

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

Ohio Organizing Collaborative, *et al.*,

Relators,

v.

Ohio Redistricting Commission, *et al.*,

Respondents.

Case No. 2021-1210

**RESPONDENTS HUFFMAN AND CUPP'S BRIEF ON THE IMPACT OF ARTICLE
XI, SECTION 8(C)(1)**

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INTRODUCTION

Respondents Senate President Matt Huffman and House Speaker Robert Cupp (“Respondents”) hereby file this brief pursuant to this Court’s order, dated December 13, 2021. Under this order, the parties were directed to file a brief addressing “[w]hat impact, if any, [] Article XI, Section 8(C)(1) of the Ohio Constitution ha[s] on the Supreme Court of Ohio’s authority to grant the relief requested by relators when the Ohio Redistricting Commission adopted the district plan by a simple majority vote of the commission.” Respondents’ position is that Section 8 of Article XI may be construed as foreclosing judicial review of a four-year plan by the Ohio Supreme Court, but that if such review is authorized, the Court may not award Relators any relief absent the findings required by Article XI, Section 9(D)(3). In either case, Relators are not entitled to any relief and their Complaints should be dismissed.

BACKGROUND

1. Textual Differences Between Article XI, Section 8(C)(1)(a) and 8(C)(1)(b)

Article XI is structured such that the Ohio Redistricting Commission may adopt a general assembly district plan of different durations. Up until September 1 of a year ending in the numeral 1, for a general assembly district plan to last the full ten years before the next decennial census, the plan must be approved by at least four members of the Commission, including at least two members of the Commission who represent each of the two largest political parties represented in the general assembly. Article XI, Section 1(B)(3), (C).

If the Commission does not adopt such a plan by September 1, the Commission must adopt a general assembly district plan by September 15. During this period, if the Commission adopts a general assembly district plan with the approval of at least four members of the Commission, including at least two members of the Commission who represent each of the two largest political

parties represented in the general assembly, the plan will be effective for ten years. Article XI, Section 8(B). However, if the Commission adopts a general assembly district plan by a simple majority vote of the Commission, the plan will be in place for only two (2) general elections for the house of representatives or four years (“four-year plan”). Article XI, Section 8(C)(1)(a). At the end of a four-year plan, if a new general assembly district plan is adopted by a simple majority of the Commission, that plan will remain effective for the remaining six years before the next decennial census (a “six-year plan”). Article XI, Section 8(C)(1)(b).

There is an important difference between the text of Article XI, Section 8(C)(1)(a) as compared to Section 8(C)(1)(b). The latter states that a six-year plan adopted by a simple majority will expire after six years “except as provided in Section 9 of this article.” No similar condition can be found in the text of Section 8(C)(1)(a). To fully answer the question posed by the Court, it is important to first review the procedural history of the 2014 joint resolution that amended Article XI, which was ultimately approved of by the voters of Ohio.

2. Procedural History of HJR 12 and the Difference between House and Senate Resolutions.

What eventually would become Article XI began as House Joint Resolution no. 12 (“HJR 12”).¹ The resolution was passed by the Ohio House of Representatives on December 4, 2014. See Exhibit 1; *See also* <http://archives.legislature.state.oh.us/JournalText130/HJ-12-04-14.pdf>.

The Ohio Senate then passed an amended version of HJR 12 on December 11, 2014. See Exhibit 2; *See also* <http://archives.legislature.state.oh.us/JournalText130/SJ-12-11-14.pdf>. The Ohio House of Representatives then concurred in the Senate’s amendments to HJR 12 on December 17, 2014. *See* <http://archives.legislature.state.oh.us/JournalText130/HJ-12-17-14.pdf>. As a result, the

¹ The procedural history of HJR 12 can be found at: <http://lsc.state.oh.us/pages/reference/archives/notes/srl/default.aspx?G=130&T=HJR&N=0012>.

Senate's amended version of HJR 12 represents the final version of Article XI that was approved by the voters on November 3, 2015.

Given the Court's inquiry regarding Section 8(C)(1), it is important to compare how the text of the House version of Section 8(C) was subsequently amended by the Senate version. A side by side comparison of the two versions is listed below:

<u>Article XI, Section 9 (House passed) (Exhibit 1 page 8)</u>	<u>Article XI, Section 8 (Senate passed) (Exhibit 2 page 10)</u>
<p>(B) If the commission adopts a final general assembly district plan in accordance with division (A) (3) of this section by the vote required to adopt a plan under division (B) of Section 1 of this article, the plan shall take effect upon filing with the secretary of state and shall remain effective until the next year ending in the numeral one, <u>except as provided in Section 10² of this article.</u></p> <p>(C) (1) If the commission adopts a final general assembly district plan in accordance with division (A) (3) of this section by a simple majority vote of the commission, the plan shall take effect upon filing with the secretary of state and shall remain effective until two general elections for the house of representatives have occurred under the plan or until a year ending in the numeral one, whichever is earlier.</p>	<p>(B) If the commission adopts a final general assembly district plan in accordance with division (A) (3) of this section by the vote required to adopt a plan under division (B) (3) of Section 1 of this article, the plan shall take effect upon filing with the secretary of state and shall remain effective until the next year ending in the numeral one, <u>except as provided in Section 9 of this article.</u></p> <p>(C) (1) (a) Except as otherwise provided in division (C) (1) (b) of this section, if the commission adopts a final general assembly district plan in accordance with division (A) (3) of this section by a simple majority vote of the commission, and not by the vote required to adopt a plan under division (B) (3) of Section 1 of this article, the plan shall take effect upon filing with the secretary of state and shall remain effective until two general elections for the house of representatives have occurred under the plan.</p> <p>(b) If the commission adopts a final general assembly district plan in accordance with division (A) (3) of this section by a simple majority vote of the commission, and not by the vote required to adopt a plan under division (B) of Section 1 of this Article, and that plan is adopted to replace a plan that ceased to be effective under division (C) (1) (a) of this section before a year ending in the numeral one, the plan adopted under this division shall take effect upon filing with the secretary of state and shall remain effective until a year ending in the numeral one, <u>except as provided in Section 9 of this article.</u></p>

² Section 10 of the original House version of HJR 12 corresponds to the Senate's Section 9 and Section 9 of Article XI today.

