

IN THE SUPREME COURT OF OHIO

LEAGUE OF WOMEN VOTERS OF
OHIO, et al.,

Relators,

-v-

OHIO REDISTRICTING
COMMISSION, et al.,

Respondent.

CASE NO. 2021-1193

ORIGINAL ACTION UNDER
ART. XI, § 9 OF THE OHIO
CONSTITUTION

BRIEF OF AMICI CURIAE THE OHIO STATE CONFERENCE OF THE NAACP IN
SUPPORT OF RELATORS

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TABLE OF CONTENTS

TABLE OF CONTENTS	iv
TABLE OF AUTHORITIES	v
I. INTRODUCTION	1
II. STATEMENT OF INTEREST OF AMICI CURIAE.....	2
a. The Ohio State Conference of the NAACP	2
III. STATEMENT OF FACTS	3
IV. ARGUMENT	4
a. The maps were based on impermissible manipulation of racial populations.	5
1. In two senate districts that narrowly elected Republican incumbents, the map drawers increased the percentage of white voters, and at the same time, decreased the percentage of Black voters and other voters of color.....	6
2. By manipulating populations based on race, map drawers shored up a competitive house district to the benefit of the Republican incumbent.	7
3. Map drawers overpopulated the house districts in Cuyahoga County, depriving the County of a house seat and shoring up an adjacent Republican district.	8
b. The plans violate traditional districting principles.	11
c. The Redistricting Commission's process was flawed.....	13
d. The Ohio NAACP demonstrated a fairer process of soliciting public input.	16
V. CONCLUSION	17
CERTIFICATE OF SERVICE	19

TABLE OF AUTHORITIES

Cases

<i>Campos v. City of Baytown</i> , 840 F.2d 1240 (5th Cir. 1988)	5
<i>Clarke v. City of Cincinnati</i> , 40 F.3d 801 (6th Cir. 1994)	6
<i>Ezell Armour v. Ohio</i> , 775 F. Supp. 1044 (N.D. Ohio 1991)	6
<i>Ohio A. Philip Randolph Inst. v. Householder</i> , 367 F.Supp. 3d 697 (S.D. Ohio 2019)	5
<i>Parker v. Ohio</i> , 26 F.Supp. 2d 1100 (S.D. Ohio 2003).....	6
<i>Thornburg v. Gingles</i> , 478 U.S. 30 (1986).....	5
<i>United States v. Euclid</i> , 580 F. Supp. 2d 584 (N.D. Ohio 2008).....	6

Ohio Constitution

Ohio Const. art. XI, § 1	3
Ohio Const. art. XI, § 3	3, 4
Ohio Const. art. XI, § 6	3

Pleadings

Compl. of League Relators ¶¶ 84–85, <i>League of Women Voters of Ohio v. Ohio Redistricting Comm'n</i> , (No. 2021-1193), https://www.aclu.org/legal-document/complaint-league-women-voters-ohio-v-ohio-redistricting-commission	4, 15
Ex. 10, Compl. of League Relators, Testimony Collin Marozzi to Ohio Redistricting Comm'n....	4
Ex. 9, Compl. of League Relators, Article XI, § 8(C) Statement of Ohio Redistricting Comm'n .	4
Compl. of OCRC ¶¶ 48, 56, <i>Ohio Org. Collaborative v. Ohio Redistricting Comm'n</i> , (No. 2021-1210), https://www.brennancenter.org/sites/default/files/2021-09/OOC%20v.%20ORC%20Complaint_File%20Stamped%20Copy.PDF	4
Ex. 1, Compl. of League Relators, Aff. of Christopher Warshaw	16

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<i>QuickFacts Cuyahoga Cty., Ohio</i> , U.S. CENSUS BUREAU, https://www.census.gov/quickfacts/fact/table/cuyahogacountyohio,US/RHI125219#RHI125219	8
<i>The Ohio House of Representatives</i> , https://ballotpedia.org/Ohio_House_of_Representatives	8
<i>Testimony from Members of the Public</i> , THE OHIO REDISTRICTING COMM’N, https://www.redistricting.ohio.gov/meetings	13
<i>QuickFacts Ohio</i> , U.S. CENSUS BUREAU, https://www.census.gov/quickfacts/OH	13
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<i>Public Input Collections of the Ohio Redistricting Comm’n</i> , THE OHIO CHANNEL, https://ohiochannel.org/collections/ohio-redistricting-commission	15
<i>Public Meeting Collections</i> , THE OHIO REDISTRICTING COMM’N, https://www.redistricting.ohio.gov/meetings	15

Data Tables

Table 1: Senate districts 16 and 19 margin of victories of Republican candidates	7
Table 2: Voting-age population comparisons between senate districts 16 and 19 under the old state senate map and the new state senate map	7
Table 3: Voting-age population comparisons between Montgomery County house districts under the old state house map versus the new state house map	8
Table 4: Voting-age population (“VAP”) comparisons between Cuyahoga County house districts under the old state house map versus the new state house map	10
Table 5: Total population comparisons between Cuyahoga County house districts under the old state house map versus the new state house map	11

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I. INTRODUCTION

The Ohio State Conference of the NAACP (“Ohio NAACP”) submits this Brief in support of Relators, who challenge, on constitutional grounds, the state senate and state house plans that were adopted by the Ohio Redistricting Commission in September 2021. If the ideal of representative democracy is, at its core, an attempt to respect and elevate the political will of the people, the maps the Commission drew and the process by which the members drew them fall well short of the ideal. While the blatant partisanship in the map drawing is enough to sink the maps constitutionally, in this Brief the Ohio NAACP directs this Court’s attention to a subtle, but equally pernicious, aspect of the partisan gerrymanders: the manipulation of populations based on race to achieve political ends.

