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 Constitution, Article XI**

PETITIONERS' OBJECTION TO THE OHIO REDISTRICTING COMMISSION'S MARCH 28, 2022 REVISED PLAN

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INTRODUCTION

On March 16, 2022, this Court invalidated the Ohio Redistricting Commission's ("Commission") February 24 revised plan (the "Third Plan") "in its entirety" and ordered the Commission to "draft and adopt an entirely new General Assembly-district plan that conforms with the Ohio Constitution, including Article XI, Sections 6(A) and 6(B) . . . ." *League of Women Voters of Ohio v. Ohio Redistricting Comm.*, Slip Opinion No. 2022-Ohio-789 at ¶ 44 (hereinafter "Slip Op."). The Commission chose not to do so. Instead, on March 28 it adopted maps (the "Fourth Plan") that are, by their own sponsor's admission, the invalidated Third Plan with "only minor changes."[1] Indeed, over both the House and Senate maps, they impact ***less than one third of one percent of Ohio's voters***. Ex. 2, Affidavit of Dr. Christopher Warshaw (Mar. 29, 2022) at 7 (hereinafter "Warshaw Aff.").

Unsurprisingly, these minor changes had almost no impact on the partisan imbalance that this Court declared unconstitutional in the Third Plan. The Third Plan created 19 House districts with 50–52% Democratic vote share; the Fourth Plan creates 17 House districts in that range. Ex. 2, Warshaw Aff. at 2–3; Slip Op. ¶ 32. The Third Plan created 7 Senate districts with 50–52% Democratic vote share; the Fourth Plan creates 6 such districts. Ex. 2, Warshaw Aff. at 2–3; Slip Op. ¶ 32. Once again, there is not a single Republican district in that range in either House or Senate. Ex. 2, Warshaw Aff. at 2–3. If there were a uniform two percent swing in favor of the Republicans, they would pick up all of these toss-up seats and win ***72% of the seats in the General Assembly*** (71 of 99 in the House; 24 of 33 in the Senate; 95 of 132 overall), a total far in excess of their 54% vote share. Conversely, a two percent swing in favor of the Democrats would yield no additional seats.

[1] Ex. 1, Tr. of Mar. 28, 2022 Ohio Redistricting Comm'n Hrg., at 117.

This partisan plan was the predictable result of a partisan process. It was the result of the majority of the Commission discarding the extensive efforts of independent map drawers retained by the Commission. Instead of using the work of those independent map drawers, the Commission adopted the invalidated Third Plan with the minor changes applied by Blake Springhetti, a staffer for House Speaker Cupp who worked on the first three invalidated plans. Ex. 1, Tr. of Mar. 28, 2022 Ohio Redistricting Comm'n Hrg., at 79, 86.

No other Commissioners saw the plan until House Speaker Cupp and Senate President Huffman moved to adopt it. *Id.* at 100–103. The plan was adopted less than an hour later, without any recess or opportunity to review the maps, and without the opportunity to amend. *Id.* at 96–97, 109–111.

In sum, the process and substance of the Fourth Plan violate Article XI, Sections 6(A) and 6(B) of the Ohio Constitution. This Court should invalidate the plan. Given that the federal court in a parallel proceeding[2] has now indicated that it may impose a plan as early as April 20, 2022, Petitioners respectfully request an early resolution of these objections so as to avoid any question that these proceedings might be moot in light of a federal ruling that imposed the Fourth Plan.

[2] *Michael Gonidakis, et al., v. LaRose et al.*, Case No. 2:22-cv-733 (S.D. Ohio).

I. RUTHLESS POWER PLAY AND THE RECREATION OF AN EXTREME PARTISAN GERRYMANDER

A. This Court Invalidates the Third Plan And Provides Specific Instructions to Remedy the Constitutional Defects.

On February 24, 2022, the Commission passed the Third Plan, to which Petitioners filed objections. *See* Obj. to Ohio Redistricting Comm'n's Feb. 24, 2022 Revised Plan, *League of Women Voters of Ohio v. Ohio Redistricting Comm'n*, No. 2021-1193 (Feb. 28, 2022). As with the first two plans, this Court issued an Opinion and Order, sustaining Petitioners' objections on the basis of violations of Article XI, Sections 6(A) and 6(B) of the Ohio Constitution. Slip Op.

In its March 16, 2022 Order, the Court spelled out just how the Third Plan's constitutional defects should be remedied:

- The Supreme Court of Ohio ordered that the Commission be reconstituted and convene in order to **"**draft and adopt an **entirely new** General Assembly–district plan" that conforms with the Ohio Constitution. *Id.* ¶ 44 (emphasis added);

- "To promote transparency and increase public trust," the order requires the Commission to conduct its drafting **"in public[.]"** *Id.* (emphasis added);

- To make sure that the work of the Commission is done effectively, the Court ordered the Commission to "convene frequent meetings to demonstrate their bipartisan efforts to reach a constitutional plan within the time set by th[e] court." *Id.*;

- And to make sure that the work is done expeditiously, the new plan must be filed with the Secretary of State no later than March 28, 2022. *Id.* ¶ 45.

B. The Commission Initially Purports to Comply with the Court's Order.

By all outward appearances, the Commission initially attempted to comply with the Court's Order. The Commission first met on Saturday, March 19 and scheduled meetings *every day* through Monday, March 28. *See Commission Meetings*, Ohio Redistricting Comm'n, https://redistricting.ohio.gov/meetings (accessed Mar. 28, 2022).

