

IN THE SUPREME COURT OF OHIO

Bria Bennett, et al.,

Petitioners,

v.

Ohio Redistricting Commission, et al.,

Respondents.

Case No. 2021-1198

Original Action Filed Pursuant to Ohio
Constitution, Article XI, Section 9(A)

*[Apportionment Case Pursuant to S.
Ct. Prac. R. 14.03]*

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I. Introduction

This Court gave the Ohio Redistricting Commission (the “Commission”) a clear set of instructions for how to draw a General Assembly Plan that complies with Article XI. The Commission did not follow them. The Commission has again passed a plan (the “Remedial Plan” or “Plan”), drawn by Republican caucus staff out of public view, on a party-line basis, that violates the Ohio Constitution in several ways. The Bennett Petitioners are compelled to object.

First, the Remedial Plan violates the line-drawing requirements of Article XI, Section 3. Specifically, the Plan splits multiple political subdivisions in violation of Section 3(D)(3).

Second, the Remedial Plan violates Article XI, Section 6. This Court held that, under Section 6(B), the Commission must achieve proportionality if it is possible to do so in compliance with other constitutional requirements. Proportionality means an 18/15 Republican/Democratic seat breakdown in the Senate and a 54/45 Republican/Democratic seat breakdown in the House. In contrast, the Remedial Plan’s Senate map creates 20 Republican-leaning seats and just 13 Democratic-leaning seats. More proportional plans, that also comply with other constitutional requirements, *can* be drawn and were available to the Commission. In particular, an updated plan from Dr. Jonathan Rodden, which was before the Commission, achieves perfect proportionality in the Senate while complying with other constitutional criteria. Indeed, even if the Remedial Plan’s House map were adopted “as is,” one can draw an additional Democratic-leaning Senate seat without making *any* changes to House district lines. The Commission is willfully refusing to comply with Section 6(B).

The Remedial Plan also violates Section 6(A). As discussed below, the Commission manipulated district boundaries to draw over a dozen House districts that are nominally Democratic-leaning but have a Democratic vote share of just 50% to 52%, while ensuring that all

57 Republican-leaning seats have a Republican vote share safely above that threshold. In short, the topline numbers the Commission reported are a mirage; a cheap parlor trick to distract from the Revised Plan's obvious partisan bias. Even in the limited time available to submit these objections, the Commission's efforts to favor the Republican Party are readily identifiable and demonstrable through several types of evidence.

Third, the Commission violated both the letter and spirit of Article XI, Section 1. As occurred during the Commission's process last fall, nearly all of the Commission's work happened behind the scenes. The Remedial Plan was unveiled and adopted on a Saturday, without opportunity for public input or comment, and the underlying data for the plan was not made publicly available until after it had already been adopted. This meant that members of the public did not have the opportunity to even review the Remedial Plan for compliance with the Ohio Constitution until after the map was passed. It is no surprise that a broken process resulted in a constitutionally noncompliant plan.

The Court should strike down the Remedial Plan, instruct the Commission to reconvene to draw a constitutionally compliant plan, and retain jurisdiction so that it can ensure the Commission finally does its job, ceases the partisan game-playing, and draws a map that reflects what the Constitution requires rather than what the Commission thinks it can get away with.

II. Factual Background

A. The Court struck down the 2021 Plan and gave the Commission clear guidance on how to comply with Article XI.

On January 12, 2022, the Court struck down the 2021 Plan as unconstitutional under Article XI of the Ohio Constitution. *See League of Women Voters of Ohio v. Ohio Redistricting Comm.*, Slip Opinion No. 2022-Ohio-65 (“*LWV*”). In its opinion, the Court provided clear direction on the requirements of Article XI.

Of relevance here, the Court held that “Section 6 imposes enforceable duties on the commission.” *LWV*, ¶ 83. The Court held that the phrase “shall attempt” in Article XI, Section 6 “directs the commission to take affirmative steps to comply with the standards stated in divisions (A) through (C).” *LWV*, ¶ 86. The Court distilled the Commission’s responsibilities with regard to Section 6 succinctly: “If it is possible for a district plan to comply with Section 6 *and* Sections 2, 3, 4, 5, and 7, the commission must adopt a plan that does so.” *LWV*, ¶ 87-88. The only circumstance under which the Commission need *not* comply with Section 6 is clear and limited to when complying with Section 6 would be *impossible* without “run[ning] afoul of Section 2, 3, 4, 5, or 7.” *LWV*, ¶ 86, n.10.

The Court also made clear that constitutional compliance is the Commission’s lodestar—not what partisans on the Commission might negotiate as a political matter. *LWV*, ¶ 110. Thus, it is not the obligation of the minority party’s Commissioners to convince the majority party’s Commissioners that a fully constitutional plan can be achieved—all Commissioners have a mandatory obligation to attempt to achieve compliance with Section 6.

The Court declared the 2021 Plan invalid and ordered the Commission to adopt a new plan within ten days. *LWV*, ¶¶ 135, 139. The tenth day after the Court order was a Saturday; meaning that, under Supreme Court Practice Rule 3.03(A)(1), it would appear that the Commission had until 11:59:59 p.m. on Monday, January 24 to adopt a new plan.

The Court further retained jurisdiction and ordered Petitioners to file any objections to the Commission’s remedial plan within three days of the plan’s adoption. *LWV*, ¶ 139. Because the Commission adopted the plan on Saturday, January 22, the objections are due today, January 25.

B. The Commission engaged in a secretive map-drawing process, with no public input.

In this section, Petitioners endeavor to provide the Court with an overview of the process used to draw the Remedial Plan. Petitioners are hampered by the fact that nearly all of the Commission's work took place out of public view. That Petitioners know so little about the process, however, is itself strong evidence that the Commission again is thumbing its nose at the law (and now the Court, following its ruling in *LWV*).

In some very limited respects, the process was different than that used to pass the 2021 Plan. Republican and Democratic staff apparently met behind the scenes to reach agreement on what data would be used to assess proportionality for Section 6(B) purposes, and to hold some meetings regarding map-drawing proposals.

But in many other respects, despite this Court's clear identification of the substantive and procedural flaws in the Commission's adoption of the 2021 Plan, the Commission chose once again to engage in a highly secretive, one-sided partisan process. As discussed below, nearly all map-drawing was conducted outside of public view. The Commission did not conduct a hearing until much of the remedial period had passed. Even then, it did not allow public testimony or consider any maps submitted by the public, and it employed technical maneuvers to flout notice requirements. The Remedial Plan was drawn by two Republican staffers, Blake Springhetti and Ray DiRossi, who also drew the unconstitutional 2021 Plan and based the Remedial Plan on the invalidated map. The Commission adopted the Remedial Plan on a rushed, party-line vote. Egregiously, the Commission did not make the data underlying the Remedial Plan public until after its adoption, completely depriving Ohioans of their constitutionally-mandated right to assess and proactively provide input on the Plan. *See* Article XI, Section 1. Given the intricate nature of

Article XI's requirements, particularly the line-drawing requirements of Sections 3 and 4, such census block-level data is integral to any meaningful assessment of the Remedial Plan.

Indeed, as discussed below, once the Democratic Commissioners began pointing out specific ways of achieving proportionality, further discussion was cut off and a final vote held. The result of this flawed process was a flawed plan that contains various constitutional defects.

1. The Commission did not meet for nearly a week after the Court's order and held only one substantive meeting before January 22, the day it passed the Remedial Plan.

The Court issued its order in *LWV* on Wednesday, January 12. A full four days later, on January 16, the Commission announced that “individual commission members [were] instructing respective staff members” to “*begin* identifying possible areas to address the court’s ruling.” (BENNETT_001 (Ohio Redistricting Commission 1/16 Statement)) (emphasis added). As was true the first time the Commission enacted a plan, the Commission did not itself employ any staff as a body; only individual Commissioners did. Thus, the Commission promised only that “individual commission members [would] have access to other commission members’ relevant staff and contractors.” *Id.*

The Commission finally convened on Tuesday, January 18—nearly a week after the Court’s ruling. That first hearing was a pro forma session. The Commission swore in new House Minority Leader-Elect Allison Russo in the place of former Leader Emilia Sykes but did not engage in any substantive discussion of state legislative maps. (*see* BENNETT_041-061 (1/18 Commission Hearing Tr.)).

That same day, the League of Women Voters (“LWV”) Petitioners emailed the Commission to “request prompt information with regard to any map(s) under consideration,” including the underlying geographic data for such plans to enable analysis and engagement. (BENNETT_002 (LWV 1/18 Letter)). The LWV Petitioners informed the Commission that they

had prepared plans that complied with Article XI requirements. *Id.* Notably, the LWV Petitioners explained that any maps submitted would “not assign numbers or incumbents to districts but [would] instead leave this assignment to the discretion of the Commission.” *Id.* They explained, “the assignment of district numbers and incumbents in no way restricts the drawing of district boundaries under Article XI, and therefore cannot provide a basis for the Commission to reject compliant plans submitted by petitioners.” *Id.* (emphasis added).

