

IN THE SUPREME COURT OF OHIO

LEAGUE OF WOMEN VOTERS
OF OHIO, *et al.*,

Relators,

v.

OHIO REDISTRICTING
COMMISSION, *et al.*,

Respondents.

Case No. 2021-1193

BRIA BENNETT, *et al.*,

Relators,

v.

OHIO REDISTRICTING
COMMISSION, *et al.*,

Respondents.

Case No. 2021-1198

THE OHIO ORGANIZING
COLLABORATIVE, *et al.*,

Relators,

v.

OHIO REDISTRICTING
COMMISSION, *et al.*,

Respondents.

Case No. 2021-1210

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INTRODUCTION

The Ohio Redistricting Commission adopted a general assembly district plan that all parties in these cases agree complied with the requirements of Article XI, Sections 2, 3, 4, 5, and 7 of the Ohio Constitution. Indeed, no Relator has alleged otherwise. And thus under the plain language of Article XI, Section, 9 the Court does not have jurisdiction to hear Relators' challenge, or to order the Commission to draw a new plan. Contrary to what has been described, the plan was adopted after extensive negotiations among the Commission members to attempt to reach a compromise that would produce a ten-year plan under Article XI. Unfortunately, a compromise was doomed after a last-minute final offer by the Commission members representing the minority caucuses of the General Assembly failed to budge at all compared to the significant movements by Respondents Cupp and Huffman.

Relators now challenge the plan under the aspirational standards of Article XI, Section 6. How do we know the standards of Section 6 are aspirational? From Relators' own evidence. When debating the 2015 amendments that ultimately produced the current version of Section 6, then Representative Kathleen Clyde, a key Democratic proponent of the amendments, conceded on the floor of the Ohio House of Representatives that "[a]dditionally, there's *aspirational criteria* that no plan shall be drawn primarily for partisan advantage." (HIST_0044:24-45:21) (emphasis added). Later she was even clearer:

Another concession by our side is that the *fairness criteria are not required but are aspirational*. Fairness should be required of any plan and I think Ohioans deserve to have a fair map, not just an attempt at a fair map. This plan doesn't ensure bipartisanship. It ensures minority input. Those are two different things. And the minority input is not required if there's an impasse, which I believe waws [sic in original] a significant concession.

(HIST0077:8-79:17) (emphasis added).

Representative Clyde's remarks were consistent with the text and plain meaning of Section 6. While other sections of Article XI contain mandatory technical instructions for the construction of general assembly districts, Section 6 seeks an "attempt" to achieve standards that Section 6 leaves solely in the discretion of the Commission to define. It is undisputed that the Commission here defined the standards and its adopted plan complies with it.

Relators now ask this Court to discard the Commission plan in favor of a plan that would gerrymander urban areas of Ohio to favor Democrats. The political lean of the Democrats' final offer was not substantially different from the political lean of the Adopted Plan. Only a handful of districts actually separated the parties. But what is now clear is that the plan adopted by the Ohio Redistricting Commission ("the Adopted Plan") and the final plan proposed by Senator Sykes (the "Sykes Plan") are *aligned* on the total number of Republican and Democratic leaning seats located in 83 *counties* for House districts and 81 *counties* for Senate districts. The partisan lean of districts within these counties is not the result of political discretion but instead a function of the mandatory construction requirements in Sections 2, 3, 4, 5 and 7 of Article XI. Because of the limited areas of the state where discretion can be exercised to draw districts that lean towards one party or the other, the Relators' interpretation of Section 6 would require that the Commission adopt Democratic House and Senate districts in urban areas that are intentional partisan gerrymanders. This is due to the fact that there are only five to seven counties where it is possible to draw a different number of Republican and Democratic districts to make up for the 81 to 83 counties where it is not possible to do so because of residential patterns. Relators' interpretation of Article XI would strip the discretion the Constitution plainly provides to the Commission under Sections 6 and 8, and even raises serious constitutional questions under the Constitution of the

United States. The Adopted Plan complies with the Ohio Constitution in all respects, and Relators' complaints should therefore be dismissed.

BACKGROUND

1. The Voters of Ohio Adopt Article XI.

On November 3, 2015, Ohio voters approved amendments to Article XI of the Ohio Constitution to establish new and detailed criteria for the drawing of legislative districts. (HIST_0121). Authority to draw plans was given to a newly reconstituted Ohio Redistricting Commission. (STIP_0427).

Article XI, Section 3 contains detailed criteria for drawing House districts and states that a general assembly plan “shall comply” with Section 3 requirements. These include that House and Senate districts be of equal population, plus or minus 5% from the ratio of representation; comply with the Constitutions of Ohio and the United States and federal law; be composed of contiguous territory; the boundary for each district shall be a single nonintersecting continuous line; and rules explaining the criteria for dividing counties, municipal corporations, and townships into separate districts. Ohio Const. art. XI, §3(A) – (E).

Article XI, Section 4 mandates that Senate districts “shall be composed of three contiguous house of representative districts”; the requirements for the district assignment of counties with population in excess or below the ratio of representation in the Senate; and that Senate districts be numbered one through thirty-three. Ohio Const. art. XI, §4(A)-(D).

Article XI, Section 5 mandates rules when there are changes in the boundaries for new Senate Districts. When a district line changes, any incumbent Senator who has more than two years left in their term of office must be assigned to the portion of that incumbent's new district which contains the largest percentage of the population from the Senator's former district. The district to

which the incumbent is assigned shall be given the same number as the district from which the Senator was elected. Ohio Const. art. XI, §5.

Article XI, Section 6 provides that: 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.

Section 6 also states that nothing in Section 6 “permits the commission to violate the district standards described in Section 2, 3, 4, 5, or 7.” Ohio Const. art. XI, §6.

Article XI, Section 7, states that districts “shall” be based upon the lines for counties, municipal corporations and township lines as they exist at the time of the decennial census. Ohio Const. art. XI, §7.

Article XI, Section 8 establishes an “impasse procedure” for the adoption of a general assembly plan when the Commission fails to obtain the support from members of the minority party for a specific plan. The Commission is then required to introduce a proposed plan no later than September 1 and may do so by a vote of a simple majority of the Commission. Ohio Const. art. XI, §8 (A)(1). After introducing a proposed plan, the Commission is required to hold at least one public hearing. Ohio Const. art. XI, §8 (A)(2). The Commission is then required to adopt final House and Senate plans no later than September 15. Ohio Const. art. XI, §8 (A)(3).

If the Commission adopts a plan with the requisite support from members of both the minority and majority parties, it will be in effect for ten years. If the plan is adopted by a simple majority vote, it will remain in effect only for the next two general elections. Following these two general

elections, the Commission must reconvene to draw new maps for the rest of decade. Ohio Const. art. XI, §8 (C)(1)(a),(b).

Article XI, Section 8(C)(2), states:

A final general assembly plan adopted under division (C)(1)(a) or (b) of this section shall include a statement explaining what the commission determined to be the statewide preferences of the voters of Ohio and the manner in which statewide proportion of districts in the plan whose voters, based on statewide state and federal partisan general election results during the last ten years, favor each political party corresponds closely to those preferences, as described in division (B) of Section 6 of this article.

Article XI, Section 9 establishes the exclusive jurisdiction of the Ohio Supreme Court to hear challenges to an adopted districting plan. Ohio Const. art. XI, §9(A). It also requires that the Commission reconvene if any general assembly plan adopted by the commission is “determined to be invalid by an unappealable final order of a court of competent jurisdiction....” Ohio Const. art. XI, §9(B). Furthermore, this section specifies the exclusive remedies that may be ordered by the Court upon a finding that a general assembly plan violates Article XI. Ohio Const. art. XI, §9(D). Particularly, Section 9(D)(3) lists the remedies available “[i]f the supreme court of Ohio determines that a general assembly plan adopted by the commission does not comply with Sections 2, 3, 4, 5 or 7 of this article.” For either a ten-year plan or a four-year plan, the Court may order the Commission to correct one or more “isolated violations of those requirements.” Ohio Const. art. XI, §9(D)(3)(a). However, where the Court finds that the general assembly plan does not comply with sections 2, 3, 4, 5 or 7 in six or more House districts or two or more Senate districts, “the Court shall declare the plan invalid and shall order the commission to adopt a new general assembly district plan in accordance with this article.” Ohio Const. art. XI, §9(D)(3)(b).

Section 9(D)(3)(c) provides for a remedy limited to general assembly plans adopted under division (C) of Section 8. If a plan does not comply with Sections 2, 3, 4, 5, or 7, it allows the Court to order the Commission to adopt a new general assembly district plan provided:

(i) the plan violates those [mandatory construction] requirements in a manner that materially affects the ability of the plan to contain districts whose voters favor political parties in an overall proportion that corresponds closely to the statewide political party preferences of the voters of Ohio as described in division (B) of Section 6; [and]

(ii) the statewide proportion of districts in the plan whose voters, based on statewide state and federal partisan general election results during the last ten years, favor each political party does not correspond closely to the statewide preferences of the voters of Ohio.