1. The Commission hires two independent map drawers and neutral mediators.

In an effort to craft a bipartisan map, the Commission unanimously agreed to hire two independent map drawers and a mediator to assist in the map-drawing process. *See* Ex. 3, Tr. of Mar. 19, 2022 Ohio Redistricting Comm'n Hrg., at 19–21; Ex. 4, Tr. of Mar. 21, 2022 Ohio Redistricting Comm'n Hrg., at 14. The two independent map drawers included one map drawer selected by Republican Commissioners, Mr. Douglas Johnson, and one selected by Democratic Commissioners, Dr. Michael McDonald. Ex. 4, Tr. of Mar. 21, 2022 Ohio Redistricting Comm'n Hrg., at 1–2. Immediately following their appointment, the two map drawers flew in from out of state for their first meeting with the Commission on Wednesday, March 23 and to receive instructions for their work. *See* Ex. 5, Tr. of Mar. 23, 2022 Ohio Redistricting Comm'n Hrg., at 1.

2. The Commission unanimously adopts instructions to guide the map-drawing process.

At the March 23 Commission meeting, after two-and-a-half hours of substantive discussion, the Commissioners unanimously agreed to adopt 24 detailed instructions to guide the work of the map drawers. *See* Ex. 6, *Ground Rules for Map Drawers*, Ohio Redistricting Comm'n (Mar. 23, 2022). These Rules directly sought to respond to the Court's Order, and include, in part:

- Rule 1: The map drawers shall include the two independent map drawers hired by the Redistricting Commission and Commissioners' staff/contractor map drawers. *Id.*
- Rule 2: The independent map drawers shall draft any General Assembly district plan at the direction of the Redistricting Commission and in accordance with the Ohio Constitution and Supreme Court of Ohio's orders. *Id.*
- Rule 3: The independent map drawers shall answer to each of the Redistricting Commission members. However, any conflicting direction from the Redistricting Commission members shall be resolved via a mediation process. (Rules 12-16). *Id.*

- Rule 4: The independent map drawers shall produce an entirely new general assembly district plan that has not been previously submitted to the Redistricting Commission. The independent map drawers shall not include or consider any general assembly plan proposals or work product produced prior to Wednesday, March 23, 2022 when drafting the entirely new general assembly district plan. *Id.*

- Rule 8: The independent map drawers shall utilize one computer purchased by the Redistricting Commission to draft any general assembly district plan. Two additional computers may be used for preparation purposes by the independent map drawers on site. *Id.*

- Rule 10: The independent map drawers shall draw a general assembly district plan that conforms with the Ohio Constitution including Article 11, Sections 1, 2, 3, 4, 5, 6, and 7, the Constitution of the United States and applicable federal laws. *Id.*

- Rule 11: The independent map drawers shall draw a general assembly district plan that conforms with the opinions of the Ohio Supreme Court and the United States Supreme Court. *Id.*

- Rule 20: The Statehouse's Ohio Government TV will livestream the map making process. OGT will stream the map drawers whenever they are working in the room. *Id.*

- Rule 21: Commissioners or their designated staff shall have unlimited access to the map drawers, but shall contact both Dr. McDonald and Mr. Johnson simultaneously. *Id.*

- Rule 22: The independent map drawers will provide regular progress updates to the Commission at each of the Commission's scheduled meetings. *Id.*

- Rule 23: Commissioners can expect to provide feedback and guidance to the independent map drawers in these meetings in addition to their individual outreach to the independent map drawers. *Id.*

3. The independent map drawers immediately get to work and make steady progress.

The next morning, on March 24, the independent map drawers began their work to draw new general assembly maps. They met in room 116 of the Statehouse and utilized two computers to draw the maps. Designated staff of the Commissioners, both Republican and Democrat, participated throughout the day, providing feedback to the map drawers in real time

and fielding questions about Ohio's geography. *See* Mar. 24, 2022 Ohio Redistricting Comm'n Workroom, https://bit.ly/3wPRJWt.

That evening, the map drawers met with the Commission to brief them on their progress and to seek their guidance on some outstanding questions. Dr. McDonald noted that he had "tackled the difficult part of Franklin County" and expected to finish the county by Thursday evening. Mar. 24, 2022 Ohio Redistricting Comm'n Hrg., at 03:18, bit.ly/3IJpomW.[3] Mr. Johnson agreed, noting that although it was "slow going," the map drawers were "making progress." *Id.* at 06:49.

At the end of the meeting, Commission Co-Chair Vernon Sykes remarked that "this is historic" due to the transparent nature of the proceedings and that "we are making progress." *Id.* at 49:32. In a joint interview with Co-Chairs Speaker Cupp and Senator Sykes after the Commission meeting concluded, Senator Sykes said that he was "optimistic that they're going to make the deadline." Josh Rultenberg (@JoshRultNews), Twitter, (Mar. 24, 2022, 8:39 PM), bit.ly/3DhpbX5. Speaker Cupp echoed this sentiment, saying "agreed, agreed." *Id.*

At the Friday, March 25, 2022 afternoon meeting of the Commission, the map drawers informed the Commission that they made even more progress and had successfully drafted their proposals for districts in Cuyahoga, Franklin, Hamilton, and Summit Counties, and were steadily making progress on Montgomery County. Mar. 25, 2022, Ohio Redistricting Comm'n Hrg., at 04:04, bit.ly/3JJeSNM. Mr. Johnson noted that the representatives of the Commissioners who had been in the map drawing room to answer questions had helpfully informed the map drawers about "lessons learned" from the past map drawing exercises. *Id.* at 31:23.

[3] Because no transcript of the March 24, 2022 Ohio Redistricting Commission hearing is available on the Commission's website, we have cited to the Ohio Channel link of the hearing. This is also true for the citations to the March 25 and 27 hearings.

The Commission met again the next day, on March 26, 2022, to hear from the map drawers on their progress and to discuss any outstanding issues. The map drawers noted that they had made significant progress on their separate maps and intended to "merge" their two maps after receiving guidance from the Commission on certain districting choices in Franklin, Montgomery, and Cuyahoga counties. Ex. 7, Tr. of Mar. 26, 2022 Ohio Redistricting Comm'n Hrg., at 4.