It is important to note that under the House passed version of HJR 12, the original version of what would become Article XI, Section 8(C) applied to any simple majority plan adopted by the Redistricting Commission.³ In the Senate version of what would eventually become Article XI, Section 8(C), the Senate distinguished four-year plans from six-year plans. In what would become Section 8(C)(1)(b), six-year plans would remain in effect until the next year ending in numeral 1 (i.e. six-years), “except as provided by Section 9 of this article.” That language was taken directly from what would eventually become Article XI, Section 8(B), which the Senate did not amend.

To the contrary, no similar condition or restriction was included in the Senate version of HJR 12 for four-year plans enacted by a simple majority of the Commission. *See* Article XI, Section 8(C)(1)(a).

It is also important to highlight that both the House and Senate versions of HJR 12 contained identical language for what would become Section 9, including the provisions of Section 9(D)(3)(c), which limits this Court’s authority to review “a plan adopted under division (C) of Section 8 of this article. . . .” only if there is a prerequisite violation of Section 2, 3, 4, 5, or 7 of Article XI. *Compare* Article XI, Section 9(D)(3)(c) at Exhibit 1, page 10 *with* Exhibit 2, page 13.

ARGUMENT

1. Regardless of how the Court ultimately interprets Article XI, Section 8(C)(1), Relators’ Complaints must be dismissed.

Article XI, Section 8(C)(1)(b) states that a six-year plan will remain in effect until the next year ending in the numeral 1, “except as provided in Section 9 of this article.” In contrast, Section

³ The House passed version of HJR 12 did not include a “six-year map”. Instead, it contemplated the possibility of two four-year maps, and one remaining 3-year map, in a given decade.

8(C)(1)(a) states that a four-year plan will remain effective until two general elections for the house of representatives have occurred. Unlike Section 8(C)(1)(b), there is no reference in Section 8(C)(1)(a) to the provisions of Section 9. Because Section 9 is referenced as applying to six-year plans, but not four-year plans, this Court could reasonably construe Section 8(C)(1)(a) as divesting this Court of any authority to review or enjoin four-year plans.

Alternatively, Article XI, Section 9(D)(3) gives this Court the authority to “determine that a general assembly district plan adopted by the commission does not comply with the requirements of Section 2, 3, 4, 5, or 7.” Moreover, Article XI, Section 9(D)(3)(c) gives the Court the authority to review “a plan adopted under division (C) of Section 8 of this article” if the Court first finds that a general assembly district plan does not comply with the requirements of Section 2, 3, 4, 5, or 7. A four-year plan is a plan adopted by the Commission. Section 9(D)(3)(c) does not distinguish between four-year plans adopted under Section 8(C)(1)(a) versus six-year plans adopted under Section 8(C)(1)(b). Thus, one reasonable interpretation of this language would be that this Court may review four-year plans adopted pursuant to Section 8(C)(1)(a) to determine whether any such plan violates Sections 2, 3, 4, 5, or 7 of Article XI. However, since there are no allegations that the 2021 general assembly district plan violates any of those mandatory construction requirements of Sections 2, 3, 4, 5 or 7 of Article XI, the Court lacks the ability to address any remaining issues raised under Section 9(D)(3)(c) of Article XI.

Thus, Relators’ Complaints must be dismissed regardless of whether the Court finds that it has the authority to review four-year plans pursuant to Section 8(C)(1) of Article XI.

2. Standard of Review

Acts of the Commission are entitled to a presumption of constitutionality, and Plaintiffs must prove beyond a reasonable doubt that the apportionment plan is constitutional. *See Wilson v.*

Kasich, 134 Ohio St. 3d 221, 227–228, 2012-Ohio-5367, 915 N.E.2d 814, ¶ 21, 22 (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).

Under this Court’s rules of construction, the Court cannot judicially amend Article XI to either expressly add or delete a phrase from Article XI, Sections 8 or 9. See *Northeast Ohio Regional Sewer Dist. v. Bath Twp.*, 144 Ohio St.3d 387, 2015-Ohio-2705 at ¶¶ 13-14 (“[I]t is well known that our duty is to give effect to the words used, not to delete words used or to insert words not used.”) (internal quotations omitted); *Columbus-Suburban Coach Lines, Inc. v. Pub. Util. Comm.*, 20 Ohio St.2d 125, 127, 254 N.E.2d 8 (1969) (it is the Court’s duty to “give effect to the words used, not to delete words or to insert words not used”); see also *State ex rel. Carmean v. Hardin Cnty. Bd. of Edn.*, 170 Ohio St. 415, 522, 165 N.E.2d 918 (1960). (“It is axiomatic in statutory construction that words are not inserted into an act without some purpose”); see also *Metro Sec. Co. v. Warren State Bank*, 117 Ohio St. 69, 76, 158 N.E. 81, 83 (1927) (having used certain language in the one instance and wholly different language in the other, it will be presumed that different results were intended).

In addressing the question raised by this Court’s order of December 13, 2021, the Court should read all of the sections of Article XI “*in pari materia*.” *Wilson*, 134 Ohio St. 3d 221, 228, 2012-Ohio-5367, 915 N.E.2d 814, ¶ 32. If there is an irreconcilable conflict, “the special provision prevails over the general provision, unless the general provision was adopted later and the manifest intent is that the general provision prevail.” *Id.* (internal citations omitted). But where the sections are “coequal—that is, if neither is more specific or adopted at the same time—then the apportionment board is empowered to apply either of them.” *Id.* at ¶ 33 (citation omitted). Where “coequal portions of Article XI . . . are irreconcilable, the apportionment board has the duty to

choose the proper course, and this court will not order it to correct one constitutional violation by committing another.” *Id.* (citation omitted).