Notably, Article XI does not provide a remedy for a stand-alone violation of Section 6. The fact that a remedy for a violation of Section 6 was specifically excepted from the remedies provided by Section 9(D)(3) is explained by the legislative debate leading to the ultimate amendments in Article XI. In December 2014, during the legislative debates in the Ohio General Assembly on HJR12 (a resolution that would become the amendment to Article XI, which was subsequently approved by the voters of Ohio), statements were made by leaders of both of the major parties that clarify the central issue to be decided by this Court. First, a leading Democratic advocate who spoke in favor of what would become Article XI, Representative Kathleen Clyde, explained that “additionally, there’s aspirational criteria that no plan shall be drawn primarily for partisan advantage” (HIST_0044:24-45:21). Then Representative Matt Huffman responded to Representative Clyde by agreeing “. . . now we have a clear order of things that are mandatory. We have other things that are aspirational in nature.” (HIST_0072:20-21). Democratic Representative Clyde concurred with Representative Huffman and stated that “[a]nother concession by our side is that the fairness criteria are not required but are aspirational. Fairness should be required of any plan and I think Ohioans deserve to have a fair map, not just an attempt

at a fair map. This plan does not ensure bipartisanship. It ensures minority input. Those are two different things. And the minority input is not required if there's an impasse, which I believe is a significant concession.” (HIST_0077:8-0079:17).

2. The Census Data is Late.

Redistricting cannot take place without the population data from the latest United States decennial census. This year that data, which historically is available by March, did not arrive until August 12, 2021, over 134 days later than anticipated. (DEPO_00478:1-5). This delay substantially hampered the ability to prepare a general assembly district plan. (DEPO_00785). While the data was received on August 12, it took several more weeks to configure the data in a way that could actually be used to draw districts. (DEPO_00485:11-486:1; DEPO_494:15-495:11). In the meantime, Senate staffer DiRossi and House staffer Springhetti made logistical arrangements to ensure that once the data was ready, the plan could be drawn as quickly as possible. (DEPO_00605:22-606:22; DEPO_01281:17-1283:9).

3. Huffman asks for an Extension to Comply with Constitutional Duties, but is Rebuffed by Democrats.

Senate President Huffman realized early on that the late census data would pose an incredible strain on the ability to adopt a plan prior to the deadlines in Article XI. (DEPO_01723:1-24). Senator Huffman asked to meet with the minority caucus leaders of the Ohio House and Ohio Senate because he was concerned that they wouldn't “have time to do the due diligence or public hearings” required during the process. (DEPO_01723:1-24). Any extension on the deadlines for map drawing could not have been taken through legislative action, and would have required a constitutional change on the ballot for the August special election (DEPO_01724:8-16). During the meeting Senator Huffman asked them to consider taking action to extend the deadlines to ensure more time for public input and for discussions about the plan. (DEPO_01723:15-1724:7).

The minority caucus leaders declined to express their position during the meeting, but later held a press conference denouncing the idea. Senator Huffman was “disappointed that the response was no and that the response came by way of a press conference and not someone calling me back and saying ‘we don’t support it.’” (DEPO_01723:25-1724:4).

4. The Introduced Commission Plan of September 9, 2021.

The Commission met on September 9, 2021. (STIP_0169). At that meeting, Senator Huffman submitted a plan and made a motion that the Commission accept it as the Commission’s introduced plan. (STIP_0170). This plan would be subjected to several public hearings. *See e.g.* STIP_0169-409.

Prior to Senator Huffman’s submission of the map on September 9 to the Commission, Senator Huffman shared the plan with Senator Sykes and Leader Sykes. (DEPO_01789:10-17; DEPO_00361:3-363:11). During that meeting, a staffer for the Democratic Caucus asked about the possibility of making changes to Dayton that would ensure most or all of Dayton was in one Senate district. (DEPO_01792:1-1793:13; DEPO_01291:18-1293:3). The change requested at that meeting was ultimately incorporated into the Adopted Plan. (DEPO_01792:1-1793:13; DEPO_01291:18-1293:3). The plan that Senator Huffman submitted to the Commission on September 9 was also shared in advance with other members of the Commission such as Secretary of State LaRose and Auditor of State Faber. (DEPO_0789:10-17; DEPO_00529:10-531:8; DEPO_01612:12-1613:1; DEPO_000019:2-22).

On August 31, 2021, Senator Sykes had submitted a general assembly plan drawn by an outside consultant he hired with state funds. (DEPO_00862:5-865:13). That plan demonstrated the perils of drawing a plan too fast after the late release of the census data as it contained on its face numerous state constitutional violations. (DEPO_001794:11-25; DEPO_00866:9-877:12). In fact,

while Senator Sykes later corrected some of the initial constitutional infirmities, his final map still contains numerous constitutional errors which were never fixed. (HC_0704-727; DEPO_01795:5-17).

5. Negotiations After the 9/9 Introduced Plan.

It is undisputed that after the Commission voted to introduce Senator Huffman's proposed plan on September 9, all members of the Commission engaged in extensive negotiations with the goal of being able to adopt a plan that would be in effect for ten years under Article XI of the Ohio Constitution. (DEPO:01757:23-1760:3; DEPO_01788:23-1789:5; DEPO_00515:16-517:19; DEPO_00581:14-19; DEPO_01617:6-18; DEPO_01291:13-1293:2; DEPO_00879:7-883:8; DEPO_00374:22-375:5; DEPO_00036:639:12; DEPO_01006:19-1011:16; DEPO_00184:10-23).

The negotiations centered around the number of Republican-leaning or Democratic-leaning districts in the various plans. In the plan submitted (and later partially corrected) by Senator Sykes on August 31, there were 55 Republican leaning districts in the House (and therefore 44 Democratic leaning districts) and 19 Republican leaning districts in the Senate (and therefore 14 Democratic leaning districts). (HC_0572). In the Commission's September 9 introduced plan, there were 67 Republican leaning districts in the House (and therefore 32 Democratic leaning districts) and 24 Republican leaning districts in the Senate (and therefore 9 Democratic leaning districts). (HC_0572).

The political leaning of districts was primarily derived from the same data used by both the Republican and Democratic caucuses of each legislative chamber were using: statewide election data from elections in 2016, 2018, and 2020. (DEPO_496:23-497:19; DEPO_489:21-24). Both the Republican and Democratic caucuses were measuring the political leans of the districts using this data so that apples-to-apples comparisons could be made in the hopes of achieving a ten-year plan.

(DEPO_00496:23-497:19; DEPO_00489:21-24). Indeed, the Republican caucuses received their data from 2016 and 2018 from the Democratic caucus. (DEPO_00496:23-497:19; DEPO_00489:21-24). The 2020 data was from the census data and so all parties had access to that data. (DEPO_00487:14-20).

After the Commission adopted its introduced plan on September 9, Senator Huffman made multiple attempts to negotiate with Senator Sykes and Leader Sykes that were rebuffed. He made multiple requests to meet which were ignored. (DEPO_01757:23-1758:9). He even offered to meet with them in Akron on September 13, but they never responded. (DEPO_01787:8-16; HC_0535-536). Senator Huffman was “surprised at the lack of participation by the Democratic members of the Commission in the last five or six days” before the constitutional deadline. (DEPO_01796:23-1797:10). This is unsurprising considering Senator Sykes testified that the weekend before the final week of hearings, he and his staff came to the conclusion that no compromise could be reached. (DEPO_00833:19-25).

Based solely on political leanings of districts using 2016/2018/2020 data, the difference between the House portion of the plan introduced to the Commission on September 9, 2021 by Senate President Huffman and the Sykes plan of September 1, 2021, was 12 districts. (HC_0572). The difference between the Senate plans was 5 districts. (HC_0572). On September 13, 2021, Senator Sykes, in a plan that was joined by Leader Sykes, proposed a counteroffer to the Commission introduced map. (DEPO_00403:12-405:9). The counteroffer contained 57 House districts leaning Republican and 20 Senate districts leaning Republican. (HC_0572).¹

¹ The decrease in Democratic leaning districts was actually not a concession by the Democratic members of the Commission, but a required change in Trumbull County because “it split Trumbull county into two different Senate Districts” which “was a violation of the Constitution.” This change, according to Senator Sykes’ deposition testimony, is what resulted in the reduced “number of districts that leaned Democrat.” (DEPO_00894:7-20).

Speaker Cupp and Senator Huffman immediately set out to make their own counteroffer. On September 14, 2021, they produced a plan that reduced the number of Republican leaning districts in the House by five and the number of Republican leaning districts in the Senate by one. (HC_0572; DEPO_01761:22-1762:2). This nearly doubled the counteroffer made by the Sykes' in terms of the political lean of districts. (HC_0572). With this counteroffer, in the House the Democrats and Republicans were only apart by 5 districts and in the Senate only by 3 districts. (HC_0572).

In order to make this counteroffer Speaker Cupp and Senator Huffman had to make significant changes to incumbent districts. In the House, this included incorporating Democratic feedback in Trumbull, Summit, and Portage counties; maintaining the city of Cincinnati in three House Districts; putting Dayton into two House districts; and adjusting the 23rd District from Republican leaning to Democratic leaning. (DEPO_01291:13-1293:2). Feedback from public hearings regarding Cuyahoga county was also incorporated. (DEPO_01293:2-7). This angered at least four Republican incumbents in the House whose districts changed significantly. (DEPO_01321:6-1322:17). In the Senate this included changing the 6th District from a Republican leaning district to a Democratic leaning district, and making the 24th District, which was initially a competitive district, a Democratic leaning district. (DEPO_00515:16-21; DEPO_00517:1-9). These changes angered at least three Republican Senators. (DEPO_00612:11-613:1).

Then the wait began. Speaker Cupp and Senator Huffman delivered the above counteroffer at around 5pm on September 14. The final constitutional deadline to adopt a plan was September 15. Senator Sykes assured Senator Huffman that they would have a counteroffer as early as possible the next day. (DEPO_01760:1-15). The initial meeting of the Commission was set for 10:30 AM on September 15. Speaker Cupp and President Huffman continued to wait.

