

IN THE SUPREME COURT OF OHIO

**Regina C. Adams, et al.,**

***Relators,***

***v.***

**Governor Mike DeWine, et al.,**

***Respondents.***

**Case No. 2021-1428**

**Original Action Filed Pursuant to  
Ohio Const., Art. XIX, Sec. 3(A)**

RELATORS' MERITS BRIEF

Abha Khanna (PHV 2189-2021)  
Ben Stafford (PHV 25433-2021)  
ELIAS LAW GROUP, LLP  
1700 Seventh Ave., Suite 2100  
Seattle, WA 98101  
(206) 656-0176  
akhanna@elias.law

Aria C. Branch (PHV 25435-2021)  
Jyoti Jasrasaria (PHV 25401-2021)  
Spencer W. Klein (PHV 25432-2021)  
Harleen K. Gambhir (PHV 25587-2021)  
ELIAS LAW GROUP, LLP  
10 G St. NE, Suite 600  
Washington, DC 20002  
(202) 968-4490  
abbranch@elias.law

Donald J. McTigue (0022849)  
*Counsel of Record*  
Derek S. Clinger (0092075)  
McTIGUE & COLOMBO, LLC  
545 East Town Street  
Columbus, OH 43215  
(614) 263-7000  
dmctigue@electionlawgroup.com

*Counsel for Adams Relators*

Dave Yost  
OHIO ATTORNEY GENERAL

Bridget C. Coontz (0072919)  
Julie M. Pfeiffer (0069762)  
Michael A. Walton (0092201)  
Assistant Attorneys General  
Constitutional Offices Section  
30 E. Broad Street, 16th Floor  
Columbus, OH 43215  
(614) 466-2872  
bridget.coontz@ohioago.gov

*Counsel for Respondent Ohio Secretary of State  
Frank LaRose*

Phillip J. Strach (PHV 25444-2021)  
Thomas A. Farr (PHV 25461-2021)  
John E. Branch, III (PHV 25460-2021)  
Alyssa M. Riggins (PHV 25441-2021)  
NELSON MULLINS RILEY & SCARBOROUGH, LLP  
4140 Parklake Ave., Suite 200  
Raleigh, NC 27612  
(919) 329-3812  
phil.strach@nelsonmullins.com

*Counsel for Respondents House Speaker Bob  
Cupp and Senate President Matt Huffman*

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## I. Introduction

As detailed in challenges to the 2021 state legislative maps pending before the Court, the story of redistricting those maps is one of General Assembly leaders hijacking the process to pass a hyper-partisan plan. The congressional districting process is a bad sequel to that same movie.

Ohio's current congressional plan, enacted in 2011 (the "2011 Plan"), is one of the most extreme partisan gerrymanders in American history, and one that a federal panel struck down under the U.S. Constitution.<sup>1</sup> As a result of that extreme gerrymander, Ohioans found that how they voted over the past decade made no difference. The 2011 Plan resulted in the election of 12 Republicans and four Democrats every election—no congressional district ever changed hands between the parties. That was true in 2012, when President Obama and Senator Brown led the ticket. It was true in the "blue wave" election of 2018. And it was true in Republican-favoring elections as well.

Ohioans did not take kindly to being stripped of the right to cast meaningful votes. They came together and, in 2018, passed constitutional reforms. The reforms implemented a multifaceted approach to combatting partisan gerrymandering. New procedural requirements aimed to encourage bipartisan maps. New technical line-drawing requirements sought to eliminate some of the techniques used to draw the 2011 gerrymander. And, if all else failed, and the General Assembly passed a new congressional plan on a party line vote, Ohioans required the General Assembly to comply with two additional, very specific anti-gerrymandering rules: A congressional

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<sup>1</sup> *Ohio A. Philip Randolph Inst. v. Householder*, 373 F.Supp.3d 978, 998-99 (S.D. Ohio 2019) *vacated and remanded sub nom, Chabot v. Ohio A. Philip Randolph Inst.*, 140 S.Ct. 102 (2019). Without reaching the merits, the U.S. Supreme Court reversed that decision on justiciability grounds in light of its opinion in *Rucho v. Common Cause*, which found that partisan gerrymandering is non-justiciable in federal courts but noted specifically that "[t]he [s]tates . . . are actively addressing the issue." 139 S.Ct. 2484, 2507 (2019). Left unchallenged were the panel's findings that the 2011 map "dilute[d] the votes of Democratic voters by packing and cracking them into districts that are so skewed toward one party that the electoral outcome is predetermined," *Ohio A. Philip Randolph Inst.*, 373 F.Supp.3d at 994.

districting plan (1) cannot unduly favor a party or its incumbents and (2) cannot unduly split political subdivisions. Ohio Constitution, Article XIX, Section 1(C)(3)(a)-(b).

In 2021, the General Assembly treated the 2018 amendments as a nuisance to be circumvented, rather than a mandate for change. Deadlines were repeatedly ignored. The process was highly secretive and partisan. Map-drawing was carefully controlled by Republican leadership, who even tasked the chief architect of the 2011 gerrymander, Ray DiRossi, with constructing the new plan. Ultimately, one of the only things that changed between the 2011 and 2021 congressional redistricting cycles is that the plan approved by the General Assembly in 2021 (the “2021 Plan”) is *more* partisan than its predecessor.

This result is at odds with Ohioans’ political preferences and Ohio’s political geography. By any measure, the 2021 Plan is an extreme partisan outlier. It skews more Republican than simulated maps that were drawn to comply with the Ohio Constitution without taking partisanship into consideration. It produces more partisan bias than nearly any congressional plan drawn in any comparable state. It vivisects Ohio’s populous counties and brazenly contorts district lines in ways plainly designed to advantage Republicans. It strategically protects Republican incumbents and surgically cuts apart the districts of Democratic incumbents. It unduly favors the Republican Party and disfavors the Democratic Party, resulting in an unconstitutional plan that harms every Ohioan.

The same was true in 2011 but, this time, the people of Ohio have acted in advance: They included failsafes to protect their rights against political gerrymandering that are now written directly into the Ohio Constitution. Because Ohio’s legislative majority could not be bothered to comply with those rules, it falls to this Court to hold Respondents to account. The Court should declare the 2021 Plan invalid and order it to be redrawn.



## II. Legal Background

Article XIX of the Ohio Constitution, as adopted in 2018, sets forth the procedures and requirements for congressional redistricting in Ohio.

Section 1 creates a three-step process for redistricting, along with an impasse procedure to be used as a last resort if bipartisan compromise cannot be achieved. Under Article XIX, Section 1(A), the General Assembly is required to “pass a congressional district plan in the form of a bill by the affirmative vote of three-fifths of the members of each house,” including the vote of “at least one-half of the members of each of the two largest political parties represented in that house,” here the Republican and Democratic Parties. The General Assembly must do so by the last day of September in a year ending in one. *Id.*

If the General Assembly cannot pass a bipartisan plan by the end of September, the process moves to the Ohio Redistricting Commission, comprised of the Governor, Secretary of State, Auditor of State, as well as appointees of the caucus leaders for the two largest parties in each of the two houses of the General Assembly. Ohio Constitution, Article XI, Section 1(A) & Article XIX, Section 1(B). The Commission must similarly pass a plan with bipartisan support, with a majority consisting of at least two Republicans and two Democrats. *Id.* If it cannot do so by the end of October, the process moves back to the General Assembly. *Id.*

Upon return to the General Assembly, the bipartisanship requirements are lower: The General Assembly still needs three-fifths of each chamber to vote for a congressional map, but it needs only one-third of the members of each party in each chamber. *Id.*, Section 1(C)(2).

Finally, if the General Assembly cannot achieve even this minimal bipartisanship, Article XIX, Section 1(C)(3) provides an impasse procedure. The General Assembly may pass a plan by a simple majority, but that plan will remain in effect for only four years (i.e., two election cycles).

Moreover, in addition to the line-drawing requirements for population equality, contiguity, and keeping political subdivisions whole that apply to all congressional maps, *see id.*, Section 2, a simple-majority map must comply with three separate anti-gerrymandering requirements: (1) “The general assembly *shall not* pass a plan that unduly favors or disfavors a political party or its incumbents,” *id.*, Section 1(C)(3)(a) (emphasis added); (2) “[t]he general assembly *shall not* unduly split governmental units, giving preference to keeping whole, in the order named, counties, then townships and municipal corporations,” *id.*, Section 1(C)(3)(b) (emphasis added); and (3) “[t]he general assembly shall attempt to draw districts that are compact,” *id.*, Section 1(C)(3)(c) (changing the requirement that the General Assembly *must* draw compact districts, *id.*, Section 2(B)(2)). Finally, when it passes a simple-majority plan, the General Assembly must include “an explanation of [its] compliance” with the simple-majority requirements. *Id.*, Section 1(C)(3)(d).

Section 3 concerns this Court’s jurisdiction and remedies, first granting this Court “exclusive, original jurisdiction in all cases arising under” Article XIX. *Id.*, Section 3(A). If, in exercising that jurisdiction, this Court issues an order declaring a congressional plan invalid, the General Assembly must pass a congressional plan within thirty days of the issuance of the order. *Id.*, Section 3(B)(1). And if the General Assembly cannot meet this deadline, the Ohio Redistricting Commission is reconstituted and must pass a plan within thirty days of the General Assembly’s failure to meet its deadline. *Id.*, Section 3(B)(2).

Thus, if this Court issues an order declaring a congressional plan invalid, a plan must be filed with the Secretary of State by one of the two entities charged with congressional redistricting no later than 60 days after the order is issued. A remedial congressional plan “shall remedy any legal defects in the previous plan identified by the court but shall include no changes to the previous plan other than those made in order to remedy those defects.” *Id.*, Section 3(B)(1) & (2).

### III. Statement of Facts

#### A. Republicans enacted an extreme gerrymander in 2011.

Before 2018, when it was amended to add the provisions under which Relators bring this action, Ohio's Constitution did not expressly address partisan gerrymandering of congressional districts. Each decade saw partisan jockeying over which communities would be kept together and which would be split. (Compl. Ex. 11.) The 2011 redistricting cycle, however, marked a nadir.

Thanks to advances in technology, map-drawers no longer needed to use blunt instruments to draw lines for partisan advantage. Big data sets and new software allowed mapmakers to draw lines with surgical precision, which politicians exploited to minimize their opponents' voting power. *Ohio A. Philip Randolph Inst.*, 373 F.Supp. 3d at 996-97, 1087. The 2011 cycle saw some of the most extreme partisan gerrymanders in U.S. history. Ohio was no exception. Despite comprising around 46% of Ohio's electorate over the last decade (and around 47% over the last three election cycles), Democratic voters were cracked and packed so egregiously that they could never win more than 25% of Ohio's 16 seats in Congress. (Rodden Aff. ¶ 15, 45.)

How did the state's Republican caucus achieve this stunning feat? Simple: When redistricting began in 2011, the Republican Party controlled the state House, Senate, and Governor's office, and they tasked one of their own—Republican Senate staffer Ray DiRossi—with drawing the maps. (Compl. Exs. 2, 11.) Holed up in a private room at the DoubleTree Hotel (known as the “Bunker”), DiRossi spent three long months with Republican congressional incumbents, operatives, and General Assembly members engineering a map that would strip Democrats of any realistic possibility of translating their votes into political power in future elections. (Compl. Ex. 2.) When all was said and done, DiRossi had drawn a map with a staggering 12-to-4 Republican-to-Democrat seat distribution. (*Id.*) The gerrymander was so severe that Democrats could not flip a single Republican-held seat for the entire decade, even when popular

Democrats like President Obama and Senator Brown led the ticket. (Rodden Aff. ¶ 19.)

To avoid public scrutiny, DiRossi's map was kept "in the can" until just before enactment in September 2011. (Compl. Ex. 2.) But once the map was unveiled, the tactics used to draw it were obvious. To achieve their remarkable partisan advantage, Republicans packed Democrats in a new Columbus-area district and diluted their vote in other areas around the state. *Ohio A. Philip Randolph Inst.*, 373 F. Supp. 3d at 1002. Congresswoman Kaptur's previous district in the Toledo area was joined with Congressman Kucinich's previous district in the Cleveland area to create a new district that would be dubbed "the snake on the lake." *Id.* at 1122-23. Further south, Congressman Chabot was able to shed some of his more Democratic-leaning precincts in the Cincinnati area in exchange for redder precincts in Warren County. *Id.* at 1109-10. And idiosyncrasies in the map's lines revealed who succeeded in getting particular concessions back at the DoubleTree. In one case, a district curiously included an unpopulated tract of land that contained only the headquarters of an influential corporation—undoubtedly so the incumbent did not lose out on the company's donations. (Compl. Ex. 2.)

As a federal three-judge panel would find, mapmakers "designed these districts with one overarching goal in mind—the creation of an Ohio congressional map that would reliably elect twelve Republican representatives and four Democratic representatives." *Ohio A. Philip Randolph Inst.*, 373 F. Supp. 3d at 994.

**B. Ohioans adopted Article XIX in 2018 to end congressional partisan gerrymandering.**

After 2011-cycle litigation revealed organized gerrymandering efforts of groups such as the Republican "REDistricting MAjority Project" (Project REDMAP) and emails by national Republican consultants referring to voters as "dog meat" and "Dem garbage," public outcry catalyzed efforts for reform across the country. *See id.* at 1147; *League of Women Voters of Michigan v. Benson*, 373 F.Supp. 3d 867, 890 (E.D. Mich.), *vacated sub nom. Chatfield v. League*

*of Women Voters of Michigan*, 140 S.Ct. 429, 205 L. Ed. 2d 250 (2019). In 2018, voters in states including Colorado, Michigan, Missouri, and Utah approved changes to their redistricting processes, and adopted restrictions on the extent to which partisanship could be used in redistricting.<sup>2</sup> Ohio did, too. In 2018, voters adopted a constitutional amendment—based on legislation proposed by Respondent President Huffman and placed on the ballot by the General Assembly—to prevent the 2011 process from happening again. (Compl. Exs. 12, 13.)