On Thursday, January 20, the Commission released proposed alternate maps of Franklin and Hamilton County. (BENNETT_005-009 (Ohio Redistricting Commission Proposal for Franklin and Union County); BENNETT_010-014 (Ohio Redistricting Commission Proposal for Hamilton and Warren County); *see also* BENNETT_074 (1/20 Commission Hearing Tr.)). Petitioners understand that these maps had been prepared for the Republican Commissioners. These documents were released only in PDF format, with no accompanying data that would allow a meaningful review of the proposed districts or indication of how districts outside of these counties would be altered. (*See* BENNETT_005-009 (Ohio Redistricting Commission Proposal for Franklin and Union County); BENNETT_010-014 (Ohio Redistricting Commission Proposal for Hamilton and Warren County)). When the Commission convened shortly after the release of the alternative maps, Co-Chair and House Speaker Robert Cupp announced that “no agreement” had been reached on the proposals. Co-Chair and Senator Vernon Sykes immediately requested a recess until the afternoon, for the purpose of reviewing the proposals. (BENNETT_074-076 (1/20 Commission Hearing Tr.)).

While the Commission was recessed, the Bennett and LWV Petitioners submitted to the Commission an updated version of the demonstrative General Assembly plan that had been drawn by Dr. Jonathan Rodden and submitted to this Court, including the underlying data files.¹

When the Commission reconvened, Senator Sykes explained that the Democratic Commissioners had not been aware that the Republican Commissioners had planned to release maps. The Democratic Commissioners subsequently released their own maps of Franklin and Hamilton Counties. (*Id.* at BENNETT_079). Each caucus then discussed their proposals as to those counties. (*Id.* at BENNETT_076-084). Speaker Cupp briefly described the Republican plan, while Democrats made their map-drawer, Chris Glassburn, available to walk Commissioners through the map and answer questions about specific line-drawing decisions. (*Id.*) The Republican map-drawers, Ray DiRossi and Blake Springhetti, did not testify.

During the discussion, Representative Russo asked whether the Commission had given mapmakers explicit direction to “striv[e] to achieve” a map with 54 Republican and 45 Democratic seats in the House, and 18 Republican and 15 Democratic in the Senate, while meeting the other requirements of the Ohio Constitution. (*Id.* at BENNETT_121). Democratic map-drawer Chris Glassburn responded that “up until [that] point,” his Republican counterparts had not expressed that view and in fact had been a “direct obstacle” to achieving that goal. (*Id.* at BENNETT_121). Senator Sykes noted, as an example, that there was “reluctance,” on the part of Republican Commissioners, to pair House districts in a manner that would create an additional Democratic-leaning Senate district in Hamilton County, consistent with the proportionality requirements of

¹ As explained in a letter to the Commission, which Petitioners also filed with the Court, “[i]n the course of a further review of [Dr. Rodden’s] plan for purposes of determining whether to submit it . . . to the Commission for consideration during the redraw process,” Petitioners identified “some technical issues that may result in municipal corporation and township splits beyond those permitted by the strict language of Article XI, Section 3.” (BENNETT_004 (Bennett 1/20 Letter)). Petitioners explained that “[t]hese issues were easily remedied, and [Petitioners were] providing for the Commission’s consideration a revised version of Dr. Rodden’s plan.” *Id.*

Article XI, Section 6(B) and with all other requirements of Article XI. (*Id.* at BENNETT_121-22). Senator Sykes characterized this “as just an example of the challenges” that the Democratic Commissioners faced. (*Id.* at BENNETT_121).

The Commission then announced that it would not adjourn but rather would take a recess until 9:30 a.m. the next day. (*Id.* at BENNETT_121-22). By recessing rather than adjourning, the Commission skirted statutory requirements to provide public notice of its meeting. *See* R.C. 121.22(F) (requiring at least 24 hours’ public notice before a special meeting is held).

The Commission did not, in fact, return the next day (Friday, January 21). Instead, several Commission members attended public events in the state. For example, Governor DeWine, Senator Huffman, and Secretary LaRose traveled to Newark to attend an event formally announcing plans by Intel to build a factory in New Albany. (*See* BENNETT_036 (Tweet by Reporter Karen Kassler); BENNETT_037 (Tweet by Governor Mike DeWine); BENNETT_038 (Tweet by Secretary Frank LaRose); BENNETT_039 (Tweet by Ohio Senate GOP)).

2. The Commission disclosed the Remedial Plan on January 22 and, that same day, voted to approve it on a party-line basis, without any public input and without releasing the underlying plan data.

On Saturday, January 22, the Democratic Commissioners released draft statewide maps on the Commission’s website, with various supporting data.² Republican Commissioners also released statewide maps, but only made public PDF images that did not allow the public to analyze the proposal’s compliance with Article XI. (BENNETT_024-026 (Ohio Redistricting Commission Proposal for West Central Ohio); BENNETT_019-023 (Ohio Redistricting Commission Proposal

² *See* Ohio Redistricting Commission, Maps, <https://www.redistricting.ohio.gov/maps#view-maps>. The Democratic Commissioners later explained that they had not intended to draft their own complete statewide plan, as they had been under the impression that the Commission would work together on a single map, proceeding on a region-by-region basis. (BENNETT_213-214 (1/22 Commission Hearing Tr.) (“[T]he Democrats on this Commission, it was never our intention to produce a map because we were directed by the Court for the Commission to [produce] the map.”)). When that process broke down, they rushed to draw their own plan. (*See id.* at BENNETT_214-215).

for Cuyahoga, Summit, Geauga): BENNETT_027 (Ohio Redistricting Commission Statewide House Districts); BENNETT_028 (Ohio Redistricting Commission Statewide Senate Districts)).³ This Republican-drawn plan, referred to here as the “Remedial Plan,” would ultimately be adopted on a party-line vote by the Commission’s Republican majority hours later. The Republican staff who drew the plan “were instructed to use the base map” (i.e., the unconstitutional 2021 Plan) as a starting point in preparing the Remedial Plan. (BENNETT_160 (1/22 Commission Hearing Tr.)).

The Commission itself did not finally reconvene until Saturday afternoon. (*Id.* at BENNETT_145). That is, the Commission meeting that had “recessed” on Thursday came back into session nearly 48 hours later. Thereafter, Commissioners questioned each party’s mapmakers.

Democratic map-drawer Chris Glassburn testified once more that the mapmakers were not collectively attempting to reach the 54% Republican and 46% Democratic proportionality threshold specified by this Court. (*Id.* at BENNETT_197). He requested the feedback and participation of the Republican Commissioners in attempting to achieve that goal. (*Id.* at BENNETT_208-09).

The Republican Commissioners instead aimed their fire at the Democratic draft map, using prepared posterboards zooming in on alleged technical defects in the proposal. (*See id.* at BENNETT_174-195, 198-219). As a result, in the limited time available to it on Saturday, the Commission was not working together to draw a compliant plan—instead, time and resources were being used to generate set pieces designed to take prepared potshots at alternative plans. Astonishingly, at the very moment Republican Commissioners were pillorying the Democratic plan over line-drawing nits, the Republican caucus had not even released their own plan in a format

³ A reporter tweeted links to Dave’s Redistricting App versions of the Republican Commissioners’ proposals at 12:26 p.m. on Saturday. (BENNETT_040 (Tweet by Reporter Jessie Balmert)). As discussed below, at no point prior to the enactment of the Revised Plan did the Commission release the actual data files for the plan. *See, e.g.*, <https://www.redistricting.ohio.gov/maps> (containing links to data files for proposed General Assembly plans).

that would allow for the same analysis. In an effort to collaborate, the Democratic staff released data for their plan to the Republican Commissioners and the public. Republican Commissioners did not let that good deed go unpunished, while continuing to avoid meaningful scrutiny of their own plan by keeping that critical information out of public view.

In response to Republican criticisms of the Democratic proposal, Glassburn repeatedly emphasized that the Democratic map-drawers were open to feedback and prepared to remedy any identified issues. (*Id.* at BENNETT_173, 177, 199). Yet in that same meeting, it became all the more clear that Republican members of the Commission were not interested in working together to follow the Court's clear direction. Auditor Faber, for example, dismissed the proportionality requirement of Section 6(B) as "some superficial ratio" and chastised Glassburn's reasoning as to why the Republican plan could be more proportional as "spaghetti methodology . . . just to hit another Democrat number." (*Id.* at BENNETT_203-204). Auditor Faber also criticized the Democratic Commissioners for delaying in releasing their own proposed statewide map, (*see id.* at BENNETT_198), but as Senator Sykes subsequently pointed out, the Court had directed the Commission as a whole, rather than any particular party, to produce a state legislative plan. (*Id.* at BENNETT_214).

