37. After setting forth these baseline requirements, Section 3 enumerates each step of the process to draw House districts, specifying criteria for dividing counties, municipal corporations, and townships in drawing district lines.

ANSWER: In response to Paragraph 37, Respondent states that Article XI speaks for itself, and thus no response is required to Relators' characterization of it.

38. Article XI, Section 4 goes on to specify criteria for the drawing of Senate districts, requiring, for example, that "Senate districts shall be composed of three contiguous house of representatives districts."

ANSWER: In response to Paragraph 38, Respondent states that Article XI speaks for itself, and thus no response is required to Relators' characterization of it.

39. Article XI, Section 5 provides a process for determining which senator will represent a Senate district when that district's boundaries are changed in the General Assembly plan during a senator's term.

ANSWER: In response to Paragraph 39, Respondent states that Article XI speaks for itself, and thus no response is required to Relators' characterization of it.

40. Article XI, Section 6 provides plan-wide standards for the Commission:

The Ohio redistricting commission shall attempt to draw a general assembly district plan that meets all of the following standards:

(A) No general assembly district plan shall be drawn primarily to favor or disfavor a political party.

(B) The statewide proportion of districts whose voters, based on statewide state and federal partisan general election results during the last ten years, favor each political party shall correspond closely to the statewide preferences of the voters of Ohio.

(C) General assembly districts shall be compact.

ANSWER: In response to Paragraph 40, Respondent states that Article XI speaks for itself, and thus no response is required to Relators' characterization of it.

41. Although the Commission may not "violate the district standards described in Section 2, 3, 4, 5, or 7" in an effort to comply with Section 6, the Commission is not free to ignore Section 6's standards.

ANSWER: In response to Paragraph 41, Respondent states that Article XI speaks for itself, and thus no response is required to Relators' characterization of it.

42. Article XI, Section 8 sets forth an impasse procedure for when, as is the case here, the Commission fails to adopt a plan with the approval of at least two members of each of the two major political parties. Prior to approving a plan under Section 8, the Commission must hold a public hearing concerning the proposed plan. Under Section 8, a plan must be approved by September 15. Finally, although the Commission may approve a plan by simple majority vote, that plan will remain in effect for only four years and requires the Commission to explain how the plan meets Section 6(B)'s proportionality requirement.

ANSWER: In response to Paragraph 42, Respondent states that Article XI speaks for itself, and thus no response is required to Relators' characterization of it.

FACTS

A. Before the passage of 2015 redistricting reforms, Ohio's redistricting process and outcomes were corrupted by excessive partisanship that resulted in districts that did not reflect the will of Ohioans.

43. The reforms to state legislative redistricting enacted in 2015, hereinafter referred to as the "Fair Districts Amendments," were a response to decades of unfair redistricting practices in Ohio.

ANSWER: Respondent admits the allegations of Paragraph 43.

44. The Fair Districts Amendments addressed two primary ways hyper-partisan legislators had distorted and coopted the redistricting process in Ohio: (1) gerrymandering of maps to favor the party in power, also known as partisan gerrymandering; and (2) engaging in map-drawing in complete secrecy.

ANSWER: Respondent admits the allegations of Paragraph 44.

1. Ohio has a history of partisan gerrymandering.

45. Prior to the Fair Districts Amendments taking effect, partisan gerrymandering was rampant in Ohio. [Exhibit 4.]

ANSWER: Respondent admits the allegations of Paragraph 45.

46. In previous cycles, state legislative maps were drawn by an Apportionment Board consisting of the Governor, Secretary of State, State Auditor, and appointees of the Senate President, Senate Minority Leader, Speaker of the House, and House Minority Leader. The Board could adopt maps by a simple majority, and there was no requirement for bipartisanship in the approval of a final plan. [Exhibit 4.]

ANSWER: Respondent admits the allegations of Paragraph 46.

47. This process proved to be a recipe for egregious partisan gerrymanders.

ANSWER: Respondent admits the allegations of Paragraph 47.

48. The 2011 redistricting cycle provides a stark example. Public records obtained from the 2011 Apportionment Board show that mapmakers drew maps with the express purpose of maximizing Republican performance. In choosing between alternative plans, Republicans closely considered how they would perform based on 2004 and 2008 presidential election results, with an eye toward maximizing the number of districts where Republicans performed well. Because 2008 was a particularly unfavorable year for Republicans, a high-performance map would enable Republicans to win a majority of seats even in an election in which Democrats won a majority of votes. [Exhibit 2.]

ANSWER: Respondent admits the allegations of Paragraph 48.

49. As a consequence of the Board's commitment to maximizing Republican control, the maps that it approved overwhelmingly favored Republicans, and individual races were almost always uncompetitive. According to a League of Women Voters study, it was possible to predict the outcome of all Senate races, as well as almost all House races, in 2012, 2014, and 2016 based exclusively on the partisan index of a given district. [Exhibit 4.]

ANSWER: Respondent admits the allegations of Paragraph 49.

50. The 2011 gerrymander led to a large gap between the statewide preferences of voters and the partisan breakdowns in each chamber of the General Assembly. For example, in the first elections held under the new maps, a majority of Ohioans voted for the Democratic presidential candidate, but Republicans gained supermajorities in both houses of the General Assembly. While Ohio regularly sees close statewide elections and has voted for Democratic candidates for President and U.S. Senate in recent years, Republicans presently enjoy majorities

of 64-35 in the House and 25-8 in the Senate under the 2011 adopted plan, which is attached as Exhibit B.

ANSWER: Respondent admits the allegations of Paragraph 50.

2. Ohio's redistricting process lacked transparency.

51. Prior to the Fair Districts Amendments, the process for drawing state legislative districts was not transparent, with major decisions often made behind closed doors without the benefit of public input. Again, the 2011 redistricting cycle serves as both the most recent and most vivid example of this recurring problem.

ANSWER: Respondent admits the allegations of Paragraph 51.

52. The Apportionment Board's first public meeting of the 2011 cycle took place on August 4, at which time the Board approved a schedule for approving state legislative maps. Under the plan, the Board would not meet again until September 26, just five days before the then-constitutionally mandated deadline by which the Board was required to approve final maps. [Exhibit 2.]

ANSWER: In response to Paragraph 52, Respondent states that he is without knowledge or information sufficient to form a belief as to the truth of any remaining allegations of Paragraph 52, and therefore denies same.

53. The Board did not unveil maps until Friday, September 23, just three days before its September 26 meeting. It approved the maps two days after the meeting, on September 28. [Exhibit 2.]

ANSWER: In response to Paragraph 53, Respondent states that he is without knowledge or information sufficient to form a belief as to the truth of any remaining allegations of Paragraph 53, and therefore denies same.

54. The sparse public record between August 4 and September 28, however, belied a flurry of activity behind closed doors. Throughout the summer and early fall of 2011, Republican members of the Board held meetings in private with Republican operatives and elected officials to craft pro-Republican maps.

ANSWER: Respondent admits the allegations of Paragraph 54.

55. It was during this time period that Republicans infamously booked a 91-day stay at a Double Tree hotel in Columbus. This room, dubbed “the Bunker” by Republican operatives, became the staging ground for secret negotiations over state legislative and congressional maps. [Exhibit 2.]