4. The independent map drawers resolve their differences and merge their maps with guidance from the Commission.

By the next afternoon, on March 27, the map drawers completed their respective maps and presented their maps to the Commission. Mar. 27, 2022, Ohio Redistricting Comm'n Hrg., at 01:50, http://bitly.ws/pHoI. The maps closely aligned on proportionality and symmetry issues—in compliance with the Constitution and this Court's orders—but differed on the configurations in several counties. *Id.* at 02:45. The map drawers presented their different county configurations to the Commission and presented the Commissioners with options for Montgomery, Cuyahoga, and Franklin counties. *Id.* at 5:50. The Commission recessed for two hours so that every Commissioner could have the opportunity to meet with the map drawers and review each map in detail on their respective computers. *Id.* at 01:24:00. After returning from recess, the Commission provided their collective guidance, without disagreement, to the map drawers on how to district Montgomery, Cuyahoga, and Franklin counties. *Id.* at 01:26:06.

As a result of these decisions, the map drawers agreed that they could merge their two respective maps for consideration by the Commission. *Id.* at 01:52:00. The next morning, on March 28, the map drawers notified the Commission that they had successfully merged their two maps and were methodically going through the state, with the help of the Commission

representatives, to fix any technical issues. Ex. 1, Tr. of Mar. 28, 2022 Ohio Redistricting Comm'n Hrg., at 3–4.

5. The Commission mediates the question of incumbent protection.

Republican Commissioners requested that that the map drawers consider the addresses of incumbents when creating district lines, while the Democratic Commissioners expressed opposition to this. Ex. 7, Tr. of Mar. 26, 2022 Ohio Redistricting Comm'n Hrg., at 5–8. As Leader Russo made clear, this Court had expressly stated that incumbency protection was not to be a determinative factor. *Id.* at 6, 7. Indeed, that is what this Court's opinion clearly stated. *See* Slip Op. ¶ 37.

The Commission agreed to bring the issue to mediation. Ex. 7, Tr. of Mar. 26, 2022 Ohio Redistricting Comm'n Hrg., at 9–10.

The issue was submitted to mediation on March 26 and resolved the next day. As a result of the mediation it was resolved as follows:

> "Upon completion of the independent map drawers' merger of their independent versions of the House and Senate maps and prior to any presentation to the Commission, the independent map drawers shall consider the residence locations of non-term limited House and Senate incumbents, and Senate incumbents in midterm, in drafting a Commission map, and where possible without violating constitutional principles, avoid pairing incumbents and also drawing districts such that Senators protected under Section 5 of Article 11 no longer live in the district they represent."

Ex. 8, *Mediation Agreement, Instructions to Map Drawers with regard to Incumbents*, Ohio Redistricting Comm'n (Mar. 27, 2022). This resolved the issue as a matter of substance, although Republican Commissioners repeatedly raised this issue in order to create some reason not to move forward with the independent map drawers' plan. Ex. 1, Tr. of Mar. 28, 2022 Ohio Redistricting Comm'n Hrg., at 22–23, 44–45, 62–63, 89–90.

C. The Commission Abandons the Independent Process and Adopts the Fourth Plan Through the Same Partisan Unconstitutional Process As Its Prior Plans.

1. The Republican Commissioners pull the rug out of the map-drawing process.

At 4:30 PM that afternoon, map drawer Mr. Johnson informed the Committee that he and Dr. McDonald were just a "couple of hours away" from completing their map and presenting it to the Commission. Ex. 1, Tr. of Mar. 28, 2022 Ohio Redistricting Comm'n Hrg., at 19. Co-Chair Sykes noted that the Commission was meeting to make "suggestions and input from the Commission . . . to cross the finish line." *Id.* Halfway through the hearing, Senate President Huffman abruptly announced that the Commission had to "pass a map by 10:30 [PM]" in order to comply with the Court's midnight deadline. *Id.* at 53. Senate President Huffman then motioned to have the Commission turn instead to the invalidated February 24 map as a starting point. And he made clear that his partisan map-drawing staff, Mr. Springhetti, would make those changes. *Id.* at 56, 79. Such a map was to make changes to the Third Plan in order to pass the partisan-drawn map by 10:30 PM that night. *Id.* at 56.

Minority Leader Russo immediately objected. So did Co-Chair Sykes. Co-Chair Sykes remarked that the motion was "ridiculous" and that "to distract us, the staff, and the . . . independent map drawer to divert to some other task is ridiculous . . . contrary to the directive, contrary to the spirit and the direction of the court." *Id.* at 57. Leader Russo explained:

> "[T]this is so disingenuous . . . the Court has ordered us to create a map as a Commission, starting from scratch. And that is what we have done, and we have brought in these outside independent map makers who have spent an enormous amount of time . . . to totally undercut that at this point, number one is . . . again, a slap in the face to Ohio voters and **completely disregarding the Court order . . .** The Court would much rather us work and finish this job than to again submit another unconditional map that is not drawn by the entire Commission and/or submit nothing . . ." *Id.* at 58 (emphasis added).

Leader Russo suggested the Commission meet in mediation to resolve the dispute. *Id.* at 61. Senate President Huffman immediately summarily rebuffed her. *Id.* at 63. Co-Chair Sykes observed that *"[t]here seems to be no end to the arrogance of the supermajority.*" *Id.* (emphasis added).

Over the objections of the two Democratic Commissioners, each and every Republican Commissioner voted for Senate President Huffman's motion to resuscitate the invalidated Third Plan. *Id.* at 70.[4]

2. Like with the First, Second, and Third Plans, Republican Commission members unveil a partisan, secret, Republican-drafted map.

At approximately 9:30 PM, Mr. Johnson informed the Commission he had completed his full House map and was "making progress as fast as humanly possible" to complete the Senate map and get a full map done that evening. Ex. 1, Tr. of Mar. 28, 2022 Ohio Redistricting Comm'n Hrg., at 71. When asked by Co-Chair Sykes how long it would take to complete his work, Mr. Johnson estimated he could complete his work within the next 45 minutes to an hour. *Id.* at 72.