Though the Commission publicly stated that race was not taken into account when drawing the new plans, the movement of Black voters into and out of certain districts belies those statements. To achieve Republican dominance in the legislature, and aware that Black voters in Ohio vote cohesively for Democratic candidates, the map drawers scattered Black voters across several districts, diluting their votes and packed Black voters into overpopulated districts, unnecessarily loading them into districts where they were not needed to elect Black-preferred candidates. In at least three instances, this was done to shore up weaker Republican incumbents’ chances for re-election or to weaken Democratic candidates’ chances for election.

It did not have to be this way. And in the concluding section of this Brief, the Ohio NAACP will explain how it helped create a model for Ohio’s redistricting that works: producing a map through a process of substantial public input that respects communities of interest and reflects Ohio’s voters, not one that unconstitutionally furthers political ends.

For the foregoing reasons, the Ohio NAACP writes to support Realtors' request that this Court invalidate the unconstitutional partisan gerrymanders in the state house and state senate maps.

II. STATEMENT OF INTEREST OF AMICI CURIAE

A. The Ohio State Conference of the NAACP

Amicus Ohio State Conference of the NAACP ("Ohio NAACP") is a nonpartisan, nonprofit membership organization that serves as an arm of the NAACP, which was founded in 1909 and is the oldest civil rights organization in the country. The Ohio NAACP has over thirty active adult chapters, college chapters, and youth councils in Ohio and more than 7,000 members across the state.

The Ohio NAACP's mission is to ensure the political, democratic, educational, social, and economic equality of rights of all persons and to eliminate racial hatred and racial discrimination. The Ohio NAACP, consistent with the national organization, identifies major areas of inequality facing Black and brown Americans and builds strategic plans and initiatives to focus its advocacy and target these inequalities. These initiatives are in the areas of economic sustainability, education equality, health equality, environmental and climate justice, criminal justice reform, voting rights and fair representation, and expansion of youth consciousness, among others.

The Ohio NAACP has a strong interest in ensuring that Ohio's district maps are drawn fairly and that Black and brown communities are not gerrymandered out of Ohio's representative democracy. Ensuring a nondiscriminatory and just representative democracy is as key to the organization's mission as fair and adequate representation is fundamental to addressing the continued inequality facing Black and brown Americans. To this end, the Ohio NAACP has worked, for much of its history, to ensure that the voices of Black and brown communities are presented and heard throughout the redistricting process.

As a foundational member of the coalition of advocacy organizations, known as the Ohio Citizens' Redistricting Commission ("OCRC"), the Ohio NAACP has been heavily involved in this redistricting cycle. The organization, in this capacity, has held numerous hearings and gathered extensive public testimony, conducted trainings and public education campaigns, and drafted demonstrative unity maps. Additionally, the Ohio NAACP has submitted written and in-person testimony to the Ohio Redistricting Commission through its member network.

III. STATEMENT OF FACTS

In 2018, after years of legal battles over maps in previous redistricting cycles that had led to Ohio's being dubbed "the most gerrymandered" state in the nation,¹ the overwhelming majority of Ohioans voted to add the "Congressional Redistricting Procedures Amendment" to the Ohio Constitution. The Amendment was expressly intended to prevent partisan gerrymandering.² While in the past the general assembly had passed state legislative maps through a simple majority vote of all members of the Ohio state house and senate, the Amendment contemplates a different process.³

This process requires the general assembly to create a bi-partisan commission, the Ohio Redistricting Commission, to draw the state's congressional and legislative plans. Ohio Const. art. XI, § 1(A). The Amendment also requires that the Redistricting Commission ensure that any enacted maps will not "primarily favor or disfavor a political party," *id.* § 6(A), and that the partisan split of the state legislature "correspond closely to the statewide preferences of the voters

¹ Julie Carr Smyth, *Witnesses Malign Ohio's Gerrymandered Maps at Hearing*, AP NEWS (Aug. 23, 2021), <https://apnews.com/article/ohio-redistricting-16d3aee123a19df4a383c474cc3a2e7c>.

² Rich Exner, *Ohio Votes to Reform Congressional Redistricting; Issue 1 Could End Gerrymandering*, CLEVELAND.COM (Mar. 18, 2019), https://www.cleveland.com/open/2018/05/ohio_votes_to_reform_congressi_1.html.

³ See *Sub. S.J.R. 5 Resolution Analysis (2018)*, OHIO LEGISLATIVE SERV. COMM'N, at 3 <https://www.legislature.ohio.gov/download?key=8806&format=pdf> (prior to the enactment of the Congressional Redistricting Procedures Amendment "the General Assembly adopt[ed] congressional districts by bill, and no specific procedure applie[d]").

of Ohio,” *id.* § 6(B). The Amendment also set forth partisan-neutral, community-friendly, principles to govern the process of line drawing. These include principles of keeping counties, municipalities, and towns whole. Counties are not to be “split more than once...[w]here feasible,” *id.* § 3(C)(3) and the Commission must take care to “split the smallest possible number” of towns and municipalities, *id.* § 3(D)(1)(c)(2). Since its establishment, the Redistricting Commission on several occasions indicated its desire to keep communities, including communities of interest, whole,⁴ something that was also provided for in the Ohio Legislative Service Commission’s memo laying out the Redistricting Commission’s authority.⁵

IV. ARGUMENT

Just after midnight on September 16, the Redistricting Commission adopted new state legislative maps by a party-line vote of 5–2. Unfortunately, the adopted plans that are designed to remain in place for the next four years are deeply flawed. Rather than accurately—or even loosely—reflecting the 55/45% statewide Republican/Democratic split, the maps amount to a power grab, producing 70% Republican dominance.⁶ Worse, one of the methods used by the map