ANSWER: In response to Paragraph 55, Respondent states that he is without knowledge or information sufficient to form a belief as to the truth of any remaining allegations of Paragraph 55, and therefore denies same.

56. Central to this cloak-and-dagger operation were the joint secretaries to the Board, Ray DiRossi and Heather Mann. DiRossi and Mann were responsible for advising the Board on Article XI’s then-requirements, and it fell to them to draw the first draft of the Board’s maps. Although both were on leave from jobs as staff members in the House and Senate at the time, they were not paid by the state of Ohio during their time as joint secretaries. Instead, they received payments from the Republican Legislative Task Force through companies they themselves had established. [Exhibit 2.]

ANSWER: Respondent admits the allegations of Paragraph 56.

57. Joint Secretary DiRossi personally booked the Double Tree room that became known as “the Bunker” and worked there throughout the mapmaking process. [Exhibit 3.]

ANSWER: In response to Paragraph 57, Respondent states that he is without knowledge or information sufficient to form a belief as to the truth of any remaining allegations of Paragraph 57, and therefore denies same.

58. The process, as then constituted, left little room for public comment. As noted above, the Board revealed maps just five days before voting to approve them. Additionally, the Board allowed for only ten minutes of remarks from any public proponent of a redistricting plan, amounting to fewer than 5 seconds for each of the 132 districts involved in the plan. [Exhibit 2.]

ANSWER: In response to Paragraph 58, Respondent admits that the 2011 redistricting process left little room for public comment. Answering further, Respondent states that he is without knowledge or information sufficient to form a belief as to the truth of any remaining allegations of Paragraph 58, and therefore denies same.

B. After the 2011 redistricting cycle, the General Assembly and the public voted to reform redistricting in Ohio.

1. The Ohio General Assembly overwhelmingly supported redistricting reforms, citing concerns about partisan gerrymandering, lack of transparency, and deferential judicial review.

59. In late 2014, members of the House introduced HJR 12, a bill to amend Article XI to reform redistricting in Ohio, attached as Exhibit 5. This proposal ultimately became the Fair Districts Amendments, which amended Article XI to its present form (save for a few later changes related only to congressional redistricting).

ANSWER: Respondent admits the allegations of Paragraph 59.

60. In its as-enrolled form, attached as Exhibit 6, HJR 12 sought to reform the redistricting process in Ohio in several important ways.

ANSWER: In response to Paragraph 60, Respondent states that the text of HJR 12 speaks for itself, and thus no response is required to Relators' characterization of it.

61. First, HJR 12 increased transparency. HJR 12 mandated, for example, that the Commission hold three public hearings on a proposed map and that all meetings be open to the public.

ANSWER: In response to Paragraph 61, Respondent states that the text of HJR 12 speaks for itself, and thus no response is required to Relators' characterization of it.

62. Second, HJR 12 encouraged bipartisanship in the redistricting process. HJR 12 replaced the Apportionment Board with the Commission. In a change to the previous system, HJR 12 required the votes from two members of the two largest parties represented in the General Assembly to approve a ten-year map.

ANSWER: In response to Paragraph 62, Respondent states that the text of HJR 12 speaks for itself, and thus no response is required to Relators' characterization of it.

63. Third, HJR 12 increased fairness in the redistricting process. HJR 12 required the Commission to attempt to draw districts that did not favor one political party and reflected the statewide partisan preferences of Ohio voters. It also provided that if a map was passed on a party-line vote, the Commission was required to explain how the plan corresponded to statewide voter preferences.

ANSWER: In response to Paragraph 63, Respondent states that the text of HJR 12 speaks for itself, and thus no response is required to Relators' characterization of it.

64. Finally, HJR 12 provided for robust judicial review of redistricting plans. HJR 12 required courts to strike down entire maps if certain of the rules are not complied with and set forth clear rules the Commission must follow in drawing maps. This stands in contrast to the previous version of Article XI, which did not contain a specific provision on when a map must be struck down and was framed in highly permissive language. It was the prior language in the since-

amended Article XI that prompted this Court to conclude, in *Wilson v. Kasich*, that redistricting plans should be reviewed with a high degree of deference and struck down only when relators have established that a plan is unconstitutional “beyond a reasonable doubt.” 134 Ohio St.3d 221, 2012-Ohio-5367, 981 N.E.2d 814, ¶ 24. HJR 12 changes this. Indeed, Commission members from both parties tacitly acknowledged this changed level of judicial review when questioning the constitutionality of the 2021 Commission Plan after its adoption, noting that it would be this Court—not the Commission itself—that would resolve whether the 2021 Commission Plan passes constitutional muster. [Exhibit 1.]

ANSWER: In Response to Paragraph 64, Respondent states that the written materials cited therein speak for themselves, and thus no response is required to Relators’ characterization of them.

65. Concerns about partisan gerrymandering and lack of transparency under the then-extant redistricting system pervaded the legislative debates and public statements on HJR 12.

ANSWER: Respondent admits the allegations of Paragraph 65.

66. For example, Representative Mike Duffey, a Republican from Worthington, remarked during the floor debate on HJR 12 in the House that “right now we have got a redistricting system that does not require any balance. It does not require minority party participation. And I really think that that has been destructive to the legislature—in my experience . . . This is a purple state. Sometimes we lose as Republicans. I think when the shoes are—if the shoe was on the other foot, and the Democrats were in control of two of the three statewide offices, we’d be looking at 60-39 majority the other way. And I don’t think anybody really wants to see government operate that way. They want to see some kind of balance, and I think that this is going to provide that. And so, I strongly support the plan.” [Exhibit 7.]

ANSWER: In response to Paragraph 66, Respondent states that Exhibit 7 speaks for itself, and thus no response is required to Relators' characterization of it.

67. Representative Huffman (now Senate President Huffman, a Commission member) remarked during floor debates on HJR 12, "There's . . . much more transparency that is dictated—again, this will be in the Constitution—about how the board will meet, when they have to have public meetings, publishing the map before it goes into place for public comment." [Exhibit 7.]

ANSWER: In response to Paragraph 67, Respondent states that Exhibit 7 speaks for itself, and thus no response is required to Relators' characterization of it.

68. Legislative debates also touched on the more robust judicial standard of review imposed by the new legislation. During debate on HJR 12, Representative Kathleen Clyde, a Democrat, noted, "The Ohio Supreme Court also ruled that the criteria currently in the Ohio constitution are not enforceable and this plan should help fix that frustrating problem." [Exhibit 8.]

ANSWER: In response to Paragraph 68, Respondent states that Exhibit 9 speaks for itself, and thus no response is required to Relators' characterization of it.

69. Legislators also discussed the meaning and consequences of the partisan fairness standards under what is now Section 6 of Article XI. Representative John Becker, a Republican from Union Township, Clermont County, speaking in opposition to the resolution, remarked that Section 6(B)'s requirement that a redistricting plan reflect the partisan preferences of Ohio voters as expressed in statewide elections "guarantees—and this could be good or bad depending on your perspective—but it guarantees we will forever have a very close 50/50 split in this Chamber so you're no longer ever going to see a strong partisan divide. Some people like that and some won't, I just wanted everybody to be aware you'll never see this kind of division again." [Exhibit 7.]