The new amendment, posed to voters as Issue 1 in the May 2018 primary, created a new constitutional regime for congressional redistricting. As part of the process leading up to Issue 1's enactment, legislators including then-Senator Huffman submitted a statement to the board responsible for approving the language for the question on the ballot. (Compl. Ex. 16.) In their statement of support, they explained that Issue 1 would create "A FAIR, BIPARTISAN, and TRANSPARENT PROCESS" and "establish fair standards for drawing congressional districts through its requirement of **bipartisan approval, or use of strict anti-gerrymandering criteria.**" (*Id.*) (emphasis added).

The ballot board ultimately placed Issue 1 on the ballot with the express statement that the amendment would, among other things, (1) "End the partisan process for drawing congressional districts, and replace it with a process with the goals of promoting bipartisanship, keeping local communities together, and having district boundaries that are more compact" and (2) "Require that if a plan is adopted by the General Assembly without significant bipartisan support, it cannot be effective for the entire 10-year period and must comply with explicit anti-gerrymandering requirements." (Compl. Ex. 17). Respondent Secretary of State LaRose, who supported the

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<sup>2</sup> *More states to use redistricting reforms after 2020 census*, Associated Press (Mar. 5, 2020), <https://apnews.com/article/15945f8bd618d3c749e7c56d3a572d71>.

reforms as a state senator, wrote in favor of the referendum in an opinion piece published at the time. (Compl. Ex. 18.) He explained, “The voters of Ohio wanted us to put people before partisanship . . . . Thankfully, we did.” (*Id.*) He continued, “I want my party to win elections because we have better candidates and better ideas—not because we use modern GIS mapping software and pinpoint-accurate polling data to draw district lines better than the other party.” (*Id.*)

The amendment, described above in Part II, passed overwhelmingly by a margin of 75% to 25%. (Compl. Ex. 1.)

**C. The 2021 congressional redistricting process ignored the new reforms, lacked transparency, and produced an extreme partisan gerrymander.**

**1. The General Assembly made no effort to pass a bipartisan congressional map during September, stalling until it could pass a map on a party-line vote.**

The 2020 census revealed that Ohio would be entitled to 15 congressional districts for the next decade, one fewer than its prior 16. (Compl. Ex. 4.) Although Ohio’s statewide population growth was slower than other states’ on average, its internal population changes were distributed highly unequally. Despite the fact that two-thirds of Ohio counties lost population over the past decade, Columbus and Cincinnati (both of which lean Democratic) gained population—largely due to an increase in their Black, Latino, and Asian populations. (Compl. Ex. 39.)

Article XIX tasked the General Assembly with approving a bipartisan congressional map in the first instance. Section 1(A) requires the General Assembly to pass a congressional district plan with three-fifths of the members of each house, including one-half of the members of each party, by the last day of September.

But in September, the Republican majority in the General Assembly took no public action. (Compl. Ex. 4.) The General Assembly did not hold any hearings, propose any maps, or solicit any public comment about redistricting. (*Id.*) The Republican majority did not bother to pretend that it had an interest in passing a congressional plan on a bipartisan basis. As noted, the 2021 Plan was

drawn by DiRossi, the chief architect of the 2011 gerrymander. DiRossi does not recall creating any digital files related to congressional redistricting prior to mid-October. (DiRossi Tr. 24:12-25:4, DEPO\_CONG\_0025-0026.) In response to interrogatories and requests for production, Speaker Cupp and President Huffman did not point to a single piece of evidence indicating they made any effort whatsoever to pass a congressional plan in September. (See RESP\_0001-0015, 0026-0047, 0060-0086.)

On September 29, in the absence of any action by Republican members of the General Assembly, the Senate Democratic caucus unveiled a congressional map introduced by Senate Minority Leader Yuko and Senator Sykes. (Compl. Ex. 19.) The map, S.B. 237, was not taken up for consideration by the Republican-controlled General Assembly before the month's end. No other member introduced a map. Later that same day, Senate President Huffman announced that the General Assembly would not meet its September 30 deadline. (Compl. Ex. 20.)

**2. The Ohio Redistricting Commission refused to propose or vote on a single map during October.**

Under Article XIX, Section 4(B), once the General Assembly failed to pass a plan by the end of September, the process shifted to the Commission, which was required to adopt a plan with bipartisan support by the end of October. But the Commission, too, refused to fulfill its responsibilities under the Constitution. It neither proposed nor passed a single map.

The record demonstrates that this was not because the Commission endeavored to complete its task in good faith only to fall short. During October, Republican House Speaker and Commission Co-Chair Bob Cupp filled his calendar with networking breakfasts and fancy wine tastings, but refused requests to schedule Commission meetings to discuss congressional districting. (CUPP\_000035-000043.) Democratic Senator Sykes, who served as the Commission's other co-chair, sent Speaker Cupp a letter on October 5 urging him to schedule meetings to work

on congressional redistricting. (GOVM\_0032-0033.) Senator Sykes reiterated this request in an October 18 letter. (GOVM\_0034.) Repeatedly, Republican Commissioners ignored Senator Sykes' entreaties for the Commission to do its job.

This is because Republican legislative leaders were, behind the scenes, conspiring toward passage of a partisan gerrymander the following month. At the same time that they refused to discuss congressional redistricting in the Commission, the staffers of Republican legislative leaders began to prepare maps for a later legislative process, in which Republicans could pass a map on a party-line basis. The month the Commission was tasked to act, for example, President Huffman privately instructed DiRossi to work with Senate Majority Whip McColley to prepare a proposal that the General Assembly could pass in November. (DiRossi Tr. 22:11-25). DiRossi testified that he was never even asked to draw a map to present to the Commission. (DiRossi Tr. 156:2-10). Nor did DiRossi speak to any Commission member (aside from Huffman and Cupp) regarding congressional redistricting before the Commission's deadline expired on November 1. (DiRossi Tr. 157:16-24).

On October 25, Senator Sykes sent Speaker Cupp yet another letter urging him to schedule a meeting. (LAROSE\_000013-000014.) At long last, the Commission agreed to hold a single hearing on October 28. (GOVM\_0001, 0035.) But in his role as Co-Chair of the Commission, Speaker Cupp took pains to make clear that nothing of significance would actually happen at this hearing. Before the hearing, Cupp stated that the Commission would miss its October 31 deadline, would not be adopting a map, and would leave the process to the General Assembly.<sup>3</sup> (Compl. Ex. 5.) As planned, the second constitutional deadline of October 31 came and went, and the public

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<sup>3</sup> Andy Chow, *Cupp Says Redistricting Commission Will Miss Another Deadline*, Statehouse News Bureau (Oct. 26, 2021), <https://www.statenews.org/government-politics/2021-10-26/cupp-says-redistricting-commission-will-miss-another-deadline>.



was no closer to seeing a congressional map that was actually being considered. (Compl. Ex. 22.)

**3. The House and Senate Republican caucuses drew and introduced egregiously gerrymandered maps with no meaningful opportunity for public comment.**

Under Article XIX, November was the first month in which the General Assembly could pass a map with a simple majority. And so, after running out the clock on the redistricting processes that required bipartisan support to enact a map, the General Assembly finally sprang into action.

As of November 1, Republican legislative leaders' staffers had already been at work drawing maps that were withheld from the Commission. (DiRossi Tr. 22:11-25, 156:2-10.) As with the 2011 process and the 2021 state legislative process, DiRossi was the primary Republican map-drawer in the Senate. (DiRossi Tr. 16:4-6, 21:11-15, 29:7-16.) On the House side, the primary map-drawer was Director of Finance Blake Springhetti, who also drew Republican maps during the 2021 state legislative process. (DiRossi Tr. 30:19-31:7.) DiRossi and Springhetti worked at adjacent desks in the same office. (DiRossi Tr. 39:20-40:4.) Senator McColley directed and supervised DiRossi's work. (DiRossi Tr. 116:7-13, 153:12-14.)

DiRossi admitted that he had access to partisan data throughout the map-drawing process. (DiRossi Tr. 49:16-50:11.) Using precinct-level election results, he generated a partisan index to score the likely partisan performance of draft districts. (DiRossi Tr. 59:4-60:24.) And as he did when drawing the 2021 state legislative maps, DiRossi viewed the partisan score for districts as he drew them, with data changing in real time. (DiRossi Dep. Ex. 1, DEPO\_CONG\_0285-0290; DiRossi Tr. 65:7-23, 66:10-67:16, 75:3-76:7; Rodden Aff. ¶ 12) If this sounds familiar, it's because it is exactly how DiRossi drew the 2011 map. *See Ohio A. Philip Randolph Inst.*, 373 F.Supp. 3d at 997 (describing how DiRossi created a partisan index that was "then uploaded into Maptitude [the map-drawing software DiRossi used in 2011 and 2021] so that the map drawers could predict how their draft districts would likely perform politically in future elections.").

We know that DiRossi, the architect of the 2011 gerrymander that prompted the 2018 reforms, drew the 2021 Plan. We know that he considered and utilized partisan data to draw the 2021 Plan. And we know, through review of the plan data (*see infra* Part III.D), that the 2021 Plan was—like DiRossi’s earlier work—another extreme partisan gerrymander. What we *don’t* know is whether DiRossi’s bosses *failed* to instruct him to comply with the anti-gerrymandering provisions of Section 1(C)(3), or if he was *affirmatively* instructed to ignore them, as he was during the state legislative redistricting process just a few months prior. (DiRossi Tr. 153:15-154:13; DEPO\_GA\_0459.) This is because, as described in more detail below, *see infra* n.7, counsel defending DiRossi and Springhetti at their depositions refused to allow either map-drawer to answer questions regarding their discussions with members of the General Assembly, citing legislative privilege.

On November 1, the House Government Oversight Committee and the Senate Local Government and Elections Committee announced that hearings on redistricting proposals would be held on November 3 (GOVM\_0036-0037); but no new maps were shared in advance. (*See* HRG\_0003.) That evening, DiRossi emailed Senator Robert McColley the map files for Senate Bill 258, the bill that would (with modifications) become the 2021 Plan. (DIROSSI\_002121.)

As the two hearings gaveled into session, Republicans in each chamber introduced proposed congressional maps. (Compl. Ex. 6.) This was the first time the public (or Democratic members of the General Assembly) had seen any Republican proposal. The timing guaranteed that no meaningful testimony on the maps could be given, since requests to testify at a hearing typically had to be submitted at least 24 hours in advance. (*See* HRG\_0019, 0036.)

Both maps were extreme partisan gerrymanders. (Compl. Ex. 6.) Because the maps were not released in a format capable of being viewed in mapping software, as described below, it was

hard to precisely gauge the maps' performance on metrics like partisanship and compactness. But such precision was unnecessary to see the maps' gross partisan slant. Both maps created only two solidly Democratic districts, while every remaining district either leaned toward or heavily favored Republican candidates. (*Id.*)

The House Republican proposal was presented at the House Government and Oversight Committee hearing at 9:30 a.m. on November 3, 2021. Members of the Committee were shown the proposal approximately 15 minutes before the start of the hearing. (HRG\_0003.) The map's sponsor, Representative Oelslager, presented the map but was unable to answer any substantive questions, including whether the map's subdivision splits comply with Article XIX. (*See* HRG\_0007-0012.) Representative Oelslager explained that he was not able to answer "technical question[s]" because he did not draw the House proposal. (HRG\_0010.) Instead, that work was done by Springhetti, who was not made available to provide testimony. (*Id.*)

When a Democratic member requested a recess to review the maps, the chair overruled her and began the hearing anyway. (HRG\_0009.) Other representatives raised concerns that the map was in a format that did not allow for meaningful analysis. (HRG\_0014-0015.) Indeed, the House proposal was released as a grainy PDF image, in which county, city, and township splits could not be evaluated, nor could partisan composition be determined by anything other than guesswork. (*See id.*; GOVM\_0049.) Although the House proposal did include a "block assignment file," the file consisted of a 5,882-page PDF listing each Ohio census block and the district to which it was assigned, a format that was effectively unusable in any mapping program and appeared to be designed to make it difficult to analyze the proposal accurately. (*See* HRG\_0017, 0020-0021.)

The sponsor of the House Republican proposal did not submit written testimony before his appearance. (*See* HRG\_0007.) One House Government Oversight Committee member noted at the

November 3 hearing that this practice was incongruous with the requirement that the public submit testimony 24 hours in advance, and requested the chair waive this requirement for members of the public as had been done for the plan sponsors. Chair Wilkin ignored the request. (HRG\_0019.)

In the next chamber, Senator Gavarone, Chair of the Senate Local Government and Elections Committee, carried significant responsibility for shepherding the process along. The Senate Republican map was not provided to Committee members or the public until the November 3 hearing began (HRG\_0045, 0051). Once released, the Senate map was even less accessible than its House counterpart. The map was available only as a PDF image. (Compl. Ex. 23; GOVM\_0074.) More comprehensive information was available but not made public: That same morning, DiRossi had sent a map-file for a revised version of the Senate proposal to an aide to Chair Gavarone but said that it should be “embargoed until further notice.” (DIROSSI\_005493-005494).

Public testimony on the Republican proposals was uniformly negative. Not a single member of the public testified in favor of the Senate Republican proposal. (*See generally* HRG\_0053-0256). At committee hearings on November 4, 8, 9, and 10, community members spoke in opposition to the Republican proposals. (*See id.*). Speakers noted that the maps unnecessarily split the state’s largest counties, thereby dividing communities of interest, (*see, e.g.,* HRG\_0192,) and did not reflect the partisan preferences of Ohio’s voters (*see, e.g.,* HRG\_0056).