As to the Republican proposal, the Republican Commissioners had few questions. In response to questions from Governor DeWine and Commissioner Russo regarding Section 6(B), Republican map-drawer Ray DiRossi indicated that he and fellow Republican map-drawer Blake Springhetti had not received guidance from the Commission on what he referred to as the "subjective" requirements of Article XI. (*Id.* at BENNETT_165, 220-221). Despite repeated questioning from Commissioners Russo and Sykes, DiRossi and Springhetti were unable to identify any specific technical requirement in Article XI that prevented them from achieving

proportionality as required by Section 6(B). (*Id.* at BENNETT_164,165). Turning to a specific region of the map, Commissioner Russo asked the Republican map-drawers whether any technical requirement of Article XI prevented them from drawing an additional Democratic House district in Franklin County. (*Id.* at BENNETT_161-163). DiRossi and Springhetti could not identify a single provision of Article XI that prevented such a choice. (*Id.*)

Commissioner Sykes also asked several questions about modifying the Republican proposal to better achieve proportionality. For example, with respect to the Senate proposal, Commissioner Sykes noted that if one simply paired a different combination of House districts in Hamilton County—without changing any House district lines—it was possible to draw one additional Democratic-leaning Senate seat. (*Id.* at BENNETT_245). He asked what prevented the Commission from doing so. *Id.* After a long pause in which the Republican map-drawers failed to answer the question, Co-Chair Cupp jumped in to assert that the map-drawers had “given the answer that [they] can give” and abruptly recessed the meeting. (*Id.* at BENNETT_248).

As soon as the meeting resumed, Commissioner Huffman immediately moved to adopt the Republican Commissioners’ proposal. (*Id.* at BENNETT_248-249). Within three minutes, the Commission passed the Remedial Plan 5-2 on a party-line vote. (*Id.* at BENNETT_250-251). Commissioner Huffman then moved that the Commission adopt a statement pursuant to Article XI, Section 8(C)(2), before acknowledging that the Commissioners had not even been given a chance to read it. (*Id.* at BENNETT_251-252). The Commission briefly recessed, and upon its return, passed the Section 8(C)(2) statement by a party-line vote. (*Id.* at BENNETT_252-253). The Democratic Commissioners submitted a dissenting Section 8(C)(2) statement (*Id.* at BENNETT_253-260).

No opportunity for public input on the Remedial Plan was provided, nor block equivalency files made available, before the Plan's adoption. That is, the Republican map-drawers had baldly asserted that the Republican proposal met the requirements of Article XI, but the public had no opportunity to provide input on the proposed plan or review data to test those assertions. In fact, the Plan violates Article XI in several ways.

C. The Remedial Plan contains multiple technical and substantive flaws.

In its Section 8(C)(2) statement describing the Remedial Plan's purported compliance with Section 6, the Commission claimed that "the Commission's map was the only map that closely corresponds to the Section 6 requirements, while remaining constitutional in all other elements." But the Remedial Plan violates Section 3(D)(3)'s line-drawing requirement, Section 6(B), and Section 6(A).

First, the Commission repeatedly asserted the Remedial Plan was the only technically compliant plan before it, but this is not true. In fact, the Remedial Plan is *not* compliant: It impermissibly splits political subdivisions in violation of Section 3(D)(3), which specifies that where House districts 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." Here, House Districts 5 and 10 of the Remedial Plan violate Section 3(D)(3) by splitting three municipal corporations—Columbus, Grove City, and Jackson Township. But, because the Commission did not release the Remedial Plan's block equivalency files prior to enactment, neither Petitioners nor the general public discovered this violation until after the final vote.

Second, the Remedial Plan is not proportional. The Commission claimed that “[t]he final adopted House district plan contains 57 Republican-leaning districts. This corresponds to approximately 57% of the total number of house districts. The final adopted Senate district plan contains 20 Republican-leaning districts. This corresponds to approximately 60% of the total number of senate districts. In total, the final adopted general assembly district plan contains a total of 77 Republican-leaning districts and 55 Democratic-leaning districts. This corresponds to approximately 58% Republican-leaning districts and approximately 42% Democratic-leaning districts.” By the Commission’s own telling, the Remedial Plan therefore creates 16% more Republican-leaning seats than Democratic-leaning seats, instead of 8% as would be required by Section 6(B).

Third, the Remedial Plan very carefully adjusts district lines ever so minimally so that formerly Republican-leaning districts become ever so slightly Democratic-leaning. As Dr. Rodden notes, the Remedial Plan’s House map “creates a large number of Democratic-leaning ‘toss-up’ districts, while creating no such districts for Republicans. Particularly with regard to the 10 Democratic House seats between 50 and 51%, this razor-thin Democratic margin could be easily overcome by specific circumstances such as incumbency advantage or even a mildly favorable electoral environment.” Affidavit of Dr. Jonathan Rodden (“Rodden Aff.”) ¶ 42. In total, 13 Democratic-leaning House districts fall within the 48-52% range, while no Republican-leaning districts do. *Id.* at ¶ 21.⁴ Similarly, the Remedial Plan’s Senate map contains four Democratic toss-

⁴ Dr. Michael Latner, expert for Petitioner Ohio Organizing Collaborative, similarly concludes that the Remedial Plan creates 14 Democratic-leaning House seats that fall within the 48 and 52% range, while creating no such Republican-leaning districts. Affidavit of Dr. Michael Latner, *Ohio Organizing Collaborative v. Ohio Redistricting Comm’n*, Case No. 2021-1210 at ¶ 6 (Jan. 25, 2022). The slight discrepancy in the number of Democratic-leaning tossup seats that Drs. Rodden and Latner count (13 versus 14) is likely attributable to the fact that the two experts use different data sets to calculate the leanings of seats. While Dr. Rodden uses a six-year lookback, averaging the results of all statewide partisan elections in Ohio between 2016 and 2020, Rodden Aff. ¶ 18-19, Dr. Latner uses a ten-year lookback, using the same set of elections, but going all the way back to 2012. Latner Aff. ¶ 12.

up seats and one such Republican seat. *Id.* Republican map drawers thus create a mirage of partisan fairness by nudging several districts to just above a 50% Democratic vote share, thereby ensuring that under the right circumstances Republicans can take a sizeable share of districts they disingenuously categorize as “Democratic,” while at the same time leaving Republican districts so heavily Republican that even a wave election for Democrats would not swing any of the Republican seats in Democrats’ favor. This operates to create a clear and concerted advantage for Republicans. Stated plainly, Republican map drawers shifted districts to barely lean Democratic, begrudgingly inching closer to proportionality while doing nothing to address the Remedial Plan’s compliance with Section 6(A).

The Commission was wrong to conclude that it had no other compliant plans before it. As described in the following section, the Commission had an alternative before it that was technically compliant and did not suffer from the same constitutional infirmities as the Remedial Plan. It simply chose to ignore that alternative.

D. Petitioners provided the Commission with a map addressing Article XI requirements.

Days before the remedial deadline, Petitioners (along with the LWV Petitioners) submitted an updated version of Dr. Rodden’s state legislative plan (“Rodden II Plan”). (*See* BENNETT_004 (Bennett 1/20 Letter)). As the LWV Petitioners had explained in an email to the Commission’s counsel two days earlier, the submitted plan would comport with Article XI requirements, except that the numbering of districts under Section 5 would be left “to the discretion of the Commission.” (BENNETT_002 (LWV 1/18 Letter)).⁵

⁵ Section 5 requires numbering Senate districts based on incumbency considerations. This numbering cannot be done until a plan is finalized. Petitioners did not know whether the Commission would consider their plan or make further changes to it that would require renumbering under Section 5. But the LWV Petitioners “note[d] that the assignment of district numbers and incumbents in no way restricts the drawing of district boundaries under Article XI, and therefore cannot provide a basis for the Commission to reject compliant plans submitted by petitioners.” *Id.*

The Rodden II Plan is largely the same as the plan Dr. Rodden submitted to this Court on October 22, 2021. The only difference between that plan and the Rodden II Plan was the adjustment of a few district boundaries to correct for minor line-drawing issues. Rodden Aff. ¶ 27-28. These changes did not impact the plan's seat count.

The attached Rodden Report includes a copy of the Rodden II Plan, which now rennumbers Senate districts to ensure compliance with Section 5. In all other respects, the plan submitted to this Court is identical to the Rodden II Plan submitted to the Commission.

The Rodden II Plan, like the original Rodden plan, results in 43 Democratic seats in the House and 15 Democratic seats in the Senate. As Dr. Rodden explains in his report, the Rodden II Plan achieves perfect proportionality in the Senate and near proportionality in the House. The plan was also drawn to comply with the other requirements of Article XI, including the line-drawing requirements of Sections 3 and 4.