While *Wilson* applies to the discretion of the apportionment board, or in this case the newly constituted Ohio Redistricting Commission, *Wilson*'s principles of judicial review are applicable to this Court's authority to interpret Sections 8 and 9 of Article XI. It would be reasonable for the Court to conclude that four-year plans are not subject to judicial review, given the omission of any reference to Section 9 in Section 8(C)(1)(a) as compared to the specific inclusion of a reference to Section 9 found in Sections 8(B) and 8(C)(1)(b). This interpretation is supported by the Senate's decision to amend HJR 12 in a manner that only made six-year plans—and not four-year plans—subject to Section 9. This interpretation is also supported by the overall carrot and stick approach the drafters carefully constructed in Article XI. The majority party has the incentive to negotiate successfully for a ten-year plan to avoid the draconian possibility that a four-year plan must be changed after it expires by a newly constituted version of the Redistricting Commission. Any newly constituted commission could reflect a completely different political balance thereby giving the party in the minority when the four-year plan was adopted the opportunity to become the majority party when a six-year plan must be adopted. On the other side, if four-year plans are not subject to judicial review, then the minority party would be equally incentivized to negotiate its position.

That very dynamic played out during the negotiations between Commission Members Huffman and Cupp with Commission members Senator Vernon Sykes and Representative Emilia Sykes. At the end of the day, Senator Huffman and Speaker Cupp gave up more Republican leaning districts than the number of Democrat leaning districts Senator Sykes and Representative Sykes were willing to give. As the facts show, Senator Sykes and Representative Sykes simply stopped

responding to requests for negotiation, and stood on their last offer, unwilling to budge from their interpretation of strict proportionality. *See* Merit Brief of Respondents Huffman and Cupp at 9-11; DEP00890-00891.

As suggested above, the Court could also conclude that Section 8(C)(1)(a) does not deprive it of authority because Section 9(D)(3) gives the Court authority to determine whether “a general assembly plan adopted by the commission does not comply with the requirements of Sections 2, 3, 4, 5, or 7.” Since the 2021 general assembly district plan is “a general assembly plan adopted by the commission”, Section 9(D)(3) could be interpreted as giving the Court authority to provide relief in this case despite the omission of any reference to Section 9 in Section 8(C)(1)(a). This interpretation is supported by the language of Section 9(D)(3)(c) which proscribes the Court’s authority when reviewing a “plan adopted under division (C) of Section 8 of this article. ...” Section 9(D)(3)(c) does not limit its scope to only plans adopted pursuant to 8(C)(1)(b). However, before the Court could possibly contemplate providing relief to Relators challenging a plan adopted under Section 8(C), the Court must first find that the challenged plan violates Section 2, 3, 4, 5, or 7. *See* Article XI, Sections 9(D)(3) and Section 9(D)(3)(c).

Accordingly, regardless of how the Court interprets Section 8(C)(1), the Relators’ claims in this action must be dismissed. The omission of a reference to Section 9 in Section 8(C)(1)(a) by the General Assembly when adopting HJR 12 reasonably supports a conclusion by this Court that it has no authority to review or enjoin a four-year plan. But if the Court interprets Section 9(D)(3)(c) as giving it the authority to review or enjoin a four-year plan, the Court cannot enjoin a plan unless that plan violates Sections 2, 3, 4, 5 or 7 of Article XI. In this case, there is no allegation or evidence that the 2021 general assembly district plan violated any of those mandatory

anti-gerrymandering requirements. Thus, even if the Court believes it has the authority to review a four-year plan, these claims must be dismissed.

Respectfully submitted this the 17th day of December, 2021.

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Exhibit 1

RETRIEVED FROM DEMOCRACYDOCKET.COM

As Adopted by the House

130th General Assembly

Regular Session

2013-2014

Sub. H. J. R. No. 12

Representatives Huffman, Sykes

**Cosponsors: Representatives Amstutz, Anielski, Ashford, Baker, Brown,
Burkley, Clyde, Duffey, Grossman, Hackett, Hagan, C., Hayes, Kunze, Letson,
McClain, McGregor, Patmon, Scherer, Schuring, Stebelton, Wachtmann,
Speaker Batchelder**

JOINT RESOLUTION

Proposing to enact new Sections 1, 2, 3, 4, 5, 6, 7, 1
8, 9, 10, and 11 of Article XI and to repeal 2
Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 3
13, 14, and 15 of Article XI of the Constitution 4
of the State of Ohio to revise the redistricting 5
process for General Assembly districts. 6

Be it resolved by the General Assembly of the State of Ohio, 7
three-fifths of the members elected to each house concurring 8
herein, that there shall be submitted to the electors of the 9
state, in the manner prescribed by law at the general election to 10
be held on November 3, 2015, a proposal to enact new Sections 1, 11
2, 3, 4, 5, 6, 7, 8, 9, 10, and 11 of Article XI of the 12
Constitution of the State of Ohio to read as follows: 13

ARTICLE XI 14

Section 1. (A) The Ohio redistricting commission shall be 15
responsible for the redistricting of this state for the general 16
assembly. The commission shall consist of the following seven 17
members: 18

<u>(1) The governor;</u>	19
<u>(2) The auditor of state;</u>	20
<u>(3) The secretary of state;</u>	21
<u>(4) One person appointed by the speaker of the house of representatives;</u>	22 23
<u>(5) One person appointed by the legislative leader of the largest political party in the house of representatives of which the speaker of the house of representatives is not a member;</u>	24 25 26
<u>(6) One person appointed by the president of the senate; and</u>	27
<u>(7) One person appointed by the legislative leader of the largest political party in the senate of which the president of the senate is not a member.</u>	28 29 30
<u>The legislative leaders in the senate and the house of representatives of each of the two largest political parties represented in the general assembly, acting jointly by political party, shall appoint a member of the commission to serve as a co-chairperson of the commission.</u>	31 32 33 34 35
<u>No appointed member of the commission shall be a current member of congress.</u>	36 37
<u>(B) (1) Unless otherwise specified in this article, a simple majority of the commission members shall be required for any action by the commission.</u>	38 39 40
<u>(2) A majority vote of the members of the commission, including at least one member of the commission who is a member of each of the two largest political parties represented in the general assembly, shall be required to do any of the following:</u>	41 42 43 44
<u>(a) Adopt rules of the commission;</u>	45
<u>(b) Hire staff for the commission;</u>	46
<u>(c) Expend funds.</u>	47

(3) The affirmative vote of four members of the commission, including at least two members of the commission who represent each of the two largest political parties represented in the general assembly shall be required to adopt any plan. For the purpose of this division, a member of the commission shall be considered to represent a political party if the member was appointed to the commission by a member of that political party or if, in the case of the governor, the auditor of state, or the secretary of state, the member is a member of that political party.

