

IN THE SUPREME COURT OF OHIO

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

Petitioners,

v.

OHIO REDISTRICTING COMMISSION,
et al.,

Respondents.

Case No. 2021-1193

Original Action Filed Pursuant to Ohio
Const., Art. XI and S.Ct.Prac.R. 14.03

PETITIONERS' OBJECTION TO THE OHIO REDISTRICTING COMMISSION'S
FEBRUARY 24, 2022 REVISED PLAN

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INTRODUCTION

In a hearing on February 24, 2022, the Republican members of the Redistricting Commission introduced for the first time a revised map that they contended would comply with this Court’s February 7, 2022 Order (“the Second Revised Plan”). Feb. 24, 2022 Ohio Redistricting Comm’n Hrg., at 00:22:50, <https://ohiochannel.org/video/ohio-redistricting-commission-2-24-2022>. Just a few hours later, and over objections from Democratic Commissioners that there had been no opportunity to study the map or provide input, *id.* at 00:33:25, Republican Commissioners proceeded to a vote and approved the plan by a 4-3 margin, *id.* at 00:48:05.¹

The Second Revised Plan violates Article XI, Sections 6(A) and 6(B) of the Ohio Constitution. It does so because it ignores the prohibition that maps shall not be drawn primarily to favor or disfavor a political party and shall reflect statewide voter preference. The plan is pervaded by extreme partisan asymmetry, which this Court found in its February 7, 2022 Opinion and Order to be evidence of a plan’s violation of Section 6(A). Additionally, the Plan distributes close districts disproportionately between the parties, which the Court in its February 7 Opinion found to violate Section 6(B).

The plan purports to have 45 Democratic-leaning House seats, but 19 of those — over one third of the seats — have a Democratic vote share of less than 52%. Report of Dr. Christopher Warshaw (Feb. 28, 2022) [hereinafter “Warshaw Rpt.”] at 2, 5. Of the purportedly 15 Democratic-leaning Senate seats, 7 — nearly half — have a Democratic vote share of less than 52%. *Id.* at 2, 4–5. Yet of the 54 Republican-leaning House seats and 18 Republican-leaning Senate seats, *none* have a Republican vote share of less than 52%. *Id.*

¹ Auditor Faber voted against the Second Revised Plan, the first time that a Republican Commissioner has voted against a plan adopted by the Commission.

The Commission majority's Section 8(C)(2) Statement contends that the Commission addressed the asymmetry issue identified in the Court's opinion by reducing the number of Democratic-leaning seats in the 50% to 51% range. *See* Section 8(C)(2) Statement, The Ohio Redistricting Comm'n, at 2, <https://redistricting.ohio.gov/meetings> ("Previous Commission Meetings — Feb. 23, 2022") [hereinafter "8(C)(2) Statement"]. The Commission has misconstrued, and ignored the spirit of, this Court's opinion.

The Court's February 7, 2022 Opinion referred to the distribution of seats within the 50% to 51% range in the map then under examination as a disparate allocation of such seats. But disparate treatment is not confined to that particular numerical range, and the decision did not confine its concern or analysis to that. As set forth below, the Court's focus was on asymmetry — the disparate treatment of the two parties as regards the allocation of closely competitive seats. And, as noted above, this unequal treatment continues to plague the Second Revised Plan.

This asymmetry violates the Court's February 7, 2022 Order. It was also unjustifiable, as the Commission had before it a far more compliant alternative (the "Rodden III" plan), which it simply failed to consider. This Court should invalidate the Second Revised Plan and remand to the Commission so that it may enact a compliant plan.

I. Objection 1: The Revised Plan Violates Section 6(A)

In its discussion of Section 6(A), *see* Feb. 7, 2022 Slip Op. ¶¶ 34–49, this Court identified the asymmetrical distribution of seats that are close to a 50% vote share as being an important factor to consider when determining whether a plan was drawn "primarily to favor" a political party. The Court looked to the disparity in the number of seats that "favor" Democrats by only 50% to 51%, the range in which Republican map-drawers had attempted to stack "Democratic" districts in the January 22, 2022 Plan that this Court invalidated. *Id.* at ¶ 36, 40. In that plan, more than a quarter of the "Democratic" House districts fell into that range, yet all Republican

districts had vote shares of 52.6% and above. *Id.* at ¶ 40. The Court then relied on “the commission’s adoption of a plan in which the quality of partisan favoritism is monolithically disparate” as evidence of a Section 6(A) violation. *Id.*

This analysis applies with particular force here. As noted above, of 45 purportedly Democratic-leaning House seats in the Second Revised Plan, 19 — over a third — have a Democratic vote share of less than 52% — but not a *single* Republican-leaning seat falls in that range. Warshaw Rpt. at 5. The Democratic seat/vote distribution for the House is set forth in the figure below from Dr. Warshaw’s Report.