III. Argument

The Remedial Plan violates multiple provisions of Article XI: the technical line-drawing requirements of Section 3, the proportionality and partisan fairness requirements of Section 6, and the procedural requirements of Section 1. For all these reasons, the Court should declare the Remedial Plan unconstitutional.

A. The Remedial Plan violates the technical line-drawing requirements of Article XI, Section 3(D)(3).

At the outset, the Remedial Plan is unconstitutional because it does not comply with the technical line-drawing requirements set out in Article XI, Section 3. The Court should reject the Remedial Plan for this reason alone.

Section 3 sets out various technical rules for the construction of House Districts. *See* Article XI, Section 3(A)-(D). Of relevance here, Section 3(D)(3) provides that “[w]here 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.**” (emphasis added).

Section 3(E)(1) provides a limited exception to this rule: “If it is not possible for the commission to comply with” Section 3(D)(3), then “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, or one ratio of representation.” *Id.*, Section 3(E)(1)(a). Section 3(E)(2) further states that, “[i]f the commission takes an action under [Section 3(E)(1)], the commission shall include in the general assembly district plan a statement explaining which action the commission took under that division and the reason the commission took that action.” *Id.*, Section 3(E)(2).

The Remedial Plan contains two House districts that split three municipalities or townships, in clear violation of Section 3. In particular, House Districts 5 and 10 each split Columbus, Grove City, and Jackson Township:

Figure 3a: Split of Columbus between Districts 10 and 5, Franklin County

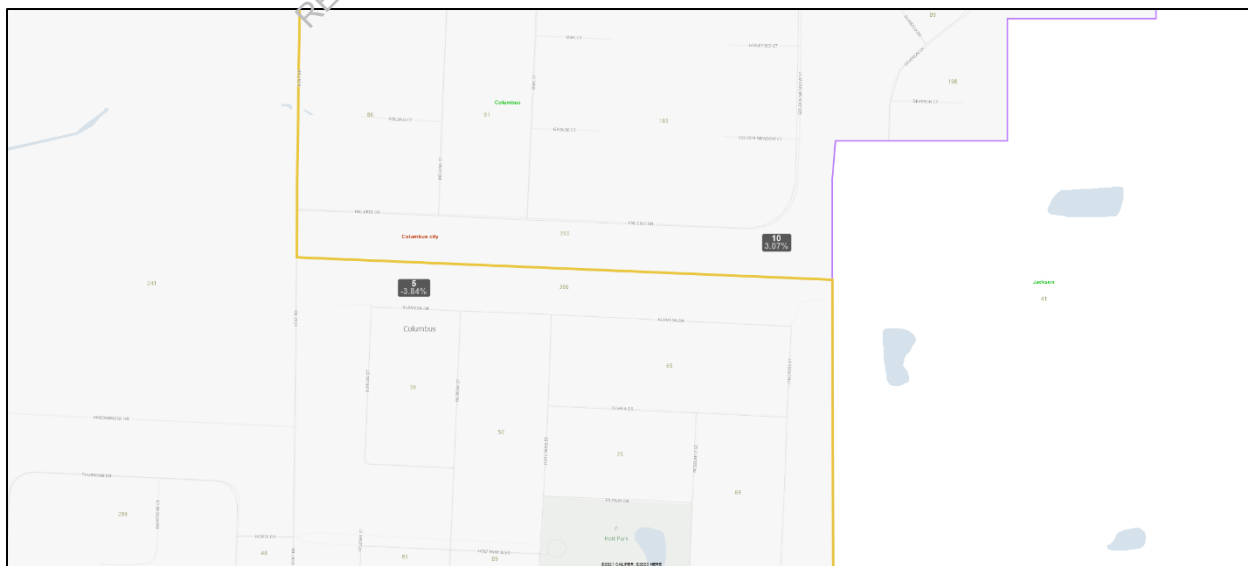


Figure 3b: Split of Grove City between Districts 10 and 5, Franklin County

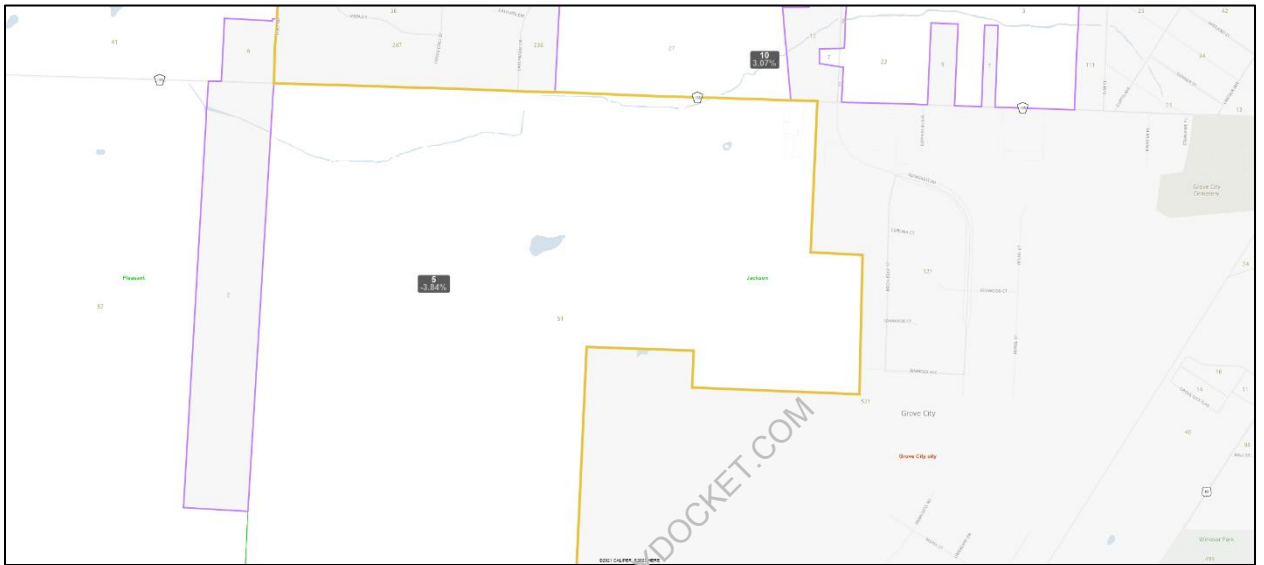


Figure 3c: First Split of Jackson Township between Districts 10 and 5, Franklin County

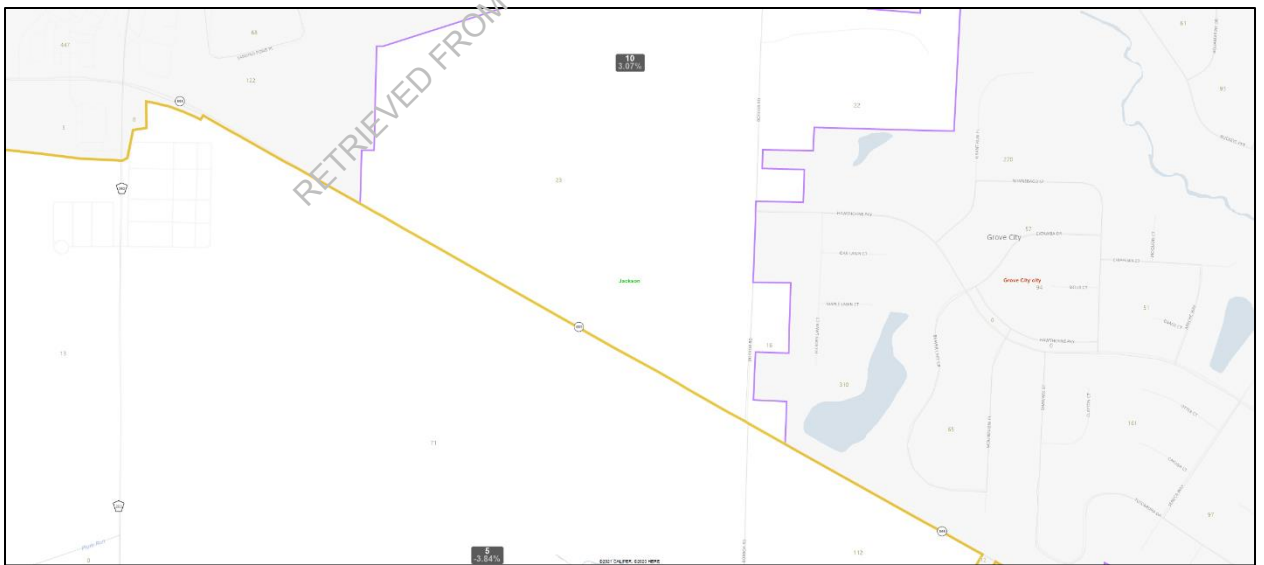


Figure 3d: Second Split of Jackson Township between Districts 10 and 5, Franklin County