A new counteroffer from Senator Sykes and Leader Sykes finally arrived around 5:44 PM on September 15, just hours before the constitutional deadline to adopt a plan. (ESYKES_0010266). The offer was disappointing. The plan offered at 5:44 PM contained the same number of Republican and Democratic leaning districts as their prior plan. In other words, the Democratic Commission members did not budge. This was despite the fact that the number of House districts was only 5 apart and the Senate districts were only 3 apart in the respective plans.²

That Senator Sykes and Leader Sykes would not budge on their counteroffer is perhaps not surprising. Leader Sykes engaged a national Democratic consulting firm, HaystaqDNA, to assist her in the mapdrawing process. (DEPO_00331:6-21; HC_0475-479). In order for Leader Sykes to hire this firm, Republicans approved a significant increase in the amount of funds allocated to the Democratic caucus in the additional amount of \$200,000. (HC_0521-523). And while Leader Sykes never submitted her own map for consideration by the Commission, it is clear that HaystaqDNA had involvement in the plans submitted by Senator Sykes, including the plans that Leader Sykes ultimately joined in on after September 9. (DEPO_403:12-405:9; VSYKES_003297-3469). Moreover, the Democratic caucus leaders were colluding for over a year with multiple nonprofits that are aligned with national Democratic interest groups. (HC_0427-511; HC_0524-534).

The final counteroffer by the Democrats also had another fatal flaw: it violated many of the mandatory construction requirements of Article XI. (HC_0704-727). For instance, Senate portions of the Sykes Plan had three non-contiguous districts, two districts that violate Ohio Const. art XI, §5, and one district that violates the population requirements set forth in Ohio Const. art.

² The statewide Respondents never submitted any plan.

XI, §3(B)(1). The House portion of the Sykes Plan fared no better, with nine non-contiguous districts. (HC_0704-727).

Ultimately, to comply with the Article XI deadline, the Commission met to finalize a plan. Late in the evening of September 15, the Commission reconvened, and the Commission introduced plan, as amended, by Senator Huffman became the final plan, after it was adopted on a 5-2 vote. (STIP_0401-402). Because the two members of the Commission representing the minority caucuses of the Ohio General Assembly did not vote for the plan, the plan will only be in effect for four years.

6. The Adopted Plan Reflects the Changing Voting and Residential Patterns of Ohio.

Ohio has experienced dramatic changes in its political landscape during the period running from 2012 to 2020. This can be demonstrated by a comparison of the voting results of the 2012 and 2020 election for President. (HC_0667-673). At the beginning of the decade, Ohio Democrats showed substantial strength in the counties that include Ohio's largest cities, but also showed substantial strength in other counties. (HC_0667-673). Areas of Democratic voting strength included counties in the Appalachia area, counties that run along the shoreline of Lake Erie, and counties in the Mahoning River Valley. (HC_0667-673). This changed dramatically by 2020 when Democratic strength in urban counties increased while Democrats lost substantial strength in all other areas of Ohio. (HC_0667-673). The vote share received by President Trump in 2020 increased in 83 counties as compared to the vote share received by Senator Romney in 2012. (HC_0669). This dramatic increase of voter support of President Trump in most of the areas of Ohio becomes even more pronounced by examining the vote share swings that occurred in smaller geographic areas including the municipal corporation, townships and census blocks. (HC_0669-673).

A sizeable majority of the counties, cities, townships and census blocks in Ohio are “red” because of the residential patterns of Democratic and Republican voters, not because of alleged gerrymandering. (HC_0678-684). This phenomenon is known as “clustering.” *Vieth v. Jubelirer*, 541 U.S. 267, 290 (2004), citing *Davis v. Bandemer*, 478 U.S. 109, 159 (1986) (O’Connor, J., concurring in judgment). Relators’ expert Jonathan Rodden has observed that “Democrats are highly clustered in dense central city areas, while Republican are scattered more evenly through the suburban, exurban, and rural periphery.” (HC_0547, citing, Chen and Rodden, “Unintentional gerrymandering: Political geography and electoral bias in legislatures,” *Quarterly Journal of Political Science* 8, no. 3, p. 241 (2013)). Because of the clustering of Democratic voters, Dr. Rodden has opined that Democrats are at a “natural disadvantage” when legislative districts are drawn. (HC_0554 citing Chen and Rodden p. 241). This is because “Democratic and Republican voters are spatially distributed in different ways, and in many states, this difference puts Democrats at a disadvantage under a system in which representation is based on spatially contiguous, geometrically compact election districts, even if these are drawn without partisan intent.” (HC_0554). *See also Gill v. Whitford*, 138 S. Ct. 1916, 1925 (2016) (“The political geography of Wisconsin favors Republicans because Democrats—who tend to be clustered in large cities—are inefficiently distributed in many parts of Wisconsin for purposes of winning elections.”).

There can be no doubt that Ohio is one of the states where the urban clustering of Democratic voters is significant. For example, the results of the 2016-2020 statewide partisan elections in Ohio shows a direct correlation between population density and Ohio election results. (HC_0546-548; HC_0664-667). The correlation between Democratic vote share and population density is even more obvious based upon a comparison of the Democratic vote share as measured from a city center. (HC_0548-52; HC_0674-678). Relators’ expert Dr. Rodden performed a similar “distance

from urban center analysis” of Ohio and Pennsylvania across multiple election cycles and found similar results. (HC_0550, citing Jonathan A. Rodden, p. 104, “Why Cities Lose: The deep roots of the urban-rural political divide,” Hachette UK (2019)). Dr. Rodden also confirmed that clustering of Democratic voters has occurred in recent times in the state of Ohio. (HC_0678, citing Rodden, “Why Cities Lose” p. 2-3, 52).

The end result of Democratic clustering in Ohio is the significant reduction in the number of counties where Democratic candidates can be competitive. In Ohio, 65 counties have fewer than 10 precincts that vote majority Democratic. (HC_0556). These counties are not only strongly Republican overall, but support for Republican candidates is evenly spread across the county. (HC_0556). Collectively, these 65 counties account for approximately 31.5 house districts. (HC_0556-557).

A total of 17 other counties include small to medium towns that are majority Democratic. Collectively, these counties account for 26 House districts. (HC_0557-558). All of these counties are majority Republican except for Athens, Lorain, and Mahoning Counties. (HC_0558). In a few of these counties (such as Lorain) it is possible to draw Democratic leaning districts, consistent with the requirements of Section 3 of Article XI. This is accomplished by basing a district in a larger urban center located within a specific county. (HC_0557-559).

All of the remaining six counties lean Democratic with a 60%/40% Democratic/Republican vote share. (HC_0560). These six counties include the most populous counties in the state and are located in the most urban areas of the state: Cuyahoga, Franklin, Hamilton, Lucas, Montgomery, and Summit. They account for 41 out of 99 House districts. (HC_0560). Unlike other areas in the state lacking majority Democratic districts, there are a large number of precincts in these six counties that are majority Republican. (HC_0561).

Because of partisan geographic sorting of Republican and Democratic voters in rural and suburban parts of Ohio, it is nearly impossible to draw Democratic leaning districts in most of these areas. As a result, strict statewide proportionality is not possible unless the map drawer intentionally creates a disproportionate number of Democratic districts in the urban counties to account for the number of geographically induced and naturally occurring Republican districts. (HC_0561-562).³

7. Comparisons Between the Adopted Plan and the Sykes Plan.

A. Where the Plans Align.

The Adopted Plan and the Sykes Plan are aligned on the number of Republican leaning districts and Democratic leaning districts that can and should be established in 83 of Ohio's 88 counties, or 72 districts in the House portion of the Adopted Plan. Similarly, comparing the Senate portion of the Adopted Plan to the Sykes Plan, there is alignment on the partisan lean of Senate districts in 81 of 88 counties, or 23 Senate districts. In these counties where there is no disagreement on the partisan leanings of districts, natural party preferences will result in districts that are drawn to comply with the politically neutral criteria stated in Article XI, Sections 2, 3, 4, 5 and 7. Application of these neutral principles essentially eliminates the discretion for the Commission or any third party to draw a district plan "primarily to favor or disfavor a political party." *See* Ohio Const. art XI, §6(A); (HC_0578-581). As conceded by Relators' expert Jonathan Rodden, the nearly identical nature of the Adopted Plan and Sykes Plan in these 83 (House) and 81 (Senate)

³ While Relators' experts compare the Adopted Plan to previous Ohio redistricting plans, this is problematic for numerous reasons. As Dr. Barber explains, because of the change in political behavior and geography shifts in Ohio, comparing the Adopted Plan to previous plans, "conflates the degree to which partisan outcomes, proportionality, and other metrics are the result of changes in the district boundaries versus changes in the political geography" of Ohio. (HC_0565). Because of this, Relators experts' comparisons of previous plans, including Dr. Warshaw's are about as helpful as comparing the Adopted Plan to West Virginia's legislative districts. (HC_0565-566).

counties is utterly predictable and not at all surprising given the disparate residential patterns of Republican versus Democratic voters.