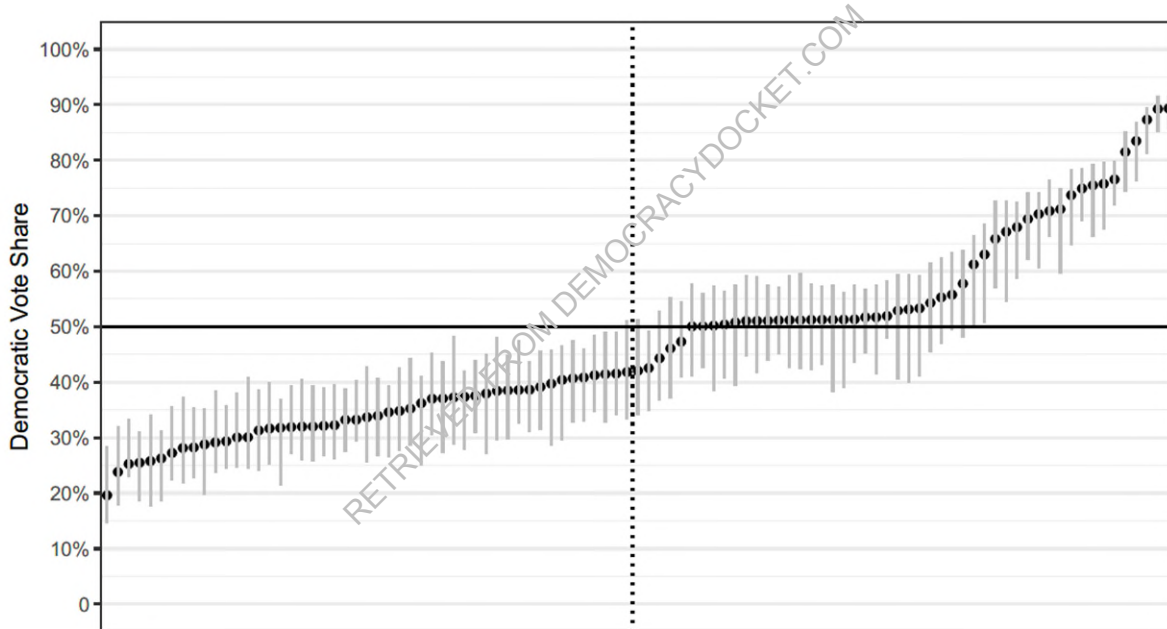


Figure 3: Expected Democrat Vote Shares

Figure 4: District-level Vote Shares on Commission’s Revised State House plan based on the aggregation approach used by the Commission. The vertical lines around each dot show the range of statewide election results in that district. The dotted line shows the number of seats required for the majority.

Similarly, of the 15 purportedly Democratic-leaning Senate seats, 7 — almost half — have a Democratic vote share of less than 52%, but *none* of the Republican-leaning seats fall in

that range. *Id.* at 4–5. The Democratic seat/vote distribution for the Senate is set forth in the figure below from Dr. Warshaw’s Report.