**4. The General Assembly convened a Joint Committee that saw near-uniform public opposition to the proposed Republican plans.**

Under Article XIX, Section 1(G), “[b]efore the general assembly passes a congressional district plan under any division of this section, a joint committee of the general assembly shall hold at least two public committee hearings concerning a proposed plan.” On November 5, the General Assembly announced that a Joint Committee on Redistricting would convene on November 10. It

consisted of four Republican elected officials—Senator Gavarone and Representative Wilkin as Co-Chairs, Senator McColley, and Representative Oelslager—and two Democratic elected officials—Senate Minority Leader Yuko and Representative Liston. (GOVM\_0043.) At the November 10 hearing, Democratic leaders introduced an amended map. (HRG\_0319-0320.) No other proposals were presented. (*See generally* HRG\_0317-0350.) Six members of the public testified, none of whom testified in support of the proposed Republican maps. (HRG\_0332-0350.)

The Joint Committee held a second hearing on November 12, where more than 20 members of the public spoke in opposition to the proposed Republican plans. (HRG\_0352-0396.) At the hearing's conclusion, Representative Liston inquired whether the Joint Committee would continue to meet and whether it would present a unified proposal. (HRG\_0395-0396.) Co-Chair Wilkin provided no information on those points and abruptly adjourned the Committee. (HRG\_0396.)

**5. The General Assembly adopted the 2021 Plan, a map that is even more gerrymandered than the 2011 map.**

Having checked the constitutionally required box of holding two Joint Committee hearings, the process reached its inevitable dénouement: a new partisan gerrymander to replace the 2011 partisan gerrymander. Late in the evening on November 15, Senate Republicans, led by Senator McColley, introduced the 2021 Plan as a substitute bill. (Compl. Ex. 30.) The map, which resulted from negotiations between Speaker Cupp and President Huffman (HRG\_0476,) was, yet again, only released as a PDF image, and members of the public were required to submit comments on the new plan by the next morning. (HRG\_0439.) In its findings, the bill claimed the map included six safe Republican seats, two safe Democratic seats, and seven “competitive” seats. (Compl. Ex. 32.) Behind the scenes, Speaker Cupp boasted that the map would “withstand legal scrutiny from a swing 4-3 Ohio Supreme Court.” (Cupp001840.)

The Senate Local Government and Elections Committee considered the bill on November

16, heard public testimony from nine individuals (all in opposition), and quickly approved it with a vote of 5-2 along partisan lines. (HRG\_0434-0460.)

Notably, the Joint Committee, which previously met to consider other proposals on November 12, never gaveled back in to consider the amended map before it was put on the agenda for consideration in the Senate Local Government and Elections Committee. Thus, although Article XIX, Section 1(G) required the Joint Committee to hold two public hearings before the General Assembly passed a congressional plan, the Joint Committee never held *any* hearings on the 2021 Plan. Instead, the Senate Rules Committee voted to put the map on the floor later in the day, and the bill was then rushed to the Senate floor, where Republicans approved it unanimously, without the support of any of their Democratic colleagues. (HRG\_0431.)

After the bill moved to the House, Republican leadership tasked the House Government Oversight Committee with considering the 2021 Plan. (See HRG\_0462-0464.) Democratic Representative Richard Brown offered an amendment to the 2021 Plan as a “compromise with regard to congressional maps.” (HRG\_0463.) As Representative Brown described, the compromise map reflected “the Democratic caucus’s desire to have a 10-year map, keep the largest counties whole, keep communities of interest together, make compact districts, and reflect the voting interests of Ohio voters.” (*Id.*) Chair Wilkin rejected Representative Brown’s proposed amendment as “out of order.” (*Id.*) He then immediately allowed Senator McColley to present the 2021 Plan, which Senator McColley claimed was “the most competitive map offered by any caucus to date.” (GOVM\_0098). The Committee then referred the bill to the full House of Representatives on an 8-5 party-line vote. (HRG\_0491-0492.)

On November 18, the House of Representatives passed the bill 55 to 37. (GOVM\_0221.) The next day, the General Assembly sent the bill to Governor DeWine, who signed it into law on

a Saturday morning, fewer than 24 hours after it hit his desk. Just ten days later, Senator Gavarone—who had co-chaired the Senate committee that approved the 2021 Plan and signed on to the plan as a sponsor—filed her intent to run for U.S. Congress in District 9.<sup>4</sup> Perhaps not coincidentally, the 2021 Plan championed by Senator Gavarone transforms District 9, represented by Democratic Congresswoman Kaptur, from a safe Democratic district to one with a Republican lean and only 40% of the population from Congresswoman Kaptur’s previous district. *See infra* Part III.D.2.

**6. The General Assembly’s justification of the 2021 Plan is misleading and misconstrues constitutional requirements.**

In the final bill, the General Assembly included a section describing the 2021 Plan’s alleged compliance with Article XIX, Section 1(C)(3)(a)-(c), as required by Section 1(C)(3)(d) (hereinafter referred to as the “Section 1(C)(3) statement”). (SB258\_0733-0734.) On all accounts, the statement is deficient and misleading.

As an initial matter, the General Assembly justifies its compliance with each requirement by comparing the 2021 Plan to the 2011 Plan—a plan that a federal court found to be an “intentional and effective” partisan gerrymander that was, moreover, not subject to Article XIX’s requirements at all. *Ohio A. Philip Randolph Inst.*, 373 F.Supp. 3d at 978; (SB258\_0734.). The 2011 Plan is therefore an inapt benchmark. Any of the alternative plans submitted during the 2021 cycle by the Democratic caucuses or members of the public would be more apt comparators.

Second, to support its compliance with Section 1(C)(3)(a), which provides that “[t]he general assembly shall not pass a plan that unduly favors or disfavors a political party or its

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<sup>4</sup> See Victoria Dugger & Caylee Kirby, *Gavarone Announces Candidacy Against Kaptur in Reworked 9<sup>th</sup> Congressional District*, WTOL 11 (Nov. 29, 2021), <https://www.wtol.com/article/news/politics/national-politics/theresa-gavarone-files-run-against-marcy-kaptur-reworked-9th-congressional-district-ohio/512-74ca42b9-cd62-4a4a-afb3-eb7feeb3b5d>.

incumbents,” the General Assembly relies primarily on the number of “competitive” districts in its plan. (SB258\_0733.) However, the Section 1(C)(3) statement fails to provide any analysis (or even definition) of competitiveness (*id.*) and “competitiveness” is not mentioned anywhere in Section 1(C)(3), which, instead, is concerned with undue partisan advantage.

As discussed below, the 2021 Plan does not contain seven “competitive” districts as the General Assembly claims. (Rodden Aff. ¶ 22, 26.) It contains, at most, two such districts, with 11 districts clearly favoring Republicans, and two districts clearly favoring Democrats. (*Id.* ¶ 41.) The General Assembly’s contrary figures are based on deliberate efforts at sleight of hand.

The General Assembly first manipulated the data by cherry-picking which elections it considered in determining the partisan lean of districts. According to Senator McColley’s written testimony to the Senate Local Government and Elections Committee, the 2021 Plan calculates a district’s competitiveness by looking to an index of only federal elections from 2012-2020 (i.e., three Senate races and three Presidential races). (GOVM\_0095.) This index encompasses Democrats’ three strongest statewide showings in this time period: President Obama’s reelection, when he won Ohio, and Senator Brown’s 2012 and 2018 election victories. (Rodden Aff. ¶ 25-26.) By contrast, it *excludes* ten of the 16 statewide elections from this period (i.e., those for state constitutional offices). The consequence is that this index significantly overstates likely Democratic performance. (*Id.*) For example, in the case of District 6, the federal-only index gives Republicans an average vote share of 52.9%, but under an index including all statewide races, the vote share increases to 56.3%, leading to an overestimation of Democratic performance of 3.4 percentage points. (*Id.* ¶ 26-27 & tbl.3.)

This was not by accident. Senator McColley used data curated by DiRossi. (DiRossi Dep. Ex. 5, DEPO\_CONG\_0300-0308; DiRossi Tr. 174:25-175:2.) DiRossi’s unpublished analyses



from the congressional redistricting process show that he knew the competitiveness claim was based on cherrypicked metrics. (DiRossi Dep. Ex. 7, DEPO\_CONG\_0312; DiRossi Tr. 192:5-193:23.) Indeed, DiRossi's map-drawing data shows that he analyzed and assessed alternative methods of measuring competitiveness. (DiRossi Dep Ex. 1-2, DEPO\_CONG\_0285-0297; DiRossi Tr. 92:14-93:6, 98:23-99:8, 102:10-19; *see also* Rodden Aff. ¶ 12.) DiRossi knew that if one used all available elections data, rather than only federal statewide data, the number of "competitive" districts in the 2021 Plan (using the General Assembly's definition) dropped to five, the same number as the House Democratic Caucus's proposal and the Senate Democratic Caucus's original proposal. (*See* DIROSSI\_005603, 005607; DIROSSI\_008948.) In other words, DiRossi fed Senator McColley a "federal only" index that inflated the apparent competitiveness of districts.

And DiRossi's preferred federal-only index was not only needlessly narrow, it also left out the most helpful data points for predicting congressional results. As explained in the report submitted by Dr. Jonathan Rodden,<sup>5</sup> *state* election results more reliably track how Ohioans have voted in congressional elections for the last ten years. (Rodden Aff. ¶ 24-31.) It is perhaps no surprise, then, that DiRossi admitted at his deposition that he did not base his assumption that federal statewide election data was the best predictor of congressional election results on any hard data. (DiRossi Tr. 63:1-12.) It is plain that DiRossi simply opted to use the methodology that would make the 2021 Plan look the most competitive.

Likewise, DiRossi and the General Assembly used a willfully misleading benchmark for "competitiveness," namely, any district with a partisan index between 46% and 54%. As Dr.

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<sup>5</sup> Dr. Rodden is a tenured political science professor at Stanford who has testified and been found credible in numerous election and redistricting cases, including *Romo v. Detzner*, No. 2012-CA-000412 (Fla. Cir. Ct. 2012), and *Bethune-Hill v. Virginia State Board of Elections*, No. 3:14-cv-00852-REP-AWA-BMK (E.D. Va. 2014).

Rodden explains, at most two districts in the 2021 Plan are competitive, when comprehensive election data (that is, data beyond DiRossi's cherrypicked set of elections) and incumbency advantage are considered. (Rodden Aff. ¶ 16-41.) But DiRossi knew that by simply defining "competitive" districts as any district falling within the 46% to 54% range, he would maximize the number of allegedly competitive districts under the 2021 Plan. If a 48% to 52% range were used instead, for example, the 2021 Plan would result in fewer "competitive" districts than the Senate Democrats' proposal under McColley's federal-only index. (DIROSSI\_008948.)

What's more, DiRossi's own internal files show the fundamental flaw with defining competitiveness with a range as broad as 46% to 54%. Under that range, two districts in the *2011 Plan* qualify as "competitive." (DiRossi Dep. Ex. 7, DEPO\_CONG\_0312; DiRossi Tr. 180:10-25, 183:12-15.) This is a curious finding for the 2011 Plan, since no district in Ohio changed party hands between 2012 and 2020—rather, partisan indices successfully predicted the results of every single race run for the ten years while that plan was in effect. (Rodden Aff. ¶ 18-19.) In fact, DiRossi himself testified at his deposition that there were "very few, if any" competitive districts in the 2011 Plan, and that, in general, "there weren't competitive elections in the last decade." (DiRossi Tr. 178:4-21.) Moreover, DiRossi was unable to name a single election in Ohio in the previous decade where a party was not favored by a partisan index (i.e., had an index of lower than 50%) and nonetheless won a district. (DiRossi Tr. 178:22-179:5.) Furthermore, even if one accepts DiRossi's intentional mismeasure of competitiveness, neither DiRossi nor Senator McColley or any other legislator should be allowed to circumvent constitutional requirements by substituting a discussion of competitive districts for the constitutional requirement that no plan may pursue undue partisan advantage. Article XIX, Section 1(C)(3)(a). And the General Assembly did not even attempt to explain why the plan (even by the General Assembly's own accounting) created

three times as many safe Republican seats as safe Democratic seats. (*See* SB258\_0733-0734.)

Third, the General Assembly's analysis discounts entirely the role of incumbency advantage in congressional races. As Dr. Rodden explains, incumbency often plays a key role in election outcomes, such that even when the statewide Republican vote share shifted by six to seven percentage points in either direction over the last decade, not a single incumbent lost a seat. (Rodden Aff. ¶ 38.) Often, congressional incumbents in seats that partisan indices describe as not safely Republican or Democratic will "outperform" statewide candidates from the same party. For example, Congressman Chabot typically outperforms statewide Republicans by around four percentage points. (*Id.* ¶ 34.) Because Congressman Chabot retains 81% of his previous district in the 2021 Plan, this advantage is likely to persist. (*Id.* ¶ 35.) So, while Congressman Chabot receives a projected vote share of around 51.5% in the 2021 Plan's configuration of his district under both the all-federal and all-statewide index, once incumbency is considered, his actual vote share is likely to approach 56%, a figure beyond even DiRossi's highly sanguine notion of competitiveness. (*Id.*) And Congressman Chabot is no rarity in this respect: In three other districts considered competitive under DiRossi's analysis—Districts 10, 14, and 15—Republican incumbents outperform statewide indices by *even more* than Congressman Chabot. (*Id.* ¶ 36-37.).

Fourth, and relatedly, the General Assembly's Section 1(C)(3) statement inaccurately describes the 2021 Plan's treatment of incumbents by claiming that two Republican incumbents (Congressmen Chabot and Wenstrup) are paired in the Cincinnati-based District 1. (*Id.*) In actuality, the 2021 Plan creates a nominally "open" safe Republican District 2 for Congressman Wenstrup. District 2, which Congressman Wenstrup presently represents, maintains a substantial portion of its territory. It was therefore plain during the bill's consideration that Congressman Wenstrup would seek re-election there. Indeed, before Governor DeWine even signed the bill into

law, Congressman Wenstrup publicly declared that very intention. (Compl Ex. 38.) It is entirely evident that the 2021 Plan was consciously drawn with the knowledge that these two Republican incumbents would not actually run against each other.