(C) At the first meeting of the commission, which the governor shall convene only in a year ending in the numeral one, except as provided in Sections 9 and 10 of this article, the members shall set a schedule for the adoption of procedural rules for the operation of the commission.

The commission shall release to the public a proposed plan for the boundaries for each of the ninety-nine house of representatives districts and the thirty-three senate districts. The commission shall draft the proposed plan in the manner prescribed in this article. Before adopting, but after introducing, a general assembly district plan, the commission shall conduct a minimum of three public hearings across the state to present the plan and shall seek public input regarding the proposed plan. All meetings of the commission shall be open to the public. Meetings shall be broadcast by electronic means of transmission using a medium readily accessible by the general public.

The commission shall adopt final plans not later than the first day of September of a year ending in the numeral one. After the commission adopts a plan, the commission shall file the plan with the secretary of state. Upon filing with the secretary of state, the plan shall become effective.

Not more than six weeks after the adoption of a general assembly plan, the co-chairpersons of the commission shall jointly dissolve the commission. 80
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(D) The general assembly shall be responsible for making the appropriations it determines necessary in order for the commission to perform its duties under this article. 83
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Section 2. Each house of representatives district shall be entitled to a single representative in each general assembly. Each senate district shall be entitled to a single senator in each general assembly. 86
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Section 3. (A) The whole population of the state, as determined by the federal decennial census or if such is unavailable, such other basis as the general assembly may direct, shall be divided by the number "ninety-nine" and by the number "thirty-three" and the quotients shall be the ratio of representation in the house of representatives and in the senate, respectively, for ten years next succeeding such redistricting. 90
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(B) The population of each house of representatives district shall be substantially equal to the ratio of representation in the house of representatives, and the population of each senate district shall be substantially equal to the ratio of representation in the senate, as provided in division (A) of this section. In no event shall any district contain a population of less than ninety-five per cent nor more than one hundred five per cent of the applicable ratio of representation. 97
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Section 4. (A) (1) Any plan adopted by the commission shall comply with all applicable provisions of the constitutions of Ohio and the United States and of federal law, including, but not limited to, those provisions dealing specifically with the protection of minority voting rights. 106
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(2) Every general assembly district shall be compact and 111

composed of contiguous territory, and the boundary of each 112
district shall be a single nonintersecting continuous line. 113

(B) (1) House of representatives districts shall be created 114
and numbered in the following order of priority, to the extent 115
that such order is consistent with the foregoing standards: 116

(a) Proceeding in succession from the largest to the 117
smallest, each county containing population greater than one 118
hundred five per cent of the ratio of representation in the house 119
of representatives, as provided in Section 3 of this article, 120
shall be divided into as many house of representatives districts 121
as it has whole ratios of representation. Any fraction of the 122
population in excess of a whole ratio shall be a part of only one 123
adjoining house of representatives district. 124

(b) Each county containing population substantially equal to 125
one ratio of representation in the house of representatives, as 126
provided in Section 3 of this article, but in no event less than 127
ninety-five per cent of the ratio nor more than one hundred five 128
per cent of the ratio, shall be designated a representative 129
district. 130

(c) Representative districts shall be drawn so as to split 131
the smallest possible number of municipal corporations and 132
townships whose contiguous portions contain a population of more 133
than fifty per cent, but less than one hundred per cent, of one 134
ratio of representation. 135

(d) The remaining territory of the state shall be divided 136
into representative districts by combining the areas of whole 137
municipal corporations and townships. 138

(e) Where the requirements of division (B) (1) of this section 139
and Section 3 of this article cannot feasibly be attained by 140
forming a representative district from whole municipal 141
corporations and townships, not more than one municipal 142

corporation or township may be split per representative district. 143

(2) If the commission must violate a standard listed in 144
division (B) (1) of this section in order to draw a house of 145
representatives district map, the commission shall violate the 146
standard having the lowest possible priority, as listed in that 147
division. If the commission violates a standard listed in that 148
division, the commission shall include in the district plan a 149
statement explaining which standard was violated and the reason 150
the standard was violated. 151

(C) (1) Except as otherwise provided in division (C) (2) of 152
this section, a county, municipal corporation, or township is 153
considered to be split if any contiguous portion of its territory 154
is not contained entirely within one district. 155

(2) Dividing, along a county line, a municipal corporation or 156
township that has territory in more than one county shall not be 157
considered splitting the municipal corporation or township. 158

Section 5. The Ohio redistricting commission shall attempt to 159
draw a general assembly district plan that meets both of the 160
following standards: 161

(A) No district plan shall be drawn primarily to favor or 162
disfavor a political party. 163

(B) The statewide proportion of districts whose voters, based 164
on recent statewide state and federal election results, favor each 165
political party shall correspond closely to the statewide 166
preferences of the voters of Ohio. 167

Section 6. Senate districts shall be composed of three 168
contiguous house of representatives districts. A county having at 169
least one whole senate ratio of representation shall have as many 170
senate districts wholly within the boundaries of the county as it 171
has whole senate ratios of representation. Any fraction of the 172
population in excess of a whole ratio shall be a part of only one 173

adjoining senate district. Counties having less than one senate ratio of representation, but at least one house of representatives ratio of representation shall be part of only one senate district. 174
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The number of whole ratios of representation for a county shall be determined by dividing the population of the county by the ratio of representation in the senate determined under Section 3 of this article. 177
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Senate districts shall be numbered from one through thirty-three and as provided in Section 8 of this article. 181
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Section 7. Notwithstanding the fact that boundaries of counties, municipal corporations, and townships within a district may be changed, district boundaries shall be created by using the boundaries of counties, municipal corporations, and townships as they exist at the time of the federal decennial census on which the redistricting is based, or, if unavailable, on such other basis as the general assembly has directed. 183
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Section 8. At any time the boundaries of senate districts are changed in any plan of redistricting made pursuant to any provision of this article, a senator whose term will not expire within two years of the time the plan of redistricting is made shall represent, for the remainder of the term for which the senator was elected, the senate district which contains the largest portion of the population of the district from which the senator was elected, and the district shall be given the number of the district from which the senator was elected. If more than one senator whose term will not so expire would represent the same district by following the provisions of this section, the district plan shall designate which senator shall represent the district and shall designate which district the other senator or senators shall represent for the balance of their term or terms. 190
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Section 9. (A) (1) If the Ohio redistricting commission fails 204

to adopt a final general assembly district plan not later than the 205
first day of September of a year ending in the numeral one, in 206
accordance with Section 1 of this article, the commission shall 207
introduce a general assembly district plan by a simple majority 208
vote of the commission. 209