⁴ See, e.g., Statement of Keith Faber, Auditor of State, at Ohio Redistricting Comm’n Hearing, THE OHIO CHANNEL (Sept. 9, 2021, at 10 AM), <https://www.ohiochannel.org/video/ohio-redistricting-commission-9-9-2021-1000am> (“[D]rawing districts based on geography and communities of interest and not splitting political subdivisions [is not] discretionary”); Statement of Niraj Antani, State Senator, at Ohio Redistricting Comm’n Hearing, THE OHIO CHANNEL (Sept. 12, 2021, at 10 AM), <https://www.ohiochannel.org/video/ohio-redistricting-commission-9-12-2021> (“One of the principles that we use is keeping communities as whole as possible.”); Statement of Keith Faber, Auditor of State, at Ohio Redistricting Comm’n Hearing, THE OHIO CHANNEL (Sept. 15, 2020, at 10 AM), <https://www.ohiochannel.org/video/ohio-redistricting-commission-9-15-2021> (“My colleagues have heard me repeatedly talk about why I think you need to keep communities that have a long track record of being represented together, together.”).

⁵ See *Members Brief: Redistricting in Ohio*, OHIO LEGISLATIVE SERV. COMM’N, at 6 (May 12, 2021) (indicating that the Redistricting Commission can “consider other district-drawing concepts . . . such as preserving communities of interest in a single district . . .”).

⁶ Compl. of League Relators ¶¶ 84–85, *League of Women Voters of Ohio v. Ohio Redistricting Comm’n*, (No. 2021-1193), <https://www.aclu.org/legal-document/complaint-league-women-voters-ohio-v-ohio-redistricting-commission>; see also Ex. 10, Compl. of League Relators, Testimony of Collin Marozzi to Ohio Redistricting Comm’n at Table 1 (Aug. 27, 2021); Ex. 9, Compl. of League Relators, *Ohio Redistricting Comm’n, Article XI, § 8(C) Statement* (Sept. 16, 2021); Compl. of OCRC Relators ¶¶ 48, 56, *Ohio Org. Collaborative v. Ohio Redistricting Comm’n*, (No. 2021-1210), https://www.brennancenter.org/sites/default/files/2021-09/OOC%20v.%20ORC%20Complaint_File%20Stamped%20Copy.PDF.

drawers to achieve this goal was the manipulation of populations based on race, despite statements made by the Commission that map drawers did not consider race in drawing the new plans.

A. The maps were based on impermissible manipulation of racial populations.

It is no secret in Ohio that Black voters vote cohesively for Democratic candidates⁷—a fact that has been accepted by several courts. *See Ohio A. Phillip Randolph Inst. v. Householder*, 367 F. Supp. 3d 697, 721 (S.D. Ohio 2019) (implying Black voters are politically cohesive in electing “black-preferred candidates” in congressional districts); *Clarke v. City of Cincinnati*, 40 F.3d 801, 811 (6th Cir. 1994) (finding Black voters politically cohesive in Cincinnati municipal elections); *United States v. Euclid*, 580 F. Supp. 2d 584, 597–98 (N.D. Ohio 2008) (finding political cohesiveness of Black voters in municipal elections); *Ezell Armour v. Ohio*, 775 F. Supp. 1044, 1052 (N.D. Ohio 1991) (finding Black voters in Mahoning County politically cohesive); *Parker v. Ohio*, 26 F.Supp. 2d 1100, 1113–14 (S.D. Ohio 2003) (Gwin, J., concurring) (assuming Black voters in Ohio satisfy political cohesiveness under *Gingles*). By moving around percentages of the Black voting age population (“VAP”), the map makers drew districts that favor Republican candidates and disfavor Democratic candidates. As the following examples demonstrate, the Redistricting Commission followed an all too familiar playbook—using Black voters as partisan tools to achieve their partisan ends.

⁷ Political cohesion is a legal term of art that describes the phenomenon of when a minority population usually votes for the same candidate as demonstrated by statistical or anecdotal evidence of voting preferences in actual elections. *See Thornburg v. Gingles*, 478 U.S. 30, 56 (1986) (“[A] showing that a significant number of minority group members usually vote for the same candidates is one way of proving the political cohesiveness.”); *Campos v. City of Baytown*, 840 F.2d 1240, 1244 (5th Cir. 1988) (holding that a minority group is politically cohesive if it votes together).

- 1. In two senate districts that narrowly elected Republican incumbents, the map drawers increased the percentage of white voters, and at the same time, decreased the percentage of Black voters and other voters of color.**

In two senate districts, SDs 16 and 19, encompassing the counties to the west and north of Franklin County (county seat, Columbus), the map drawers manipulated populations based on race to increase the white VAP and decrease the Black VAP in these districts. In both SDs 16 and 19, the Republican candidates defeated the Democratic candidates by extremely narrow margins in the last election. Under the old map, SD 19 had elected a Republican candidate for at least a decade. But in a close election in 2018, the white Republican incumbent in SD 19 won by only 2.7 percentage points.⁸ In 2020, the old SD 19 had a people-of-color (“POC”) VAP of 25% (including a 9.6% Black VAP, a 3.9% Hispanic VAP, a 7.1% Asian VAP) and a white VAP of 75%. In the newly drawn SD 19, map drawers decreased the POC VAP by 12 percentage points, bringing the POC VAP of the District to 13% (2.4% Black VAP, 2.2% Hispanic VAP, and 5.1% Asian VAP), and simultaneously increased the white VAP to nearly 87%. Visually, the new SD 19 stretches further northeast into the rural parts of the state, bringing many more conservative white voters within its boundaries.