Finally, the Section 1(C)(3) statement made no effort to explain or justify the compactness, or lack thereof, of its districts besides remarking that a “visual inspection” shows that the 2021 Plan is more compact than the 2011 Plan, which was notorious for its oddly shaped, non-compact districts. (SB258\_0734.) Worse yet, this may actually represent the full extent to which the General Assembly analyzed compactness under the 2021 Plan: At his deposition, DiRossi admitted that he did not view any compactness scores while drawing maps in Maptitude. (DiRossi Tr. 73:11-14.)

Once the smokescreen created by DiRossi’s misleading analysis and the 1(C)(3) statement parroting that analysis is cleared away, what Ohioans are left with is this: The 2021 Plan creates 11 safe Republican districts, two safe Democratic districts, and two competitive districts. (Rodden Aff. ¶ 41.) Splitting the competitive districts between the two parties, the result is a map with 12 Republican seats and three Democratic seats, an outcome described by Dr. Rodden as “a considerable change in favor of Republicans from the status quo under the previous map,” which awarded Democrats four seats to the Republicans’ 12. (*Id.* ¶ 18, 41.)

#### **D. The 2021 Plan is a partisan gerrymander and partisan outlier.**

Analysis of the 2021 Plan reveals results entirely consistent with the hyper-partisan process used to pass the plan: On every measure, and under every analysis, the 2021 Plan is an extreme partisan outlier that palpably—and unduly—favors the Republican Party and its incumbents and disfavors the Democratic Party and its incumbents.

##### **1. Expert analysis confirms the 2021 Plan is an egregious gerrymander.**

Republicans have received about 54% of the vote in statewide elections in Ohio over the past decade; Democrats about 46%. (Rodden Aff. ¶ 15.) As discussed, expert analysis confirms

that the 2021 Plan is likely to award Republicans a stunning 12 (or 80%) of Ohio's 15 congressional seats. (*Id.* ¶ 41.) The 2021 Plan thus creates only three districts with Democratic majorities according to recent general election data. (*Id.* ¶ 16-21.) This is down from the four districts that contained Democratic majorities in the map in place from 2012 to 2020. (*Id.* ¶ 18.). And one of these districts has only a bare Democratic majority of 50.8%. (*Id.* tbl. 2.). But that's not all. As explained by Dr. Rodden, a variety of metrics developed by political scientists to measure undue partisanship in redistricting confirm that the 2021 Plan egregiously favors Republicans and Republican incumbents.

One such metric is termed the "efficiency gap." Simply stated, the efficiency gap measures the number of votes that are likely to be "wasted" under a given congressional plan. (*Id.* ¶ 57.) "Wasted votes" are votes in excess of what was needed for a party to win a particular district and those cast for a party that loses in a district; in other words, wasted votes are those that are unneeded for any candidate's victory. (*Id.*) The efficiency gap is the difference between the wasted votes received by one party and the wasted votes received by another, divided by the total number of votes. (*Id.*) Partisan gerrymanders create large numbers of wasted votes for a minority party by ensuring the party wins by very large margins in a small number of districts while losing by closer (but comfortable) margins in many more districts. The larger the efficiency gap in a given plan, the greater the partisan bias.

Using data from statewide partisan elections in Ohio from 2016 to 2020 and aggregating precinct-level data from that set to the level of districts in the 2021 Plan, Dr. Rodden concludes that the 2021 Plan has a 24% efficiency gap in favor of Republicans—a figure reflecting extraordinary pro-Republican bias. (*Id.* ¶ 60.) Dr. Rodden further shows that the efficiency gap in the 2021 Plan is an outlier compared to other states; its only peers are extreme gerrymanders from

the 2010 redistricting cycle, and it even beats those (with two exceptions). (*Id.* ¶ 61-63.)

Perhaps even more startling, the 2021 Plan's efficiency gap bests that of its infamous 2011 predecessor. In his report, Dr. Christopher Warshaw, an Associate Professor of Political Science at George Washington University, explains that when precinct-level 2020 congressional election results are aggregated to the level of districts under the 2021 Plan, the plan has an efficiency gap of 23% in favor of Republicans. (Warshaw Aff. 19, ADAMS\_00042.) When the same analysis is run for the 2011 Plan, the efficiency gap is only 11%. (*Id.*)

The severity of the 2021 Plan's partisan bias can also be seen by the significant spread between the parties' statewide vote share and their likely share of congressional seats under the plan. As discussed, Republicans have received around 54% of the statewide vote over the past decade but are likely to win 80% of the seats. (Rodden Aff. ¶ 15, 41.) Engaging in a cross-state comparison, Dr. Rodden finds that, of states that are generally competitive statewide and have more than four congressional districts, the 2021 Congressional Plan has a larger spread between statewide vote share and Congressional seats awarded than any other comparable state, with the sole exception of Oregon's map passed two decades ago. (*Id.* ¶ 44-46, 46 n.14.)

**2. Experts have similarly found that the 2021 Plan benefits Republican incumbents over their Democratic counterparts.**

The 2021 Plan unduly favors Republican incumbents. After the state lost one seat in Congress based on the 2020 census, mapmakers ensured Democratic representatives would bear the brunt of the loss. This is in spite of the fact that Columbus and Cincinnati, both of which vote solidly Democratic, gained population—largely due to an increase in their Black, Latino, and Asian populations—while two-thirds of Ohio counties lost population. (Compl. Ex. 39.) But no matter: The 2021 Plan nonetheless manages to protect Republican incumbents, pack as many Democrats into two districts as possible, and take aim at the remaining two seats currently held by

Democrats. (Rodden Aff. ¶ 39, 74, 76.)

As Dr. Rodden notes, of the 12 Republican incumbents that held seats under the 2011 Plan, 11 continue to enjoy Republican majorities in their districts based on the electoral data described above. (*Id.* ¶ 70-74.) The only exception to this is Congressman Gonzalez, who announced his retirement this year and will not be seeking reelection. (*Id.* ¶ 70.) DiRossi even managed to achieve a Republican majority in Congressman Chabot's District 1 in what is plainly a "best case" district for Republicans: Article XIX prohibited Republicans from carving up Cincinnati as they had before, but by cracking Black communities in Hamilton County, Republicans kept the district as Republican-friendly as possible. (*Id.* ¶ 83-84.)

The story is entirely different, however, for Democratic incumbents. Of the four incumbents under the plan, one (Congressman Ryan, who has announced a run for the U.S. Senate) is placed in a safely Republican district already held by a Republican incumbent. (*Id.* ¶ 74.) Another, Congresswoman Kaptur, is placed in a Republican-majority district with only about 40% of the population from her previous district. (*Id.* ¶ 39; *see also* Kaptur Aff. ¶ 11-14, ADAMS\_00138-00140.) Dr. Warshaw also concludes that the 2021 Plan unduly favors Republican incumbents, demonstrating that the Plan does not put any Republican incumbents in any district with a majority of Democratic voters, while not lending Democratic incumbents the same goodwill. (Warshaw Aff. at 24-25.)

**3. The 2021 Plan is an extreme partisan outlier even considering the constraints imposed by Article XIX and Ohio's political geography.**

Article XIX of the Ohio Constitution sets out technical line-drawing rules for congressional districting plans. Those rules do not explain the extreme Republican skew of the 2021 Plan.

Dr. Jowei Chen, an Associate Professor in the Department of Political Science at the University of Michigan, Ann Arbor, generated 1,000 computer-simulated congressional district

plans drawn according to the non-partisan criteria specified by the Ohio Constitution, including equal population, contiguity, and minimizing splits of political subdivisions. (Chen Aff. ¶ 11-12, 14.) Dr. Chen’s simulations were *not* programmed to achieve any partisan outcome. (*Id.* ¶ 14.)

On the back end, Dr. Chen measured the partisan performance of the 2021 Plan and the simulated plans by disaggregating down to the census block level the election results for all statewide elections in Ohio between 2016-2020, and then reaggregating the results to the district level for each plan. (*Id.* ¶ 21-22.) As Dr. Chen explains, such simulations “fully account for Ohio’s unique political geography, its political subdivision boundaries, and its unique constitutional districting requirements.” (*Id.* ¶ 94.) The “districting simulation analysis” enabled him “to identify how much of the electoral bias in [the 2021 Plan] is caused by Ohio’s political geography and how much is caused by the map-drawer’s intentional efforts to favor one political party over the other.” (*Id.* ¶ 95.)

Dr. Chen found that, when compared to the simulated plans, the 2021 Plan “is an extreme partisan outlier, both at the statewide level and with respect to the partisan characteristics of its individual districts.” (*Id.* ¶ 3.) A comparison of the district-level partisan vote share of the 2021 Plan’s districts and the districts in the computer-simulated plans prove the point.

The 2021 Plan packs Democratic voters into a small number of districts, thereby improving Republican performance in other districts. The most Democratic district in the 2021 Plan, District 11, is more heavily Democratic than **100%** of the most-Democratic districts in each of the 1,000 computer-simulated plans. (*Id.* ¶ 27.) District 11 packs Democratic voters in the Cleveland area to a more extreme extent than all of the computer-simulated plans. Similarly, the second-most Democratic district in the 2021 Plan, District 3, is more heavily Democratic than **100%** of the second-most Democratic districts in each of the 1,000 computer-simulated plans. (*Id.* ¶ 28.)



District 3 packs Democratic voters in the Columbus area, making it a more Democratic district than the second-most Democratic district in all of the computer-simulated plans. Meanwhile, the 2021 Plan's most Republican district, District 4, is *less* heavily Republican than **98.7%** of the most Republican districts in each of the 1,000 computer-simulated plans. (*Id.* ¶ 29.)

As Dr. Chen explains, these three districts (Districts 11, 3, and 4) contain more Democratic voters than virtually all of their counterparts in the 1,000 computer-simulated plans. (*Id.* ¶ 30.) By placing “extra” Democratic voters in the three most partisan-extreme districts, the map-drawers of the 2021 Plan allocated fewer Democratic voters to other districts, thus improving likely Republican performance in those jurisdictions. (*Id.*) Indeed, five additional districts in the 2021 Plan have a Republican vote share that is higher than over **95%** of their counterpart districts in the computer-simulated plans. (*Id.* ¶ 31-32.) Thus, eight of the 15 districts in the 2021 Plan are extreme partisan outliers. (*Id.* ¶ 33.)

This district-by-district gerrymandering results in a stark partisan bias at the state level. The 2021 Plan creates 12 Republican-favoring districts. By contrast, 98.7% of the 1,000 simulated plans resulted in fewer Republican-favoring districts. (*Id.* ¶ 35.) No computer-simulated plan ever created more than 12 Republican-favoring districts. (*Id.*)

By comparing the 2021 Plan against simulated plans using several measures of partisan bias, Dr. Chen confirms and reinforces Dr. Rodden's conclusion that the 2021 Plan, when compared against plans in similar states, is an extreme partisan outlier.

First, Dr. Chen conducted an efficiency gap analysis of the type described above. (*Id.* ¶ 37-39). Dr. Chen found that the 2021 Plan has an efficiency gap of 23.7% in favor of Republicans, because the difference between the total number of wasted Democratic votes and wasted Republican votes amounts to about 24% of the total number of votes statewide. (*Id.* ¶ 41.) This

efficiency gap is larger than 99.5% of the computer-simulated plans, indicating that “the significant level of Republican bias exhibited by the 2021 Plan cannot be explained alone by Ohio’s political geography or the redistricting criteria in the Ohio constitution.” (*Id.*)

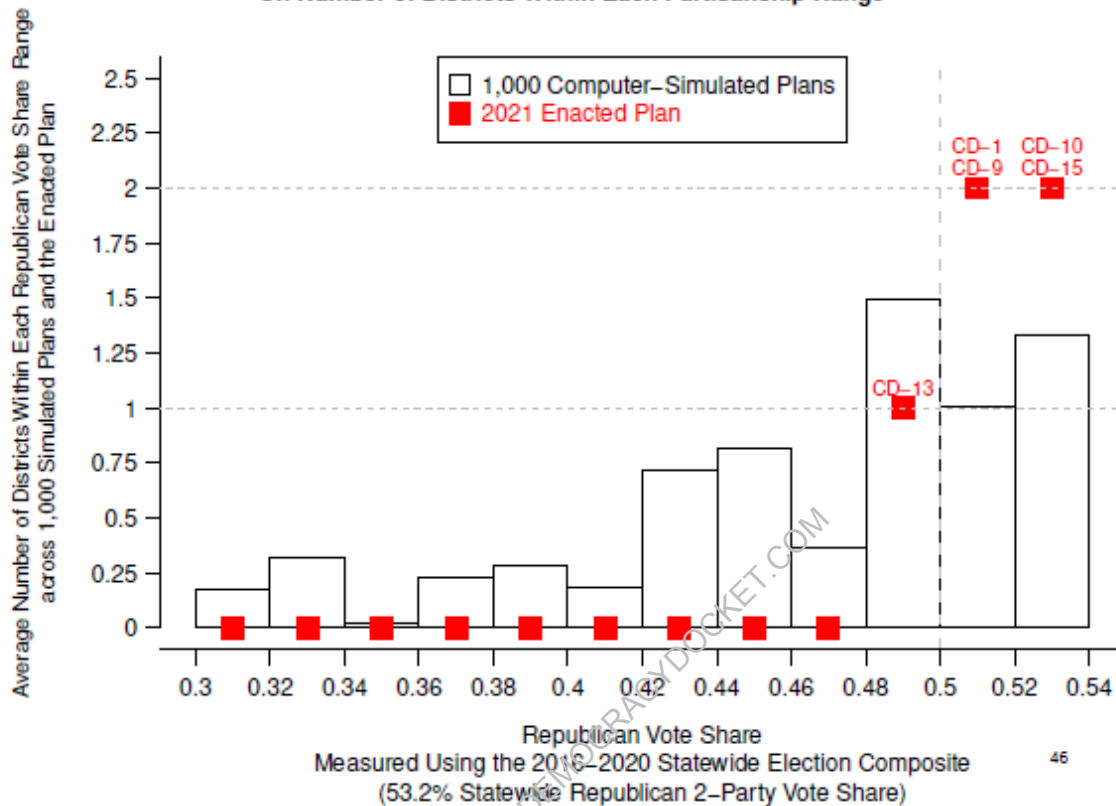
The “lopsided margins” measure compares the average margin of victory in Republican-favoring districts versus Democratic-favoring districts. (*Id.* ¶ 42-43.) A large average margin of victory indicates that a party’s voters have been packed into just a few districts. (*Id.* ¶ 42.) The 2021 Plan contains three Democratic-favoring districts (Districts 3, 11, and 13) that have an average Democratic vote share of 67.1%, based on 2016-2020 statewide election data. (*Id.* ¶ 43.) The remaining twelve districts are Republican-favoring and have an average Republican vote share of just 58.1%. (*Id.*) Thus, there is a nine-percentage point difference in the average margin of victory in Democratic- versus Republican-favoring districts. Again, this is not explainable by political geography; this result is more extreme than 99.8% of Dr. Chen’s simulated plans. (*Id.* ¶ 45.) Dr. Kosuke Imai, a professor in the Department of Government and the Department of Statistics at Harvard University, reached similar results based on a comparison of the 2021 Plan with 5,000 hypothetical plans, finding that the 2021 Plan “is more biased than any of the 5,000 simulated plans for all four partisan bias metrics [he] considered.” (Imai Aff. ¶ 31, ADAMS\_00070, 00072.)