ANSWER: In response to Paragraph 69, Respondent states that Exhibit 7 speaks for itself, and thus no response is required to Relators' characterization of it.

70. HJR 12 passed the General Assembly in December 2014 by a vote of 28-1 in the Senate and 80-8 in the House. [Exhibit 9.] Following approval by the Governor, it was placed on the November 2015 ballot as a popular referendum.

ANSWER: In response to Paragraph 70, Respondent states that HJR 12 passed the General Assembly in December 2014, and thereafter, was placed on the November 2015 ballot.

2. Ohioans voted for redistricting reforms in large numbers, in response to ballot language and public campaigns that emphasized bipartisanship, transparency, and fairness.

71. The referendum on the Fair Districts Amendments—known as Issue 1—appeared on Ohio ballots as follows, as seen on the sample ballot attached as Exhibit 10:

Issue 1

Creates a bipartisan, public process for drawing legislative districts

Proposed Constitutional Amendment Proposed by Joint Resolution of the General Assembly

To enact new Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10 of Article XI and to repeal Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, and 15 of Article XI of the Constitution of the State of Ohio.

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

The proposed amendment would:

- End the partisan process for drawing Ohio House and Senate districts, and replace it with a bipartisan process with the goal of having district boundaries that are more compact and politically competitive.
- Ensure a transparent process by requiring public meetings, public display of maps, and a public letter explaining any plan the Commission adopts by a simple majority vote.
- Establish the bipartisan Ohio Redistricting Commission, composed of 7 members including the Governor, the Auditor of State, the Secretary of State,

and 4 members appointed by the majority and minority leaders of the General Assembly.

- Require a bipartisan majority vote of 4 members in order to adopt any final district plan, and prevent deadlock by limiting the length of time any plan adopted without bipartisan support is effective.

If passed, the amendment will become effective immediately.

	YES	SHALL THE AMENDMENT BE APPROVED?
	NO	

ANSWER: In response to Paragraph 71, Respondent states that Exhibit 10 speaks for itself and thus no response is required to Relators' characterization of it.

72. In seeking approval from the Ohio Ballot Board for the above ballot language for Issue 1, Senators Keith Faber (now Auditor Faber, a Commission member) and Joe Schiavoni, along with Representatives Kirk Schuring and Michael Curtin, submitted a bipartisan statement in support of Issue 1. The statement characterized Issue 1 as establishing "a fair, bipartisan, and transparent process," which would "establish[] fair and balanced standards for drawing state legislative districts, including that no district plan should favor a political party." [Exhibit 11.]

ANSWER: In response to Paragraph 72, Respondent states that the allegations are not directed at Respondent, and thus no response is required. Answering further, Respondent states that Exhibit 11 speaks for itself and thus no response is required to Relators' characterization of it.

73. Issue 1 gained support across the political spectrum, earning the endorsements of both major political parties in the state, as well as the Ohio Chamber of Commerce, Ohio NAACP, Ohio League of Women Voters, Ohio Fraternal Order of Police, Ohio Right to Life, NARAL Pro-Choice Ohio, and many other organizations. [Exhibit 12.]

ANSWER: In response to Paragraph 73, Respondent states that the allegations are not directed at Respondent, and thus no response is required. Answering further, Respondent states that Exhibit 12 speaks for itself and thus no response is required to Relators' characterization of it.

74. The organizational literature distributed by pro-Issue 1 organizations emphasized the goals of ending partisan gerrymandering and ensuring transparency.

ANSWER: In response to Paragraph 74, Respondent states that the allegations are not directed at Respondent, and thus no response is required. Answering further, Respondent states that the literature referenced in Paragraph 74 speaks for itself and thus no response is required to Relators' characterization of it.

75. The website of the "Fair Districts = Fair Elections Coalition" (the "Coalition"), an umbrella organization of several good-government organizations advocating for Issue 1's approval, described the then-status quo as follows: "Right now the Ohio Constitution allows one political party in Ohio to draw General Assembly districts to increase partisan advantage instead of ensuring fair representation. In 2011, map-makers labeled the hotel room where they drew maps in secret 'the bunker' and used partisan information to draw as many districts as possible for their party. They even changed district lines for a major political donor. If voters amend Ohio's Constitution by approving Issue 1 in November, they would end a system of hyper-partisan manipulation of state legislative map-making with no transparency and no accountability." [Exhibit 13.]

ANSWER: In response to Paragraph 75, Respondent states that the allegations are not directed at Respondent, and thus no response is required. Answering further, Respondent states that Exhibit 13 speaks for itself and thus no response is required to Relators' characterization of it.

76. In its voter guide for the 2015 elections, the League of Women Voters included among the "PROs" in favor of Issue 1: "Prohibits partisan gerrymandering" and "requires transparency and public hearings." [Exhibit 14.]

ANSWER: In response to Paragraph 76, Respondent states that the allegations are not directed at Respondent, and thus no response is required. Answering further, Respondent states that Exhibit 14 speaks for itself and thus no response is required to Relators' characterization of it.

77. The literature distributed by the Coalition explained that Issue 1 would "establish clear rules for creating fair districts; require transparency and public input; and create a bipartisan process that requires both parties to work together." [Exhibit 14.]

ANSWER: In response to Paragraph 77, Respondent states that Exhibit 14 speaks for itself and thus no response is required to Relators' characterization of it.

78. Fair Districts for Ohio, another coalition supporting Issue 1 started by current Commissioners (and then-state Representatives) Huffman and Vernon Sykes, put up posters explaining that Issue 1 would establish a redistricting process that is bipartisan, transparent, fair, and accountable. The poster noted that to advance fairness, the amendments "protect[] against gerrymandering by prohibiting any district from primarily favoring one political party" and "require[] districts to closely follow the statewide preferences of voters." To advance the goal of accountability, the Issue "creates a process for the Ohio Supreme Court to order the commission to redraw the map if the plan favors one political party." And for transparency, the poster pointed to the many procedural requirements imposed by Issue 1, including that all meetings be open to the public and that the public have an opportunity to comment on a redistricting plan. [Exhibit 15.]

ANSWER: In response to Paragraph 78, Respondent admits that he was instrumental in launching the Fair Districts for Ohio coalition in support of Issue 1, and that the Issue 1 campaign utilized posters in support of its goal to protect against gerrymandering and require districts to be drawn such that the legislative districts would more accurately reflect the statewide preferences of

Ohio voters. Answering further, Respondent states that Exhibit 15 speaks for itself and thus no response is required to Relators' characterization of it.

79. Additional literature distributed by Fair Districts for Ohio stated that, once Issue 1 passed, "no longer will politicians be able to meet behind closed doors to carve up the state into safe districts." [Exhibit 16.]

ANSWER: In response to Paragraph 79, Respondent states that Exhibit 16 speaks for itself and thus no response is required to Relators' characterization of it.

80. Voters overwhelmingly approved Issue 1 by a vote of 71.47 to 28.53 percent. [Exhibit 17.]

ANSWER: Respondent admits the allegations of Paragraph 80.