Notwithstanding Mr. Johnson's progress, Senate President Huffman and Speaker Cupp introduced the Fourth Plan, which was crafted by Mr. Springhetti in the recess period. *Id.* at 79–81; Ex. 9, Fourth Plan, Ohio Redistricting Comm'n (Mar. 28, 2022). They proceeded to pass out PDFs of the map along with a population deviation spreadsheet. Ex. 1, Tr. of Mar. 28, 2022 Ohio Redistricting Comm'n Hrg., at 84. Speaker Cupp then read off prepared remarks,

[4] During a recess, Senate President Huffman spoke with reporters, and informed them that he came up with the idea to bypass the independent map drawers that Saturday (March 26), coincidentally, the same day he proposed the additional instructions be given to the independent map drawers to consider incumbent addresses when drawing districts. Andrew Tobias (@AndrewJTobias), Twitter, (Mar. 28, 2022, 6:04 PM), https://bit.ly/36vQrW4.

explaining that "this was the best that could be done in the time that was allotted by the Supreme Court . . . We have followed the Supreme Court's process directions . . . and they have led us to this moment . . . At this late hour we have to comply I think, as best we can." *Id.* at 82–83. Leader Russo responded that "this process and this motion and this map that's been put before us is a complete farce," noting that she had been handed just a PDF of the map along with population deviations, but did not receive any details on the partisan lean of each district or any information about the symmetry of competitive districts. *Id.* at 83–84. Leader Russo requested the opportunity to offer amendments to the Fourth Plan. Her request was denied. *Id.* at 96–97.

Co-Chair Sykes further noted that the Republicans withdrew from the map-drawing process over the previous day and stopped assisting the independent map drawers. He noted that "in th[e] last day, [majority staff] have not been really present to assist and help in this process. And so, instead of passing or adopting a motion to turn their attention away from the independent map drawers and trying to assist and make sure that we comply with all of the requirements of the Constitution [] they withdrew . . . the majority has just hijacked this whole process and they've withdrawn from helping us to get across the finish line." *Id.* at 87.

In an extended back-and-forth between Speaker Cupp and Leader Russo, Speaker Cupp confirmed that Mr. Springhetti worked off of the previously invalidated Third Plan. *Id.* at 92. He also confirmed that the only changes made from the Third Plan resulted in the Fourth Plan having two fewer "asymmetrical" Democratic House Districts and one fewer "asymmetrical" Democratic Senate district. *Id.* at 93–94. As a result, while the Third Plan had 19 House Democratic seats in the 50–52% range, the Fourth Plan has 17 House Democratic seats in that range and no competitive Republican seats. *Id.* And, the Fourth Plan had one fewer Democratic Senate seat in the 50–52% range than the Third Plan, and no Republican seats in that range. *Id.*

3. The partisan Republican map is adopted.

After that, Leader Russo suggested that the Commission recess to review the Fourth Plan. Senate President Huffman opposed Leader Russo's request. Leader Russo then summarized the Republican Commissioners' request: "you are asking us as a Commission to vote on a map that clearly violates the court order and the Constitution as interpreted through the court order because you don't want to give . . . our independent map maker, the Commission's mapmaker the additional time to do the work. Frankly, I'd rather be here for a couple hours longer than to have to come back and go through this process again because . . . this map has been declared [] unconstitutional and has been thrown out by the Court." *Id.* at 99. Receiving no response to her question, Leader Russo then asked each of the Commissioners when they first saw the Fourth Plan. *Id.* at 100. Commissioners Sykes, DeWine, LaRose, and Faber all noted that the first time they saw the plan was at the hearing moments ago. *Id.* at 100–103. Commissioners Huffman and Cupp did not answer. *Id.*

Co-Chair Sykes and Leader Russo then twice motioned to have the Commission request that the Ohio Supreme Court grant a 12-hour extension of the deadline to pass a map. *Id.* at 103–104, 107–108. Their motion was ignored. Leader Russo then requested a 30 minute recess to review the Fourth Plan. *Id.* at 105, 107. Her request was again rebuffed. The Fourth Plan was then brought up and adopted by a 4–3 vote, with both Democratic Commissioners voting against the Plan. *Id.* at 110–111.

4. The Independent Plan is complete — before the Court's deadline — and summarily disregarded.

Following a 30 minute recess, the Commission reconvened at 11 PM. At that time, save for a few technical items that perhaps needed correcting, Dr. Johnson completed his maps (the "Independent Plan"), posted them on the Commission's website at 10:46 PM (approximately 20

minutes after the Commission's adoption of the Fourth Plan), and made them available to the Commission members. *See* Monday Evening 3-28 Revised-Draft-Independent Map drawers-10:46 PM (Mar. 28, 2022), General Assembly District Plans – Draft Plans Drawn by Independent Map Drawers, Ohio Redistricting Comm'n, https://redistricting.ohio.gov/maps; *see also* Ex. 10, Independent Plan, Ohio Redistricting Comm'n (Mar. 28, 2022).

Co-Chair Sykes then moved for the Commission to replace the Fourth Plan by instead adopting the Independent Plan. Ex. 1, Tr. of Mar. 28, 2022 Ohio Redistricting Comm'n Hrg., at 113. He further noted that the Independent Plan achieved strict proportionality, and Leader Russo noted that the Plan was significantly more symmetrical than the Fourth Plan because it had three House Democratic and three House Republican seats falling within the 50–52% range, and only two Senate Democratic and no Senate Republican seats falling within that competitive range. *Id.* at 114–115. Although the Independent Plan was presented an hour before midnight, addressing Republican Commissioners' concerns about meeting the Court's deadline, all Republican Commissioners came out against it, citing the lack of time to review the plan as a reason for the rejection. *Id.* at 116–130.[5]

In expressing his opposition to the Independent Plan, Senate President Huffman confessed that he supported the Fourth Plan over the Independent Plan because the Fourth Plan made "only minor changes" to the invalidated Third Plan. *Id.* at 117. Shortly thereafter, the Independent Plan was rejected in a 5–2 vote, with all Republican Commissioners voting against the plan, and the two Democratic Commissioners voting in favor. *Id.* at 130–131.