(2) After introducing a general assembly district plan under 210
division (A)(1) of this section, the commission shall hold a 211
public hearing concerning the introduced plan, at which the public 212
may offer testimony and at which the commission may adopt 213
amendments to the introduced plan. All members of the commission 214
shall be required to attend the hearing. A quorum of the members 215
of the commission is required to conduct the hearing. 216

(3) After the hearing described in division (A)(2) of this 217
section is held, and not later than the fifteenth day of September 218
of a year ending in the numeral one, the commission shall adopt a 219
final general assembly district plan, either by the vote required 220
to adopt a plan under division (A) of Section 1 of this article or 221
by a simple majority vote of the commission. 222

(B) If the commission adopts a final general assembly 223
district plan in accordance with division (A)(3) of this section 224
by the vote required to adopt a plan under division (B) of Section 225
1 of this article, the plan shall take effect upon filing with the 226
secretary of state and shall remain effective until the next year 227
ending in the numeral one, except as provided in Section 10 of 228
this article. 229

(C)(1) If the commission adopts a final general assembly 230
district plan in accordance with division (A)(3) of this section 231
by a simple majority vote of the commission, the plan shall take 232
effect upon filing with the secretary of state and shall remain 233
effective until two general elections for the house of 234
representatives have occurred under the plan or until a year 235
ending in the numeral one, whichever is earlier. 236

(2) A final general assembly district plan adopted in 237
accordance with division (A) (3) of this section by a simple 238
majority vote of the commission shall include a statement 239
explaining what the commission determined to be the statewide 240
preferences of the voters of Ohio and the manner in which the 241
statewide proportion of districts in the plan whose voters, based 242
on recent election results, favor each political party corresponds 243
closely to those preferences, as described in division (B) of 244
Section 5 of this article. At the time the plan is adopted, a 245
member of the commission who does not vote in favor of the plan 246
may submit a declaration of the member's opinion concerning the 247
statement included with the plan. 248

(D) After a plan adopted under division (C) of this section 249
ceases to be effective, and not earlier than the first day of July 250
of the year following the year in which the plan ceased to be 251
effective, the commission shall be reconstituted as provided in 252
Section 1 of this article, convene, and adopt a new general 253
assembly district plan in accordance with this article, to be used 254
until the next time for redistricting under this article. The 255
commission shall draw the new plan using the same population and 256
county, municipal corporation, and township boundary data as were 257
used to draw the plan adopted under division (C) of this section. 258

Section 10. (A) The supreme court of Ohio shall have 259
exclusive, original jurisdiction in all cases arising under this 260
article. 261

(B) In the event that any section of this constitution 262
relating to redistricting or any plan of redistricting made by the 263
Ohio redistricting commission is determined to be invalid by an 264
unappealed final order of a court of competent jurisdiction then, 265
notwithstanding any other provisions of this constitution, the 266
commission shall be reconstituted as provided in Section 1 of this 267
article, convene, and ascertain and determine a plan of 268

redistricting in conformity with such provisions of this 269
constitution as are then valid, including establishing terms of 270
office and election of members of the general assembly from 271
districts designated in the plan, to be used until the next 272
regular redistricting in conformity with such provisions of this 273
constitution as are then valid. 274

(C) Notwithstanding any provision of this constitution or any 275
law regarding the residence of senators and representatives, a 276
plan of redistricting made pursuant to this section shall allow 277
thirty days for persons to change residence in order to be 278
eligible for election. 279

(D) (1) No court shall order, in any circumstance, the 280
implementation or enforcement of any plan that has not been 281
approved by the commission in the manner prescribed by this 282
article. 283

(2) If the supreme court of Ohio determines that a general 284
assembly district plan adopted by the commission does not comply 285
with the standards set forth in this article, the available 286
remedies shall be as follows: 287

(a) If the court finds that the district plan violates the 288
requirements of Section 2, 3, 6, 7, or 8 or division (A) (2), (B), 289
or (C) of Section 4 of this article, the court shall order the 290
commission to correct the violation. 291

(b) If, in considering a district plan adopted under division 292
(C) of Section 9 of this article, the court determines that both 293
of the following are true, the court shall order the commission to 294
adopt a new general assembly district plan in accordance with this 295
article: 296

(i) The plan significantly violates the requirements of 297
Section 2, 3, 6, 7, or 8 or division (A) (2), (B) (1) (a), (B) (1) (b), 298
(B) (1) (c), (B) (1) (e), (B) (2), or (C) of Section 4 of this article 299

in a manner that materially affects the ability of the plan to 300
contain districts whose voters favor political parties in an 301
overall proportion that corresponds closely to the statewide 302
political party preferences of the voters of Ohio, as described in 303
division (B) of Section 5 of this article. 304

(ii) The statewide proportion of districts in the plan whose 305
voters, based on recent statewide state and federal election 306
results, favor each political party does not correspond closely to 307
the statewide preferences of the voters of Ohio. 308

Section 11. The various provisions of this article are 309
intended to be severable, and the invalidity of one or more of 310
such provisions shall not affect the validity of the remaining 311
provisions. 312

EFFECTIVE DATE AND REPEAL 313

If adopted by a majority of the electors voting on this 314
proposal, new Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11 of 315
Article XI take effect January 1, 2021, and Sections 1, 2, 3, 4, 316
5, 6, 7, 8, 9, 10, 11, 12, 13, 14, and 15 of Article XI of the 317
Constitution of the State of Ohio are repealed from that effective 318
date. 319