Similarly, under the old plan, SD 16 had consistently elected a Republican candidate by a wide margin until 2020, when the Republican incumbent won against the Democratic opponent by a mere 116 votes (less than .005 percentage points).⁹ This change might be attributed largely to the shifting demographics of the District and the changes in partisan preferences over the past decade. In 2020, SD 16 had a POC VAP of 22% (including a 5.4% Black VAP, a 5.2% Hispanic VAP, and a 7.5% Asian VAP). In the newly redrawn SD 16, the POC VAP was decreased by about

⁸ *Ohio Senate District 19*, https://ballotpedia.org/Ohio_State_Senate_District_19 (last visited Oct. 28, 2021).

⁹ *Ohio Senate District 16*, https://ballotpedia.org/Ohio_State_Senate_District_16 (last visited Oct. 28, 2021).

2.4 percentage points to 19.6% while the white VAP saw a similar increase to around 80%. In the new map, SD 16 extends to the north and now includes more rural voters from Peoria, Marysville, and West Jackson.

In recognition that even a slight decrease in the percentage of voters of color and a marginal increase in white voters would strengthen the Republican incumbent's chances of re-election, map drawers moved populations based on race to achieve their goal of electing Republican candidates in SD 16 in future elections.

Table 1: Senate districts 16 and 19 margin of victories of Republican candidates

Senate Districts 16 and 19	Republican Margin of Victory in 2020 General (in percentage points)	Candidate Name	Candidate Race
SD 16	0.55%	Stephanie Kunze	white
SD 19	2.70%	Andrew Brenner	white

Table 2: Voting age population comparisons between senate districts 16 and 19 under the old state senate map and the new state senate map¹⁰

	SDs 16 and 19									
District	% White VAP (2020) old plan	% Non White VAP (2020) old plan	% African American VAP (2020) old plan	% Hispanic VAP (2020) old plan	% Asian VAP (2020) old plan	% White VAP (2020) new plan	% Non White VAP (2020) new plan	% African American VAP (2020) new plan	% Hispanic VAP (2020) new plan	% Asian VAP (2020) new plan
SD 16	77.90%	22.10%	5.40%	5.30%	7.50%	80.30%	19.60%	4.10%	4%	7.80%
SD 19	75.10%	24.90%	4.00%	3.90%	7.10%	87%	13%	2.40%	2.20%	5.10%

2. By manipulating populations based on race, map drawers shored up a competitive house district to the benefit of the Republican incumbent.

Under the new maps, all the house districts are newly numbered. As such, previously designated HD 43 under the old house map, which became the new HD 39, has witnessed competitive races with Republicans beating Democrats in close elections, with the winner

¹⁰ *Decennial Census Data P.L. 94-171 Redistricting Data*, U.S. CENSUS BUREAU (Aug. 12, 2021), <https://www.census.gov/programs-surveys/decennial-census/about/rdo/summary-files.html> (last visited Oct. 28, 2021).

receiving between 50% to 55% of the vote.¹¹ The 2018 election, for example, was decided by .4 percentage points or 137 votes.¹² In the new HD 39 (old HD 43), map drawers increased the white VAP by more than 8 percentage points and decreased the Black VAP by more than 8 percentage points, a manipulation of populations by race, to achieve the partisan end of making it easier for the Republican incumbent to retain his seat.

Table 3: Voting age population comparisons between Montgomery County house districts under the old state house map versus the new state house map

MONTGOMERY COUNTY							
District on New House Plan	Examined Districts and Year of Examination	VAP	% Total Non-White VAP	% White VAP	% African American VAP	% Other Single Minority VAP	% Mixed VAP
HD35	OLD HD40 (2010 DATA)	89372	14.93%	85.07%	9.05%	4.47%	1.41%
	OLD HD40 (2020 DATA)	92500	22.84%	77.16%	11.94%	6.67%	4.23%
	NEW HD35 (2020 DATA)	95025	27.33%	72.67%	18.60%	4.74%	3.99%
HD36	OLD HD41 (2010 DATA)	91746	7.97%	92.03%	3.13%	3.72%	1.12%
	OLD HD41 (2020 DATA)	93857	14.96%	85.04%	4.81%	6.23%	3.92%
	NEW HD36 (2020 DATA)	90411	21.73%	78.27%	11.38%	6.42%	3.93%
HD37	OLD HD42 (2010 DATA)	85265	11.63%	88.37%	5.04%	5.54%	1.06%
	OLD HD42 (2020 DATA)	92822	17.85%	82.15%	6.30%	8.12%	3.44%
	NEW HD37 (2020 DATA)	98779	16.52%	83.48%	5.05%	8.13%	3.34%
HD38	OLD HD39 (2010 DATA)	86489	56.04%	43.96%	50.90%	3.36%	1.78%
	OLD HD39 (2020 DATA)	83460	57.92%	42.08%	47.84%	6.22%	3.86%
	NEW HD38 (2020 DATA)	94067	49.56%	50.44%	38.27%	7.08%	4.21%
HD39	OLD HD43 (2010 DATA)	91034	25.26%	74.74%	22.57%	1.55%	1.14%
	OLD HD43 (2020 DATA)	89687	30.30%	69.70%	24.45%	2.60%	3.25%
	NEW HD39 (2020 DATA)	89869	22.19%	77.81%	16.19%	2.77%	3.22%

3. Map drawers overpopulated the house districts in Cuyahoga County, depriving the County of a house seat and shoring up an adjacent Republican district.

Ohio has ninety-nine house seats and the ideal population for each of its ninety-nine house districts is 119,186 after the 2020 census data came out. After the 2010 census, the general assembly had drawn eleven districts encompassing parts of Cuyahoga County (county seat, Cleveland), of which five had significant Black voting-age populations ranging between 50% and

¹¹ *Ohio House District 43*, https://ballotpedia.org/Ohio_House_of_Representatives_District_43 (last visited Oct. 28, 2021).