Dr. Chen also examined the extent to which partisan favoritism affected the map-drawing process within Ohio’s three largest counties: Franklin, Cuyahoga, and Hamilton. (Chen Aff. ¶ 52.) He found that the 2021 Plan’s “districts in these three counties are outliers . . . in ways that systematically favor the Republican Party.” (*Id.*) In particular, Dr. Chen found that the 2021 Plan’s splitting of Hamilton County into three districts is an outcome that occurs in just 1.3% of the computer-simulated plans. (*Id.* ¶ 72.) The 2021 Plan unduly splits Hamilton County in order to

combine Cincinnati with more Republican voters in Warren County, thereby creating three Republican-favoring districts. (*Id.* ¶ 54; *see also id.* ¶ 70-77.) Moreover, Dr. Chen found that the 2021 Plan “creates an extreme partisan outcome in Cuyahoga County by unnaturally packing Democratic voters, and in Franklin County by sacrificing geographic compactness to create anomalously partisan districts.” (*Id.* ¶ 3; *see also id.* ¶ 60-69, 78-84.) Dr. Imai similarly found that “[i]n Hamilton County, the [2021 Plan] cracks Democratic voters to create safe Republican seats, while in Franklin and Cuyahoga counties the [2021 Plan] packs Democratic voters to create additional Republican-leaning districts.” (Imai Aff. ¶ 3.)

Finally, Dr. Chen assessed the relationship between political competitiveness and partisanship in the 2021 Plan. Dr. Chen found that, even using the definition of a “competitive district” deployed by the 2021 Plan’s map-drawers (46-54%), there is “a clear partisan asymmetry in the [2021 Plan’s] competitive districts when compared to the competitive districts in the computer-simulated plans.” (Chen Aff. ¶ 92.) To show this, the figure below presents the number of districts in the 2021 Plan (represented by the red squares) versus in the average computer-generated plan (represented by the white bars) for each 2% range of Republican vote share from 0.3 (or 30%) to 0.54 (or 54%). (*Id.* fig. 19.) For example, the red square labeled CD-1 and CD-9 represents that the 2021 Plan has two districts with a Republican vote share of 50-52%, whereas the white bar shows that Dr. Chen’s 1,000 plans, on average, have only one district with a Republican vote share in the same range. As demonstrated by the entire figure, then, the 2021 Plan “contains more Republican-favoring competitive districts than the average simulated plan does. [And] the [2021 Plan] created these Republican-favoring competitive districts at the expense of Democratic-favoring competitive districts, as well as safe Democratic-favoring districts.” (*Id.*)

**Figure 19:**  
**Comparisons of 2021 Enacted Plan to 1,000 Computer-Simulated Plans**  
**On Number of Districts Within Each Partisanship Range**



In sum, the 2021 Plan is a partisan outlier that packs Democratic voters into a small number of districts to maximize Republican performance in the remaining districts. The Plan favors the Republican Party in a manner and to an extent unexplainable by Ohio's political geography.

#### **4. The 2021 Plan needlessly splits counties in metropolitan areas.**

The 2021 Plan also unduly splits political subdivisions in service of achieving partisan ends. Dr. Rodden demonstrates that mapmakers achieved the 12-3 partisan distribution of the 2021 Plan by splitting urban, Democratic counties and municipalities and pairing them with the surrounding rural, Republican areas. (Rodden Aff. ¶¶ 71-74.)

Take Hamilton County, for example. In the 2020 general election, voters in Hamilton County favored the Democratic nominee for President by a margin of more than 15%, while statewide, Ohio voters favored the Republican nominee by about 8%. (Clinger Aff. Ex. 11.) The

lines in the 2021 Plan cut across Hamilton County in three different places, slicing Greater Cincinnati's Democratic hub and connecting voters there with largely Republican voters in exurban and rural areas to create two safe Republican districts and one Republican-leaning district. (Rodden Aff. ¶ 84.) The Black community of northern Hamilton County is likewise split in two, with its northern half combined with rural counties to the north to form District 8 (with a northern boundary 85 miles from Hamilton County), resulting in one safe Republican district. (*Id.*) Next, Cincinnati is combined with Warren County via a narrow corridor in northeast Hamilton County to form District 1, which leans Republican. (*Id.*) Finally, the eastern suburbs of Cincinnati are combined with rural counties—stretching all the way to Ohio's eastern border—to form the heavily Republican District 2. (*Id.*; *see also* Supp. 1-3.)

In Franklin County, Dr. Rodden observed a similar pattern. Franklin County, which encompasses Columbus, contains a sizeable portion of the state's Democratic voters. There were too many Democratic votes in Columbus to simply submerge *all* of them with votes from rural counties, so mapmakers instead packed a large portion of Columbus's voters in one overwhelmingly Democratic district—District 3—while connecting the Columbus suburbs with rural communities in the southwest to avoid creating any additional Democratic districts. (Rodden Aff. ¶ 89-91.) District 15 is drawn as a grasping claw squeezing the City of Columbus and submerging the city's Democratic-leaning suburbs into much more Republican-favoring Madison, Pickaway, and Fayette Counties. (*Id.* ¶ 91; *see also* Supp. 5-8.)

Finally, in northeast Ohio, the General Assembly split Summit County to divide the city of Akron from some of its Democratic suburbs (as well as Canton, to the Southeast), thereby ensuring the latter are diluted in the safe Republican District 7. (Rodden Aff. ¶ 94 & fig. 19.) A bit north from there, after packing as many Democratic votes as possible into the Cleveland-based District

11, the 2021 Plan carves two more contorted districts out of Cuyahoga County. (*Id.* ¶ 95.) District 14 begins in several cities just south of Cleveland, running eastward through a narrow corridor that at one point consists of a *single census block* (without which the district would not be contiguous) and expanding south to include Portage County, and north and east to include Geauga and Ashtabula Counties. (*Id.*; *see also* Supp. 10-12).

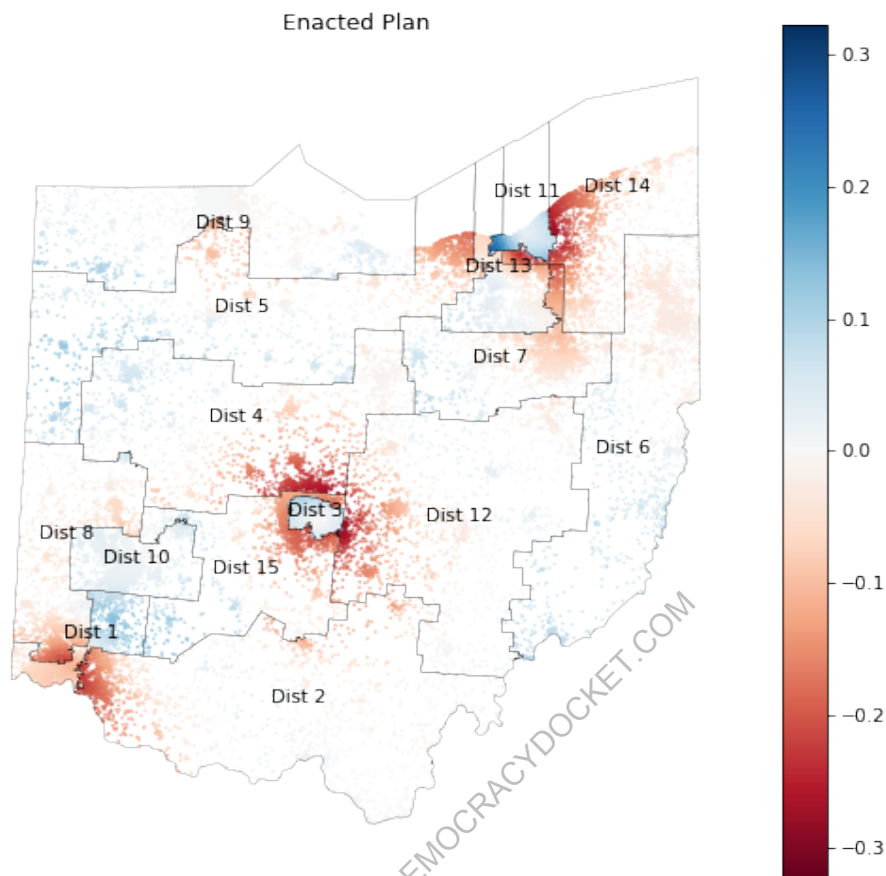
None of these splits were a necessary result of political geography or Article XIX requirements. Three alternative plans presented to the General Assembly managed to (1) comply with Article XIX; (2) outperform the 2021 Plan on compactness; and (3) achieve substantially higher partisan fairness than the 2021 Plan, while avoiding the unnecessary splits described above. (Rodden Aff. ¶ 80, 87-88, 90; *see also* Supp. 3, 6, 7, 9, 11, 13.) Those three alternative plans were proposed by the House Democrats, Senate Democrats, and the Ohio Citizens' Redistricting Commission, respectively. (Rodden Aff. ¶ 78.) In each, Cincinnati is placed in a district wholly within Hamilton County, and only one other district is created out of Hamilton County.<sup>6</sup> (*Id.* ¶ 86, 88.) None of these alternative plans split Summit County, and each only splits Cuyahoga County between two districts (the minimum in light of the county's size). (*Id.* ¶ 94 & fig. 20.) These alternatives make clear that the 2021 Plan splits urban areas as part of a conscious effort to secure partisan advantage at the expense of other redistricting principles.

In his report, Dr. Rodden helps illustrate the partisan consequences of Republicans' highly-selective splitting of urban counties using an approach called "partisan dislocation" analysis. (*Id.* ¶ 105.) Partisan dislocation starts with a simple question: If every voter in the state were placed in a congressional district with their 786,630 closest neighbors, what would the partisan composition

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<sup>6</sup> This aligns with Dr. Chen's finding that the 2021 Plan's splitting of Hamilton County into three districts is an outcome that occurs in just 1.3% of the computer-simulated plans. (Chen Aff. ¶ 72.)

of each district look like? (*Id.* ¶ 106.) This district, known as a voter’s geographic “neighborhood,” represents the partisan voting patterns of each voter’s immediate geographical surroundings. (*Id.*) The analysis next proceeds to compare the partisan composition of each voter’s geographic neighborhood with the partisan composition of the district the voter actually lives in. (*Id.* ¶ 107.) Where the difference between a voter’s neighborhood and the voter’s district skews toward Republicans (i.e., the voter lives in a district more Republican than their neighborhood), that voter is plotted on the graph as a red dot. (*Id.* ¶ 108.) The redder the dot, the greater the disparity in favor of Republicans. (*Id.*) The same is done for Democrats: For a voter placed in a district more Democratic than their neighborhood, a blue dot appears. (*Id.*) In situations where mapmakers have consciously gerrymandered a map to political ends, dark shaded dots often appear around district boundaries. (*Id.* ¶ 107.) This is because gerrymanderers must often crack voters of a disfavored party away from one another in order to prevent a district that would favor the other party from naturally emerging. By “cracking,” voters are separated from their geographic neighborhood and instead paired with districts with partisan leans far afield from their own. (*Id.* ¶ 105.) Applying this analysis to the 2021 Plan, Dr. Rodden reaches the following result:



As is apparent from the above, very dark red dots appear around the borders of the districts that split counties in southwest and northeast Ohio. The same phenomenon occurs in the areas right outside the borders of the heavily-packed and safely Democratic District 3. This further confirms that counties in these areas were split not to achieve equal population or some other valid redistricting goal, but instead to crack Democratic votes to the maximum degree possible and ensure maximum Republican performance. This is also an outlier among the plans proposed to the General Assembly: The percentage of voters living in a district that votes differently from the voter's geographic neighborhood is significantly higher in the 2021 Plan than any of the alternatives. (*Id.* ¶ 115.) In the three alternative plans, the share of “misaligned” voters ranges from 17.5% to 22.5%. *Id.* In the 2021 Plan, however, 30% of voters live in districts where the district-wide voting behavior is at odds with the voter's electoral neighborhood. (*Id.*)



#### IV. Argument

The 2021 Plan violates the constitutional requirements that “[t]he general assembly shall not pass a [simple-majority] plan that unduly favors or disfavors a political party or its incumbents” and “shall not unduly split governmental units, giving preference to keeping whole, in the order named, counties, then townships and municipal corporations.” Ohio Constitution, Article XIX, Section 1(C)(3)(a) & (b).