[5] Curiously, the lack of time to review the Fourth Plan was not an obstacle to its passing to the four Commissioners who voted in favor of that Plan.

5. The Section 8(C)(2) Statement and the Minority Report.

The Commission then proceeded to adopt the Section 8(C)(2) Statement ("the Statement") drafted by the Republicans. And despite the Court's Order that an entirely new plan be drawn, the Statement confesses that "on the final evening of March 28, 2022, the Commission instructed Commission member staff to prepare, with the assistance of the independent map[ ]drawers, a modification of the plan adopted by the Commission on February 24, 2022 ("Third Plan") that more closely complies with the Court's orders than the Third Plan." Ex. 11, *Section 8(C)(2) Statement*, Ohio Redistricting Comm'n (Mar. 28, 2022) at 2. And while the Statement claims that the final adopted plan meets "strict proportionality," it vaguely asserts that "[t]he Commission also improved upon the number of asymmetric districts identified in *LWV*" by "reduc[ing] the number of these districts as compared to the Third Plan." *Id.*

In response, Leader Russo read into the record the minority statement endorsed by her and Co-Chair Sykes. The minority statement explains that the "[f]rom March 16, 2022 until March 28, 2022, the Minority Commissioners made every attempt to move the process along to comply with the Supreme Court's clear orders. The Minority Commissioners pushed for frequent hearings, as strongly suggested by the Court. In fact, the Minority Commissioners tried to convene the Commission every day, including on Sunday, March 20, to propose independent mapmakers. The Republicans demurred." Ex. 12, *Minority Report*, Ohio Redistricting Comm'n (Mar. 28, 2022) at 2.

The minority statement also notes that "[t]he Minority Commissioners fought for an open and transparent process. The map drawing was done entirely on a live stream – complete, with audio – for everyone to observe. Yet, in a bunker at the Bureau of Worker Compensation building, a secret map was developed, at some unknown time, in violation of the orders of the

state's highest judicial authority. The process and outcome, despite all the efforts for public viewing, expert input, and bipartisan oversight, was still conducted in the shadows." *Id*. Further, "[t]he Majority Commissioners, through President Huffman, announced their secret efforts late on the last day as a parachute they have apparently planned on for much of this process." *Id*. And again, "it is the Republican Senate president's map drawer who was sequestered in a secret location drawing the map." *Id.* at 3.

II. THE FOURTH PLAN VIOLATES SECTION 6(A)

A. Process: The Commission Violated This Court's Clear Instructions to Favor the Republican Party.

In its opinion invalidating the Third Plan, this Court acknowledged that Article XI, Section 1(C) of the Ohio Constitution provides: "The commission shall draft the proposed plan in the manner prescribed in this article." Slip Op. ¶ 25. This Court observed that "[t]he commission has adopted three plans so far, but it still has not drafted one." *Id.* Rather, "[s]taff members of Senate President Huffman and House Speaker Cupp have drafted all three of the plans adopted by the commission." *Id.* The Court explicitly wrote that "[t]he commission should retain an independent map drawer—who answers to all commission members, not only to the Republican legislative leaders—to draft a plan through a transparent process." *Id.* at ¶ 30. And the Commission did. Until it didn't.

This Court also lamented that "the map-drawing process for all three districting plans we have reviewed has been controlled by the Republican Party." *Id.* at ¶ 32. The Court explained that this "one-sided process is evidence of an intent to draw a plan that favors the Republican Party at the expense of the Democratic Party," and identified specific aspects of this process that indicated intent to favor a particular political party. *Id.* at ¶¶ 25–30. Unfortunately, the Republicans on the Commission decided, when it became clear that the independently drawn

map would not unduly favor the Republican Party, to abandon the independent process and enact a one-sided plan. Once again, this partisan process is "strong evidence of partisan intent." *Id.* at ¶ 26.

The Fourth Plan was drawn exclusively by Republican staff. The Court's March 16 order noted that "[s]taff members of Senate President Huffman and House Speaker Cupp have drafted all three of the plans adopted by the commission," and explained that these Republican legislative leaders' "nearly exclusive control over . . . map drawing was strong evidence of partisan intent." *Id.* at ¶¶ 25–26. The process that produced the Fourth Plan was again controlled entirely by Senate President Huffman and House Speaker Cupp. Thus, Senate President Huffman, at the eleventh hour, introduced his motion to have Speaker Cupp's Republican staff member, Mr. Springhetti, begin drafting the Fourth Plan, and Speaker Cupp introduced the motion to adopt it. Ex. 1, Tr. of Mar. 28, 2022 Ohio Redistricting Comm'n Hrg., at 56–57.[6] Once again, the Republican Commissioners relied on the same partisan map drawer to draw a Fourth Plan that made only minor adjustments to the invalid Third Plan he had previously drafted. Ex. 1, Tr. of Mar. 28, 2022 Ohio Redistricting Comm'n Hrg., at 117.

The Fourth Plan Was Drafted in Secret. Notwithstanding this Court's admonition that the map drawing process must be conducted "in public," Slip Op. ¶ 44, the Fourth Plan was drafted in an office at the Bureau of Worker Compensation building. *See* Ex. 12, *Minority Report*, Ohio Redistricting Comm'n (Mar. 28, 2022) at 2. While a television camera may have permitted the public to watch Mr. Springhetti move the mouse of his computer and make a few clicks for a few minutes in the publicly broadcasted workroom, that hardly amounts to a robust

[6] As this Court is all too aware by now, Mr. Springhetti was one of two Republican map drawers who drew the First, Second, and Third Plans that this Court invalidated. Mar. 16, 2022 Order at ¶ 25.

public process that provides for the opportunity for input. It makes a mockery of this Court's directive.