B. Where the Plans do not Align.

I. The Sykes Plan “Double Bunks” Significantly More Republican Incumbents.

The Adopted Plan and the Sykes Plan differ in two material respects. First, the two plans differ in the assignment of incumbents. “Double bunking” is a term used to describe those instances where incumbents are assigned to the same district under a new districting plan. (HC_0576-577). In the House portion of the Adopted Plan, no Republicans are double bunked with another Republican, no Democrats are double bunked with another Democrat, and only three Republican incumbents are double bunked with three Democrat incumbents. (HC_0577). In contrast, under the House version of the Sykes Plan, *ten* Republicans are assigned to a district with another Republican (or five pairs), *no* Democrats are double bunked with another Democrat, and *two* Republican incumbents are double bunked with an incumbent Democrat. (HC_0577).

A similar comparison exists between the two different versions of the Senate plans. The Adopted Plan double bunks six Republican incumbents (or three pairs) while the Sykes Plan double bunks *ten* Republican incumbents (or five pairs). (HC_0577). Neither plan double bunks any Democrat incumbents with either another Democrat or a Republican incumbent. (HC_0577).

II. The Adopted and Sykes Plans Differ on the Partisan Leans of only 5 House Districts and 3 Senate Districts.

The Adopted Plan and the Sykes Plan differ on the partisan leanings of a few districts located in Ohio’s more populous counties. In the House plans there are differences over districts located wholly or partially in only five counties (Franklin, Pickaway, Montgomery, Hamilton and Lorain). (HC_0579). There are 27 House districts that span these five counties, but the Adopted Plan and Sykes Plan differ on the partisan lean of only 5 of these 27 districts. (HC_0579).

In the Senate versions of the Adopted Plan and the Sykes Plan, there are a total of 10 districts spanning the 7 counties where there is a difference between the Adopted Plan and the Sykes plan on the partisan lean of districts (Franklin, Pickaway, Cuyahoga, Summit, Geauga, Erie, and Lorain). (HC_0580). Of those 10 Senate districts, the difference between the plans is limited to only 3 districts. (HC_0580).

Thus, the House portions of the Adopted Plan and the Sykes Plan differ on the partisan lean of 5.6% of Ohio's House districts (5 divided by 88) and 9% of the Senate districts (3 divided by thirty-three). (HC_0579-580).

This difference has a significant impact on the Republican voters who reside in the counties with a disputed district. In the five counties with disputed House districts, 57% of the voters lean Democratic while 43% lean Republican. (HC_0579). In the Adopted Plan, 63% of the districts in these five counties lean Democratic while 37% lean Republican. (HC_0579). Thus, under the House portion of the Adopted Plan, in the five differing counties, Democratic voters have a slightly higher percent of House districts (63%) than the corresponding vote share (57%). (HC_0579-580). In contrast, the Sykes Plan would create a higher disproportionality of Democratic leaning districts with 81% of the districts leaning Democratic as compared to the Democrats vote share in these counties of 57%. (HC_0580).

In the Senate portion of the Adopted Plan and the Sykes Plan, in the seven counties that contain a disputed district, 61% of the voters lean Democratic and 39% lean Republican. (HC_0580). In the Adopted Plan, seven of the districts in these seven counties lean Democratic (70%). (HC_0580). Only three districts lean Republican (30%). (HC_0580). Thus, under the Senate portion of the Adopted Plan, in the seven counties that include one of the three disputed Senate districts, Democratic voters again have a higher percentage of these districts (70%) than their vote

share of 61%. (HC_0580-581). In comparison, under the Senate portion of the Sykes Plan, all ten districts located in the seven disputed counties lean Democratic. (HC_0581). Thus, in the Senate, the Sykes Plan would eliminate any Republican leaning districts in the seven counties while Democrats would have 100% of the districts as compared to only 61% of their vote share. (HC_0581).

III. Franklin County House Districts

Franklin County accounts for two of the five House district differences in the Adopted Plan versus the Sykes Plan. Franklin County has enough population to form eleven House districts plus additional population that must be combined with another county to form a twelfth district. (HC_0581). The Adopted Plan combines Franklin with Union County while the Sykes Plan combines Franklin County with Pickaway County. (HC_0581-582; HC_0688-692). The partisan lean of Franklin County alone (without regard to the Republican majority counties of Union or Pickaway) is 63% D and 37% R.⁴ (HC_0581). Under the Adopted Plan, ten of the twelve districts (83%) lean Democratic as compared to the Democratic vote share of 63%. In contrast, the Sykes Plan creates all 12 districts as Democratic leaning districts, or 100% of the districts versus 63% of the vote share (not counting Pickaway which would lower the Democratic vote share). Thus, while the Adopted Plan establishes a disproportionately higher number of Democratic leaning districts as compared to vote share, the Sykes Plan creates a 100% disproportionality between vote share and district share. (HC_0584).

Moreover, intentional partisan gerrymandering is the only possible explanation for the highly unusual shape of House District 12 in the Sykes Plan. Under the Sykes Plan, Republican voters in

⁴ In his report, Dr. Barber made a clerical error and stated that it was 63/47 percent. This should be 63/37 percent.

Pickaway County are submerged into strong performing Democratic areas located in the city of Columbus. (HC_0582). The Sykes Plan accomplished this result by connecting the voters in Pickaway County with the City of Columbus by drawing a portion of the district in a way that resembles an elevator shaft. (HC_0582; HC_0587). By doing this, Senator Sykes was able to construct District 12 to avoid including Pickaway with areas of Republican voting strength located in southern Franklin County. (HC_0582; HC_0690-692).

IV. Hamilton County House Districts

Hamilton County has enough population for a total of seven House districts. One of those districts is a point of disagreement between the Adopted Plan and the Sykes Plan. The partisan lean of Hamilton County is 55% Democratic and 45% Republican. (HC_0588). The Adopted Plan creates four leaning Democratic districts and three leaning Republican districts. (HC_0588). Under the Adopted Plan, 57% of the districts lean Democratic as compared to 55% of their vote share. (HC_0588). By comparison, under the Sykes Plan, five of the seven districts lean Democratic. (HC_0588). Thus, under the Sykes Plan, 71% of the districts in Hamilton County lean Democratic as compared to their vote share of only 55%. (HC_0588). A review of the Adopted Plan and Sykes Plan demonstrates how Senator Sykes eliminated a Republican leaning district. Senator Sykes reconstituted House District 29 located in western Hamilton County by first moving Republican voters out of the Adopted Plan's House District 29. He then submerged the Republican voters he retained in this district into Democratic areas in the city of Cincinnati. Senator Sykes then moved the remaining Republican areas in western Hamilton County to create his version of House District 30. (HC_0686-687; HC_0588-592). The ultimate result of Senator Sykes' gerrymandering of Hamilton County creates a House District 29 that resembles a bear claw reaching into the honey pot. (HC 0592).

Both the Adopted Plan and the Sykes Plan add voters to House District 24 by running an extension of the district along the Ohio River. (HC_0591-592). The difference between the two versions is that the Sykes Plan takes a larger bite out of western Hamilton County. This is accomplished through a longer extension into western Hamilton County that submerges more Republican voters into a Democratic leaning district. (HC_0685-86; HC_0691-592).

V. Montgomery County House Districts

Montgomery County accounts for one of the House districts differing between the Adopted Plan and the Sykes Plan. The population of Montgomery County is large enough to produce 4.5 House districts. Thus, a portion of Montgomery County must be attached to another county or counties to make a total of five districts. (HC_0593).

The Adopted Plan draws House District 39 to include the western side of Montgomery County, all of Preble County, and a portion of Butler County. (HC_0579). The Sykes Plan also draws its House District 39 into another county connecting the southeastern portion of Montgomery County with the southwestern portion of Greene County. (HC_0598).

The voting index for Montgomery County is 50% Republican and 50% Democratic. (HC_0595). Adding either Preble County or Greene County to the geography used to draw districts originating from Montgomery County would slightly reduce the Democratic share of voter preferences to 48%. (HC_0595). The Adopted Plan creates two of the five districts as Democratic leaning districts while the Sykes Plan creates three. (HC_0595). Republican leaning districts under the Adopted Plan represent 60% of the districts as compared to a vote share of slightly above 50%. Similarly, the Sykes Plan creates three of the five districts as Democratic leaning districts giving the Democrats 60% of the seat share as compared to slightly less than 50% of their vote share. (HC_0595).

VI. Lorain County House Districts

Lorain County has enough population for 2.6 districts. (HC_0599). Thus, a portion of Lorain County has to be combined with another county to make three complete House districts. (HC_0599). The Adopted Plan combines Lorain County with Huron County. (HC_0599; HC_0602). The Sykes Plan combines Lorain with a portion Erie County. (HC_0603).

There are three districts centered in Lorain under both the Adopted Plan and the Sykes Plan. Under the Adopted Plan, one of three districts lean Democratic or 33% as compared to their vote share of 49% (combining Lorain and Huron). (HC_0600). Under the Sykes Plan, two of three seats lean Democratic, or 67%, as compared to their vote share of 51% (combining Lorain and Erie). (HC_0600; HC_0603).

In the Adopted Plan, all of Huron County is connected with a portion of Lorain County to form House District 53. (HC_0599; HC_0602). The corresponding district in the Sykes Plan is House District 54. (HC_0599; HC_0603). This proposed district contains a portion of Lorain County and a portion of Erie County, thereby unnecessarily dividing Erie into two districts. (HC_0599; HC_0603).

Another difference concerns the treatment of the cities of Lorain and Elyria. House District 53 in the Sykes Plan combines the City of Lorain with Cleveland exurbs located in Lorain County, including Avon Lake. (HC_0694-95). Similarly, House District 53 in the Sykes Plan combines the City of Elyria with Cleveland exurbs such as Avon and North Ridgeville. (HC_0694). In contrast, the Adopted Plan combines the two cities into House District 51. (HC_0694). It also combines all of the Cleveland exurbs running along the eastern border of Lorain County into House District 52. (HC_0694). The option selected by the Commission better reflects the common interests of voters in Lorain and Elyria, as well as the voters in the Cleveland exurbs. (HC_0694-695).