Here, the evidence shows that the General Assembly did *not* comply with Section 1(C)(3)(a) or (b). This Court should declare the 2021 Plan invalid and issue specific guidance to the General Assembly and, if necessary, to the Commission, in order to ensure that the entity responsible for remedying the violation enacts a plan that complies with all provisions of Article XIX, including those in Section 1(C)(3).

**A. Proposition of Law 1: The 2021 Plan unduly favors the Republican Party and its incumbents, and unduly disfavors the Democratic Party and its incumbents.**

As an initial matter, the General Assembly cannot simply ignore the Section 1(C)(3) requirements: It “shall” comply with those rules. This Court has made clear that the word “[s]hall means must. And ‘the word “must” is mandatory. It creates an obligation. It means obliged, required, and imposes a physical or moral necessity.’” *Wilson v. Lawrence*, 150 Ohio St.3d 368, 2017-Ohio-1410, 81 N.E.3d 1242, ¶ 13. “Shall” therefore imposes a mandatory obligation “unless other language evidences a clear and unequivocal intent to the contrary.” *Lawrence* at ¶ 13.

Under Article XIX Section 1(C)(3)(a), when the General Assembly passes a map by a simple majority, as it did here, it “shall not pass a plan that unduly favors or disfavors a political party or its incumbents.” First, it is beyond dispute that the 2021 Plan *favors* the Republican Party and its incumbents: Even by Respondents’ own accounting, the plan creates three times as many safe Republican districts as it does Democratic districts, and in reality, it creates many more than

that. *See supra* Part III.C.6. It also places half of the current Democratic delegation in districts that are either safely Republican or highly competitive, while leaving all but one retiring Republican incumbent in districts with Republican majorities, many of which are quite safe. *See supra* Part III.D.2. The operative question, then, is whether the 2021 Plan’s favoritism of Republicans and Republican incumbents is “undue.”

The “unduly favors” provision was enacted in 2018 with the rest of Article XIX, and this Court has not yet had occasion to interpret its text. When construing the Constitution, this Court will “apply the same rules of construction that [it] appl[ies] in construing statutes.” *Toledo City Sch. Dist. Bd. of Educ. v. State Bd. of Educ.*, 146 Ohio St.3d 356, 2016-Ohio-2806, 56 N.E.3d 950, ¶ 16. As a result, “the intent of the framers is controlling.” *Id.* When ascertaining legislative intent, the Court first looks to “the language of the provision itself.” *Id.* The language of Section 1(C)(3)(a) states that a simple-majority plan may not “unduly favor[] or disfavor[] a political party or its incumbents.” When construing statutory text, courts consult external sources like dictionaries to ascertain the words’ plain meaning. *See State v. Nelson*, 162 Ohio St.3d, 2020-Ohio-3690, 165 N.E.3d 1110, ¶ 18. Black’s Law Dictionary defines undue as “excessive or unwarranted.” *Undue*, Black’s Law Dictionary (11th ed. 2019). Reading this definition into Section 1(C)(3)(a), Article XIX prohibits the General Assembly from (1) excessively or (2) unwarrantedly, favoring—that is, advantaging—the Republican Party or its incumbents in electoral contests under the Plan. The legislative history and circumstances surrounding Article XIX’s enactment, which came as a response to the 2011 congressional map’s gerrymandering in favor of Republicans, confirm this understanding of Article XIX. *See supra* Part III.B.

As described below, the 2021 Plan’s favoring of the Republican Party is excessive: Its partisan characteristics, which objectively favor the Republican Party and its incumbents, are

inconsistent with the Ohio electorate's partisan characteristics. They also lead to the "wasting" of a staggering number of Democratic votes. Moreover, this favoritism is unwarranted—the Plan's partisan characteristics are unexplainable on any ground *other* than an interest in granting political advantage to the Republican Party and its incumbents, and are certainly not explainable on the ground that such a map was necessary to comply with Article XIX or federal law. As such, the 2021 Plan favors the Republican Party and its incumbents more than they are due, in direct violation of Section 1(C)(3)(a)'s constitutional mandate.

**1. The 2021 Plan excessively favors the Republican Party and its incumbents.**

The 2021 Plan violates 1(C)(3)(a) because its partisan favoritism is excessive. As both Dr. Rodden's and Dr. Warshaw's expert analyses explain, the 2021 Plan's favoritism of the Republican Party and its incumbents is particularly excessive when compared to the much lesser extent to which Ohio's *voters* actually favor the Republican Party. *See supra* Part III.D.1-2. In statewide partisan elections from 2016-2020, Republicans have received about 53% of the vote on average. (Rodden Aff. ¶ 15.) The 2021 Plan, however, awards Republicans 80% of the seats. (*Id.* ¶ 41.) This disparity between statewide vote share and congressional seat share is astounding, and (with one exception) is starker than every plan enacted in a comparable state in the last twenty years. *See supra* Part III.D.1.

But the 2021 Plan's excessive partisan favoritism is apparent from more than its lack of partisan proportionality. The 2021 Plan also trips the alarm of other leading measures used to detect partisan bias. *Id.* For example, the 2021 Plan has a higher efficiency gap than almost every other comparable state: When using 2016 Presidential data, only Pennsylvania's notorious (and ultimately court-invalidated) gerrymander, scores worse—even Ohio's 2011 Plan scores better by a substantial margin. (Rodden Aff. ¶ 61-62; Warshaw Aff. 19.) When using 2020 presidential data, only Wisconsin has a higher efficiency gap than the 2021 Plan. (*Id.* ¶ 63) As described, the 2021

Plan also scores worse than the three major alternative plans submitted to the General Assembly under Dr. Rodden’s partisan dislocation analysis by a significant margin. *See supra* Part III.D.4.

The 2021 Plan also excessively favors Republican incumbents while disfavoring Democratic incumbents. As Dr. Rodden finds, the 2021 Plan places two of the four Democratic incumbents in Republican-majority districts. *See supra* Part III.D.2. Among the *twelve* Republican incumbents, however, all but one incumbent—who has announced his intention to retire—are in districts with Republican majorities, most quite comfortable. *Id.* In sum, the Plan jeopardizes the electoral prospects of half of the small Democratic delegation, while largely maintaining advantages for the Republican delegation. This favoring of Republican incumbents (and, by the same token, disfavoring of Democratic incumbents) is excessive, and it is therefore undue.

**2. The 2021 Plan’s favoring of the Republican Party and its incumbents is unwarranted.**

The 2021 Plan’s advantage to Republican voters, candidates, and incumbents is not an accident. It results from deliberate efforts to draw districts to favor the Republican Party. And, as a direct consequence, the 2021 Plan’s partisan advantage is unwarranted by valid considerations, namely, the redistricting criteria set forth in Article XIX.

Although this court has not yet interpreted Section 1(C)(3), other courts that have struck down gerrymanders provide useful guidance on when a plan’s partisanship is unwarranted. For example, in *League of Women Voters of Pennsylvania v. Commonwealth (LWVPA)*, 178 A.3d 737 (Pa. 2018), the Pennsylvania Supreme Court struck down the state’s congressional map, concluding that the plan violated voters’ rights under the Pennsylvania Constitution’s Free and Equal Elections Clause. *Id.* at 803. The court found, based on objective evidence such as expert testimony on alternative maps, that neutral redistricting criteria such as compactness and contiguousness were “subordinated to the pursuit of partisan political advantage.” *Id.* at 817.

As Dr. Chen outlines in his report, that is exactly what happened in Ohio. (Chen Aff. ¶ 3.) The 2021 Plan is an extreme partisan outlier, both at a statewide level and with respect to the partisan characteristics of individual districts. (*Id.*) When compared with 1,000 computer-simulated maps that follow Article XIX's redistricting requirements *without* consideration of partisan outcomes, the 2021 Plan achieves a partisan split more extreme than 98.7% of the maps in the set. (*Id.* ¶ 36.) Moreover, Dr. Chen's computer-simulated plans achieved the same number of governmental unit splits as the 2021 Plan and were significantly more compact than the 2021 Plan. (*Id.* ¶ 56-58.)

Using a different methodology, Dr. Rodden reached the same conclusion. As Dr. Rodden finds, the General Assembly chose to enact a Republican gerrymander despite the availability of other alternative plans that materially complied with Article XIX's line-drawing requirements and either exceeded or matched the 2021 Plan on compactness scores. (Rodden Aff. ¶ 78-80, 88.)

Courts also consider the existence of districts that combine disparate communities of interest for no apparent reason as evidence that the partisan characteristics of a particular district or plan were unwarranted. *See LWV PA*, 178 A.3d at 819-821 (pointing to “geographic idiosyncrasies” that “strengthen[ed] the votes of voters inclined to vote for Republicans . . . and weaken[ed] those inclined to vote for Democrats”). Here, Dr. Rodden lays out all the ways in which the 2021 Plan dilutes Democratic votes around cities, often cracking communities of color and submerging them in overwhelmingly white, Republican districts. (*See, e.g.*, Rodden Aff. ¶ 82-116.) Those case studies exemplify that the 2021 Plan's supermajority Republican advantage is in spite of, and not because of, natural groupings of precincts and communities of interest.

Thus, both Dr. Chen and Dr. Rodden explain that the partisan skew of the 2021 Plan *cannot* be explained by geography. (Chen Aff. ¶ 93-96; Rodden Aff. ¶ 76-78.) Rather, if one follows the

geographic-based line-drawing requirements set out in Article XIX and avoids drawing contorted district boundaries, the result comes nowhere near the 12-3 Republican advantage in the 2021 Plan. (Chen Aff. ¶ 95; *see also* Rodden Aff. ¶ 78-82.)

The 2021 Plan's favoritism of Republican incumbents at the expense of Democratic incumbents is similarly unwarranted. As described above, the 2021 Plan places two of the four Democratic incumbents in majority-Republican districts, while leaving 11 of the 12 Republicans in Republican districts, many of which are quite safe. *See supra* Part III.D.2. No rule of Article XIX justifies this disparate treatment of Republican incumbents vis-à-vis Democratic incumbents. For these reasons as well, the 2021 Plan unduly favors Republicans and Republican incumbents, while simultaneously disfavoring Democrats and Democratic incumbents.

**3. The General Assembly's intent to favor the Republican Party and its incumbents further shows that the Plan's partisan bias is unwarranted.**

Finally, the way that the 2021 congressional redistricting process unfolded provides clear evidence that the partisan bias of the 2021 Plan results from the General Assembly's desire to secure the maximum number of congressional seats for Republican candidates and incumbents—and is thus untethered to other valid redistricting considerations.

Courts have held that a plan is drawn to favor a political party when there is evidence, direct or indirect, of intent to favor one party. *See League of Women Voters of Fla. v. Detzner*, 172 So. 3d 363, 376 (Fla. 2015); *see also Reno v. Bossier Parish Sch. Bd.*, 520 U.S. 471, 488-89 (1997) (discussing the use of intent evidence in racial gerrymandering cases); *Miller v. Johnson*, 515 U.S. 900, 916 (1995) (discussing intent in racial gerrymandering cases); *In re Estate of Duiguid*, 24 Ohio St.2d 137, 141, 265 N.E.2d 287 (1970) ("Subsequent acts of the parties may reflect, as circumstantial evidence, on the question of intent."); *State v. Huffman*, 131 Ohio St. 27, 38, 1 N.E.2d 313 (1936) ("[I]ntent may be made to appear from circumstantial as well as from direct

evidence.”). Here, that evidence is plentiful and unmistakable.

First, the record reveals that achieving favorable outcomes for Republicans drove the map-drawing process. DiRossi and Springhetti confirmed that they considered partisan data while drafting their maps. *See supra* Part III.C.3. Thus, they could see in real time the partisan consequences of how they were constructing the districts. *Id.* DiRossi then drew a plan in which Republicans have the upper hand in 12 of 15 districts; a higher percentage than under the map enacted *before* the 2018 constitutional reforms. *See supra* Part III.D.1.

Second, the maps were drawn, negotiated, and adopted through a highly partisan process at odds with the bipartisan procedure contemplated under Article XIX. Republican legislative leaders stonewalled during the first two phases of the congressional redistricting process, refusing to introduce a map in September or to allow the Commission to meet, draw, or vote on any map in October. *See supra* Part III.C.1-2. In fact, DiRossi did not so much as begin drawing congressional maps until mid-October at the very earliest. *See supra* Part III.C.1. And once the General Assembly was liberated from the need to pass a plan on a bipartisan basis, it immediately rushed through a plan on a party-line vote while refusing to consider alternatives. *See supra* Part III.C.3-5. This is powerful evidence of the partisan purpose behind the 2021 Plan. *See Reno*, 520 U.S. at 489 (“Other considerations relevant to the purpose inquiry include . . . [d]epartures from the normal procedural sequence.” (quoting *Village of Arlington Heights v. Metro Hous. Dev. Corp.*, 429 U.S. 252, 268 (1977))).

Third, as set forth above, both the initial map-drawing and the revision processes took place entirely behind the scenes in 2021’s version of the infamous 2011 Bunker. In drawing congressional maps, DiRossi took direction only from Senate President Huffman and Senator McColley. *See supra* Part III.C.3. Despite the fact that other maps were submitted by the

Democratic caucuses and by the public via the Commission’s website, the only map that the Republican legislative leaders were willing to use as a starting point was their own extreme partisan gerrymander. *See supra* Part III.C.3-5. Direct evidence regarding the mapmaking process therefore shows that Republicans ran a rushed and opaque redistricting process with the sole goal of creating maps that favored Republicans.

Fourth, there is at least one glaring instance in which a major decisionmaker in the congressional redistricting process directly benefited from that process’s outcome. As discussed, Senator Gavarone, Chair of the Senate Local Government and Elections Committee, and a sponsor of the 2021 Plan, announced shortly after the 2021 Plan was signed into law that she intends to seek election in District 9, currently held by Democratic incumbent Congresswoman Kaptur. *See supra* Part III.C.5. It is no coincidence that this newly-minted District 9 contains only 40% of the population from Congresswoman Kaptur’s current district and bears an unmistakable Republican tilt. *See supra* Part III.D.2.