The Fourth Plan was not drafted by the Commission as a whole. This Court's March 16 order also noted that the "Democratic members of the commission had no opportunity to provide input in creating the [Third P]lan, and they had no meaningful opportunity to review and discuss it or to propose amendments once it was presented." Slip Op. ¶ 27. The same pattern was repeated here – on steroids.:

- The Democratic Commissioners were again denied any opportunity to review, provide input, or propose suggestions to the Fourth Plan, which was not revealed until 9:30 pm on March 28, 2022, when Senate President Huffman and House Speaker Cupp immediately introduced and moved to adopt the Plan. *See* Ex. 1, Tr. of Mar. 28, 2022 Ohio Redistricting Comm'n Hrg., at 79–81.
- In contrast with the Third Plan — where this Court noted that Commissioners had only two hours to review the final version of the Third Plan from the time it was posted on the Commission's website, *see* Slip Op. ¶ 29, for the Fourth Plan, the Commissioners were given ***no time*** to review the plan before it was introduced and motioned for adoption. *See* Ex. 1, Tr. of Mar. 28, 2022 Ohio Redistricting Comm'n Hrg., at 79–81.
- When the Democratic Commissioners requested opportunities to review and amend the Plan, their entreaties were completely disregarded. Leader Russo's request for a 30 minute recess to review the Plan was ignored. *Id.* at 105, 107. She and Co-Chair Sykes were not given the partisan indices of the proposed plan. *Id.* at 84, 93.

- Leader Russo's and Co-Chair Sykes' requests to have the Commission request that this Court grant a 12-house extension of the deadline so that the Commission could consider the Independent Plan was disregarded. *Id.* at 103–104, 107–108.
- Leader Russo's request to make amendments to the Fourth Plan was rebuffed. *Id.* at 96–97.
- *Even the state wide Republican elected officials were excluded from the process.* This Court also noted in its March 16 opinion that the record failed to show "that the other members of the commission—the statewide officeholders—engaged in any map drawing." Slip Op. ¶ 30. Here, all three Republican statewide officials asserted that they also had not even *seen* the Fourth Plan before it was submitted for adoption. Ex. 1, Tr. of Mar. 28, 2022 Ohio Redistricting Comm'n Hrg., at 100–103. That did not stop the majority of those statewide officeholders, however, from voting to adopt that plan less than an hour later, without recess or other opportunity to review the plan. *Id.* at 96–97, 109–111.

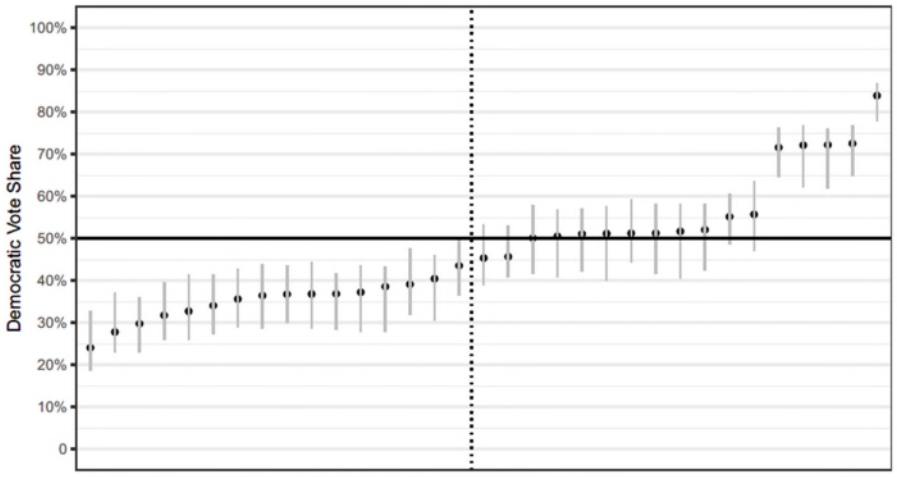
B. Substance: the Fourth Plan Primarily Favors the Republican Party.

1. The Fourth Plan is substantively identical to the invalidated Third Plan.

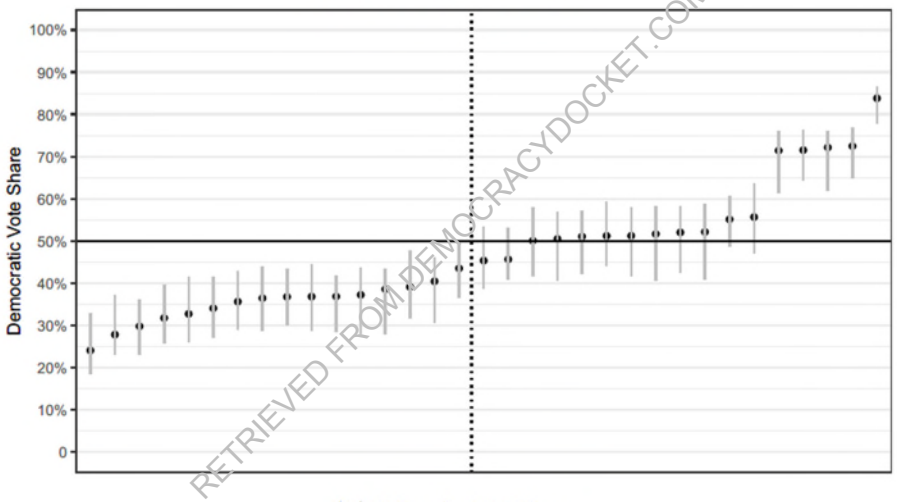
This Court invalidated the Third Plan pursuant to Sections 6(A) and 6(B). As discussed above, the Fourth Plan is not an "entirely new General Assembly–district plan," as required by this Court's previous order. Slip Op. ¶ 44. Instead, it is essentially the Third Plan, with a small number of minor modifications. This comes as no surprise, as Senate President Huffman acknowledged that Mr. Springhetti created the Fourth Plan by resurrecting the invalidated Third Map and making "only minor changes." Ex. 1, Tr. of Mar. 28, 2022 Ohio Redistricting Comm'n Hrg., at 117.