VII. Franklin County Senate Districts

Franklin County has enough population for 3.7 Senate districts wholly within its borders. (HC_0604). In the Adopted Plan, Franklin County is combined with all of Union County. (HC_0604). In the Sykes Plan, Franklin County is combined with all of Pickaway County. (HC_0604).

Democratic voters represent 63% of the vote share in Franklin County. (HC_0605). In either Union or Pickaway Counties, Democratic vote share is around 30%. (HC_0605). So regardless of whether one combines Franklin County with Union County or Pickaway County, the Democratic vote share of either combination is under 63%. (HC_0605).

There are four districts centered in Franklin County under both the Adopted Plan and the Sykes Plan. (HC_0605). The Adopted Plan establishes three of the four districts as Democratic leaning districts, or 75% of the districts as compared to a vote share of under 63%. (HC_0605).

In contrast, under the Sykes Plan, all four Franklin County Senate Districts are Democratic leaning districts. (HC_0605). Thus, under the Sykes Plan, Republican voters would get no Senate district in Franklin County that is Republican leaning while the Democrats would get all four districts, despite their vote share being below 63%. (HC_0605).

VIII. Cuyahoga & Summit Counties Senate Districts

Both the Adopted Plan and the Sykes Plan create five Senate districts using all of Cuyahoga, all of Summit, and a portion of Geauga. (HC_0609). The vote share for these three counties is 63% Democratic and 37% Republican. (HC_0609). The Adopted Plan creates four Democratic leaning districts and one Republican leaning district. Democratic leaning districts would constitute 80% of the Senate districts in these counties as compared to a Democratic vote share of only 63%. (HC_0610).

The Sykes Plan establishes all five districts as Democratic leaning districts. Under the Sykes Plan, Democrats would receive 100% of the districts despite a vote share of only 63%. (HC_0610). Despite having a vote share of 37% in these three counties, there would be no Republican leaning district under the Sykes Plan. (HC_0610).

IX. Lorain County Senate District

Lorain County has enough population to form 0.88% of a single Senate district. (HC_0614). It must therefore be combined with another county to form a Senate district. (HC_0614). The Adopted Plan combines Lorain with all of Huron County to form one Senate district. (HC_0614; 617). In contrast, the Sykes Plan combines all of Lorain County with only a portion of Erie County. (HC_0614). Lorain and Erie counties together have enough population to form 1.09 Senate districts. (HC_0614). As a result, the Sykes Plan divides Erie into two Senate districts. (HC_0614; HC_0618).

The Adopted Plan's Senate District 13 has a vote share that is 51% Republican and 49% Democratic. (HC_0615). The Sykes Plan's version of Senate District 13 has the opposite vote share - 51% Democratic and 49% Republican. (HC_0615). The Adopted Plan's Senate District 13 leans slightly Republican while the Sykes Plan's version leans slightly Democratic. (HC_0615).

ARGUMENT

1. Standard of Review.

A. Beyond a Reasonable Doubt.

District plans by the Ohio Redistricting Commission are entitled to a presumption of constitutionality, and the Ohio Supreme Court presumes that the Commission "properly performed [its] duties in a regular and lawful manner and not to have acted illegally or unlawfully." *Wilson*, 134 Ohio St. 3d 221, 227–228, 2012-Ohio-5367, 915 N.E.2d 814, ¶ 21 (2012) (quoting *State ex*

rel. Skaggs v. Brunner, 120 Ohio St.3d 506, 2008 Ohio-6333, 900 N.E.2d 982, ¶ 51 (2008)) (internal quotations omitted). That presumption is overcome only if Relators “rebut the plan’s presumed constitutionality by proving **beyond a reasonable doubt that the apportionment plan is unconstitutional.**” *Wilson*, at ¶ 22 (emphasis added).

This standard is fully applicable to the act of the Commission in approving the Adopted Plan. This is because in doing so the Commission is performing a legislative function. *Wilson v. Kasich*, at ¶ 20 (citing *Ely v. Klahr*, 403 U.S. 108 (1971) (“districting and apportionment are legislative tasks in the first instance”); *Arizona Minority Coalition for Fair Redistricting v. Arizona Indep. Redistricting Comm.*, 220 Ariz. 587, 208 P.3d 676 (2009) (“Not only do enactments that carry the force of law traditionally originate in the legislature, but the process of redistricting itself [is] traditionally viewed as a legislative task.”). Thus, “as with legislation, a presumption of validity attaches to the apportionment board’s adopted apportionment plan.” *Wilson*, at ¶ 21 (citing *State ex rel Gallagher v. Campbell*, 48 Ohio St. 435, 436–437, 442, 27 N.E. 884 (1891)). Through the Constitution, the people of Ohio gave the Commission redistricting authority and thus “the apportionment plan should be given the same, if not greater, consideration as a statute enacted by the General Assembly.” *Id.* at ¶ 22.

In *Wilson v. Kasich*, this Court interpreted Article XI of the Ohio Constitution as “vest[ing] the apportionment board with considerable discretion in formulating an appropriate plan.” *Id.* at ¶ 30 (emphasizing words and phrases in Article XI, including “substantially,” “to the extent consistent,” “feasibly,” and “extent reasonably consistent” as vesting “considerable discretion” in the apportionment board). Thus, the role of the Court in reviewing the constitutionality of a general assembly district plan is “restricted to determining whether relators have met their burden to prove that the plan adopted by the board is unconstitutional beyond a reasonable doubt.” *Id.* at ¶ 31. To

the extent that the Commission concludes that Article XI, Section 6 contains discretionary requirements, that interpretation is controlling. *Id.* at ¶ 17 (citing *Vionovich v. Ferguson*, 63 Ohio St.3d 198, 586 N.E.2d 1020 (1992)).

B. Rules of Construction.

“Generally speaking, in construing the Constitution, [this Court applies] the same rules of construction that [it applies] in construing statutes.” *Wilson*, at ¶ 13 (quoting *Smith v. Leis*, 106 Ohio St.3d 309, 2005-Ohio-5125, 835 N.E.2d 5, ¶ 57 (2005)).

First, the Court looks “to the plain language . . . to determine the legislative intent.” *Summerville v. Forest Park*, 128 Ohio St.3d 221, 225, 2010-Ohio-62890, 943 N.E.2d 552, ¶ 18 (2010) (quoting *Hubbell v. Xenia*, 115 Ohio St.3d 77, 2007-Ohio-4839, 873 N.E.2d 878, ¶ 11 (2007)). If a provision is “plain and unambiguous and conveys a clear and definite meaning, then there is no need for th[e] court to resort to the rules of statutory interpretation[.]” *State v. Parker*, 157 Ohio St.3d 460, 2019-Ohio-3848, 137 N.E.2d 1151, ¶ 21 (2019)(citation omitted); *Toledo City Sch. Dist. Bd. of Educ. v. State Bd. of Educ. of Ohio*, 146 Ohio St. 3d 356, 2016-Ohio-2806, 56 N.E.3d 950, ¶ 16 (2016) (“Where the meaning of a provision is clear on its face, we will not look beyond the provision in an attempt to define what the drafters intended it to mean.” (quoting *State ex rel. Maurer v. Sheward*, 71 Ohio St.2d 513, 520 664 N.E.2d 369 (1994))).

Thus, only when a statute or constitutional provision is ambiguous, does the Court look to cannons of construction and statutory interpretation. *See Toledo City Sch. Dist. Bd. of Educ.*, at ¶ 16 (“If the meaning of a provision cannot be ascertained by its plain language, a court may look to the purpose of the provision to determine its meaning.”). “Determining this intent requires us to read words and phrases in context and construe them in accordance with rules of grammar and

common usage.” *State ex rel. Russell v. Thornton*, 111 Ohio St.3d 409, 2006-Ohio-5858, 856 N.E.2d 966, ¶ 11 (2006).

Finally, this Court reads constitutional provisions *in pari materia*, meaning it “attempt[s] to give full application to every part of each of them unless they are irreconcilable and in hopeless conflict.” *Wilson*, at ¶ 32 (citing *Smith v. Leis*, 106 Ohio St.3d 309, 2005-Ohio-5125, 835 N.E.2d 5, ¶ 57 (2005)).

2. Article XI, Section 6 is Aspirational and is therefore not a Basis for an Actionable Claim in this Court.

Section 6 states that the Commission “shall attempt to draw a general assembly district plan” that meets certain undefined standards. Nothing in Section 6 states that the Commission “shall” draw a district plan that complies with its criteria. It specifically identifies an “attempt” to do so. The term “attempt” is not defined in Section 6 or anywhere in Article XI. “If a word is not defined in the Constitution, courts imbue that word with its common, ordinary meaning.” *Toledo City School Dist. Bd. of Educ.*, at ¶ 16. “Attempt” is defined as “1. The act or an instance of making an effort to accomplish something, esp. *without success*.” *Attempt*, Black’s Law Dictionary (10th ed. 2014) (emphasis added).