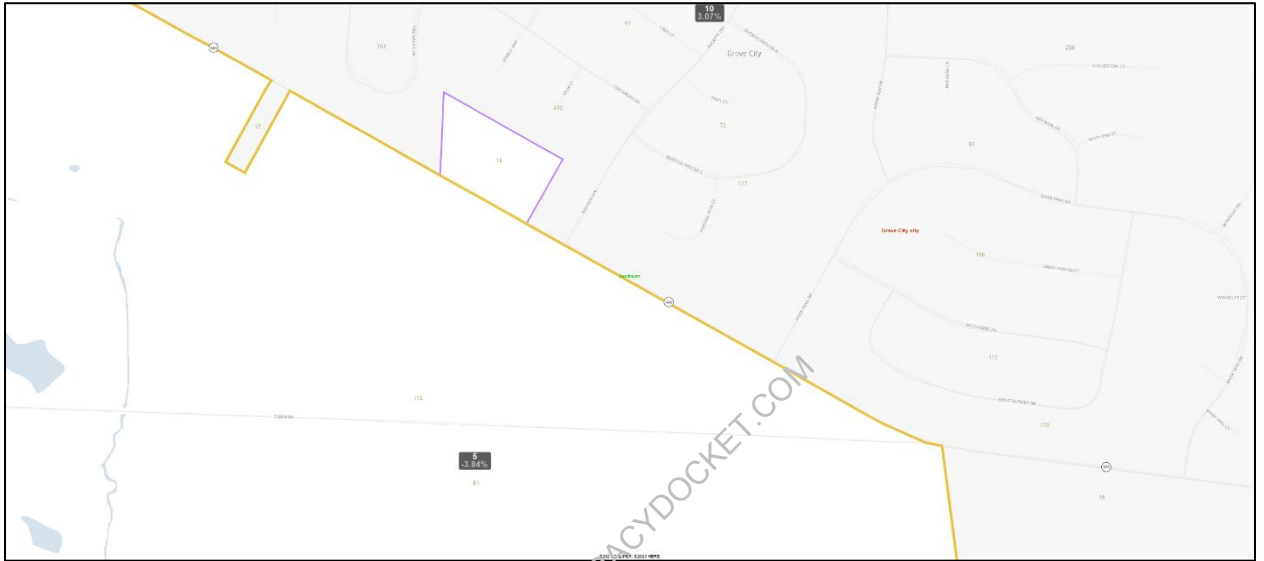
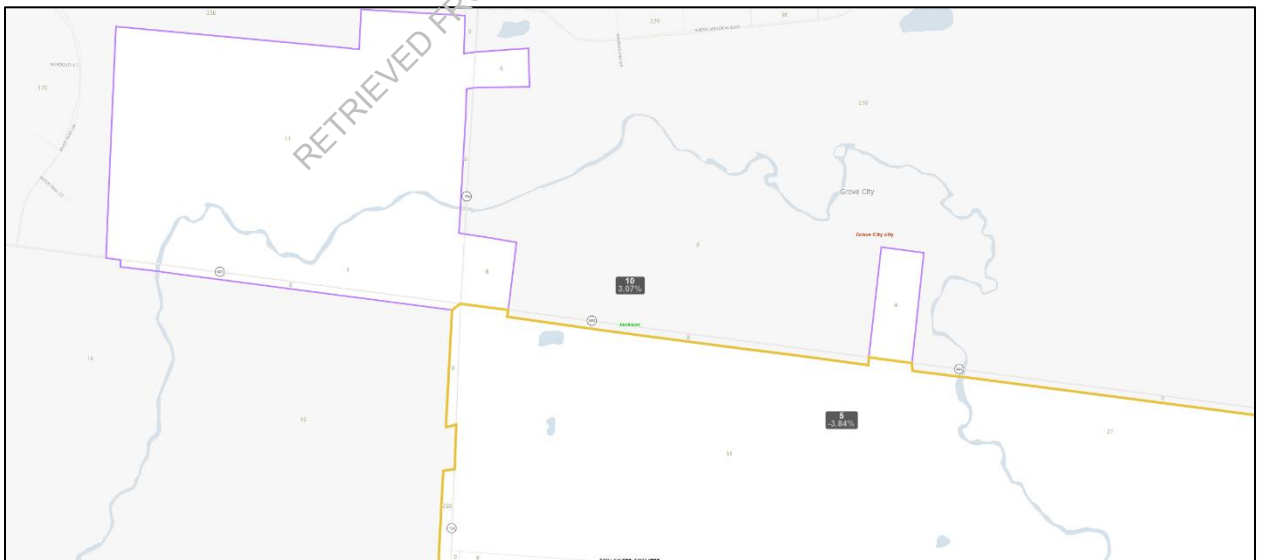


Figure 3e: Third and Fourth Splits of Jackson Township between Districts 10 and 5, Franklin County



See Rodden Aff. ¶ 37, figs. 3a-e.

The Remedial Plan also contains two House districts that each split two municipalities or townships. In House Districts 31 and 33 of the Remedial Plan, Akron and Copley Township are both split:

Figure 2a: Split of Copley Township between Districts 31 and 33, Summit County

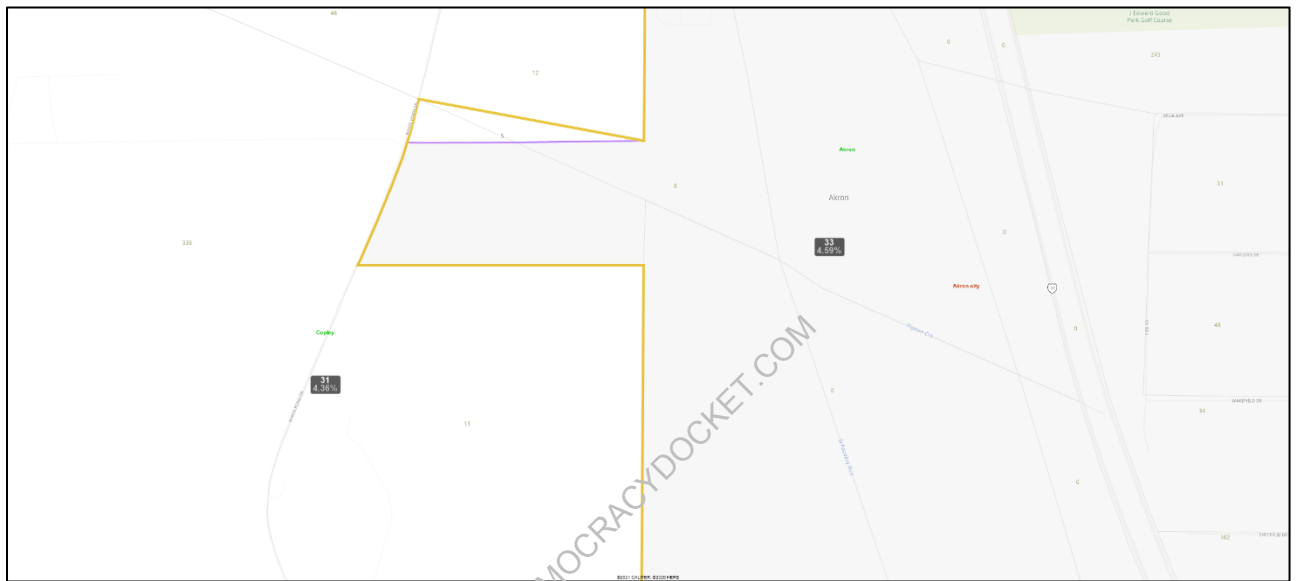
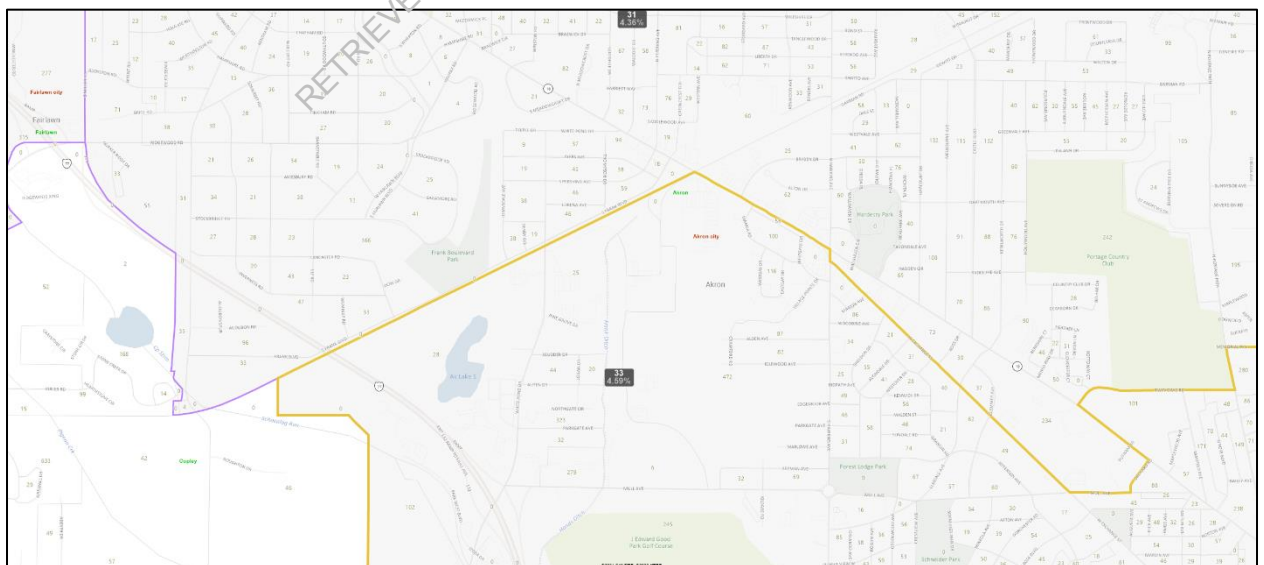