For the reasons stated above, the 2021 Plan’s favoring of the Republican Party and its incumbents is undue and violates Section 1(C)(3)(a).<sup>7</sup>

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<sup>7</sup> Respondents may argue that the Court should ignore the overwhelming evidence that the 2021 Plan was an intentional partisan gerrymander because legislators did not go on the record to declaim, like a Bond villain, their plan to unduly advantage the Republican Party. However, in the depositions of DiRossi and Springhetti (the only depositions in this case to which their counsel—who also represents Huffman, Cupp, and all of the legislators subpoenaed in this action—agreed), their counsel asserted “legislative privilege” over virtually any discussions between and among legislators and their staffers concerning congressional redistricting. (DiRossi Tr. 32:1-19, 35:9-18, 117:14-25, 141:21-24, 152:6-12, 153:15-154:13; Springhetti Tr. 21:25-22:10.) Relators were therefore unable to directly inquire into what instructions DiRossi and the other mapmakers received from their supervisors in the General Assembly, or the substance of any conversations between them and members of the General Assembly (or anyone else) about map-drawing. No Ohio case has ever recognized an assertion that “legislative privilege” entitles a legislative staffer to refuse to respond to discovery. The expedited case schedule facilitates prompt resolution of this important matter on the merits, but did not afford an opportunity to litigate Respondents’ counsel’s



**B. Proposition of Law 2: The 2021 Plan unduly splits governmental units.**

The 2021 Plan also violates Article XIX’s prohibition on undue subdivision splits (the “undue-splits provision”). Under Article XIX, Section 1(C)(3)(b), when the General Assembly passes a map by a simple majority, as it did here, the plan “shall not unduly split governmental units, giving preference to keeping whole, in the order named, counties, then townships and municipal corporations.” With excessive splits to urban counties that are unexplainable by any valid, countervailing redistricting justification, the 2021 Plan violates this rule.

Like the undue-partisanship provision described above, this Court has never had the opportunity to interpret the undue-splits provision. Looking to the constitutional text, a plan may not “unduly split” political subdivisions. “Split” is defined in Article XIX itself. *See* Ohio Constitution, Article XIX, Section 2(C)(1) (“a county, municipal corporation, or township is considered to be split if, based on the census data used for the purpose of redistricting, any contiguous portion of its territory is not contained entirely within one district.”). The meaning of this provision, then, similarly involves a question as to the proper interpretation of “unduly.” As noted above, Black’s Law Dictionary defines “undue” as “excessive and unwarranted.” *See supra* Part IV.A. Reading this definition into the undue-splits provision, Article XIX prohibits the General Assembly from making (1) excessive or (2) unwarranted splits of governmental units.

While no state has Ohio’s precise formulation of its prohibition on excessive splits, many states mandate respect for political subdivisions in redistricting.<sup>8</sup> Decisions from other state courts

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11th-hour sweeping assertion of privilege. Thus, the lack of such testimony is due to Respondents’ counsel’s litigation position, and nothing else. And the other evidence, as discussed, overwhelmingly demonstrates that the avoidance of the Ohio Constitution’s dictates, and the resulting extreme partisan gerrymander, were both entirely intentional.

<sup>8</sup> *See, e.g.*, Idaho Code § 72-1506 (“(5) Division of counties [in congressional and legislative plans] shall be avoided wherever possible. In the event that a county must be divided, the number of such divisions, per county, should be kept to a minimum . . . (8) Counties shall not be divided to protect

interpreting those states' equivalents of the undue-splits provision provide helpful guidance on when a plan makes excessive or unwarranted splits of political subdivisions. In many instances, state supreme courts interpret such provisions to require the avoidance of splits unless necessary to comply with other redistricting requirements, such as population equality.<sup>9</sup> And as discussed, the dictionary definition of "undue" includes "unwarranted." Harmonizing these two principles, a split is "undue" if it is unjustifiable (i.e., unwarranted) by compliance with Article XIX or federal law. For example, a split is not "undue" if it is necessary to comply with the partisan-fairness standards discussed in Part III.D. What may not justify such splits, however, is a naked desire to secure partisan advantage.

Here, the 2021 Plan unduly splits counties throughout the state, particularly in urban regions, in ways clearly designed for partisan gain. As detailed in Dr. Rodden's report and described above, the 2021 Plan splits both Cuyahoga and Hamilton Counties into three separate districts. *See supra* Part III.D.4. In Cuyahoga County, two of the districts stretch chaotically out

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a particular political party or a particular incumbent."); Fla. Const. Art. III § 20 ("Unless compliance with the standards in this subsection conflicts with the standards in subsection (a) [Florida's provision prohibiting partisan gerrymandering] or with federal law, districts shall be as nearly equal in population as is practicable; districts shall be compact; and districts shall, where feasible, utilize existing political and geographical boundaries."); Penn. Const. Art. II, § 16 ("Unless absolutely necessary no county, city, incorporated town, borough, township or ward shall be divided in forming either a senatorial or representative district.").

<sup>9</sup> *See, e.g., Twin Falls County v. Idaho Comm'n on Redistricting*, 271 P.3d 1202, 1207 (Idaho 2012) (holding invalid redistricting plan that split more counties than needed to comply with the federal Constitution); *In re Senate Joint Resolution of Legislative Apportionment* 83 So.3d 597, 664, 683 (Fla. 2012) (holding invalid state senate redistricting plan where it was possible to draw more districts that split fewer counties); *In re Reapportionment of Colorado General Assembly*, 45 P.3d 1237, 1252 (Colo. 2002) (holding county splits are permissible in a redistricting plan only upon "an adequate factual showing that less drastic alternatives could not have satisfied the equal population requirement"); *Holt v. 2011 Legislative Reapportionment Comm'n*, 614 Pa. 364, 438 (Pa. 2012) (finding state legislative plan's splits of subdivisions were unconstitutional where it "made subdivisions splits that were not absolutely necessary, and certainly could not be justified on the population equality or other grounds proffered").

of the county, while one (containing Cleveland, which cannot be split) remains within the County. *Id.* In Hamilton County, none of the three districts remains within the county, with each stretching toward more rural parts of the state. *Id.* Additionally, the 2021 Plan splits Summit County in two, with a narrow north-south corridor running along the eastern portion of the county in District 7, splitting Akron from its eastern suburbs and pairing the latter with far-flung rural areas stretching to the middle of the state. *Id.*

The alternative plans submitted show that these splits were not required by Ohio's political geography, equal population, or any other neutral redistricting principles. *Id.* First, as between the 2021 Plan and the plans submitted by the House Democrats, Senate Democrats, and the Ohio Citizens' Redistricting Commission, *only* the 2021 Plan splits a county into three districts—in fact, the 2021 Plan does so twice. *Id.* Additionally, in the alternative plans, Cuyahoga County contains only two districts (the minimum for the county) with one district wholly within the county. *Id.* And, in every alternative plan, Summit County is kept whole. *Id.* Similarly, the three alternative plans split Hamilton County into only two districts (again, the minimum) with one district contained wholly within the county. *Id.* Dr. Chen, too, shows that the 2021 Plan's splitting of Hamilton County into three districts is an extreme outlier—more than 98% of the simulated plans split Hamilton County into just two districts. (Chen. Aff. ¶ 72.)

To be sure, the 2021 Plan performs similarly in terms of the number of splits *plan-wide* when compared to other plans before the General Assembly. (Rodden Aff. ¶ 99). What distinguishes the Plan from others, however, is the *reason* for these splits. While other plans may have drawn splits to ensure districts were more compact, of equal population, or compliant with the partisan fairness requirements of Section 1(C)(3)(a), the 2021 Plan runs roughshod over Ohio's political subdivisions for none of these reasons. Instead, it does so for raw partisan gain and nothing

more. In any event, even if the other proposed plans had unnecessary splits for other reasons, that would not excuse the 2021 Plan from complying with the law.

The purpose of each of these splits is apparent from their partisan consequences. In Hamilton County—which favored the Democratic nominee for President by over 15 percentage points in 2020—the 2021 Plan creates two very safe Republican districts and one Republican-leaning district, the latter of which has a Republican incumbent and 81% of the voters from the incumbent’s current district. *See supra* Parts III.C.6, III.D.4. By dividing Hamilton County into three pieces, each paired with rural portions of the state, the General Assembly has managed to make a strong Democratic majority within the county disappear. (*See* Rodden Aff. ¶ 83-88.) The General Assembly then pats itself on the back because, by filleting Hamilton County into pieces to avoid creating a compact, Democratic-leaning district in the Cincinnati area, one of the resulting districts is “competitive.” *See supra* Part III.C.6. Even accepting *arguendo* that District 1 is competitive (a point which Relators contest), creating a “competitive” district out of District 1 represents a best-case scenario for Republicans because any neutral configuration of Hamilton County would create a Democratic-leaning district.

Cuyahoga and Summit Counties present a similar case. Despite both counties being overwhelmingly Democratic, the 2021 Plan sees to it that the two counties are now apportioned into one extremely safe Democratic Cleveland-based district (a necessity in any map, since Cleveland cannot be split under Article XIX), two safe Republican districts pairing urban and suburban portions of the counties with rural counties, and one competitive Akron-based district, which would otherwise be comfortably Democratic but is instead rendered a toss-up by separating Akron from its suburbs and Canton. *See supra* Part III.D.4. Again, this represents a best-case scenario for Republicans, who previously had to contend with three Democratic-majority districts

in Northeast Ohio under the heavily gerrymandered 2011 Plan.

The 2021 Plan's needless splitting of counties in metropolitan areas also has the consequence of diluting the power of Black voters in the state. As Dr. Rodden illustrates, the border of Districts 1 and 8 runs directly through greater Cincinnati's Black community, pairing each half with rural parts of the state to submerge the largely urban and suburban Democratic communities within rural, white, Republican counties. *See supra* Part III.D.4. This decision reflects mapmakers' single-minded focus on maximizing the number of Republicans-leaning seats, a focus that pays no heed to concerns that its designs may dilute Black votes and deprive southwestern Ohio's Black community of meaningful representation in Congress.

Nor was this splitting of Ohio's metropolitan counties forced on the General Assembly by a need to draw compact districts. On each of three widely accepted compactness scores, the 2021 Plan scores worse than all 1,000 of Dr. Chen's simulated maps and the three alternative plans that Dr. Rodden considered. (Chen Aff. ¶ 102; Rodden Aff. ¶ 102). In fact, several of the 2021 Plan's districts are by far the least compact out of all four alternative plans. The 2021 Plan's Districts 5 and 6 score the worst under the Reock measure of any district in any of the four plans (Rodden Aff. ¶ 88 & fig.13).<sup>10</sup> District 6 spans most of the eastern border of the state, while District 5 begins in Lorain County, where it picks up a substantial number of Democratic votes in industrial cities on Lake Erie, and then meanders through Republican vote-rich rural counties in the west, spanning a distance that would take three hours to traverse by car and terminating at the Indiana border (*See* Rodden Aff. ¶ 97; Supp. 13). Through this artful construction, District 5 splits Democratic-leaning areas from Toledo, thereby drawing Congresswoman Kaptur into a slightly Republican-leaning

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<sup>10</sup> Reock is one of several widely accepted measurements for measuring district compactness. Higher Reock scores suggest higher compactness. (Rodden Aff. ¶ 88.) Other accepted measurements include Polsby-Popper and Convex-Hull. (*Id.*)

9th district, while placing Lorain County in the safe Republican 5th. *Id.*

As described above, Dr. Rodden's partisan dislocation analysis helps confirm the partisan consequences of the 2021 Plan's excessive splitting of urban counties. *See supra* Part III.D.4. By systemically splitting Democratic voters from their electoral surroundings in urban and suburban areas and diluting them with rural Republican votes, the 2021 Plan takes voters who live in or near Cincinnati, Cleveland, or Akron and places them in districts largely out of line with their voting preferences. *Id.* It also leaves more voters in districts that do not align with the partisan lean of their geographical "neighborhoods" than any of the comparator plans, thus resulting in the highest proportion of "misaligned" voters. *Id.*

As the above demonstrates, the 2021 Plan's splits are unwarranted by any valid redistricting consideration. They needlessly crack and pack Democratic votes, thus breaking up communities of interest and causing multiple splits to two of Ohio's largest metropolitan counties, where other plans managed to split those counties only once. The Plan fails to match alternative proposals before the General Assembly on all metrics but one: its ability to generate Republican wins. While that may have constituted a good day's work in DiRossi's Bunker, it should not fly in this Court. These splits are undue and violative of Section 1(C)(3)(b).

**C. Proposition of Law 3: The 2021 Plan's "competitiveness" is beside the point as a legal matter.**

Respondents will likely claim that the Plan does not unduly favor the Republican Party because it contains many "competitive" districts. This is not only factually untrue, *see supra* Part III.C.6, it is also irrelevant to this Court's review.

Nowhere does the Ohio Constitution or any other source of law mandate or even suggest maximizing competitive districts. And for good reason: Maximizing competitive districts can be directly at odds with Section 1(C)(3)(a)'s mandate not to unduly favor one party. For example,

creating two Republican-leaning districts from territory that might otherwise have formed one safe Democratic-leaning seat plainly advantages Republicans—even if the two Republican-leaning districts may be defined as “competitive.” Indeed, as evidenced by the analyses above, the most effective way to advantage a party is to do something similar, namely, to pack and crack voters of the opposing party such that one’s own party secures narrower margins of victory in more districts. That is just what the General Assembly did here, as evidenced by Dr. Chen’s analysis showing that the 2021 Plan contains more Republican-leaning “competitive” districts (under McColley’s definition of the range for competitive districts) than the average computer-simulated plan, but at the expense of having virtually zero safe Democratic seats that are not overly packed. (Chen Aff. ¶ 92.) Dr. Rodden similarly concludes that a successful partisan gerrymander would require the creation of districts where the favored party holds only a modest, but no less insurmountable, advantage. (Rodden Aff. ¶ 81.) This is because creating a map with only very safe districts for the favored party decreases the efficiency of the party’s distribution of votes, and thereby limits the number of seats the party can win. Therefore, when the Respondents say “competitive,” what they mean is “carefully calibrated to maximize Republican advantage.”