Thus, on its face, the language of Section 6 acknowledges that it provides for a goal that possibly will not be accomplished. Of course, that does not mean that progress toward a goal cannot be made. Indeed, it was made here in the course of negotiations in an attempt to attain a ten-year map. The Sykes Plan ultimately increased the number of Republican leaning House seats from 55 to 57. The Adopted Plan ultimately decreased the number of Republican leaning House seats from 67 to 62. Concessions by both sides were also made in the Senate Plans. While the negotiations did not produce a ten-year plan, they did prove fruitful in encouraging the parties to move closer to the other side’s position. And when the negotiations broke down, the Adopted Plan

maintained the concessions made by Republicans during negotiation even though the Democratic members of the Commission did not vote for it.

This is how Senator Huffman, the original sponsor of HJR12 which proposed the amendments that produced Section 6, understood his role. His role as a Commissioner “was to attempt to draw a ten-year map through sincere and active negotiations with the other side.” (DEPO_01810:24-1811:9). Of course, this is consistent with the legislative debates when HJR12 was approved. During those legislative debates, a leading Democratic advocate who spoke in favor of what would become Article XI, Representative Kathleen Clyde, explained that “additionally, there’s aspirational criteria that no plan shall be drawn primarily for partisan advantage” (HIST_44:24-45:21). Then Representative Matt Huffman responded to Representative Clyde by agreeing “. . . now we have a clear order of things that are mandatory. We have other things that are aspirational in nature.” (HIST_72:20-21). Democratic Representative Clyde concurred with Representative Huffman and stated that “[a]nother concession by our side is that the fairness criteria are not required but are aspirational. Fairness should be required of any plan and I think Ohioans deserve to have a fair map, not just an attempt at a fair map. This plan does not ensure bipartisanship. It ensures minority input. Those are two different things. And the minority input is not required if there’s an impasse, which I believe is a significant concession.” (HIST_77:8-79:17).

That the “attempt” referenced in Section 6 is not mandatory is also demonstrated through its juxtaposition with the obviously mandatory provisions of Sections 2, 3, 4, 5, and 7 of Article XI. Section 2 states that all districts “shall be” single member districts. Section 3 instructs the Commission that it “shall comply” with all of its requirements. Similarly, Sections 4, 5, and 7 state that the Commission “shall” comply with the criteria stated in those sections. These sections

provide specific guidance on how the Commission must draw districts. None of these sections refer to an “attempt” to comply with them.

Moreover, Article XI gives this Court specific authority to declare unlawful any violations of these mandatory standards. Ohio Const. art. XI, Sec. 9(D)(3). Conversely, no such authority is given to this Court for an alleged violation of Section 6 alone. Under section 9(D)(3), this Court is prohibited from ordering any remedies absent a finding that a general assembly plan adopted by the Commission “does not comply with the requirements of Sections 2, 3, 4, 5 or 7. . . .” As it relates to Section 6, under Section 9(D)(3)(c), this Court can provide relief only where it makes two threshold findings: (1) that the plan significantly violates Section 2, 3, 4, 5 or 7 in a manner that materially affects the ability of the plan to comply with Section 6(B); and (2) that the statewide proportion of districts in the plan does not “correspond closely” to the statewide preferences of the voters of Ohio. Thus, any remedy this Court could order that relates to Section 6 must find a predicate violation of Sections 2, 3, 4, 5, or 7. No such violation has been alleged or even suggested; as such, this case must be dismissed.⁵

⁵ The Ohio Organizing Collaborative Relators argue that the Adopted Plan violates Article I of the Ohio Constitution. They are incorrect. Article I contains general provisions related to rights held by all Ohioans. Article I does not address redistricting in any respect. “Special constitutional provisions relating to a subject will control general provisions in which, but for such special provisions, the subject might be regarded as embraced.” *State ex re. Maxcy v. Saferin*, 155 Ohio St. 3d 496, 2018-Ohio-4035, 122 N.E.3d 1165, at ¶ 10 (2018) (*quoting Akron v. Roth*, 88 Ohio St. 456, 461, 103 N.E. 465 (1913)) (holding the more-specific constitutional provisions in Article XVIII, Sections 8 and 9 of the Ohio Constitution control amendments to city charters, not Article II, Section 1f). Article XI specifically addresses general assembly district plans while Article I does not. For this reason alone, the Article I claims should be dismissed. Moreover, those Relators also argue that some of those provisions are “coextensive with federal law.” OOC Brief at 27. If that is the case, then their claims should be dismissed as the United States Supreme Court has held that under federal law so-called partisan gerrymandering claims are nonjusticiable. *Rucho v. Common Cause*, 139 S. Ct. 2484 (2019).

The fact of the matter is that the “remedy” for the Democratic and Republican members of the Commission failing to agree on a plan, is a plan that is in effect for only four years. Predictably, the aspirational goals of Section 6 require that the members of the Commission make political considerations during any negotiation to reach a consensus on what constitutes a “fair” plan. If consensus is achieved, the plan will be in place for ten years. There can be no dispute here that Speaker Cupp and President Huffman made extensive efforts to reach a compromise plan with Senator Sykes, Leader Sykes, and the other members of the Commission. Yet, because the members could not reach a bipartisan consensus, the plan was adopted by a simple majority of the Commission and will only be in place for four years. Four years from now, when the Commission must adopt another general assembly district plan, the Commission may consist of different legislative members for both parties and different statewide election officials. Because the current Republican majority could not reach consensus with the Democratic legislative members, Republicans now run the risk that a new plan that must be adopted in four years could be adopted by a newly constituted Commission that could be majority Democratic. Section 8(C)(10)(a). Any majority Democratic Commission would be able to adopt a new plan based upon a simple majority vote and without the support of the Republican legislative members. Any such plan would remain in effect for the final three election cycles for this decade. Section 8(C)(1)(b). It is clear that, except in limited circumstances, Article XI provides a political remedy for the failure of the Commission to reach consensus on a plan.⁶

⁶ The Ohio Organizing Collaborative Relators and the League of Women Voters of Ohio Relators argue that Section 9(B) of Article XI provides an independent source for this Court to order the Commission to draw a new general assembly district plan. That is clearly incorrect. That section provides that the Commission shall be reconstituted in the event that any plan or district is invalidated by a court of competent jurisdiction. It is only triggered if a plan or district is invalidated under an applicable provision of the Ohio Constitution. Thus, if the Court invalidated a plan or a district under the provisions of Article XI that specifically give the Court authority to

3. Article XI Confers Discretion on the Commission to Interpret and Implement the Provisions of Section 6.

The only mandatory obligation the Commission must comply with regarding Section 6 is the statement required by Section 8(C)(2) of Article XI. That section states that the Commission “shall include” (not “shall attempt to include”) “a statement explaining what the commission determined to be the statewide preferences of the voters of Ohio.” It also allows for the inclusion of a dissenting opinion by the members of the Commission not voting in the affirmative for the Commission adopted plan.

Notably, this provision does not mandate that the Commission issue a statement regarding how it *complied* with Section 6; rather it only mandates a statement describing what the Commission determined. Relators mischaracterize this requirement repeatedly. Relators describe this statement as a mandate to identify how the Commission complied with Section 6, which implies that Section 6 is mandatory. *See* Bennett Relators’ Merit Brief at p. 49; League of Women Voters of Ohio Relators’ Merit Brief at pp.19-20. The opposite is true. This provision demonstrates that it is the *Commission* that has the discretion to “*determine*” the statewide preferences of the voters of Ohio as well as how the district plan it adopts “correspond[s] closely” to those preferences.

It makes sense that this provision would vest this discretion in the Commission. The standards in Section 6 are, charitably speaking, vague. “Attempt” is not defined. “Primarily to favor or disfavor a political party” is not defined. “Correspond closely” is not defined. “Compact” is not defined. How to calculate the ten-year statewide preferences based on “election results” is not defined. Should this be determined by adding up all of the votes cast in all statewide partisan

do so, then the Commission would be reconstituted to address that issue. The Court has no independent authority under Section 9(B) itself to order any remedy.

elections during the last ten years and then calculating the percentage of the total votes received by each political party? This is the method used by most of Relators' experts and was used by Respondent's expert, Dr. Barber, to explain where the Adopted Plan and Sykes Plan are in alignment and where they differ. Or should "election results" be determined by calculating the percentage of vote received by each Republican and Democratic candidate and then averaging the percentages as opposed to the actual vote totals? The manner of calculating "election results" as well as the elections to establish statewide percentages can result in different predictions for the number of seats that lean Republican and those that lean Democratic. (See HC_0664-667 for the different methods used by Relators' experts to calculate "election results" and how different methods can have a significant impact on the proposed outcomes). Or should "election results" be determined by the percentage of races won by candidates from either party over the last ten years? Commission members Senator Huffman, who was a Representative in 2014-15, and Auditor Faber, who was the President of the Senate in 2014-15, stated at a public hearing that this was their understanding of the term "election results." (STIP_0403;STIP_00407).

While Republicans have won 81% of the statewide elections during the last ten years, a ten-year lookback at the time HJR12 passed in 2014 (from 2014 to 2004) shows that Republicans only won 63.6% of the statewide elections. (HC_0635-636). Using the actual "election results" seems consistent with a plain meaning of that term as it is stated in Section 6(B). But Dr. Rodden has opined that it is absurd to tally the percentage of victories each party has enjoyed in statewide elections on the grounds that either party would be entitled to 100% of the districts if they won 100% of the statewide elections. See *Bennett Complaint, Affidavit of Dr. Rodden*, ¶21. Dr. Rodden knows that such a result is impossible because the other criteria of Article XI require districts that are based on the jurisdictional lines for counties, municipal corporations, and townships. Dr.