¹² See *id.*

60% BVAP.¹³ Except for one house district, old HD 7, the remaining districts all elected Democratic candidates in 2020. Over the past decade, Cuyahoga County's total population has declined by about 1%, from 1,280,122 in 2010 to 1,264,817 in 2020.¹⁴ Despite the minimal loss in population, the new house map eliminates one district completely and overpopulates the rest. Thus, the new map has only ten house districts that incorporate part of the County (new HDs 13, 14, 15, 16, 17, 18, 19, 20, 21, and 22). And each is overpopulated by 2% to 5% above the ideal population size for house districts.

One of the ways these districts were overpopulated was by packing Black voters into them. For example, under the old map, HDs 10 and 11 were respectively 46.08% and 66.28% Black after the 2020 Census. After the Redistricting Commission reshaped the Cuyahoga County districts, the map drawers increased the Black population of HD 10 (new HD 20) by nearly 7 percentage points raising it to 53.96%. The Black voting-age population of the newly drawn HD 18 is 67.37% and of HD 20 is 50.92%. This increase in Black voters in the new HD 20 was unnecessary. Black Democratic representatives have run unopposed in these districts for at least the last three election cycles. As such, the increase in the Black VAP, under the new house plan, does nothing to ensure Black voters the ability to elect candidates of their choice.

Similarly, the map drawers increased the Black population of HD 11 (new HD 18) by nearly 4 percentage points to 70.18%. As Representative Stephanie Howse, a Black Democrat, was elected to her seat with approximately 86% of the vote in 2016 and 2018 and ran unopposed

¹³ The configuration of the old districts is available *The Ohio House of Representatives*, https://ballotpedia.org/Ohio_House_of_Representatives (last visited Oct. 28, 2021).

¹⁴ *QuickFacts Cuyahoga Cty., Ohio*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/cuyahogacountyohio,US/RHI125219#RHI125219> (last visited Oct. 28, 2021).

in 2020, the additional Black votes were not needed in new HD 18 to give Black voters an equal opportunity to elect their preferred candidates.

The packing of Black voters into two districts and the overpopulating of the Cuyahoga County districts as compared to the rest of the state house districts, contributed to the loss of one Democratic district in the Cuyahoga County region. The new house plan, thus, limits the electoral interests of Black voters across the state, ensuring continued Republican domination of the Ohio legislature and subsuming their political voice to this partisan end.

Table 4: Voting-age population (“VAP”) comparisons between Cuyahoga County house districts under the old state house map versus the new state house map

	CUYAHOGA COUNTY						
District on Proposed Plan	Examined Districts and Year of Examination	VAP	% Total Non-White VAP	% White VAP	% African American VAP	% Other Single Minority VAP	% Mixed VAP
REAPPORTIONED	OLD HD06 (2010 DATA)	94201	11.86%	88.14%	5.64%	5.56%	0.66%
	OLD HD06 (2020 DATA)	98790	17.65%	82.35%	7.34%	8.08%	2.24%
	N/A (REAPPORTIONED)						
HD13	OLD HD13 (2010 DATA)	86669	29.74%	70.26%	14.09%	14.06%	1.59%
	OLD HD13 (2020 DATA)	89825	33.98%	66.02%	13.19%	17.15%	3.64%
	NEW HD13 (2020 DATA)	98623	35.65%	64.35%	11.59%	20.36%	3.69%
HD14	OLD HD14 (2010 DATA)	88594	15.08%	84.92%	5.69%	8.45%	0.94%
	OLD HD14 (2020 DATA)	90832	23.95%	76.05%	7.24%	13.41%	3.29%
	NEW HD14 (2020 DATA)	101015	21.43%	78.57%	6.84%	11.27%	3.31%
HD15	OLD HD15 (2010 DATA)	88298	11.39%	88.61%	3.10%	7.40%	0.89%
	OLD HD15 (2020 DATA)	89951	20.22%	79.78%	5.19%	11.91%	3.12%
	NEW HD15 (2020 DATA)	102879	16.36%	83.64%	4.14%	9.37%	2.85%
HD16	OLD HD16 (2010 DATA)	92312	7.17%	92.83%	1.37%	5.07%	0.72%
	OLD HD16 (2020 DATA)	98355	11.26%	88.74%	2.07%	6.83%	2.36%
	NEW HD16 (2020 DATA)	98042	11.30%	88.70%	2.07%	6.86%	2.37%
HD17	OLD HD07 (2010 DATA)	91393	7.76%	92.24%	2.33%	4.65%	0.78%
	OLD HD07 (2020 DATA)	96155	12.75%	87.25%	2.84%	7.29%	2.62%
	NEW HD17 (2020 DATA)	100023	11.94%	88.06%	2.13%	7.44%	2.37%
HD18	OLD HD11 (2010 DATA)	84640	65.30%	34.70%	60.53%	3.60%	1.18%
	OLD HD11 (2020 DATA)	79112	72.46%	27.54%	62.77%	6.81%	2.88%
	NEW HD18 (2020 DATA)	95058	79.04%	20.96%	67.37%	8.89%	2.78%
HD19	OLD HD08 (2010 DATA)	92188	54.97%	45.03%	50.43%	3.41%	1.14%
	OLD HD08 (2020 DATA)	92529	64.71%	35.29%	56.81%	5.10%	2.80%
	NEW HD19 (2020 DATA)	99360	49.04%	50.96%	41.49%	4.95%	2.60%
HD20	OLD HD10 (2010 DATA)	90847	66.44%	33.56%	50.80%	14.29%	1.35%
	OLD HD10 (2020 DATA)	92447	64.10%	35.90%	43.32%	17.67%	3.11%
	NEW HD20 (2020 DATA)	101957	66.35%	33.65%	50.92%	12.46%	2.97%
HD21	OLD HD09 (2010 DATA)	92340	58.03%	41.97%	51.36%	5.22%	1.45%
	OLD HD09 (2020 DATA)	90578	58.15%	41.85%	47.96%	7.23%	2.96%
	NEW HD21 (2020 DATA)	95754	59.82%	40.18%	49.00%	7.85%	2.96%
HD22	OLD HD12 (2010 DATA)	88378	62.34%	37.66%	57.44%	3.78%	1.12%
	OLD HD12 (2020 DATA)	90318	68.15%	31.85%	60.16%	5.45%	2.55%
	NEW HD22 (2020 DATA)	97737	51.85%	48.15%	41.98%	7.11%	2.76%