Mr. Huffman estimated that the Fourth Map retained 97% of the Third Map. *Id.* That turned out to be a gross underestimate; in fact, the minor changes in the Fourth Map shift less than 0.3% of Ohio's population. Ex. 2, Warshaw Aff. at 7. For 99.7% of the state's residents, the Fourth Map follows the exact same boundaries and districts as the invalidated Third Map. The similarity is even more stark if one looks at Ohio's census blocks (of which the Fourth Plan affects 0.16% in the House and 0.1% in the Senate) or its land area (of which the Fourth Plan affects 0.11% in the House and 0.01% in the Senate). *Id.*

The near identity of partisan bias in these two plans is illustrated in charts below from Dr. Warshaw's affidavit, which show the two-party vote share for each district in the Senate and House plans. Between the Senate plans, only two districts have been adjusted, and those adjustments were so minor that a keen eye is necessary to identify any distinction from the Third Plan's partisan skew:



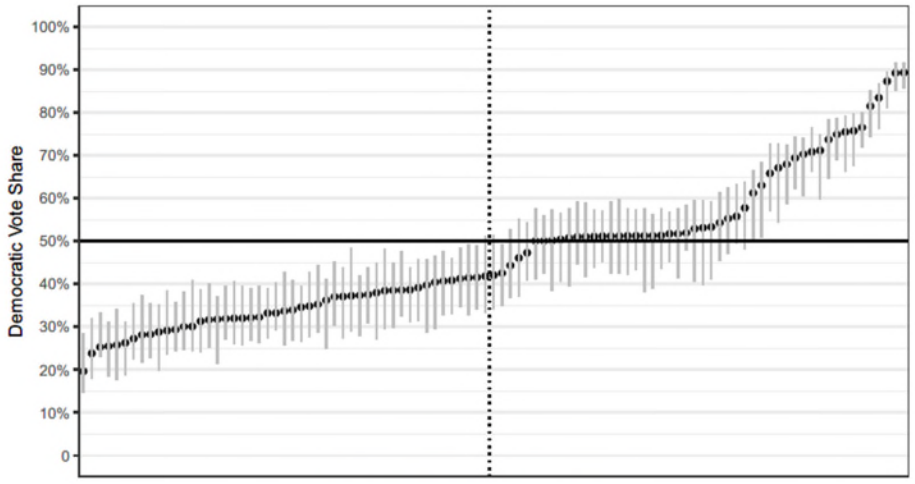
(a) February 24 Plan



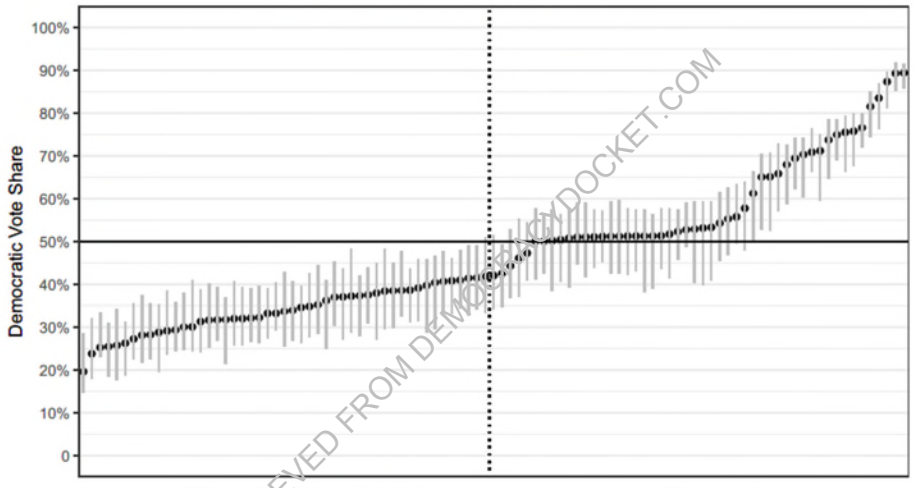
(b) March 28 Plan

Figure 1: District-level Vote Shares on Commission's February 24 and March 28 State Senate plans 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.

Ex. 2, Warshaw Aff. at 4, 7. Similarly, in the House only 7 of 99 districts have been changed:



(a) February 24 Plan



(b) March 28 Plan

Figure 2: District-level Vote Shares on Commission's February 24 and March 28 State House plans 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.

Ex. 2, Warshaw Aff. at 6, 7.

2. The Fourth Plan violates this Court's symmetry requirements as regards the allocation of toss up districts.

It should not surprise anyone that this partisan process produced an unconstitutional result. By reviving the invalidated Third Plan, the Commission revived the overwhelming

partisan bias of that plan, which "was drawn primarily to favor the Republican Party and to disfavor the Democratic Party." Slip Op. ¶ 33.

The Fourth Plan has been stacked with toss-up districts where Democratic vote share is between 50 and 52%. There are 17 such seats in the House, and six in the Senate; between the two chambers, more than a third of ostensibly Democratic seats (23 out of 60, or 38.3%, to be exact) are in this range. Ex. 2, Warshaw Aff. at 2–3. There is not a *single* Republican seat in either the House or Senate in this 50–52% range. *Id.* In fact, there is not even a single Republican Senate seat below 54% vote share. *Id.* at 5.

This "remarkably one-sided distribution of toss-up districts" in the Fourth Plan is almost identical to the invalidated Third Plan, which contained 19 House districts and seven Senate districts with 50–52% Democratic vote share, but, again, zero Republican-leaning districts in that band. Slip Op. ¶¶ 33, 29.

III. THE FOURTH PLAN VIOLATES SECTION 6(B): AN ACCURATE ASSESSMENT REVEALS A GROSSLY DISPROPORTIONATE SEAT SHARE

While the Section 8(C)(2) Statement recites that the Fourth Plan complies with the proportionality requirement of Section 6(B), any fair assessment of the Fourth Plan reveals that is not the case.