Rodden's approach is also ironic since he and Relators' other experts treat the ten-year average of vote totals for statewide elections in Ohio as the dominant criterion for determining whether a plan provides fair representation. While Dr. Rodden and Relators champion the idea of statewide proportional representation, they care little for the reality that mandating strict statewide proportional representation will in some cases deny Republican voters in urban counties an opportunity for equal representation. Ultimately, however, the Commission has the discretion to "determine" the statewide preferences of Ohio voters and to "determine" how its Adopted Plan conforms to the statewide preferences. The Commission did just that, and these complaints should therefore be dismissed.⁷

⁷ LWVO Relators cite to *State v. White*, 103 Ohio St.3d 580, 2004-Ohio-5989 ¶14, 817 N.E.2d 393 (2004) to support their argument that Art. XI, Sec. 6 imposes a formulaic statewide proportional representation requirement on the Commission. (LWVO Merits Brief pp.23-26). However, *White* supports Respondent's position. In *White*, a criminal defendant challenged the ability of a trial court to assess court costs as part of an indigent defendant's felony sentence. *White*, 103 Ohio St.3d at 580, 817 N.E.2d at 394. In its determination of the case, this Court noted that Ohio Rev. Code § 2949.14 states that the "clerk shall attempt to collect the costs from the person convicted" and described the process for the clerk's compliance with section 2949.14 as the clerk being "required to certify a bill of costs and attempt collection from nonindigent defendants." *Id.* at 583, 817 N.E.2d 396. Notably, however, the *White* Court recognized that there was not a formula for the clerk to attempt to collect costs against indigent defendants, but rather a number of different options from which the clerk had discretion to choose "despite the lack of guidance from the Revised Code[:]"

One possibility is to assess costs and attempt collection through the defendant's prison account. Another is to attempt collection at a later date, when it becomes apparent that the defendant is no longer indigent. Yet another is to impose community service upon the defendant as a method to pay off or forgive costs. We will not, however, speak to the legality of the several avenues for collection from an indigent defendant, as those questions are not before us.

White, 103 Ohio St.3d at 584, 817 N.E.2d at 397 (footnotes omitted).

While *White* is not analogous to this dispute given that it involved a statute governing the known process for collection of court costs rather than a Constitutional provision involving redistricting, it is instructive that the *White* Court properly recognized that the requirement that

4. The Commission's Interpretation of Article XI can be Reversed only if Relators Establish its Unconstitutionality Beyond a Reasonable Doubt.

The people of Ohio entrusted the Commission to exercise its discretion when adopting a general assembly district plan that complies with Article XI. *Voinovich v. Ferguson*, 63 Ohio St.3d 198, 204, 586 N.E.2d 1020 (1992). This Court must presume the constitutionality of the Adopted Plan. *Wilson*, at ¶18. Relators have the burden of proving the unconstitutionality of the Adopted Plan “beyond a reasonable doubt.” *Id.* Whether the Commission “wisely or unwisely” exercised its discretion is immaterial. *Voinovich*, 63 Ohio St.3d at 204. “For the wisdom or unwisdom of what they have done, within the limits of the powers conferred, they are answerable only to the electors of the state, and no one else.” *Id.*

Relators cannot meet their burden of proof because the Adopted Plan complies with Article XI. To the extent Relators argue that Article XI provides for an independent cause of action based solely on Section 6, Relators cannot carry their burden of proving that the Adopted Plan is unconstitutional “beyond a reasonable doubt.”

The basis of Relators' claim is that the Adopted Plan violates Section 6. All of Relators' experts use statewide voting measurements to support Relators' claim that the Adopted Plan fails to provide fair representation. All of Relators' experts have assumed that Article XI requires strict proportionality for each major party's seat share. Relators contend that the disproportionality of the Adopted Plan, as they would define it, violates both Section 6(A) and 6(B).

The problem, among many, with Relators' claim is that they have utterly failed to provide a judicially manageable standard under which this Court, and future Commissions can determine

someone “attempt” to do something gives the person or entity which must “attempt” to do the task some discretion in determining how such an attempt occurs. *See id.* As such, *White* does not support, and actually stands in contrast to Relators' argument, that Art. XI, Sec. 6 imposes a formulaic statewide proportional representation requirement on the Commission.

“how much partisan dominance is too much.” *Gill*, 138 S.Ct. at 1928, citing *League of Latin American Citizens (“LULAC”) v. Perry* 548 U.S. 399, 419 (2006) (rejecting “asymmetry as a reliable measure of unconstitutional partisanship”). Relators’ experts can easily draw simulated maps after the fact that provide exact proportionality by making exact proportionality one of their criteria for drawing maps. But Relators have not provided guidance on when a departure from asymmetry, or any other alleged measurements of so-called “partisan bias” crosses the line from legal to illegal. This is not surprising because no court has been able to decipher where that line exists. *Rucho v. Common Cause*, 139 S. Ct. 2484, 2501 (2019). Moreover, Article XI intentionally gives the Commission the sole discretion to determine whether a plan is “fair” under the standards established by Section 6, except in very limited circumstances.

The serious problems presented to a court when asked to enforce standards similar to those stated in Section 6(A), was explained by Justice Scalia in his opinion for the Court in *Vieth*, *supra*. In that decision, Justice Scalia critiqued a test proposed by the plaintiffs that is analogous to the standard referenced in Section 6(A), whether politics was the “predominant motive” for a statewide plan. *Id.* at 285. The “predominate motive” test proposed by the *Vieth* plaintiffs was “borrowed” from cases involving claims of racial gerrymanders. Ironically, it is well established that claims of racial gerrymandering can be defeated by evidence that the plan complies with “traditional districting principles” including “compactness, contiguity, and respect for political subdivisions.” *Vieth*, 541 U.S. 3355, citing *Shaw v. Reno*, 509 U.S. 630, 647 (1993) (dissenting opinion of Stevens, J.). Regardless, the question remains - how does a court determine whether politics was the predominant motive underlying a state redistricting plan? Does it mean “that partisan intent must outweigh all other goals - contiguity, compactness, preservation of neighborhood, etc. - statewide?” *Vieth*, 541 U.S. at 285. Further, how is the “statewide” result to

be determined? For example, “[i]f three fifths of the maps districts forgo the pursuit of partisan ends in favor of strictly observing political subdivision lines, and only two-fifths ignore those lines to disadvantage the plaintiffs, is the observance of political subdivisions the predominant motive between the two?” *Id.*

Importantly, this Court has not been asked to infer that politics was the predominant motive for the Adopted Plan because of a failure to comply with traditional districting principles. This is because the Relators have not alleged any violations of traditional principles and have conceded that 100% of the districts in the Commission’s plan comply with the traditional districting principles protected by Article XI. These principles include “compactness, contiguity, and respect for political subdivisions.” *Shaw v. Reno, supra*. Under these circumstances, it is not possible for Relators to prove beyond a reasonable doubt that the Commission’s plan was drawn “primarily to favor or disfavor a political party” unless absolute proportionality trumps every other criteria in Article XI.

In addition, a strong case can be made that if any plan was drawn to primarily favor a political party it was the Sykes Plan and not the Adopted Plan. One indicia of partisan intent can be gleaned from an analysis of how a particular plan treats incumbents of the different parties. This includes the way incumbents are assigned to districts. *Larios v. Cox*, 300 F. Supp 2d 1320, 1329 (N.D. Ga.), *affirmed*, *Cox v. Larios*, 542 U.S. 947 (2004). Under the House portion of the Adopted Plan, no Democrat incumbents are assigned to a district with another Democrat while an equal number of Republican and Democrat incumbents (three from each party) are assigned to the same three districts. (HC_0577). The Commission’s treatment of Democratic House incumbents stands in stark contrast to the Sykes House Plan, which assigns *ten* Republican House incumbents (or *five pairs*) to a district with another Republican. (HC_0577).

In its Senate plan, the Adopted Plan assigns no Democratic Senators to a district with another senator while placing *six* Republican Senators (*three pairs*) in the same district as another Republican. (HC_0577). In contrast, the Sykes Plan assigns *ten* incumbent Republican Senators (*five pairs*) to the same Senate District. (HC_0577). No incumbent Democratic Senator is assigned to a district that includes another Senator under the Sykes Plan. (HC_0577). The Sykes Plan's disparate treatment of Republican and Democrat incumbents is clear evidence that his plan was drawn to primarily favor the Democratic Party and to disfavor the Republican Party.

Another more significant factor demonstrates that the Sykes Plan was primarily drawn to favor Democratic candidates and voters over Republican candidates and voters. Recall that the Adopted Plan and the Sykes Plan align on the partisan leans of House districts located in 83 counties and Senate districts located in 81 counties. (HC_0578-581). No political discretion can be exercised in these parts of Ohio to draw different numbers of Democratic and Republican seats. The only locations where political discretion can be utilized to determine whether a district leans Republican or Democratic are the counties where the map drawer can actually decide whether to make a district lean more Republican or Democratic. There are only five counties in the House and only seven counties in the Senate where the Adopted Plan and the Sykes Plan differ on the total number of districts that lean towards the Republicans and those that lean towards the Democrats.

The evidence shows that the Commission did not draw districts in the disputed counties to favor Republicans. Again, in contrast, the Sykes Plan indisputably drew districts in the few differing counties to favor Democrats at the expense of Republicans. In the five counties that include disputed House districts, the total vote share collectively leans 57% D and 43% R. (HC_0579). In these five counties, the Adopted Plan produces a Democratic leaning seat share of 63%, which is higher than the Democratic vote share in those counties. (HC_0579-80). By

comparison, under the Sykes Plan, 81% of the House districts in these five counties are Democratic leaning seats while only 19% are Republican leaning despite Republicans earning 43% of the vote share in these counties. (HC_0579-580).