Table 5: Total population comparisons between Cuyahoga County house districts under the old state house map versus the new state house map

	CUYAHOGA COUNTY						
District on Proposed Plan	Examined Districts and Year of Examination	Population	% Total Non-White Pop	% White Pop	% African American Pop	% Other Single Minority Pop	% Mixed Pop
REAPPORTIONED	OLD HD06 (2010 DATA)	121328	13.38%	86.62%	6.02%	6.25%	1.11%
	OLD HD06 (2020 DATA)	123329	19.85%	80.15%	7.53%	9.15%	3.18%
	N/A (REAPPORTIONED)						
HD13	OLD HD13 (2010 DATA)	112814	34.85%	65.15%	15.79%	16.48%	2.58%
	OLD HD13 (2020 DATA)	111364	38.79%	61.21%	14.78%	19.38%	4.63%
	NEW HD13 (2020 DATA)	124554	40.71%	59.29%	12.80%	23.28%	4.63%
HD14	OLD HD14 (2010 DATA)	111538	18.35%	81.65%	6.63%	10.02%	1.70%
	OLD HD14 (2020 DATA)	111474	27.72%	72.28%	8.02%	15.55%	4.16%
	NEW HD14 (2020 DATA)	125064	24.75%	75.25%	7.49%	13.05%	4.20%
HD15	OLD HD15 (2010 DATA)	112243	14.04%	85.96%	3.59%	8.93%	1.52%
	OLD HD15 (2020 DATA)	111384	23.95%	76.05%	5.80%	14.04%	4.11%
	NEW HD15 (2020 DATA)	125088	19.04%	80.96%	4.53%	10.80%	3.71%
HD16	OLD HD16 (2010 DATA)	118049	8.27%	91.73%	1.43%	5.60%	1.23%
	OLD HD16 (2020 DATA)	122217	12.74%	87.26%	2.08%	7.39%	3.28%
	NEW HD16 (2020 DATA)	121879	12.78%	87.22%	2.09%	7.41%	3.29%
HD17	OLD HD07 (2010 DATA)	116912	8.86%	91.14%	2.36%	5.24%	1.26%
	OLD HD07 (2020 DATA)	119129	14.37%	85.63%	2.86%	8.11%	3.40%
	NEW HD17 (2020 DATA)	124819	13.73%	86.27%	2.24%	8.29%	3.20%
HD18	OLD HD11 (2010 DATA)	117361	70.20%	29.80%	64.59%	3.94%	1.67%
	OLD HD11 (2020 DATA)	106117	76.96%	23.04%	66.28%	7.30%	3.38%
	NEW HD18 (2020 DATA)	123226	82.19%	17.81%	70.18%	8.81%	3.19%
HD19	OLD HD08 (2010 DATA)	116631	59.20%	40.80%	53.61%	3.79%	1.81%
	OLD HD08 (2020 DATA)	116630	68.42%	31.58%	59.40%	5.59%	3.43%
	NEW HD19 (2020 DATA)	124679	52.70%	47.30%	44.14%	5.29%	3.27%
HD20	OLD HD10 (2010 DATA)	116431	70.72%	29.28%	53.63%	15.35%	1.74%
	OLD HD10 (2020 DATA)	112562	68.09%	31.91%	46.08%	18.51%	3.49%
	NEW HD20 (2020 DATA)	125098	70.46%	29.54%	53.96%	13.04%	3.46%
HD21	OLD HD09 (2010 DATA)	121456	60.05%	39.95%	52.86%	5.18%	2.01%
	OLD HD09 (2020 DATA)	116237	59.32%	40.68%	48.33%	7.19%	3.80%
	NEW HD21 (2020 DATA)	122023	61.28%	38.72%	49.38%	8.05%	3.86%
HD22	OLD HD12 (2010 DATA)	113359	65.59%	34.41%	59.92%	4.03%	1.64%
	OLD HD12 (2020 DATA)	114374	70.87%	29.13%	61.57%	6.04%	3.26%
	NEW HD22 (2020 DATA)	124633	56.17%	43.83%	44.56%	8.03%	3.58%

B. The plans violate traditional districting principles.

As noted above, the Redistricting Commission’s public statements made it seem as if the map-drawing process would have respected traditional districting principles—of protecting communities of interest, creating contiguous and compact districts, minimizing jurisdictional splits, and ensuring partisan fairness. One of the most important of these principles is the preservation of communities of interest (“COI”). COIs center on shared interests and a sense of cohesion that reflect shared goals, wants and needs. Defined broadly, COIs can be based on trade

areas, geographic location, communication and transportation networks, media markets, location of Indian reservations, urban and rural interests, social, cultural and economic interests, or occupations and lifestyles, among other characteristics. They often feature shared landmarks, language, and histories and can reflect cohesive racial or ethnic identities.