Exhibit 2

RETRIEVED FROM DEMOCRACYDOCKET.COM

As Adopted by the Senate

130th General Assembly

Regular Session

2013-2014

Am. Sub. H. J. R. No. 12

Representatives Huffman, Sykes

Cosponsors: Representatives Amstutz, Anielski, Ashford, Baker, Brown, Burkley, Clyde, Duffey, Grossman, Hackett, Hagan, C., Hayes, Kunze, Letson, McClain, McGregor, Patmon, Scherer, Schuring, Stebelton, Wachtmann, Speaker Batchelder Senators Faber, Coley, Bacon, Balderson, Beagle, Burke, Eklund, Gardner, Gentile, Hite, LaRose, Lehner, Peterson, Sawyer, Schiavoni, Turner, Widener

JOINT RESOLUTION

Proposing to enact new Sections 1, 2, 3, 4, 5, 6, 7, 1
8, 9, and 10 of Article XI and to repeal Sections 2
1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, and 3
15 of Article XI of the Constitution of the State 4
of Ohio to revise the redistricting process for 5
General Assembly districts. 6

Be it resolved by the General Assembly of the State of Ohio, 7
three-fifths of the members elected to each house concurring 8
herein, that there shall be submitted to the electors of the 9
state, in the manner prescribed by law at the general election to 10
be held on November 3, 2015, a proposal to enact new Sections 1, 11
2, 3, 4, 5, 6, 7, 8, 9, and 10 of Article XI of the Constitution 12
of the State of Ohio to read as follows: 13

ARTICLE XI 14

Section 1. (A) The Ohio redistricting commission shall be 15
responsible for the redistricting of this state for the general 16

assembly. The commission shall consist of the following seven 17
members: 18

(1) The governor; 19

(2) The auditor of state; 20

(3) The secretary of state; 21

(4) One person appointed by the speaker of the house of 22
representatives; 23

(5) One person appointed by the legislative leader of the 24
largest political party in the house of representatives of which 25
the speaker of the house of representatives is not a member; 26

(6) One person appointed by the president of the senate; and 27

(7) One person appointed by the legislative leader of the 28
largest political party in the senate of which the president of 29
the senate is not a member. 30

The legislative leaders in the senate and the house of 31
representatives of each of the two largest political parties 32
represented in the general assembly, acting jointly by political 33
party, shall appoint a member of the commission to serve as a 34
co-chairperson of the commission. 35

(B) (1) Unless otherwise specified in this article, a simple 36
majority of the commission members shall be required for any 37
action by the commission. 38

(2) (a) Except as otherwise provided in division (B) (2) (b) of 39
this section, a majority vote of the members of the commission, 40
including at least one member of the commission who is a member of 41
each of the two largest political parties represented in the 42
general assembly, shall be required to do any of the following: 43

(i) Adopt rules of the commission; 44

(ii) Hire staff for the commission; 45

(iii) Expend funds. 46

(b) If the commission is unable to agree, by the vote 47
required under division (B) (2) (a) of this section, on the manner 48
in which funds should be expended, each co-chairperson of the 49
commission shall have the authority to expend one-half of the 50
funds that have been appropriated to the commission. 51

(3) The affirmative vote of four members of the commission, 52
including at least two members of the commission who represent 53
each of the two largest political parties represented in the 54
general assembly shall be required to adopt any general assembly 55
district plan. For the purpose of this division, a member of the 56
commission shall be considered to represent a political party if 57
the member was appointed to the commission by a member of that 58
political party or if, in the case of the governor, the auditor of 59
state, or the secretary of state, the member is a member of that 60
political party. 61

(C) At the first meeting of the commission, which the 62
governor shall convene only in a year ending in the numeral one, 63
except as provided in Sections 8 and 9 of this article, the 64
commission shall set a schedule for the adoption of procedural 65
rules for the operation of the commission. 66

The commission shall release to the public a proposed general 67
assembly district plan for the boundaries for each of the 68
ninety-nine house of representatives districts and the 69
thirty-three senate districts. The commission shall draft the 70
proposed plan in the manner prescribed in this article. Before 71
adopting, but after introducing, a proposed plan, the commission 72
shall conduct a minimum of three public hearings across the state 73
to present the proposed plan and shall seek public input regarding 74
the proposed plan. All meetings of the commission shall be open to 75
the public. Meetings shall be broadcast by electronic means of 76
transmission using a medium readily accessible by the general 77

public. 78

The commission shall adopt a final general assembly district 79
plan not later than the first day of September of a year ending in 80
the numeral one. After the commission adopts a final plan, the 81
commission shall promptly file the plan with the secretary of 82
state. Upon filing with the secretary of state, the plan shall 83
become effective. 84

Four weeks after the adoption of a general assembly district 85
plan, the commission shall be automatically dissolved. 86

(D) The general assembly shall be responsible for making the 87
appropriations it determines necessary in order for the commission 88
to perform its duties under this article. 89

Section 2. Each house of representatives district shall be 90
entitled to a single representative in each general assembly. Each 91
senate district shall be entitled to a single senator in each 92
general assembly. 93

Section 3. (A) The whole population of the state, as 94
determined by the federal decennial census or, if such is 95
unavailable, such other basis as the general assembly may direct, 96
shall be divided by the number "ninety-nine" and by the number 97
"thirty-three" and the quotients shall be the ratio of 98
representation in the house of representatives and in the senate, 99
respectively, for ten years next succeeding such redistricting. 100

(B) A general assembly district plan shall comply with all of 101
the requirements of division (B) of this section. 102

(1) The population of each house of representatives district 103
shall be substantially equal to the ratio of representation in the 104
house of representatives, and the population of each senate 105
district shall be substantially equal to the ratio of 106
representation in the senate, as provided in division (A) of this 107
section. In no event shall any district contain a population of 108

less than ninety-five per cent nor more than one hundred five per cent of the applicable ratio of representation. 109
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(2) Any general assembly district plan adopted by the commission shall comply with all applicable provisions of the constitutions of Ohio and the United States and of federal law. 111
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(3) Every general assembly district shall be composed of contiguous territory, and the boundary of each district shall be a single nonintersecting continuous line. 114
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(C) House of representatives districts shall be created and numbered in the following order of priority, to the extent that such order is consistent with the foregoing standards: 117
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(1) Proceeding in succession from the largest to the smallest, each county containing population greater than one hundred five per cent of the ratio of representation in the house of representatives shall be divided into as many house of representatives districts as it has whole ratios of representation. Any fraction of the population in excess of a whole ratio shall be a part of only one adjoining house of representatives district. 120
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(2) Each county containing population of not less than ninety-five per cent of the ratio of representation in the house of representatives nor more than one hundred five per cent of the ratio shall be designated a representative district. 128
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(3) The remaining territory of the state shall be divided into representative districts by combining the areas of counties, municipal corporations, and townships. Where feasible, no county shall be split more than once. 132
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(D) (1) (a) Except as otherwise provided in divisions (D) (1) (b) and (c) of this section, a county, municipal corporation, or township is considered to be split if any contiguous portion of its territory is not contained entirely within one district. 136
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(b) If a municipal corporation or township has territory in more than one county, the contiguous portion of that municipal corporation or township that lies in each county shall be considered to be a separate municipal corporation or township for the purposes of this section.