C. The 2021 Commission proceedings were not transparent and produced maps that violate Article XI, as amended.

1. 1. The Commission missed multiple constitutional deadlines and did not actively engage with public input.

81. The Ohio Redistricting Commission held its first meeting on August 6, 2021. The meeting lasted only seven minutes and did not allow for public comment. [Exhibit 18.]

ANSWER: Respondent admits that the Ohio Redistricting Commission (the "Commission") held its first meeting on August 6, 2021. Answering further, Respondent states that Exhibit 18 speaks for itself and thus no response is required to Relators' characterization of it.

82. Beginning on August 23, the Commission held a weeklong series of ten "public hearings" throughout the state, where the public had the opportunity to provide testimony. The Commission had not released draft maps at this time, meaning the public had no opportunity to comment or provide feedback on the Commission's intended redistricting approach. [Exhibit 19.]

ANSWER: Respondent admits that the majority-Republican Commissioners had not released a proposed District Map when the Commission held its first public hearings. Answering

further, Respondent states that Exhibit 19 speaks for itself and thus no response is required to Relators' characterization of it.

83. Those members of the public who took the time to speak at these hearings found they were shouting into the wind. Commission members' attendance at public hearings ranged from spotty to non-existent. Only Co-Chair Senator Sykes attended every session. Governor DeWine did not personally attend a single session; he skipped the first scheduled hearing to attend training camp for the Cincinnati Bengals. [Exhibit 20.] The other members of the Commission also frequently sent proxies. The high watermark for attendance was at the hearing held at Ohio State University at Lima, where six members attended. Save for that meeting, no more than three members of the Commission attended any other public hearing that week. [Exhibit 21.]

ANSWER: In response to Paragraph 83, Respondent admits that he was the only member of the Commission to attend every session, and that numerous citizen speakers expressed frustration during these hearings. Answering further, Respondent states that Exhibits 20 and 21 speak for themselves and thus no response is required to Relators' characterization of it.

84. Prior to and during the period in which the Commission held these public hearings, no member of the Commission had introduced a map, nor had the Commission, as a whole, proposed a map.

ANSWER: Respondent admits the allegations of Paragraph 84.

85. At the public hearings, Commission members refused to answer questions and made clear that there would be no debate or dialogue between Commission members and the public. For example, at the hearing held in Cincinnati on August 24, former state Democratic Party chairman David Pepper asked Commission members if they had been in private meetings to discuss state legislative maps. [Exhibit 21.] Commission members refused to answer the question.

ANSWER: In response to Paragraph 85, Respondent states that at the Commission meeting of August 24, 2021, both Commissioner LaRose and Commissioner Faber were asked whether they had participated in private meetings to discuss state legislative maps, and they declined to respond to Mr. Pepper. Answering further, Respondent denies any remaining allegations of Paragraph 85 as it relates to him personally.

86. The Commission reconvened, this time with all members present, on August 31, just one day short of Article XI, Section 1's September 1 deadline to adopt a General Assembly district plan. At this meeting, the Commission merely adopted procedural rules. [Exhibit 22.]

ANSWER: Respondent admits that the Commission reconvened on August 31. Answering further, Respondent states that Exhibit 22 speaks for itself and thus no response is required to Relators' characterization of it.

87. The August 31 meeting also saw the first legislative maps introduced by a member of the Commission, as Co-Chair Senator Sykes introduced a plan on behalf of the Senate Democratic caucus. No other maps were submitted on that day. [Exhibit 22.]

ANSWER: Respondent admits the allegations of Paragraph 87.

88. The maps introduced by the Senate Democratic caucus, updated slightly on September 2 and attached as Exhibit C, complied with all of Article XI's line-drawing criteria. The maps also substantially matched the partisan preferences in the state, which the Senate Democratic caucus determined to be 45.9 percent Democratic and 54.1 percent Republican, based on statewide partisan elections between 2012 and 2020. The Senate Democratic caucus maps would lead to the election of approximately 44 Democrats and 55 Republicans in the House, and 14 Democrats and 19 Republicans in the Senate.

ANSWER: Respondent admits the allegations of Paragraph 88.

89. During the August 31 meeting, Commission member and House Minority Leader Sykes repeatedly asked Co-Chair Speaker Cupp when members could expect to see a map from any of the Republican members of the Commission. In each instance, Co-Chair Speaker Cupp refused to commit to a date when maps would be released, responding at one point: “obviously when a map is presented, members of the Commission will have an opportunity to weigh in.” Co-Chair Speaker Cupp also indicated that he did not expect Republicans to *propose* a map prior to the September 1 deadline for the Commission to *adopt* a proposed map for public comment; even under Section 8’s impasse provision, September 1 is the final day to propose a map. [Exhibit 22.]

ANSWER: In response to Paragraph 89, Respondent states that the allegations are not directed at Respondent, and thus no response is required. Answering further, Respondent states that Exhibit 22 speaks for itself and thus no response is required to Relators’ characterization of it.

90. The September 1 deadline came and went, and the Commission failed to adopt or even propose, state legislative maps. The Commission thus failed to comply with the deadlines set forth in Article XI, Section 1 or Article XI, Section 8 of the Ohio Constitution.

ANSWER: In response to Paragraph 90, Respondent admits that the majority-Republican commissioners had not formally proposed or adopted state legislative maps as of September 1, 2021. Answering further, Respondent states that Article XI of the Ohio Constitution speaks for itself and thus no response is required to Relators’ characterization of it.

2. The Commission proposed blatantly partisan maps.

91. With just one week until the final deadline to approve General Assembly maps under Article XI, Section 8’s impasse procedure, the Commission announced on September 8 that it would hold two hearings the following day. The public was given notice of the meetings just 24 hours before the first hearing gavelled to order. [Exhibit 23.]

ANSWER: Respondent admits the allegations of Paragraph 91.

92. At the first hearing on September 9, Commission member and Senate President Huffman declared his intention to introduce maps to the Commission in his capacity as Senate President. [Exhibit 24.]

ANSWER: Respondent admits the allegations of Paragraph 92.

93. Shortly thereafter, Senate President Huffman's maps, attached as Exhibit D, appeared on the Commission website. This was the first the public had seen of any map proposed by a Republican member of the Commission.

ANSWER: Respondent admits the allegations of Paragraph 93.

94. Senate President Huffman's maps were officially presented to the Commission that morning by Ray DiRossi—the former joint secretary of the 2011 Apportionment Board and the person responsible for the 2011 “Bunker”—now the Senate Republicans' finance director. [Exhibit 24.]

ANSWER: Respondent admits the allegations of Paragraph 94.

95. DiRossi's presentation focused exclusively on the maps' compliance with the line-drawing criteria in Sections 3 and 4 of Article XI. His presentation made no reference to partisan proportionality or partisan fairness. [Exhibit 24.]

ANSWER: Respondent admits the allegations of Paragraph 95.

96. Following the presentation, Co-Chair Senator Sykes asked DiRossi whether the maps complied with Article XI's requirement that redistricting plans attempt to reflect the partisan makeup of the state and not favor or disfavor any one political party. In response, DiRossi explained that the Republicans' analysis of the partisan breakdown of the maps was “ongoing.” [Exhibit 24.]