The Redistricting Commission could have considered COIs, and in several instances, the Commission seemed to indicate that map drawers were attempting to keep COIs whole.¹⁵ Nearly half of all states mandate that the bodies responsible for redistricting take account of COIs in the mapmaking process,¹⁶ and in many states the public can directly submit COIs into the record. Indeed, much of the testimony presented to the Redistricting Commission centered on keeping COIs whole.¹⁷

But the new maps do not reflect any desire to keep COIs intact. In some places, the district lines break apart historically Black communities cordoning them off from surrounding, similar communities and folding them into rural towns and municipalities with which these Black communities have little in common. For instance, Trotwood, a suburb of Dayton with a more-than 70% Black population, was drawn into a house district with rural, white Preble County. The Black voters in Trotwood have little in common with the white voters in Preble County. Instead, Trotwood should have been included in HD 39 (new HD 38), which encompasses Dayton and some of its suburbs that are more culturally and geographically aligned with Trotwood. Similarly, the Columbus neighborhoods of Northland and Linden were split between multiple districts with

¹⁵ See *Public Hearings Before the Ohio Redistricting Comm'n*, *supra* note 4.

¹⁶ See *Communities of Interest*, BRENNAN CTR. FOR JUSTICE (2010) <https://www.brennancenter.org/sites/default/files/analysis/6%20Communities%20of%20Interest.pdf>.

¹⁷ See *Public Hearings Before the Ohio Redistricting Comm'n*, *supra* note 4.

one 1.5 mile stretch of road divvied up among three different districts.¹⁸ Both neighborhoods are historically Black.

C. The Redistricting Commission's process was flawed.

Apart from the patterns of racial manipulation discussed above, the Redistricting Commission's process also lacked sufficient public input. Public testimony in redistricting hearings is important because it provides "feasibly mappable suggestions" that, particularly at the local level, influence the redistricting bodies.¹⁹ Public testimony also gives the opportunity for the redistricting body and map drawers to learn where communities live and what political needs and goals they share. This local knowledge is valuable to the redistricting process because it provides context for local geography and allows redistricting bodies to better understand local communities.

The process undertaken by the Redistricting Commission did not meet this standard. Instead, mapmaking was rushed and little opportunity was given for substantive community input or criticism. Only five full committee meetings were held, none before August 2021, and these were supplemented by only thirteen regional meetings, an insufficient number given Ohio's diverse electorate.²⁰ One of the five full committee meetings was only seven minutes long and two lasted only an hour each.²¹ In a state with nearly twelve million residents,²² this truncated process afforded an opportunity for only around fifty people to testify in front of the full committee.²³ Hearings, including regional hearings, did not begin until late August²⁴ and continued for less than

¹⁸ THE OHIO CITIZENS REDISTRICTING COMM'N, OFFICIAL REPORT TO THE OHIO REDISTRICTING COMM'N, 4 (Aug. 2021), <https://ohredistrict.org/assets/images/unity-maps/OCRC-Report-State-Leg.pdf>.

¹⁹ Peter Miller, *Public Hearings and Congressional Redistricting: Evidence from the Western States 2011-2012*, ELECTION L. J. 27, 34 (Mar. 2018).

²⁰ See generally, *Public Input Collections of the Ohio Redistricting Comm'n*, THE OHIO REDISTRICTING COMM'N, <https://www.redistricting.ohio.gov/meetings> (last visited Oct. 28, 2021).

²¹ See *id.*

²² See *Ohio*, CENSUS QUICKFACTS, <https://www.census.gov/quickfacts/OH>.

²³ See *Public Input Collections of the Ohio Redistricting Comm'n*, THE OHIO REDISTRICTING COMM'N, *supra* note 20.

²⁴ With the exception of the initial, seven-minute full committee meeting on August 6, all the Redistricting Commission's meetings, regional or otherwise, were held between August 23 and September 15.

a month. Given that census data did not become available in a generally accessible format²⁵ until September 16,²⁶ this schedule effectively foreclosed any opportunity for the public, without help from demographers and access to expensive software, to produce and submit their own maps while hearings were being held.²⁷

Moreover, Ohio has eighty-eight counties and, while it may not be feasible to visit each of them, the fact that the Commission held hearings in twelve²⁸ was a significant failing. This, paired with the fact that hearings were often scheduled on short notice and at inconvenient times, presented significant barriers to public participation in the process. Meetings were held exclusively during traditional business hours between—9:00 a.m. and 5:00 p.m.—and thus, were inaccessible to many Ohio NAACP constituents who worked during those hours.²⁹ Sometimes the public was provided only twenty-four hours' notice of hearings, allowing minimal time for community members to prepare to provide meaningful public comment or even arrange to attend.³⁰ Members of the public wishing to testify could submit written testimony through the website, but the Redistricting Commission did not permit remote live testimony, instead requiring community members to testify in person.³¹

²⁵ The Census Bureau had released census legacy data earlier on August 12, but because of the software necessary to change the files into a readable format, most members of the public including Ohio NAACP members could not access them.

²⁶ See *Census Bureau Delivers 2020 Census Redistricting Data in Easier-to-Use Format*, U.S. CENSUS BUREAU (Sept. 16, 2021), <https://www.census.gov/newsroom/press-releases/2021/2020-census-redistricting-data-easier-to-use-format.html#:~:text=SEPT.,identical%20to%20those%20released%20Aug>.

²⁷ In contrast, the Utah Independent Redistricting Commission began holding its first meetings back in April 2020 and held public hearings continuously throughout September and October. See *Utah Redistricting Comm'n Public Hearing Schedule*, UTAH INDEP. REDISTRICTING COMM'N, <https://uirc.utah.gov/> (last visited Oct. 28, 2021).

²⁸ See *Public Input Collections of the Ohio Redistricting Comm'n*, THE OHIO REDISTRICTING COMM'N, *supra* note 20.

²⁹ See *id.*

³⁰ See Amina Barhumi, *Opinion: Fair Redistricting Maps Like Those Drawn by OCRC the Only Way Forward*, CINCINNATI.COM (Oct. 6, 2021), <https://www.cincinnati.com/story/opinion/2021/10/06/opinion-fair-redistricting-maps-like-those-drawn-ocrc-only-way-forward/5917399001/>.