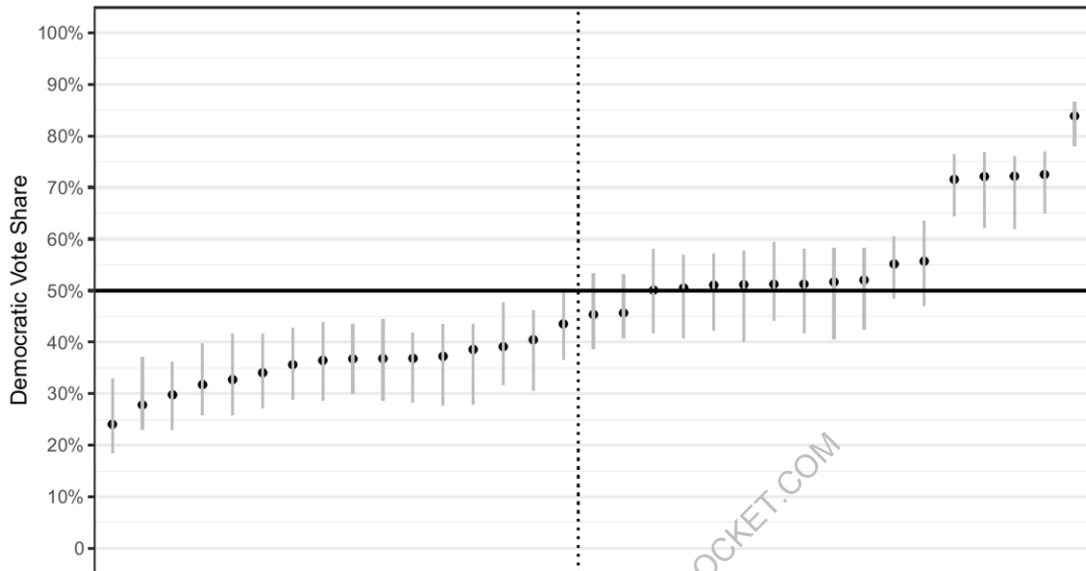


Figure 1: Expected Democrat Vote Shares

Figure 2: District-level Vote Shares on Commission’s Revised State Senate plan based on the aggregation approach used by the Commission. The vertical lines around each dot show the range of statewide election results in that district. The dotted line shows the number of seats required for the majority.

Indeed, the asymmetrical distribution of seats under the Second Revised Plan is *more severe* than the comparable distribution in the January 22 Plan. *Id.* at 3. Under that Plan, there were 14 Democratic-leaning House Seats in the 50-52% range and 5 Senate seats in that range. *Id.* As noted above, under the Second Revised Plan there are 19 House seats in that range and 7 Senate seats in that range. *Id.* at 2–3. The January 22 Plan created one Republican Senate district in that range, but the Second Revised Plan does not contain a single Republican seat in this range. *Id.*

II. Objection 2: The Revised Plan Violates Section 6(B)

In the section of its February 7, 2022 Opinion addressing the violation of Section 6(B), Slip Op. ¶¶ 50–64, this Court again focused on the asymmetrical distribution of seats with vote

shares close to 50%. It first observed that it is inappropriate to take at face value the assertion that a district “favors” a political party if its vote share is close to 50%:

Bluntly, the commission’s labeling of a district with a Democratic vote share between 50 and 51 percent (in one case, a district having a 50.03 percent vote share) as “Democratic-leaning” is absurd on its face. Section 6(B) requires the commission to attempt to draft a plan in which the statewide proportion of districts whose voters “favor” each party closely corresponds to the statewide voters’ preferences.

Slip. Op. ¶ 61. Critically, the Court then built on this point to focus on whether the treatment of two parties’ seats that are close to the 50% line is improperly disparate:

Here, the quality and degree of favoritism in each party’s allocated districts is grossly disparate. When 12 of the 42 “Democratic-leaning” House districts (i.e., more than 25 percent) are very close “toss-up districts” yet there are 0 “Republican-leaning” districts that are similarly close, the proportion of districts whose voters “favor” each party is not being assessed properly.

Id.

It then concluded:

To be clear, we do not read Article XI, Section 6(B) as prohibiting the creation of competitive districts. But competitive districts . . . must either be excluded from the proportionality assessment or be allocated to each party in close proportion to its statewide vote share.

Id. at ¶ 62. Thus, when characterizing districts as “Democratic” or “Republican” for purposes of a Section 6(B) calculation, where there is a disproportional allocation of seats with close to 50% vote share, the superficial characterization of the districts cannot be taken at face value. Either such districts must be excluded altogether from the calculation or they must be allocated to the parties in a proportionate manner.

The implication for the Second Revised Plan is straightforward. The contention in the majority’s Section 8(C) statement that this plan reflects a 54% Republican-leaning and 46%

Democratic-leaning proportionate seat allocation — i.e. “a total of 72 Republican-leaning districts and 60 Democratic-leaning districts,” *see* 8(C)(2) Statement at 1–2 — cannot simply be accepted at face value. If one eliminates the seats within the 50-52% range, the number of Democratic seats shrinks by 26, for a total of 34 seats. The resulting partisan division of the remaining 106 seats (132 minus 26) is about 32% Democratic-leaning seats and 68% Republican-leaning seats — a far cry from proportionate allocation.

Dated: February 28, 2022

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CERTIFICATE OF SERVICE

I, Freda J. Levenson, hereby certify that on February 28, 2022, I caused a true and correct copy of the following documents to be served by email upon the counsel listed below:

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