Figure 2b: Split of Akron between Districts 31 and 33, Summit County



See Rodden Aff. ¶ 35, figs. 2a-b.⁶

None of these splits can be justified under Section 3(E). First, House Districts 5 and 10 split three municipal corporations and townships, and therefore are not permissible even under Section 3(E)(1)(a)'s exception, which allows two splits at most. *Id.* ¶ 38. Second, while House Districts 31 and 33 only split two townships or municipal corporations, the Commission failed to include a statement with the Remedial Plan identifying and providing a justification for those splits, as required under Section 3(E)(2). *Id.*

Thus, even setting aside the Commission's ongoing failure to comply with Section 6, the Remedial Plan fails constitutional muster. The Court should reject it because it contains threshold deficiencies.

In contrast, the Rodden II Plan does not contain *any* House districts with more than one municipal or township split. Rodden Aff. ¶ 35. Therefore, it does not implicate Section 3(E)(1)(a) at all. The Rodden II Plan demonstrates that it was possible for the Commission to draw a state legislative plan that complied with Article XI, Section 3's strict line-drawing requirements, without relying on the Section 3(E)(1)(a) exception, while also better achieving Section 6's anti-partisan gerrymandering, partisan proportionality, and compactness objectives.

B. The Remedial Plan violates Article XI, Section 6.

Article XI mandates that the Commission "shall attempt to draw a general assembly district plan that meets all of the following standards":

⁶ Additionally, the Remedial Plan contains several instances where a district splits more than one township or municipality, but only one of the splits places populated areas of the township or municipality on both sides of the district line. For example, in the Remedial Plan's House map, both Columbus and New Albany are split between House Districts 4 and 9. However, the portion of New Albany that falls within House District 9 contains no population. Rodden Aff. ¶ 37 n.5. Petitioners do not understand a subdivision to be "split" for purposes of Article XI, Section 3 if its entire population is contained within one district. Accordingly, Petitioners do not consider splits such as the ones created by House Districts 4 and 9 to constitute a violation of Section 3(D)(3) and do not object on the basis of such splits.

(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.

Article XI, Section 6. The Commission may not “violate the district standards described in Section 2, 3, 4, 5, or 7” in an effort to comply with Section 6. *Id.* If, however, it is possible to draw a map that meets these standards while complying with the other substantive provisions of Article XI, the Commission must do so. *See LWV*, ¶ 87-88. The Remedial Plan violates Section 6(B) with regard to the Senate map and violates Section 6(A) as to both the House and Senate maps.

1. The Remedial Plan’s Senate Map violates Section 6(B): The Ohio Constitution’s proportionality requirement is not “some superficial ratio.”

Section 6(B)’s formula for calculating statewide voter preferences indicates that, over the relevant time period, “about 54 percent of Ohio voters preferred Republican candidates and about 46 percent of Ohio voters preferred Democratic candidates. Accordingly, under Section 6(B), the Commission is required to attempt to draw a plan in which the statewide proportion of Republican-leaning districts to Democratic-leaning districts closely corresponds to those percentages.” *LWV*, ¶ 108. Applying this ratio to the 33 seats of the Senate, the Commission must attempt to draw a Senate map with 18 Republican-leaning districts and 15 Democratic-leaning districts. If it is possible to draw a map that meets this ratio while complying with the other substantive provisions of Article XI, the Commission *must* do so. *See LWV*, ¶ 87-88. Attempting to achieve proportionality is a constitutional prerogative, not “some superficial ratio” as Commissioner Faber described it. (BENNETT_203-204 (1/22 Commission Hearing Tr.)).

The Remedial Plan violates Section 6(B). It contains 20 Republican-leaning Senate districts and just 13 Democratic-leaning Senate districts. Rodden Aff. ¶ 19.⁷ The Commission had access to a state legislative plan—the Rodden II Plan—that resulted in exact proportionality with 18 Republican-leaning Senate seats and 15 Democratic-leaning Senate seats. Rodden Aff. ¶ 30. Moreover, the Rodden II Plan outperforms the Remedial Plan on multiple metrics of compactness. Rodden Aff. ¶ 39.

The Commission’s failure to attempt to achieve proportionality as to the Senate Plan comes into starker relief still if one simply looks at the way the Remedial Plan nests House districts to form Senate districts. Even without changing a *single House district in any way*, the Commission could have gotten closer to proportionality in the Senate map by changing the pairing of House districts in Hamilton County. Specifically, it appears that the Commission could have created an additional Democratic-leaning Senate district by forming Senate District 8 from House Districts 26, 28, and 29 and Senate District 9 from House Districts 24, 25, and 30. (See BENNETT_245-248 (1/22 Commission Hearing Tr.)). This change alone would have made the Remedial Plan’s Senate map almost perfectly proportional.

It is no surprise, then, that when Democratic Commissioners started to point these issues out, debate was cut off and the plan was immediately passed on a party-line basis. (*Id.* at BENNETT_245-249). The Commission *knew* that it could draw a more proportional plan—it just chose not to. Instead, the Commission adopted a plan that gave the Republican Party a

⁷ Under the Commission’s method of calculating vote share, the Revised Plan contains 57 Republican-leaning House districts, all of which have a Republican vote share of 52% or greater. Rodden Aff. ¶ 20. The Revised Plan contains 29 Democratic-leaning districts with a Democratic vote share of 52% or greater, and 13 nominally Democratic-leaning “toss-up” districts. *Id.* Many of these districts, under the Commission’s methodology for calculating partisan lean, are “Democratic-leaning” in name only. See Rodden Aff. ¶ 18. Even assuming, for the sake of argument, that the Commission can achieve proportionality by drawing a large number of fractionally Democratic-leaning seats for purposes of Section 6(B), the House plan violates Section 6(A) as it was plainly drawn to favor the Republican Party. See *infra* Section III.B.2.

supermajority in the Senate, in contravention of the statewide preferences of Ohio voters. The Remedial Plan's Senate map plainly and palpably violates Section 6(B).

2. The Remedial Plan violates Section 6(A).

The Remedial Plan violates Article XI, Section 6(A) because the Commission drew the Plan primarily to favor the Republican Party.

As to the Senate plan, the analysis is easy. One can draw a more proportional plan simply by grouping together House districts in a different manner. The Commission refused to do so. The only explanation is the pursuit of partisan advantage. For all the reasons that the Remedial Plan's Senate map fails to pass muster under Section 6(B), it also violates Section 6(A).

The Remedial Plan's House map, too, violates Section 6(A). In interpreting Section 6(A), this Court explained that "direct or circumstantial evidence may establish that a districting plan was drawn primarily to favor one political party over another." *LWV*, ¶ 117 (citations omitted). The Court found that the 2021 Plan violated Section 6(A) based on evidence that "the adopted plan's partisan skew [could not] be explained solely by nondiscriminatory factors," *id.* ¶ 121, as well as based on aspects of the "map-drawing process," *id.* ¶ 118. Both factors support the conclusion that the House map violates Section 6(A).

a. Analysis of the Remedial Plan reveals that the House map was drawn primarily to favor the Republican Party.