ANSWER: Respondent admits the allegations of Paragraph 96.

97. Co-Chair Speaker Cupp and Senate President Huffman told the press later that day that the Republican caucuses did not analyze the partisan balance of their maps at all prior to introducing them. [Exhibit 25.] That is, Co-Chair Speaker Cupp and Senate President Huffman confirmed that their maps had not been drafted with any attempt to comply with Article XI, Section 6 of the Ohio Constitution.

ANSWER: Respondent admits the allegations of Paragraph 97.

98. Nevertheless, the partisan composition of the map that Senate President Huffman proposed would calcify the Republican Party's supermajority in both houses of the General Assembly. Of the 132 total General Assembly districts, only 31 percent would lean Democratic: 32 of 99 in the House and 9 of 33 in the Senate. Indeed, those numbers would somewhat *reduce* Democratic representation in the General Assembly, in which the members were elected based on the hyper-partisan maps created in the 2011 Republican Bunker, resulting in Democrats presently holding 35 House seats and 8 Senate seats.

ANSWER: Respondent admits the allegations of Paragraph 98.

99. Next, House Minority Leader Sykes asked about the Republican plan's compliance with the Voting Rights Act. DiRossi replied that the mapmakers had not considered "racial or demographic" data in drawing the maps. DiRossi explained that leadership in the General Assembly had instructed him to exclude this data from his analysis. [Exhibit 24.]

ANSWER: Respondent admits the allegations of Paragraph 99.

100. At the second hearing of the day, mere hours after the public had seen the Republican maps for the first time, the Commission voted along party lines to propose Senate President Huffman's maps in their entirety as the Commission's plan. The Commission did not

hold a vote on or consider the issue of adopting the Senate Democratic maps or any other map prior to holding a vote on the Republican maps. [Exhibit 23.]

ANSWER: In response to the allegations of Paragraph 100, Respondent admits that the Commission voted to approve the District Plan by a 5-2 party-line vote, with Respondent and House Minority Leader Emilia Sykes voting against the Republicans' proposal.

3. Ohioans offered public testimony about the proposed Commission maps' failure to adhere to constitutional and statutory mandates.

101. In the days following introduction of the initially proposed Commission maps, members of the public offered testimony on the maps' effects and its compliance with the Ohio Constitution. [Exhibits 26, 27, 28.]

ANSWER: Respondent admits the allegations of Paragraph 101.

102. In doing so, speakers often referenced alternative maps that had been submitted by the Senate Democratic caucus and members of the public, including a map proposed by the nonpartisan Ohio Citizens' Redistricting Commission, attached as Exhibit E.

ANSWER: Respondent admits the allegations of Paragraph 102.

103. Many voters testified about the maps' total inability to achieve anything remotely resembling partisan fairness. One witness called the maps "a joke and a fraud." [Exhibit 29.] Witnesses stressed that under Article XI, maps should correspond closely to the statewide preferences of voters, as expressed in the results of statewide partisan elections. Several witnesses explained that a fair map would result in around 45 percent of districts going to Democrats and 55 percent of districts going to Republicans. [Exhibits 26, 27, 28.] At the September 14 hearing, Commission member and Secretary LaRose, while questioning a witness, himself expressed his understanding that 6(B)'s proportionality requirement would allocate about 45 percent of seats to Democrats and about 55 percent to Republicans. [Exhibit 28.]

ANSWER: In response to Paragraph 103, Respondent admits that many voters criticized the Republican-proposed map and admits that a fair map would have resulted in around 45 percent of districts going to Democrats and 55 percent of districts going to Republicans. Answering further, Respondent states that Article XI of the Ohio Constitution and the Exhibits referenced in Paragraph 103 speak for themselves and thus no response is required to Relators' characterization of them.

104. Under no measurement did the maps do this; instead, upwards of 64 percent of districts favored Republicans under the proposed maps.

ANSWER: In response to Paragraph 104, Respondent admits that the so-called Commission maps failed to satisfy the proportional fairness provision of Section 6. Answering further, Respondent denies any remaining allegations of Paragraph 104.

105. Witnesses also discussed the maps' failure to respect communities of color. In particular, speakers noted that the maps packed and cracked Black communities throughout the state, thereby limiting the strength of their votes. At the Dayton hearing, for example, one witness noted that (as discussed in more detail below) the Commission-proposed Republican plan drew "black communities in and around Dayton together with white rural [counties]," and another testified that the proposed map "cut off Dayton . . . from [its] suburban neighbors that face challenges similar to [its] own." [Exhibit 26.]

ANSWER: In response to Paragraph 105, Respondent states that Exhibit 26 speaks for itself, and thus no response is required to Relators' characterization of it. Answering further, Respondent denies any remaining allegations of Paragraph 105.

106. Witnesses also chastised the Commission for its purported failure to even consider racial or demographic data in drawing the map. Doing so, speakers stressed, abdicated the

Commission's responsibility to ensure compliance with the Voting Rights Act and protect communities of interest. [Exhibit 24.]

ANSWER: In response to Paragraph 106, Respondent admits that many voters criticized the Republican-proposed map and admits that a fair map would have resulted in around 45 percent of districts going to Democrats and 55 percent of districts going to Republicans. Answering further, Respondent states that Exhibit 24 speaks for itself and thus no response is required to Relators' characterization of it.

107. Testimony was also given about the Republican maps' failure to respect communities of interest. At the hearing in Cleveland in particular, many witnesses complained about being lumped in with communities with which they shared little in common. For example, Catherine LaCroix, a resident of Shaker Heights and co-President of the regional League of Women Voters chapter, noted that under the Republican maps, many of the districts surrounding Shaker Heights had broken apart communities that share school districts, while at the same time districts "wander across the county to distant points and communities that have nothing in common with." [Exhibit 27.]

ANSWER: In response to Paragraph 107, Respondent admits that many voters criticized the Republican-proposed map and admits that a fair map would have resulted in around 45 percent of districts going to Democrats and 55 percent of districts going to Republicans. Answering further, Respondent states that Exhibit 27 speaks for itself and thus no response is required to Relators' characterization of it.

108. Columbus resident Richard Topper shared that "[t]he Republican map puts [his] neighbors to the north, south and east with whom [he] share[s] parks, roads, schools and facilities

and Next-Door app in” a different Senate District than his, which includes the entirety of Union County—which “voted 2-1 Republican in 2020.” [Exhibit 30.]

ANSWER: In response to Paragraph 108, Respondent admits that many voters criticized the Republican-proposed map and admits that a fair map would have resulted in around 45 percent of districts going to Democrats and 55 percent of districts going to Republicans. Answering further, Respondent states that Exhibit 30 speaks for itself and thus no response is required to Relators’ characterization of it.

109. Zaiba Malik submitted testimony from West Chester, expressing that she was “disappointed to see how [her] current districts do not include [her] next-door communities that [she] share[s] life experiences with.” [Exhibit 31.]

ANSWER: In response to Paragraph 109, Respondent admits that many voters criticized the Republican-proposed map and admits that a fair map would have resulted in around 45 percent of districts going to Democrats and 55 percent of districts going to Republicans. Answering further, Respondent states that Exhibit 31 speaks for itself and thus no response is required to Relators’ characterization of it.