This Court has already stated what an honest such assessment entails: a fair allocation of toss-up seats. This Court's decisions establish that districts with "vote share between 50 and 52 percent do not 'favor'" a particular party, and must be allocated between the political parties on a symmetrical basis or be excluded from the calculation of proportionality. Slip Op. ¶¶ 38, 41. The Fourth Plan does no such thing. That fact eviscerates any suggestion that the Fourth Plan satisfies the proportionality requirements of Section 6(B).

The Fourth Plan contains 17 Democratic House seats and six Democratic Senate seats in this 50–52% range, but not a single Republican district in that range. Ex. 2, Warshaw Aff. at 4–6. This plan therefore does not allocate toss-up seats in proportion to the statewide vote; 23-to-0 is as far as possible from the 46%-to-54% ratio required for strict proportionality.

Once toss-up districts are removed from consideration, Republicans are favored in 66% of the seats in each chamber (54 out of 82 in the House and 18 out of 27 in the Senate), and Democrats favored in only 34%. *Id.* at 3–6. This 66-to-34 split creates a 32% gap between the parties' seat share — four times the 8% difference created by the 54-to-46 split of Ohio's voters.

This partisan skew in the distribution of toss-up districts grants Republicans a substantial advantage, and makes them likely to win many more seats than they are ostensibly favored in. *Id.* at 4–6. Indeed, the result, as this Commission explained in its March 16 opinion, is "that the 54 percent seat share for Republicans is a floor while the 46 percent share for Democrats is a ceiling." Slip Op. ¶ 32.

Simple math makes the point. If there were a uniform two percent swing in favor of the Republicans, they would win all seats in the toss-up range. This would mean that Republicans would win 71 (not 54) seats in the House and 24 (not 18) Republican seats in the Senate. Conversely, if there were a uniform two percent swing in favor of the Democrats, they would obtain no additional seats. Thus, under the "two percent swing" example, the total Republican seat share in the General Assembly would be 72% (95 out of 132 total seats), a total that is grossly disproportionate to the Republican 54% vote share.

CONCLUSION

For the foregoing reasons, the Court should: (1) invalidate the General Assembly district plan adopted by the Commission on March 28, 2022; and (2) require the Commission to adopt a General Assembly district plan consistent with this Court's procedural directives and with the substantive provisions of Article XI, Sections 6(A) and 6(B) of the Ohio Constitution as explained in this Court's three prior decisions. Given that the independent map drawers had completed a substantively compliant map, the impending election deadlines, and a federal court potentially ready to impose a map by April 20th, Petitioners respectfully request that the Commission be ordered to adopt a plan within a few days of this Court's order.

Dated: April 1, 2022

Respectfully submitted,

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E-Signature Summary

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I, Theresa M Sabo, did witness the participants named above electronically sign this document.

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 Constitution, Article XI**

VERIFICATION OF FREDA J. LEVENSON

I, Freda J. Levenson, having been duly sworn and cautioned according to law, hereby state that I am over the age of eighteen years and am competent to testify as to the facts set forth below based on my personal knowledge and having personally examined all records referenced in this affidavit, and further state as follows:

1. I am an attorney licensed to practice in the State of Ohio, and serve as legal counsel to the Petitioners in this action.

2. Exhibit 1 to the Objections is a true and correct transcription of the Ohio Redistricting Commission's March 28, 2022 hearing.

3. Exhibit 2 to the Objections is a true and correct copy of the expert affidavit of Dr. Christopher Warshaw dated March 29, 2022.

4. Exhibit 3 to the Objections is a true and correct transcription of the Ohio Redistricting Commission's March 19, 2022 hearing.

5. Exhibit 4 to the Objections is a true and correct transcription of the Ohio Redistricting Commission's March 21, 2022 hearing.

6. Exhibit 5 to the Objections is a true and correct transcription of the Ohio Redistricting Commission's March 23, 2022 hearing.

7. Exhibit 6 to the Objections is a true and correct copy of the March 23, 2022 instructions adopted by the Ohio Redistricting Commission for the mapdrawers (referred to in the Objections as "Ground Rules for Map Drawers").

8. Exhibit 7 to the Objections is a true and correct transcription of the Ohio Redistricting Commission's March 26, 2022 hearing.

9. Exhibit 8 to the Objections is a true and correct copy of the March 26, 2022 mediation statement regarding incumbents.

10. Exhibit 9 to the Objections is a true and correct copy of the General Assembly districting plan adopted by the Ohio Redistricting Commission on March 28, 2022 (referred to in the Objections as the "Fourth Plan").

11. Exhibit 10 to the Objections is a true and correct copy of the March 28, 2022 final districting plan drafted by independent mapmakers Douglas Johnson and Michael McDonald (referred to in the Objections as the "Independent Plan").

12. Exhibit 11 to the Objections is a true and correct copy of the Section 8(C)(2) Statement adopted by the majority of the Commission on March 28, 2022.

13. Exhibit 12 to the Objections is a true and correct copy of the Minority Report submitted by the Democratic Commissioners as part of the record of the March 28, 2022 Commission hearing.

14. I have read the Objections filed in this action and affirm that the factual allegations contained therein are true.

Freda Levenson
Signed on 2022/03/31 13:11:45 -8:00

Freda J. Levenson

Signed at Columbus, Franklin, Ohio
City, County, State

Sworn to and subscribed before me this 03/31/2022 day of March, 2022

Theresa M Sabo
Signed on 2022/03/31 13:11:45 -8:00

Notary Public

NOTARY PUBLIC STATE OF OHIO
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Commission # 2016-RE-619622
Electronic Notary Public
State of Ohio
My Comm Exp. Nov 28, 2026
Notary Stamp 2022/03/31 13:11:45 PST 56B08F63FC4C

Notarial act performed by audio-visual communication

CERTIFICATE OF SERVICE

I, Freda J. Levenson, hereby certify that on April 1, 2022, I caused a true and correct copy of the forgoing to be served by email upon the counsel listed below:

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