³¹ *Public Input Collections of the Ohio Redistricting Comm'n*, THE OHIO REDISTRICTING COMM'N, *supra* note 20.

As such, to engage in a dialogue with the Commission and be sure that one's voice was heard, members of the public not only needed to be free from work, as well as from other life commitments such as child care, but were also asked to risk exposure to the COVID-19 virus. This structure substantially circumscribed opportunities for members of the public to participate, particularly Black people and other people of color who are more likely to be unable to take time off work and for whom the COVID-19 pandemic has been disproportionately deadly.³²

When the Redistricting Commission ultimately produced the maps (more than a week after the constitutional deadline) mere hours passed between the maps' becoming publicly available and being adopted by the Commission.³³ The meetings at which the maps were introduced and then selected were announced with only one day's notice.³⁴ Even with a team of full-time demographers and redistricting experts at the ready, neither the Ohio NAACP nor its partners had time to complete a full analysis of the maps in that short window. Thus, members of the public, including many of Ohio NAACP's constituents—who lacked Geographic Information System (GIS) training or experience in redistricting—were effectively prevented from evaluating and providing insight on these maps.

As detailed more fully above, the maps that were ultimately produced reflect the lack of public input and, even worse, evidence an overwhelmingly partisan slant built in part on the manipulation of populations of racial minorities. Despite a 54% to 46% Republican to Democratic vote-share split aggregated across the last five general elections, the enacted maps lock in 70% of seats in the state senate and house maps, guaranteeing a Republican supermajority at least for the

³² See Elise Gould & Valerie Wilson, *Black Workers Face Two of the Most Lethal Preexisting Conditions for Coronavirus—Racism and Economic Inequality*, ECONOMIC POLICY INST. (June 1, 2020) <https://www.epi.org/publication/black-workers-covid/>.

³³ The Commission introduced the maps at a 10 A.M. meeting and then selected those maps as their plan at a 2 P.M. meeting the same day. See Compl. of League Relators ¶¶ 73–76 (No. 2021-1193).

³⁴ *Id.*

next four years.³⁵ Worse, this partisan outcome was achieved in part through the manipulation of politically cohesive Black communities and ignore traditional districting principles, most importantly, the maintenance of communities of interest.

D. The Ohio NAACP demonstrated a fairer process of soliciting public input.

The Ohio NAACP modeled how the process could and should have looked had the Redistricting Commission really desired to create an open and transparent process. The Ohio NAACP was a convening member of the Ohio Citizens Redistricting Committee (“OCRC”), a coalition of sixteen volunteer members convened to engage the public in redistricting through numerous town halls and hearings and to produce maps that focus on partisan fairness and keeping communities whole.³⁶ Given the ongoing COVID-19 pandemic, these hearings were held virtually to maximize participation without forcing Ohioans to potentially put their lives at risk to have their voices heard.³⁷ OCRC’s hearings were held after traditional business hours to maximize opportunity for engagement.³⁸ As a result, nearly 500 Ohioans, many standing as representatives of much larger communities, were able to register and speak.³⁹

Protecting communities of interest, as cornerstone of civic identity, was a primary concern for OCRC. OCRC and the Ohio NAACP actively sought out community member input beyond these hearings. The coalition collected input from the public and community organizations directly through hearings and public outreach programs and provided opportunities for individuals to designate proposed communities of interest virtually through free mapping tools and social media.⁴⁰

³⁵ *Id.* Ex. 1, Compl. of League Relators, Aff. of Christopher Warshaw, at 11–16.

³⁶ OCRC’S OFFICIAL REPORT TO THE OHIO REDISTRICTING COMM’N, *supra* note 19, at 8.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.* at 10.

⁴⁰ *Id.* at 13.

Ultimately, this active public engagement produced a series of “unity” maps which OCRC submitted to the Redistricting Commission for consideration. These maps achieved a significant degree of representational fairness. The state house unity map provides for a district split that leans 55.56% Republican and 44.44% Democratic,⁴¹ which corresponds almost exactly with the less-than-10% Republican–Democrat split across the last five general elections.⁴² The proposed state senate unity map hews even closer to this vote share with 54.54% of districts leaning Republican and 45.46% leaning Democrat. This is in stark contrast to the Redistricting Commission’s deeply partisan skewed maps.

More important than the partisan split, both OCRC state legislative maps take special care to keep Ohio’s communities whole. Consistent with Article XI’s requirements, to the greatest extent possible, OCRC’s maps minimize splits. Additionally, these maps keep communities of interest together, providing for fifteen house and six senate districts that give Black voters a substantial opportunity to elect a candidates of choice.⁴³ While, as described above, communities of interest are not necessarily coextensive with racial or ethnic communities, the OCRC’s maps reflect consideration of the specific challenges faced by Black communities and the importance of districts that reflect the particular needs of Black voters.

V. CONCLUSION

Redistricting should be a process that centers on ensuring that communities are able to elect representatives that will adequately serve them and address their needs. The manner in which the enacted maps are drawn does not accomplish this goal. This Court should invalidate the Ohio

⁴¹ See Susan Tebben, *Republican Majority Gerrymanders Ohio for Another Four Years*, OHIO CAP. J. (Sept. 16, 2021), <https://ohiocapitaljournal.com/2021/09/16/republican-majority-gerrymanders-ohio-for-another-four-years/>.

⁴² OCRC’S OFFICIAL REPORT TO THE OHIO REDISTRICTING COMM’N, *supra* note 19, at 17.

⁴³ *Id.*

Redistricting Commission's state senate and state house maps as partisan gerrymanders that violate the Ohio Constitution.

Respectfully submitted, this 29th day of October, 2021,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Brief of Amici Curiae the Ohio State Conference of NAACP in support of Relators was filed electronically on 10/29/2021. Notice of this filing will be sent by operation of the Court's electronic filing system to all counsel of record.

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