4. The Commission adopted General Assembly maps that violate the Ohio Constitution.

110. In response to the abundance of testimony delineating gross flaws in the Commission-proposed maps, Co-Chair Senator Sykes introduced two sets of amendments on behalf of Senate and House Democrats. [Exhibit 26.] The second of these amendments was introduced after discussions with Secretary LaRose and Auditor Faber. [Exhibit 32.] The Commission refused to bring either of Co-Chair Senator Sykes’ maps up for a vote.

ANSWER: Respondent admits the allegations of Paragraph 110.

111. The deadline for adopting general assembly maps under Article XI, Section 8 was September 15, 2021. Shortly before the midnight deadline, the Commission convened to vote on a slightly amended map proposed by Senate President Huffman just that evening. Before the vote was held, Auditor Faber asked whether the Commission had a constitutionally-required statement explaining how the proposed plan complied with Section 6(B) of the Constitution, as required by Article XI, Section 8(C)(2). Senate President Huffman explained that while the statement had already been prepared (in the last few hours), there was no requirement to share it before the vote was cast. [Exhibit 1.]

ANSWER: In response to Paragraph 111, Respondent states that Article XI of the Ohio Constitution and Exhibit 1 speak for themselves, and thus no response is required to Relators' characterization of them. Answering further, Respondent denies any remaining allegations of Paragraph 111.

112. Accordingly, the Commission voted without discussing whether the maps complied with Section 6(B). Instead, the Commission adopted the Republican state legislative maps proposed by Senate President Huffman with few changes (the "2021 Commission Plan"), by a 5-2 party-line vote. [Exhibit 1.]

ANSWER: Respondent admits the allegations of Paragraph 112.

113. The Commission approved the 2021 Commission Plan a few minutes after midnight on September 16, missing the final constitutional deadline set by Article XI, Section 8. [Exhibit 1.]

ANSWER: Respondent admits that the Commission voted to approve the District Plan by a 5-2 party-line vote, with Respondent and House Minority Leader Emilia Sykes voting against the Republicans' proposal. Answering further, Respondent states that Article XI of the Ohio

Constitution and Exhibit 1 speak for themselves and thus no response is required to Relators' characterization of them.

114. Even Commission members who voted in favor of the plan expressed strong reservations about it. Prior to casting his "yes" vote, Secretary of State Frank LaRose remarked "I'm casting my 'yes' vote with great unease. I fear – I fear we're going to be back in this room very soon." [Exhibit 1.] Under Article XI, if the Court declares a redistricting plan invalid, the Commission must then reconvene to consider new maps.

ANSWER: Respondent admits the allegations of Paragraph 114.

115. Auditor Keith Faber added "[T]his map isn't that bad. It's not that good either." [Exhibit 1.]

ANSWER: Respondent admits the allegations of Paragraph 115.

116. Governor Mike DeWine expressed his view that the Commission "could have produced a more clearly constitutional bill. That's not the bill we have in front of us." [Exhibit 1.] Governor DeWine also added that he was "not judging the bill one way or another. That's up to a court to do."

ANSWER: Respondent admits the allegations of Paragraph 116.

117. The two Democratic Commissioners expressed their view that the adopted plan was plainly unconstitutional.

ANSWER: Respondent admits the allegations of Paragraph 117.

a. The 2021 Commission Plan's districts do not match the statewide preferences of Ohio voters.

118. The 2021 Commission Plan does not match the statewide preferences of Ohio voters. Rather, it reflects the partisan preferences of the Republican majority by maintaining—and even increasing—the number of likely Republican districts. The House map includes 32 districts

expected to elect a Democrat and 62 districts expected to elect a Republican. The Senate map includes 9 expected Democratic seats and 21 expected Republican seats.

ANSWER: Respondent admits the allegations of Paragraph 118.

119. Following a years-long fight by Ohio voters to enact constitutional amendments mandating that maps be fairly drawn, the 2021 Commission Plan achieves the remarkable result of maintaining the status quo. That is, the Commission managed to defang constitutional amendments designed to upend the status quo so that the partisan majority could instead maintain business as usual.

ANSWER: Respondent admits the allegations of the first sentence of Paragraph 119, and states that the Republican Commissioners adopted a Plan that failed to comply with the purpose or text of Article XI. Answering further, Respondent denies the remaining allegations of Paragraph 119.

120. The 2021 Commission Plan does not reflect Ohio voters' statewide preferences because the Commission did not attempt to achieve partisan proportionality. Crediting statements by DiRossi, Senate President Huffman, and Co-Chair Speaker Cupp that the Republican maps were drawn without regard to partisan data, it is logically impossible that the Commission could have attempted to achieve partisan fairness in creating the initially proposed maps.

ANSWER: Respondent admits the allegations of Paragraph 120.

121. And if Republicans did in fact consider the partisan breakdown of the districts in their maps before presenting them to the Commission, the maps were plainly not an attempt to achieve partisan proportionality, but just the opposite.

ANSWER: Respondent admits the allegations of Paragraph 121.

122. The Republicans' report on their compliance with the partisan fairness criteria only bolsters the conclusion that the 2021 Commission Plan violates the Ohio Constitution.

ANSWER: Respondent admits the allegations of Paragraph 122.

123. Following a party-line vote on the plan, the Republican Commissioners then issued a recently-drafted statement on how they purportedly ascertained the statewide preferences of Ohio voters in creating the 2021 Commission Plan, attached as Exhibit F.

ANSWER: Respondent admits the allegations of Paragraph 123.

124. But it appears that only two of the seven Commissioners—at most—even *saw* the statement prior to accepting the plan they had supposedly crafted in reliance on the statement's analysis. [Exhibit 1.] According to the statement, members of the Commission calculated partisan fairness by looking at two figures. [Exhibit F.]

ANSWER: In response to Paragraph 124, Respondent states that the Plan was adopted by a 5-2 party-line vote, with Respondent and House Minority Leader Emilia Sykes voting against the Republicans' proposal. Answering further, Respondent states that Exhibits 1 and F speak for themselves, and thus no response is required to Relators' characterization of them.

125. First, the Commission averaged the percentage of votes cast for Democratic and Republican candidates in partisan statewide races for the last ten years. This yielded a result of 46 percent support for Democrats and 54 percent support for Republicans. This measure is uncontroversial. [Exhibit F.]

ANSWER: In response to Paragraph 125, Respondent admits that the Plan was designed to preserve the Republican super majority in the Ohio General Assembly, whereas a map that complied with the provisions of Article XI, Section 6, would have established districts favoring Democrats in at least 45% of the state's districts with the remaining 55% favoring Republicans.

126. Second, and remarkably, Republicans considered the percentage of races *won* by Republicans in statewide partisan elections for the last ten years. Under this measurement, the statewide voter preferences are 81 percent Republican and 19 percent Democratic. [Exhibit F.]