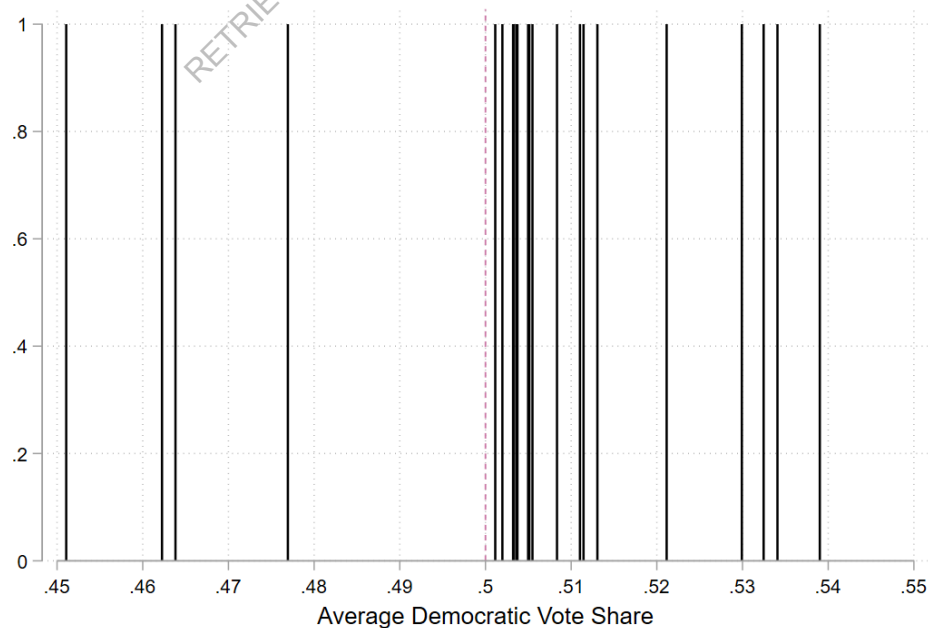
The Commission's intentional effort to favor the Republican Party at the expense of the Democratic Party is evident in the Revised Plan's House map in three distinct ways. First, the Remedial Plan creates more than a dozen Democratic-leaning House seats with razor-thin margins, while ensuring safe seats for Republicans throughout the state. Second, the Remedial Plan exhibits clear partisan skew on several measures of partisan bias. Third, the Remedial Plan contorts district lines in order to favor the Republican Party.

(i) **The Remedial Plan’s House map creates nominally Democratic-leaning districts with razor-thin margins.**

The most extraordinary feature of the House map is the way it was drawn to permit the Commission to assert nominal compliance with Section 6(B), while still stacking the deck in favor of Republicans. The evidence of partisan bias is stark and inexorable.

The Remedial Plan creates 57 House seats in which the Republican vote share exceeds 52%. Rodden Aff. ¶ 19-20. It does not contain a single Republican-leaning House seat that falls within the 48% to 52% range. *Id.* at ¶ 21. The treatment of Democratic-leaning seats is markedly different. The Remedial Plan creates only 29 House seats in which the Democratic vote share exceeds 52%. *Id.* Every other nominally “Democratic-leaning” district falls within the 50% to 52% range. *Id.* Indeed, 10 of these 13 districts fall within the 50% to 51% range. *Id.* ¶ 23. The Remedial Plan’s systematic creation of weak Democratic seats is illustrated by the following discrete histogram of the Democratic vote share in the House districts in the Remedial Plan:

Figure 1: Discrete Histogram of District-Level Average Democratic Vote Share, Revised House Plan



Rodden Aff. fig. 1. As Dr. Rodden explains, “Figure 1 demonstrates a remarkable ‘bunching’ of 10 districts between 50 and 51 percent, with an additional 3 districts with a Democratic vote share a little over 51 percent, and an additional district with a vote share around 52 percent. In contrast, there are no Republican-leaning districts in this range.” *Id.* ¶ 23. Dr. Rodden points out that “[t]his discrepancy in the allocation of toss-up seats is more severe than the [2021 Plan]. In that plan, all of the majority-Republican seats in the House were similarly greater than 52 percent Republican, while all 5 toss-up seats were Democratic-leaning.” *Id.* ¶ 25.

This distribution was no accident. Republican map-drawer Ray DiRossi admitted that he worked *from* the invalidated 2021 Plan and methodically altered it to create districts that leaned Democratic by the smallest possible margin. When asked why the Remedial Plan included so many House seats in the 50% to 51% range, DiRossi explained: “When you finally get over the hurdle to go under 50 and everything else balances and every else matches, I move on to another district.” (BENNETT_227 (1/22 Commission Hearing Tr.)).

The Remedial Plan’s systematic creation of strong Republican seats alongside weak Democratic seats favors the Republican Party. Dr. Rodden explains that “the concessions the Remedial Plan does make in the direction of proportionality come exclusively in the form of highly competitive toss-up districts.” Rodden Aff. ¶ 43. “Particularly with regard to the 13 House Democratic seats between 50% and 52%, this razor-thin Democratic margin could be easily overcome by specific circumstances such as incumbency advantage or even a mildly favorable electoral environment. In fact . . . almost all of the new ‘toss-up’ districts created in the Remedial Plan have Republican incumbents, who are more likely to outperform partisan indices in a given election as compared to other candidates.” *Id.* ¶ 42.

If this gambit sounds familiar, that’s because it is. In the congressional plan struck down by this Court less than two weeks ago, the same Republican map-drawers responsible for the Remedial Plan drew a large number of safe Republican seats and then drew “competitive” seats to avoid the natural emergence of Democratic-leaning seats in Democratic-supporting areas. *See Adams v. DeWine*, Slip Opinion No. 2022-Ohio-89, ¶ 71 (“[T]he General Assembly’s decision to shift what could have been – under a neutral application of Article XIX – Democratic-leaning areas into competitive districts, i.e., districts that give the Republican Party’s candidates a better chance of winning than they would otherwise have had in a more compactly drawn district, resulted in a plan that unduly favors the Republican Party and unduly disfavors the Democratic Party.”). The Court found this approach unconstitutional under the analogous Article XIX, Section 1(C)(3)(a). The Commission is trying the same sleight of hand again with its revised state legislative plan.⁸

The Rodden II Plan demonstrates that it is possible to comply with all provisions of Article XI without favoring one party over another in this way. Unlike the Remedial Plan, which creates 13 nominally Democratic-leaning House districts with Democratic vote shares between 48% and 52% (and *no* Republican-leaning House districts in the same category), the Rodden II Plan creates four. *See* Rodden Aff. ¶ 43 tbl. 2.

(ii) The Remedial Plan’s House map exhibits clear partisan bias.

The Remedial Plan exhibits clear partisan skew on several measures of partisan bias, including the efficiency gap, partisan bias, mean median, and declination. The Rodden II Plan, while still manifesting some partisan bias in favor of the Republican Party, performs markedly better on these measures than the Remedial Plan.

⁸ To be clear, Petitioners are not arguing that there is anything *intrinsically* wrong with a Commission map that includes some toss-up districts. The point here is that the Commission systematically rigged the map—Ohio’s political geography does not necessitate drawing such a large number of nominally Democratic-leaning tossup districts.

With regard to the Senate map, the data show as follows:

Partisan Bias Measure	Revised Senate Plan	Rodden II Plan
Efficiency Gap	-6.0%	-5.4%
Mean-Median Diff.	-3.4	-1.3%
Declination	-.357	-.256
Symmetry Bias	-9.5	-1.7

See Report of Dr. Christopher Warshaw (Jan. 25, 2022) (“Warshaw Report”), at 13.⁹ On every measure of partisan bias, the Revised Plan reflects “substantial pro-Republican bias,” and only “modest improvement” on the 2021 Plan. *Id.* The Rodden II plan, by contrast, reflects a “marked improvement,” albeit still possessing a pro-Republican bias under these measures. *Id.*

The same partisan bias is evident in the House map:

Partisan Bias Measure	Revised House Plan	Rodden II Plan
Efficiency Gap	-5.7%	-3.1%
Mean-Median Diff.	-3.9	-3.1%
Declination	-.515	-.328
Symmetry Bias	-8.0	-4.8

Id. at 14. Again, whereas the Revised Plan only shows “modest improvement on these metrics” compared to the unconstitutional 2021 Plan, the Rodden II plan is “much less biased.” *Id.* at 14-15.

⁹ The Warshaw Report is filed in a related case, *League of Women Voters v. Ohio Redistricting Commission*, Case No. 2021-1193.

Simply put, analysis of partisan bias measures reveals that the Revised Plan “appears to be drawn to favor the Republican Party.” *Id.* at 17.

(iii) The Remedial Plan’s House map reflects intentional line-drawing decisions to maximize Republican performance.

Third and finally, the Remedial Plan’s House map—on its face—continues to reflect the Commission’s efforts to favor the Republican Party by contorting district lines. This is true when considering measures of compactness: The Rodden II Plan performs better than the Remedial Plan on multiple measures of plan-wide compactness. *See* Rodden Aff. ¶ 39 & tbls. 1-2 (demonstrating that the Rodden II Plan is more compact than the Remedial Plan for both the House and Senate maps). The Rodden II Plan also maintains the integrity of political subdivisions more effectively than the Remedial Plan. It splits only 32 counties in its House map and 15 in its Senate map, while the Remedial Plan splits 37 counties in its House map and 17 in its Senate map. *Id.* ¶ 34 & tbls. 1-2.