(c) If a municipal corporation or township that is located in a county that contains a municipal corporation or township that has a population of more than one ratio of representation is split for the purpose of complying with division (E) (1) (a) or (b) of this section, each portion of that municipal corporation or township shall be considered to be a separate municipal corporation or township for the purposes of this section.

(2) Representative districts shall be drawn so as to split the smallest possible number of municipal corporations and townships whose contiguous portions contain a population of more than fifty per cent, but less than one hundred per cent, of one ratio of representation.

(3) Where the requirements of divisions (B), (C), and (D) of this section cannot feasibly be attained by forming a representative district from whole municipal corporations and townships, not more than one municipal corporation or township may be split per representative district.

(E) (1) If it is not possible for the commission to comply with all of the requirements of divisions (B), (C), and (D) of this section in drawing a particular representative district, the commission shall take the first action listed below that makes it possible for the commission to draw that district:

(a) Notwithstanding division (D) (3) of this section, the commission shall create the district by splitting two municipal corporations or townships whose contiguous portions do not contain a population of more than fifty per cent, but less than one

hundred per cent, of one ratio of representation. 171

(b) Notwithstanding division (D) (2) of this section, the 172
commission shall create the district by splitting a municipal 173
corporation or township whose contiguous portions contain a 174
population of more than fifty per cent, but less than one hundred 175
per cent, of one ratio of representation. 176

(c) Notwithstanding division (C) (2) of this section, the 177
commission shall create the district by splitting, once, a single 178
county that contains a population of not less than ninety-five per 179
cent of the ratio of representation, but not more than one hundred 180
five per cent of the ratio of representation. 181

(d) Notwithstanding division (C) (1) of this section, the 182
commission shall create the district by including in two districts 183
portions of the territory that remains after a county that 184
contains a population of more than one hundred five per cent of 185
the ratio of representation has been divided into as many house of 186
representatives districts as it has whole ratios of 187
representation. 188

(2) If the commission takes an action under division (E) (1) 189
of this section, the commission shall include in the general 190
assembly district plan a statement explaining which action the 191
commission took under that division and the reason the commission 192
took that action. 193

(3) If the commission complies with divisions (E) (1) and (2) 194
of this section in drawing a district, the commission shall not be 195
considered to have violated division (C) (1), (C) (2), (D) (2), or 196
(D) (3) of this section, as applicable, in drawing that district, 197
for the purpose of an analysis under division (D) of Section 9 of 198
this article. 199

Section 4. (A) Senate districts shall be composed of three 200
contiguous house of representatives districts. 201

(B) (1) A county having at least one whole senate ratio of representation shall have as many senate districts wholly within the boundaries of the county as it has whole senate ratios of representation. Any fraction of the population in excess of a whole ratio shall be a part of only one adjoining senate district.

(2) Counties having less than one senate ratio of representation, but at least one house of representatives ratio of representation, shall be part of only one senate district.

(3) If it is not possible for the commission to draw representative districts that comply with all of the requirements of this article and that make it possible for the commission to comply with all of the requirements of divisions (B) (1) and (2) of this section, the commission shall draw senate districts so as to commit the fewest possible violations of those divisions. If the commission complies with this division in drawing senate districts, the commission shall not be considered to have violated division (B) (1) or (2) of this section, as applicable, in drawing those districts, for the purpose of an analysis under division (D) of Section 9 of this article.

(C) The number of whole ratios of representation for a county shall be determined by dividing the population of the county by the ratio of representation in the senate determined under division (A) of Section 3 of this article.

(D) Senate districts shall be numbered from one through thirty-three and as provided in Section 5 of this article.

Section 5. At any time the boundaries of senate districts are changed in any general assembly district plan made pursuant to any provision of this article, a senator whose term will not expire within two years of the time the plan becomes effective shall represent, for the remainder of the term for which the senator was elected, the senate district that contains the largest portion of

the population of the district from which the senator was elected, 233
and the district shall be given the number of the district from 234
which the senator was elected. If more than one senator whose term 235
will not so expire would represent the same district by following 236
the provisions of this section, the plan shall designate which 237
senator shall represent the district and shall designate which 238
district the other senator or senators shall represent for the 239
balance of their term or terms. 240

Section 6. The Ohio redistricting commission shall attempt to 241
draw a general assembly district plan that meets all of the 242
following standards: 243

(A) No general assembly district plan shall be drawn 244
primarily to favor or disfavor a political party. 245

(B) The statewide proportion of districts whose voters, based 246
on statewide state and federal partisan general election results 247
during the last ten years, favor each political party shall 248
correspond closely to the statewide preferences of the voters of 249
Ohio. 250

(C) General assembly districts shall be compact. 251

Nothing in this section permits the commission to violate the 252
district standards described in Section 2, 3, 4, 5, or 7 of this 253
article. 254

Section 7. Notwithstanding the fact that boundaries of 255
counties, municipal corporations, and townships within a district 256
may be changed, district boundaries shall be created by using the 257
boundaries of counties, municipal corporations, and townships as 258
they exist at the time of the federal decennial census on which 259
the redistricting is based, or, if unavailable, on such other 260
basis as the general assembly has directed. 261

Section 8. (A)(1) If the Ohio redistricting commission fails 262
to adopt a final general assembly district plan not later than the 263

first day of September of a year ending in the numeral one, in 264
accordance with Section 1 of this article, the commission shall 265
introduce a proposed general assembly district plan by a simple 266
majority vote of the commission. 267