ANSWER: In response to Paragraph 126, Respondent admits that the Plan was designed to preserve the Republican super majority in the Ohio General Assembly, whereas a map that complied with the provisions of Article XI, Section 6, would have established districts favoring Democrats in at least 45% of the state's districts with the remaining 55% favoring Republicans. Respondent further admits that the Plan was adopted by a 5-2 party-line vote, with Respondent and House Minority Leader Emilia Sykes voting against the Republicans' proposal.

127. The Commission then explained that it supposedly aimed to achieve a result in between these two figures, and dutifully met this goal with a map where 64.4 percent of districts lean Republican and 35.6 percent leaned Democratic. [Exhibit F.]

ANSWER: In response to Paragraph 127, Respondent admits that the Plan was designed to preserve the Republican super majority in the Ohio General Assembly, whereas a map that complied with the provisions of Article XI, Section 6, would have established districts favoring Democrats in at least 45% of the state's districts with the remaining 55% favoring Republicans. Respondent further admits that the Plan was adopted by a 5-2 party-line vote, with Respondent and House Minority Leader Emilia Sykes voting against the Republicans' proposal.

128. As the Democratic Commissioners' response to the report noted, the majority report's approach to ascertaining the statewide preferences of Ohio voters is "absurd." [Exhibit 33.] That is, if 50.01 percent of Ohio voters favored Republican candidates in each statewide race, the majority report suggests that 100 percent of Ohioans favor Republican candidates. The logic-defying nature of the Commission's decision to consider the percentage of statewide races won by

one party in determining statewide voter preference is plain when the approach is applied to other states. In Minnesota, for example, no Republican has won statewide in the last ten years. The Commission's measurement would therefore suggest that Minnesota voters prefer 100 percent of their elected officials to be Democrats (even though, in fact, control of the state legislature in Minnesota has been closely divided for the last decade). The same is true in California, even though more than *six million* people in that state voted for former President Trump in the 2020 election.

ANSWER: Respondent admits the allegations of Paragraph 128.

129. At least one Republican member of the Commission, Secretary LaRose, had previously expressed a view of partisan fairness directly at odds with the Commission report, *see supra* ¶ 103.

ANSWER: Respondent admits the allegations of Paragraph 129.

130. Further evincing that this partisan fairness justification was a mere post hoc fig leaf covering Republicans' brazen attempt to engage in extreme partisan gerrymandering, several members of the Commission were not even aware of the Commission's rationale prior to voting on the map. [Exhibit 1.]

ANSWER: Respondent admits that he had neither seen Exhibit 1 nor discussed the rationale behind Exhibit 1, which purported to justify the majority Commissioners' views on the provisions of Article XI, Section 6(B). Respondent also admits that he disagreed with the rationale of Exhibit 1. Answering further, Respondent denies every remaining allegation in Paragraph 130.

131. After approving the map, but prior to adopting the rationale, Secretary LaRose stated on the record that he had only just received the statement and that "[he] ha[d] not gotten an answer" about "how [Senate President Huffman] believe[s] that [he is] reaching the representational fairness or proportionality requirement in Section 6" "until tonight." [Exhibit 1.]

ANSWER: In response to Paragraph 131, Respondent states that the allegations are not directed at Respondent, and thus no response is required. Answering further, Respondent states that Exhibit 1 speaks for itself, and thus no response is required to Relators' characterization of it.

132. In response to Secretary LaRose's statement, Senate President Huffman himself admitted that "this statement [explaining the proportional standard] was prepared probably in the last five or six hours." [Exhibit 1.] He did not suggest that the principles of the statement guided the mapmaking process throughout. In fact, his own statements to the press after the Commission first proposed a map on September 9 confirm that they did not, *see supra* ¶ 97.

ANSWER: In response to Paragraph 132, Respondent states that the allegations are not directed at Respondent, and thus no response is required. Answering further, Respondent states that Exhibit 1 speaks for itself, and thus no response is required to Relators' characterization of it.

133. The Commission's Democratic members similarly stated that "until just a few moments ago, [they] had no idea how [the Republican members] decided to calculate or figure out proportional representation." [Exhibit 1.]

ANSWER: Respondent admits the allegations of Paragraph 133.

134. In fact, the 2021 Commission Plan remains disproportionately favorable to Republicans. Again, the average Democratic candidate received around 46 percent of votes in an Ohio statewide election held during the last ten years, while the average Republican candidate received 54 percent. The map, by the Commission's own admission, favors Republicans 64.4 30 percent of the time, a substantial and consequential deviation from the statewide voter preferences of Ohioans.

ANSWER: Respondent admits the allegations of Paragraph 134.

135. As explained below, *see infra* ¶ 143, the Commission had ample opportunity to consider publicly submitted maps that *did* meet a reasonable definition of partisan proportionality while also meeting all of Article XI's other requirements. The 2021 Commission Plan did not attempt to achieve—let alone actually achieve—partisan proportionality, as required by Section 6(B) of Article XI. Instead, the Commission considered how its already drawn map supposedly met proportionality only after the fact. That alone defies Section 6(B) of Article XI.

ANSWER: In response to Paragraph 135, Respondent states that neither the Plan nor the rationale behind it comply with the requirements of Article XI.

b. The 2021 Commission Plan was drawn primarily to favor the Republican Party.

136. It is plain from the partisan composition of the maps that the Commission created and adopted the 2021 Commission Plan with the single-minded goal of protecting Republican performance.

ANSWER: Respondent admits the allegations of Paragraph 136.

137. By Republicans' own view in their statement on partisan fairness, the actual statewide voter preference of Ohioans is 54-46 in favor of Republicans. Under any coherent reading of the Constitution, 54 is the benchmark for the percentage of majority-Republican seats that should exist in a given plan. The Republican statement treated this figure as a floor, however, seeking to achieve a result between the benchmark percentage and the percentage of statewide races *won* by Republicans (81 percent of races). [Exhibit F.] As a result, Republicans drew their map with the express purpose of creating *more* Republican districts than what would correspond to the statewide preferences of Ohio voters. This act of electoral rent-seeking constitutes partisan gerrymandering in direct contravention of Section 6(A).

ANSWER: In response to Paragraph 137, Respondent states that he voted against the Republican-proposed Plan and that neither the Plan nor the conduct of the five Republican Commissioners complied with the requirements of the Ohio Constitution.

138. Not only could the Commission have drawn a plan that reflected statewide voter preferences while adhering to all other constitutional provisions, but Republicans' attempt to maintain an undue advantage meant that other redistricting principles were subordinated.

ANSWER: Respondent admits the allegations of Paragraph 138.

139. In particular, Commission Republicans' pursuit of this goal came at a cost to Ohio's communities of color. The 2021 Commission Plan packs and cracks those communities, inhibiting their ability to organize to elect candidates of their choice, and diluting the strength of their votes.

ANSWER: Respondent admits the allegations of Paragraph 139.

140. For example, in the 2021 Commission Plan's house map, District 39 (Relator Clark's district) reaches into communities directly west of Dayton in Montgomery County, joining a primarily Black and Democratic community with white, Republican Preble County, thereby submerging Black and Democratic votes in a district that is overwhelmingly white and Republican.

ANSWER: In response to Paragraph 140, Respondent states that he voted against the Republican-proposed Plan and that neither the Plan nor the conduct of the five Republican Commissioners complied with the requirements of the Ohio Constitution.