Specific examination of regions in the Remedial Plan illustrates the Commission’s intentional efforts to improve the likely Republican performance of the Plan.¹⁰ For example, the Remedial Plan’s treatment of Montgomery County is identical to the 2021 Plan. As the Court noted in its opinion, the 2021 Plan achieved its partisan skew by “splitting proximate groups of Democratic voters to scatter them across majority-Republican and rural exurban areas (e.g., the Cincinnati and Dayton metropolitan areas).” *LWV*, ¶ 126. The Remedial Plan is no different: it once again removes Trotwood—a primarily Black and Democratic suburb of Dayton—from its surrounding area and submerges it in a solid red district with rural Preble County. *See* Rodden Aff. ¶ 52. The Remedial Plan takes the same approach in Hamilton County, but this time substitutes

¹⁰ The examples provided herein are illustrative only. Given the limited time available to analyze the Revised Plan and prepare these objections, Petitioners have focused on a relative handful of examples, rather than a systematic recitation, and exhaustive discussion, of every region in the House plan that manifests clear partisan bias.

one community with a large minority population for another. In the 2021 Plan, Forest Park, which is largely Black and suburban, is paired with rural and white exurban areas in House District 29. *Id.* ¶ 49. In the Remedial Plan, House District 29 simply replaces Forest Park with North College Hill, another community in metro Cincinnati with a large minority population, to create yet another safe Republican district. *Id.*

The Plan also creates very non-compact districts in order to achieve specific partisan results throughout the state. In Franklin County, the Remedial Plan creates unnecessarily non-compact districts and retains the choice to extract Dublin from Franklin County and attach it to rural Union County in the 12th district. *Id.* ¶ 47. In Hamilton County, the Remedial Plan draws House District 27 as a “long, non-compact” House district, lurching toward Cincinnati to grab just enough Democratic votes to cross the 50% threshold and resulting in a 50.2% Democratic index. *Id.* ¶ 50. House District 27 also appears to be built around a Republican incumbent, Representative Brinkman. *Id.*

This pattern continues in Lorain County. In the Elyria-based House District 52, the Remedial Plan creates a nominally Democratic district with an index of 50.3 percent. *Id.* ¶ 53. The district includes Representative Manning, a Republican incumbent who won by significant margins in the last two elections. *Id.* The Remedial Plan manages to keep the district on the razor’s edge by carefully extracting the heavily-Democratic city of Oberlin.

These choices, as well as others, reflect a deliberate effort to benefit Republican candidates. It is therefore plain that the Remedial Plan’s failure to achieve partisan proportionality is not explainable by a need to comply with Article XI, but rather the unconstitutional act of drawing a plan primarily to favor Republicans and disfavor Democrats.

b. The process used to adopt the Remedial Plan also provides strong evidence of partisan bias.

The Commission's actions during the remedial period also support a finding that the Remedial Plan as a whole violates Section 6(A). This Court has explained that a "map-drawing process may support an inference of predominant partisan intent." *LWV*, ¶ 118. The process used to draw the Remedial Plan reeks of partisan bias.

Here, as with the 2021 Plan, "the commission itself did not engage in any map drawing or hire independent staff to do so. Instead, the legislative caucuses of the two major political parties – i.e., the groups with the most self-interest in protecting their own members – drew maps for the commission to consider." *Id.* ¶ 119. The Remedial Plan was drawn by the same Republican map-drawers as before. And though Republican commissioners made much of the fact that staff held *some* joint meetings during the remedial process, Democratic map-drawer Chris Glassburn testified that this process broke down after it became clear that Republican mapmakers were not attempting to reach the 54% Republican and 46% Democratic proportionality threshold specified by this Court. (*See* BENNETT_121 (1/22 Commission Hearing Tr.)). Whatever nascent efforts to work together may have occurred behind the scenes, it seems plain that the process quickly devolved into competing partisan camps.

The Commission's remedial process was characterized by secrecy and dominance by the majority party. As explained above, nearly all map-drawing was conducted outside of public view. The Commission did not conduct a single substantive hearing until the majority of the remedial period had passed. *See supra* Section II.B.1. Even then, it did not allow public testimony or consider any maps submitted by the public. *Id.* It employed technical maneuvers in order to flout notice requirements. *Id.* The Commission adopted the Remedial Plan on a rushed, party-line vote after cutting off questioning by Democratic Commissioners. (*See* BENNETT_248-251 (1/22

Commission Hearing Tr.)). Most damningly, the Commission did not make the data underlying the Remedial Plan public until after its adoption, completely depriving Ohioans of their constitutionally mandated right to assess and proactively provide input on the Plan. *See supra* Section II.B.2.

The one-sided nature of the Commission’s process further supports the conclusion that the partisan skew of the Remedial Plan was intentional—that the Commission primarily favored the Republican Party in drawing the plan. The Remedial Plan therefore violates Section 6(A).

C. The Remedial Plan violates Article XI, Section 1.

Finally, the Commission did not follow the mandatory procedures set out in Section 1 of Article XI. In relevant part, the Commission must:

- “[R]elease to the public a proposed general assembly district plan for the boundaries for each of the ninety-nine house of representatives districts and the thirty-three senate districts.”
- Before adopting, but after introducing the plan, hold three public hearings to present the proposed plan and seek public input.
- Make all Commission meetings open to the public.

See Article XI, Section 1(C).

Petitioners acknowledge that the Commission had ten days to enact a new General Assembly Plan. Even within this compressed timeframe, however, Article XI applies with no less force, and Commission violated both the letter and the spirit of these public transparency provisions. *See supra* Section II.B. Of particular concern, the Commission did not post data files to the Commission website until *after* voting to adopt the plan. It therefore did not “release to the public a proposed general assembly district plan for the boundaries for each of the ninety-nine house of representatives districts and the thirty-three senate districts,” prior to the Remedial Plan’s adoption, in direct contravention of Article XI, Section 1(C).

Nor did the Commission allow any public input before voting. As discussed above, the Commission did not provide notice of a public meeting at which it would vote to adopt and/or finally approve a General Assembly Plan. Rather, the Commission had been in “recess” for almost 48 hours before suddenly convening for the meeting in which the Remedial Plan was ultimately adopted. Accordingly, the Commission did not provide public notice of the meeting under Ohio’s Sunshine laws. R.C. 121.22(F). In any event, the Commission did not provide any opportunity for public input on the Remedial Plan (at that meeting or otherwise) before it was adopted. This again contravenes Article XI’s requirement, contained under both Section 1 and Section 8’s impasse provision, that the public have the opportunity to comment on a proposed plan before its adoption. Article XI, Section 1(C), 8(A)(2).

Indeed, the Commission scarcely provided opportunity for the Democratic Commissioners to offer input on the Remedial Plan. For example, Co-Chair Cupp effectively cut off Co-Chair Sykes’ line of questioning about why Republican map-drawers did not draw more proportional maps and recessed the Commission; a procedurally curious maneuver in light of the fact that, as Co-Chairs, Sykes and Cupp are equals on the Commission. When the Commission returned from the abrupt recess, Senator Huffman immediately moved to adopt the Remedial Plan. *See supra* Section II.B.2.

Petitioners understand it may have been difficult for the Commission to, for example, hold *three* public meetings before voting to adopt a plan, as Section 1 requires. But even giving the Commission the benefit of the doubt in that respect, it acted in flagrant disregard of Section 1 requirements. That disregard has consequences. Not only were members of the public deprived of the opportunity to provide input on the substance of the plan, but they were also deprived of any

chance to note the plan's deficiencies under the Ohio Constitution. As discussed above, this includes compliance with the technical line-drawing rules set out in Article XI, Section 3.

Simply put, the Commission failed again—both in how it proceeded and in the plan it adopted.

IV. Conclusion

The Commission's task is clear: It must comply with Article XI in its entirety. It has now failed to do so twice. The Commission's refusal to follow this Court's order and comply with the Ohio Constitution reflects a stubborn intransigence toward complying with Article XI, and a troubling willingness to flout those mandates whenever political expediency might dictate. Petitioners respectfully ask the Court to (a) declare the Remedial Plan unconstitutional; (b) order the Commission to reconvene to draw a constitutional General Assembly Plan; (c) order, if the Court deems necessary and appropriate at this stage, a stay or postponement of the February 2, 2022 deadline for candidates for legislative offices to submit petitions and declarations of candidacy;¹¹ and (d) retain jurisdiction.

Dated: January 25, 2022

Respectfully submitted,

/s/ Donald J. McTigue

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¹¹ The Court has previously noted that "the election cycle should not proceed with a General Assembly—district map that [it has] declared invalid," and that the Court has authority to issue orders as are "necessary to achieve closure and complete relief in [an] action[] pending before the court." *LWV*, ¶ 136 (internal quotation omitted). Petitioners note that the General Assembly has already moved the candidate filing deadline for congressional races to March 4, 2022. *See* 2021 Sub.S.B. No. 258, § 4.

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