This disproportionality employed by the Sykes Plan is even more stark in the seven counties that contain disputed Senate districts. (HC_0579-80). The vote share for these seven counties is 61% Democratic and 39% Republican. (HC_0579-80). The Adopted Plan creates 70% of those districts as leaning Democratic and 30% leaning Republican. Like its House plan, the Adopted Plan provides Democrats with a seat share that exceeds the measure of Democratic vote share. (HC_0579-80). In the Senate portion of the Sykes Plan, the map drawer took whatever steps that were necessary to ensure that all ten Senate districts in these seven counties leaned Democratic. (HC_0579-80). Thus, the Sykes map drawer gave Democrats 100% of the seat share despite a vote share in these counties of only 61%.

5. Mandated Statewide Strict Proportional Representation Under the Circumstances of this Case may Violate the Fourteenth Amendment of the United States Constitution.

Article XI anticipates the one or more of its provisions could be the subject of a constitutional challenge. It provides that “[t]he provisions of this article are intended to be severable, and the invalidity of one or more of such provisions shall not affect the validity of the remaining provisions.” If this Court determines that strict statewide proportionality must be granted to Democratic voters through the systematic destruction of Republican leaning districts only in the counties where political discretion may be exercised to determine their political lean, this Court should exercise its authority to declare Section 6(B) unconstitutional under the Fourteenth Amendment of the United States Constitution, and sever that section from the remaining sections of Article XI.

Partisan gerrymandering claims, including this case “rest on an instinct that groups with a certain level of political support enjoy a commensurate level of political power.” *Rucho*, 139 S. Ct. at 2499. But there is no precedent, including in this case, to require “statewide elections for representatives along party lines.” *Bandemer*, 478 U.S. at 159. Because it is impossible to identify a judicially manageable standard distinguishing fair maps from unfair maps, “[p]artisan gerrymandering claims inevitably sound in a desire for proportional representation.” *Rucho*, 139 S. Ct. at 2499. The United States Supreme Court has clearly rejected that the Equal Protection Clause requires states to provide proportional representation “or to come as nearly as possible to allocating seats to the contending parties in proportion to what their anticipated statewide vote may be.” *Id.*, citing *Bandemer*, 478 U.S. at 130 (O’Connor, J., concurring in judgment), *Mobile v. Bolden*, 446 U.S. 55, 75-76 (1980) (“The Equal Protection Clause of the Fourteenth Amendment does not require proportional representation as an imperative of political organizations”).

While the federal constitution may not require proportional representation of the major political parties, it remains open whether mandated proportional representation is constitutionally permissible, particularly under the facts of this case. In *Gaffney v. Cummings*, 412 U.S. 735 (1973), the Court rejected claims brought by the Chairman of Connecticut’s Republican Party that a legislative plan consisting of single member districts was drawn in a manner to ensure that the legislature’s intentional decision to draw districts to provide “rough” proportionality violated the Fourteenth Amendment representation for the two major parties. The Court rejected plaintiff’s claim on the grounds that “[p]olitics and political considerations are inseparable from districting and apportionment.” *Id.* at 753.

The next time the United States Supreme Court considered proportionality was in *Bandemer*. There the Court dismissed a claim brought by the Indiana Democratic Party that argued that a

districting plan enacted by the majority Republican legislature violated the Fourteenth Amendment. By a plurality opinion, the Court concluded that the plaintiffs had not stated a claim but established a framework under which future plaintiffs might challenge districting plans on the grounds of partisan gerrymandering. *Bandemer*, 478 U.S. at 115-143.

Justice O'Connor concurred in the judgment in an opinion joined by Chief Justice Burger, holding that claims for political gerrymandering are nonjusticiable. *Id.* at 144-161. Justice O'Connor correctly forecasted that the "nebulous" test adopted by the plurality opinion would lead to an argument that political parties are entitled to proportional representation. *Id.* at 145. Justice O'Connor stated that members "of every identifiable group that possesses distinctive interests and tends to vote on the basis of those interests should be able to bring similar claims, if members of the major political parties are protected from vote dilution by the Equal Protection Clause." *Id.* at 147. Justice O'Connor also opined that a constitutional preference for proportionality would call the legitimacy of districting itself into question. *Id.* at 159. This was because voters in groups who are less evenly distributed throughout the state benefit from a system requiring statewide proportionality. *Id.*

Assuming Article XI requires some form of proportionality in the representation of the major political parties in the General Assembly, the first question, as highlighted by Justice O'Connor, would involve the State's failure to grant equal rights to other political groups to proportional representation in the General Assembly. It cannot be disputed that requiring the composition of the General Assembly to be based upon vote shares received only by the two major parties, excludes other parties or groups from equal consideration. The Libertarian Party has regularly run candidates for President and other statewide offices in Ohio and typically has achieved the support of at least 1% of the voters. Under Relators' interpretation of Article XI, proportionality trumps

geography. Thus, in the 83 counties where Democrats are insufficiently numerous to constitute more than a few districts that are based upon jurisdictional lines as required by section 3, Article XI requires the state to intentionally discriminate against Republican voters who reside in the relatively few locations of Ohio where Democratic voters can constitute a majority. Why are only Democrats, and not Libertarians and other groups, entitled to play the proportional representation card to defeat the other of Article XI?

Next, in any case of alleged vote dilution, whether or not parties can state claims for cognizable injuries, there can be no dispute that the way a district is drawn can injure a particular voter's right to receive equal treatment. *Gill*, 138 S.Ct. at 1930. For example, in *Cox v. Larios*, a districting plan intended to maximize the voting strength of Democrats located in cities and rural areas at the expense of Republican voters in suburban areas, was declared unconstitutional under the Fourteenth Amendment. 542 U.S. 947 (2004). The Legislature in *Larios* used two methods to accomplish its goal of preferential treatment of Democratic voters at the expense of Republicans. Their most obvious tactic was to double bunk more Republican incumbents than Democrats. *Id.* The second tactic was to systematically under populate Democratic performing districts located in Georgia's most urban areas while overpopulating Republican performing districts located in more suburban areas of Georgia. *Id.* at 947-48.

The intent and the effect of this unequal standard for populating districts was to pack Republicans in districts way beyond any percentage that would give them an equal opportunity to elect their candidate of choice, and thereby reducing the number of Republicans that could be assigned to other districts. *Id.* at 948. The corollary intent and effect was also to maximize the voting strength of Democrats by reducing the population in Democratic districts in order to spread Democratic voters into other districts and thereby increase the number of Democratic performing

districts. *Id.* at 948. The ultimate holding was that the Equal Protection Clause was violated by the legislature's systematic application of different and discriminatory standards to satisfy the constitutional requirement that districts contain equal population. *Id.* at 948-49. Overpopulating Republican districts had the intent and effect of diminishing the voting right of Republicans while under populating districts had the intent and effect of maximizing Democrats at the expense of Republicans. *Id.* at 948.

Relators interpret Article XI to create a completely unnecessary conflict that raises constitutional issues that are similar to the violations addressed in *Larios*. Relators advocate that the Court adopt an interpretation that creates an unnecessary conflict between Section 6 and the remaining provisions. Proportional representation in Ohio cannot be achieved under a system that also requires compact, geographically based districts, without sanctioning discrimination directed only against Republican voters who reside in Ohio's urban counties. The dispersal of Democratic voters throughout Ohio makes it impossible to draw geographically based single member districts in over 80 counties. No doubt, there are fewer Democratic districts in these 80 counties than their vote share in these same counties. But in these counties the disproportionality of Democratic representation is not caused by discrimination against Democratic voters - it instead is the result of drawing districts based upon the traditional, politically neutral criteria stated in Sections 2, 3, 4, 5 and 7. All of these sections were designed to reduce the scope of partisan decision making that previously had been made in Ohio's districting plans. That these provisions have succeeded is demonstrated by the fact that the Adopted Plan and the Sykes Plan have equal number of Republican and Democrat leaning districts in over 80 counties.

In contrast, Relators ask the Court to require the State to discriminate against Republican voters in the state's most urban counties. This is not an issue of whether the redistricting authority can

exercise some political discretion in drawing districts in these counties. Relators do not advocate the limitation of political discretion; instead, they ask this Court to ban any political discretion but only for voters who reside in urban counties. Stated more directly, Relators demand that the Commission be mandated to discriminate only against the Republican voters in urban counties. In these counties, Relators demand that the Commission should be obligated to draw as many Democratic leaning districts as possible. In some instances, such as Franklin County or Senate districts based in Cuyahoga and Summit counties, Relators asked that the Commission be banned from drawing any Republican leaning districts at all.

How could this result possibly be intended by the voters when they approved Article XI? But if this was the intent of the voters, the next question is how could this unequal and intentionally discriminatory treatment, specifically targeted only at urban Republicans, possibly comply with the Fourteenth Amendment? The answer to these questions is obvious. This Court can avoid the serious constitutional issues raised by Relators' unreasonable interpretation of Article XI, by deferring to the judgments made by the Commission, and then giving the people an opportunity to hold the members of the Commission accountable during the next general election.

CONCLUSION

For the foregoing reasons, Respondents request that this action be dismissed with prejudice. Respectfully submitted this the 5th day of November, 2021.

By:

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