141. Likewise, there is one fewer Hamilton County House district in the 2021 Commission Plan, as compared to the 2011 adopted plan, in which Black voters constitute a majority of the voting age population.

ANSWER: In response to Paragraph 141, Respondent states that he voted against the Republican-proposed Plan and that neither the Plan nor the conduct of the five Republican Commissioners complied with the requirements of the Ohio Constitution.

142. Two possibilities exist behind the 2021 Commission Plan: (1) either DiRossi was telling the truth when he said he followed the Republican legislative leaders' instruction to not consider racial data in drawing the maps, and the plan simply neglects the interests of minority communities entirely; or (2) the mapmakers did consider racial demographic data and deliberately packed and cracked minority communities into districts where their votes counted less than their white counterparts. Whatever the case may be, the 2021 Commission Plan represents a subordination of minority voters' interests in the name of protecting Republican incumbents and maximizing Republican candidates' chances of success.

ANSWER: In response to Paragraph 142, Respondent states that he voted against the Republican-proposed Plan and that neither the Plan nor the conduct of the five Republican Commissioners complied with the requirements of the Ohio Constitution.

143. Moreover, the Commission chose the Republican plan despite ample opportunity to consider several other plans that complied with Article XI's line-drawing requirements, either exceeded or matched the Republican plan on compactness scores, and achieved substantially higher partisan fairness than the Republican plan. These maps, namely the maps proposed by the Ohio Senate Democratic Caucus [Exhibit C] and the Ohio Citizens' Redistricting Commission [Exhibit E], were submitted to the Commission via the Commission's public website well before the Republican plan was itself submitted for consideration.

ANSWER: In response to Paragraph 143, Respondent admits that the maps proposed by the Ohio Senate Democratic Caucus and the Ohio Citizens' Redistricting Commission were

submitted before the Republican plan was itself submitted for consideration. Answering further, Respondent states that he voted against the Republican-proposed Plan and that neither the Plan nor the conduct of the five Republican Commissioners complied with the requirements of the Ohio Constitution. Respondent further states that the Plan was adopted by a 5-2 party-line vote, with Respondent and House Minority Leader Emilia Sykes voting against the Republicans' proposal.

144. Moreover, countless Ohioans testified in favor of these plans at the Commission's public meetings and hearings from September 9 through September 14.

ANSWER: Respondent admits the allegations of Paragraph 144.

145. The reapportionment plans adopted by the Commission deprive Relators and all similarly situated individuals of rights guaranteed to them under Article XI of the Ohio Constitution.

ANSWER: In response to Paragraph 145, Respondent states that he voted against the Republican-proposed Plan and that neither the Plan nor the conduct of the five Republican Commissioners complied with the requirements of the Ohio Constitution. Respondent further states that the Plan was adopted by a 5-2 party-line vote, with Respondent and House Minority Leader Emilia Sykes voting against the Republicans' proposal.

FIRST CAUSE OF ACTION—Violation of Article XI, Section 6(B) of the Ohio Constitution

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

ANSWER: Respondent restates and incorporates by reference all prior and subsequent answers as though fully restated herein.

147. The 2021 Commission Plan was drawn without regard for the statewide preferences of the voters of Ohio, as determined by the statewide state and federal partisan general election

results during the last ten years. Despite the fact that multiple plans presented to the Commission met all of Article XI's line-drawing requirements and achieved partisan proportionality, the Commission adopted a plan that exacerbates existing partisan distortions. The Commission thus did not attempt to draw a General Assembly plan in which the statewide proportion of districts whose voters favor each political party corresponds closely to the statewide preferences of voters.

ANSWER: Respondent admits that he voted against the Republican-proposed Plan and that neither the Plan nor the conduct of the five Republican Commissioners complied with the requirements of the Ohio Constitution. Respondent further states that the Plan was adopted by a 5-2 party-line vote, with Respondent and House Minority Leader Emilia Sykes voting against the Republicans' proposal.

148. As a result, the 2021 Commission Plan as a whole violates Article XI, Section 6(B) of the Ohio Constitution. The 2021 Commission Plan as a whole deprives Relators and all other citizens of Ohio the rights guaranteed them by the Ohio Constitution.

ANSWER: Respondent admits the allegations of Paragraph 148.

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

ANSWER: In response to Paragraph 149, Respondent states that Paragraph 149 states a legal conclusion to which no response is required.

150. The Commission acted in bad faith in adopting a plan in contravention of Section 6(B), as evidenced by its failure to adhere to Article XI's procedural requirements and its "contrived attempts to justify an untenable position" regarding the partisan composition of its plan. *See State ex rel. The Fairfield Leader v. Ricketts*, 56 Ohio St. 3d 97, 104, 564 N.E.2d 486, 493 (1990).

ANSWER: In response to Paragraph 150, Respondent states that he voted against the Republican-proposed Plan and that neither the Plan nor the conduct of the five Republican Commissioners complied with the requirements of the Ohio Constitution.

SECOND CAUSE OF ACTION—Violation of Article XI, Section 6(A) of the Ohio Constitution

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

ANSWER: Respondent restates and incorporates by reference all prior and subsequent answers as though fully restated herein.

152. The 2021 Commission Plan was drawn primarily to favor the Republican Party. Despite the fact that multiple plans presented to the Commission met all of Article XI's line-drawing requirements and achieve partisan proportionality, the Commission adopted a plan that exacerbates existing partisan distortions. The Commission thus did not attempt to draw a General Assembly plan so as not to favor a particular party.

ANSWER: Respondent admits that the Republican-designed Plan was drawn primarily to favor the Republican Party, and that neither the Plan nor the conduct of the five Republican Commissioners complied with the requirements of the Ohio Constitution. Respondent further states that the Plan was adopted by a 5-2 party-line vote, with Respondent and House Minority Leader Emilia Sykes voting against the Republicans' proposal.

153. As a result, the 2021 Commission Plan as a whole violates Article XI, Section 6(A) of the Ohio Constitution. The 2021 Commission Plan as a whole deprives Relators and all other citizens of Ohio the rights guaranteed them by the Ohio Constitution.

ANSWER: Respondent admits the allegations of Paragraph 153.

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

ANSWER: In response to Paragraph 154, Respondent states that Paragraph 154 states a legal conclusion to which no response is required.

155. The Commission acted in bad faith in adopting a plan in contravention of Section 6(A), *see supra* ¶ 150.

ANSWER: In response to Paragraph 155, Respondent states that he voted against the Republican-proposed Plan and that neither the Plan nor the conduct of the five Republican Commissioners complied with the requirements of the Ohio Constitution.

156. Respondent denies every allegation not explicitly admitted to be true herein.

PRAYER FOR RELIEF

In response to Relators' Prayer for Relief, Respondent requests that the Court grant the relief requested in Paragraphs 1-5. In response to Paragraph 6, Respondent denies any obligation to pay Relators' attorneys' fees and costs.

Respectfully submitted,

ICE MILLER LLP

/s/ Diane Menashe

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CERTIFICATE OF SERVICE

I hereby certify that on October 19, 2021, I have served the foregoing document by email on the following:

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