(2) After introducing a proposed general assembly district 268
plan under division (A)(1) of this section, the commission shall 269
hold a public hearing concerning the proposed plan, at which the 270
public may offer testimony and at which the commission may adopt 271
amendments to the proposed plan. Members of the commission should 272
attend the hearing; however, only a quorum of the members of the 273
commission is required to conduct the hearing. 274

(3) After the hearing described in division (A)(2) of this 275
section is held, and not later than the fifteenth day of September 276
of a year ending in the numeral one, the commission shall adopt a 277
final general assembly district plan, either by the vote required 278
to adopt a plan under division (B)(3) of Section 1 of this article 279
or by a simple majority vote of the commission. 280

(B) If the commission adopts a final general assembly 281
district plan in accordance with division (A)(3) of this section 282
by the vote required to adopt a plan under division (B)(3) of 283
Section 1 of this article, the plan shall take effect upon filing 284
with the secretary of state and shall remain effective until the 285
next year ending in the numeral one, except as provided in Section 286
9 of this article. 287

(C)(1)(a) Except as otherwise provided in division (C)(1)(b) 288
of this section, if the commission adopts a final general assembly 289
district plan in accordance with division (A)(3) of this section 290
by a simple majority vote of the commission, and not by the vote 291
required to adopt a plan under division (B)(3) of Section 1 of 292
this article, the plan shall take effect upon filing with the 293
secretary of state and shall remain effective until two general 294
elections for the house of representatives have occurred under the 295

plan. 296

(b) If the commission adopts a final general assembly district plan in accordance with division (A) (3) of this section by a simple majority vote of the commission, and not by the vote required to adopt a plan under division (B) of Section 1 of this article, and that plan is adopted to replace a plan that ceased to be effective under division (C) (1) (a) of this section before a year ending in the numeral one, the plan adopted under this division shall take effect upon filing with the secretary of state and shall remain effective until a year ending in the numeral one, except as provided in Section 9 of this article. 297
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(2) A final general assembly district 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 the statewide proportion of districts in the plan whose voters, based on statewide state and federal partisan general election results during the last ten years, favor each political party corresponds closely to those preferences, as described in division (B) of Section 6 of this article. At the time the plan is adopted, a member of the commission who does not vote in favor of the plan may submit a declaration of the member's opinion concerning the statement included with the plan. 307
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(D) After a general assembly district plan adopted under division (C) (1) (a) of this section ceases to be effective, and not earlier than the first day of July of the year following the year in which the plan ceased to be effective, the commission shall be reconstituted as provided in Section 1 of this article, convene, and adopt a new general assembly district plan in accordance with this article, to be used until the next time for redistricting under this article. The commission shall draw the new general assembly district plan using the same population and county. 319
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municipal corporation, and township boundary data as were used to 328
draw the previous plan adopted under division (C) of this section. 329

Section 9. (A) The supreme court of Ohio shall have 330
exclusive, original jurisdiction in all cases arising under this 331
article. 332

(B) In the event that any section of this constitution 333
relating to redistricting, any general assembly district plan made 334
by the Ohio redistricting commission, or any district is 335
determined to be invalid by an unappealed final order of a court 336
of competent jurisdiction then, notwithstanding any other 337
provisions of this constitution, the commission shall be 338
reconstituted as provided in Section 1 of this article, convene, 339
and ascertain and determine a general assembly district plan in 340
conformity with such provisions of this constitution as are then 341
valid, including establishing terms of office and election of 342
members of the general assembly from districts designated in the 343
plan, to be used until the next time for redistricting under this 344
article in conformity with such provisions of this constitution as 345
are then valid. 346

(C) Notwithstanding any provision of this constitution or any 347
law regarding the residence of senators and representatives, a 348
general assembly district plan made pursuant to this section shall 349
allow thirty days for persons to change residence in order to be 350
eligible for election. 351

(D) (1) No court shall order, in any circumstance, the 352
implementation or enforcement of any general assembly district 353
plan that has not been approved by the commission in the manner 354
prescribed by this article. 355

(2) No court shall order the commission to adopt a particular 356
general assembly district plan or to draw a particular district. 357

(3) If the supreme court of Ohio determines that a general 358

assembly district plan adopted by the commission does not comply 359
with the requirements of Section 2, 3, 4, 5, or 7 of this article, 360
the available remedies shall be as follows: 361

(a) If the court finds that the plan contains one or more 362
isolated violations of those requirements, the court shall order 363
the commission to amend the plan to correct the violation. 364

(b) If the court finds that it is necessary to amend not 365
fewer than six house of representatives districts to correct 366
violations of those requirements, to amend not fewer than two 367
senate districts to correct violations of those requirements, or 368
both, the court shall declare the plan invalid and shall order the 369
commission to adopt a new general assembly district plan in 370
accordance with this article. 371

(c) If, in considering a plan adopted under division (C) of 372
Section 8 of this article, the court determines that both of the 373
following are true, the court shall order the commission to adopt 374
a new general assembly district plan in accordance with this 375
article: 376

(i) The plan significantly violates those requirements in a 377
manner that materially affects the ability of the plan to contain 378
districts whose voters favor political parties in an overall 379
proportion that corresponds closely to the statewide political 380
party preferences of the voters of Ohio, as described in division 381
(B) of Section 6 of this article. 382

(ii) The statewide proportion of districts in the plan whose 383
voters, based on statewide state and federal partisan general 384
election results during the last ten years, favor each political 385
party does not correspond closely to the statewide preferences of 386
the voters of Ohio. 387

Section 10. The various provisions of this article are 388
intended to be severable, and the invalidity of one or more of 389

such provisions shall not affect the validity of the remaining 390
provisions. 391

EFFECTIVE DATE AND REPEAL 392

If adopted by a majority of the electors voting on this 393
proposal, new Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10 of 394
Article XI take effect January 1, 2021, and Sections 1, 2, 3, 4, 395
5, 6, 7, 8, 9, 10, 11, 12, 13, 14, and 15 of Article XI of the 396
Constitution of the State of Ohio are repealed from that effective 397
date. 398

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