Where other states have chosen to elevate the drawing of competitive districts to constitutional prerogative, they have (a) done so expressly and (b) coupled such a provision with a partisan fairness provision. That is, the fact that other states’ redistricting provisions address *both* competitiveness and partisan fairness underscores that these are distinct concepts. *See* Mo. Const. art. III, § 3 (“Districts shall be drawn in a manner that achieves both partisan fairness and, secondarily, competitiveness.”); Wash. Rev. Code Ann. 44.05.090(5) (encouraging competitive districts and prohibiting the intentional favoring of or discrimination against a party or group); Colo. Const. art. V, § 44.3 (requiring competitive districts and prohibiting the intentional favoring

or disfavoring of an incumbent, candidate, or party); N.Y. Const. Art. III, § 4(c)(5) (same). Likewise, when courts set out to review or adopt redistricting maps free from partisan favoritism, they commonly pay no attention to whether districts are competitive. *See, e.g., Gaffney v. Cummings*, 412 U.S. 735, 752 (1973) (approving “fair” plan drawn to “achieve a rough approximation of the statewide political strengths of the Democratic and Republican parties”); *Prosser v. Elections Bd.*, 793 F.Supp. 859, 867 (W.D. Wis. 1992) (explaining “a politically fair apportionment plan is one that will produce a legislative composition that reflects the respective voting strengths of the parties in the state”); *Good v. Austin*, 800 F.Supp. 557, 566-67 (E.D. Mich. 1992) (analyzing political favoritism of new districts with attention to whether the resulting delegation was likely to be “roughly proportionate to the relative strength of the political parties in the State”); *Hastert v. State Bd. of Elections*, 777 F.Supp. 634, 659 (N.D. Ill. 1991) (three-judge panel) (judicially adopting a map that achieves “a politically fair projected distribution of congressional seats across party lines”).

Accordingly, any attempt by Respondents to focus the Court’s attention on the Plan’s supposed competitiveness is a gambit to distract from the critical constitutional questions at issue.

## **V. Conclusion**

For the foregoing reasons, Relators request that this Court declare the 2021 Plan invalid and order the General Assembly and, if necessary, the Commission to pass a new plan in compliance with the requirements of Article XIX of the Ohio Constitution. Given the filing deadline for congressional candidates, the Court should set forth clear directives for the remedial plan and retain jurisdiction to ensure the remedial plan complies with the Court’s directives.



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Respectfully submitted,

/s/ Donald J. McTigue

Donald J. McTigue\* (0022849)

*\*Counsel of Record*

Derek S. Clinger (0092075)

MCTIGUE & COLOMBO LLC

545 East Town Street

Columbus, OH 43215

T: (614) 263-7000

F: (614) 368-6961

dmctigue@electionlawgroup.com

dclinger@electionlawgroup.com

Abha Khanna (PHV 2189-2021)

Ben Stafford (PHV 25433-2021)

ELIAS LAW GROUP LLP

1700 Seventh Ave, Suite 2100

Seattle, WA 98101

T: (206) 656-0176

F: (206) 656-0180

akhanna@elias.law

bstafford@elias.law

Jyoti Jasrasaria (PHV 25401-2021)

Spencer W. Klein (PHV 25432-2021)

Harleen K. Gambhir (PHV 25587-2021)

ELIAS LAW GROUP LLP

10 G St NE, Suite 600

Washington, DC 20002

T: (202) 968-4490

F: (202) 968-4498

jjasrasaria@elias.law

sklein@elias.law

hgambhir@elias.law

*Counsel for Relators*

## CERTIFICATE OF SERVICE

I hereby certify that the foregoing was sent via email this 13th day of December, 2021 to the following:

Bridget C. Coontz, [bridget.coontz@ohioago.gov](mailto:bridget.coontz@ohioago.gov)  
Julie M. Pfeiffer, [julie.pfeiffer@ohioago.gov](mailto:julie.pfeiffer@ohioago.gov)  
Michael Walton, [michael.walton@ohioago.gov](mailto:michael.walton@ohioago.gov)

*Counsel for Respondents Ohio Governor DeWine, Ohio Secretary of State LaRose, Ohio Auditor Faber, House Speaker Robert R. Cupp, Senate President Matt Huffman, Senator Vernon Sykes, House Minority Leader Emilia Sykes, and Ohio Redistricting Commission*

W. Stuart Dornette, [dornette@taftlaw.com](mailto:dornette@taftlaw.com)  
Beth A. Bryan, [bryan@taftlaw.com](mailto:bryan@taftlaw.com)  
Philip D. Williamson, [pwilliamson@taftlaw.com](mailto:pwilliamson@taftlaw.com)  
Phillip J. Strach, [phil.strach@nelsonmullins.com](mailto:phil.strach@nelsonmullins.com)  
Thomas A. Farr, [tom.farr@nelsonmullins.com](mailto:tom.farr@nelsonmullins.com)  
John E. Branch, III, [john.branch@nelsonmullins.com](mailto:john.branch@nelsonmullins.com)  
Alyssa M. Riggins, [alyssa.riggins@nelsonmullins.com](mailto:alyssa.riggins@nelsonmullins.com)

*Counsel for Respondents House Speaker Robert R. Cupp and Senate President Matt Huffman*

/s/ Derek S. Clinger  
Derek S. Clinger (0092075)

## **APPENDIX**

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## **Ohio Constitution, Article XIX**

### **Sec. 1 Adoption of congressional district plan**

(A) Except as otherwise provided in this section, the general assembly shall be responsible for the redistricting of this state for congress based on the prescribed number of congressional districts apportioned to the state pursuant to Section 2 of Article I of the Constitution of the United States.

Not later than the last day of September of a year ending in the numeral one, the general assembly shall pass a congressional district plan in the form of a bill by the affirmative vote of three-fifths of the members of each house of the general assembly, including the affirmative vote of at least one-half of the members of each of the two largest political parties represented in that house. A congressional district plan that is passed under this division and becomes law shall remain effective until the next year ending in the numeral one, except as provided in Section 3 of this article.

(B) If a congressional district plan is not passed not later than the last day of September of a year ending in the numeral one and filed with the secretary of state in accordance with Section 16 of Article II of this constitution, then the Ohio redistricting commission described in Article XI of this constitution shall adopt a congressional district plan not later than the last day of October of that year by the affirmative vote of four members of the commission, including at least two members of the commission who represent each of the two largest political parties represented in the general assembly. The plan shall take effect upon filing with the secretary of state and shall remain effective until the next year ending in the numeral one, except as provided in Section 3 of this article.

(C)(1) If the Ohio redistricting commission does not adopt a plan not later than the last day of October of a year ending in the numeral one, then the general assembly shall pass a congressional district plan in the form of a bill not later than the last day of November of that year.

(2) If the general assembly passes a congressional district plan under division (C)(1) of this section by the affirmative vote of three-fifths of the members of each house of the general assembly, including the affirmative vote of at least one-third of the members of each of the two largest political parties represented in that house , and the plan becomes law, the plan shall remain effective until the next year ending in the numeral one, except as provided in Section 3 of this article.

(3) If the general assembly passes a congressional district plan under division (C)(1) of this section by a simple majority of the members of each house of the general assembly, and not by the vote described in division (C)(2) of this section, all of the following shall apply:

(a) The general assembly shall not pass a plan that unduly favors or disfavors a political party or its incumbents.

(b) The general assembly shall not unduly split governmental units, giving preference to keeping whole, in the order named, counties, then townships and municipal corporations.

(c) Division (B)(2) of Section 2 of this article shall not apply to the plan. The general assembly shall attempt to draw districts that are compact.

(d) The general assembly shall include in the plan an explanation of the plan's compliance with divisions (C)(3)(a) to (c) of this section.

(e) If the plan becomes law, the plan shall remain effective until two general elections for the United States house of representatives have occurred under the plan, except as provided in Section 3 of this article.

(D) Not later than the last day of September of the year after the year in which a plan expires under division (C)(3)(e) of this section, the general assembly shall pass a congressional district plan in the form of a bill by the affirmative vote of three-fifths of the members of each house of the general assembly, including the affirmative vote of at least one-half of the members of each of the two largest political parties represented in that house. A congressional district plan that is passed under this division and becomes law shall remain effective until the next year ending in the numeral one, except as provided in Section 3 of this article.

A congressional district plan passed under this division shall be drawn using the federal decennial census data or other data on which the previous redistricting was based.

(E) If a congressional district plan is not passed not later than the last day of September of the year after the year in which a plan expires under division (C)(3)(e) of this section and filed with the secretary of state in accordance with Section 16 of Article II of this constitution, then the Ohio redistricting commission described in Article XI of this constitution shall be reconstituted and reconvene and shall adopt a congressional district plan not later than the last day of October of that year by the affirmative vote of four members of the commission, including at least two members of the commission who represent each of the two largest political parties represented in the general assembly. A congressional district plan adopted under this division shall take effect upon filing with the secretary of state and shall remain effective until the next year ending in the numeral one, except as provided in Section 3 of this article.

A congressional district plan adopted under this division shall be drawn using the federal decennial census data or other data on which the previous redistricting was based.

(F)(1) If the Ohio redistricting commission does not adopt a congressional district plan not later than the last day of October of the year after the year in which a plan expires under division (C)(3)(e) of this section, then the general assembly shall pass a congressional district plan in the form of a bill not later than the last day of November of that year.

A congressional district plan adopted under this division shall be drawn using the federal decennial census data or other data on which the previous redistricting was based.

(2) If the general assembly passes a congressional district plan under division (F)(1) of this section by the affirmative vote of three-fifths of the members of each house, including the affirmative vote of at least one-third of the members of each of the two largest political parties represented in that house, and the plan becomes law, it shall remain effective until the next year ending in the numeral one, except as provided in Section 3 of this article.

(3) If the general assembly passes a congressional district plan under division (F)(1) of this section by a simple majority vote of the members of each house of the general assembly, and not by the

vote described in division (F)(2) of this section, all of the following shall apply:

(a) The general assembly shall not pass a plan that unduly favors or disfavors a political party or its incumbents.

(b) The general assembly shall not unduly split governmental units, giving preference to keeping whole, in the order named, counties, then townships and municipal corporations.

(c) Division (B)(2) of Section 2 of this article shall not apply to the plan. The general assembly shall attempt to draw districts that are compact.

(d) The general assembly shall include in the plan an explanation of the plan's compliance with divisions (F)(3)(a) to (c) of this section.

(e) If the plan becomes law, the plan shall remain effective until the next year ending in the numeral one, except as provided in Section 3 of this article.

(G) Before the general assembly passes a congressional district plan under any division of this section, a joint committee of the general assembly shall hold at least two public committee hearings concerning a proposed plan. Before the Ohio redistricting commission adopts a congressional district plan under any division of this section, the commission shall hold at least two public hearings concerning a proposed plan.

(H) The general assembly and the Ohio redistricting commission shall facilitate and allow for the submission of proposed congressional district plans by members of the public. The general assembly shall provide by law the manner in which members of the public may do so.

(I) For purposes of filing a congressional district plan with the governor or the secretary of state under this article, a congressional district plan shall include both a legal description of the boundaries of the congressional districts and all electronic data necessary to create a congressional district map for the purpose of holding congressional elections.

(J) When a congressional district plan ceases to be effective under this article, the district boundaries described in that plan shall continue in operation for the purpose of holding elections until a new congressional district plan takes effect in accordance with this article. If a vacancy occurs in a district that was created under the previous district plan, the election to fill the vacancy for the remainder of the unexpired term shall be held using the previous district plan.

## **Sec. 2 Requirements for congressional district plan**

(A)(1) Each congressional district shall be entitled to a single representative in the United States house of representatives in each congress.

(2) The whole population of the state, as determined by the federal decennial census or, if the federal decennial census is unavailable, another basis as directed by the general assembly, shall be divided by the number of congressional districts apportioned to the state pursuant to Section 2 of Article I of the Constitution of the United States, and the quotient shall be the congressional ratio of representation for the next ten years.

(3) Notwithstanding the fact that boundaries of counties, municipal corporations, and townships within a district may be changed, district boundaries shall be created by using the data from the most recent federal decennial census or from the basis directed by the general assembly, as applicable.

(B) A congressional district plan shall comply with all of the following requirements:

(1) The plan shall comply with all applicable provisions of the constitutions of Ohio and the United States and of federal law, including federal laws protecting racial minority voting rights.

(2) Every congressional district shall be compact.

(3) Every congressional district shall be composed of contiguous territory, and the boundary of each district shall be a single nonintersecting continuous line.

(4) Except as otherwise required by federal law, in a county that contains a population that exceeds the congressional ratio of representation, the authority drawing the districts shall take the first of the following actions that applies to that county:

(a) If a municipal corporation or township located in that county contains a population that exceeds the congressional ratio of representation, the authority shall attempt to include a significant portion of that municipal corporation or township in a single district and may include in that district other municipal corporations or townships that are located in that county and whose residents have similar interests as the residents of the municipal corporation or township that contains a population that exceeds the congressional ratio of representation. In determining whether the population of a municipal corporation or township exceeds the congressional ratio of representation for the purpose of this division, if the territory of that municipal corporation or township completely surrounds the territory of another municipal corporation or township, the territory of the surrounded municipal corporation or township shall be considered part of the territory of the surrounding municipal corporation or township.

(b) If one municipal corporation or township in that county contains a population of not less than one hundred thousand and not more than the congressional ratio of representation, that municipal corporation or township shall not be split. If that county contains two or more such municipal corporations or townships, only the most populous of those municipal corporations or townships shall not be split.

(5) Of the eighty-eight counties in this state, sixty-five counties shall be contained entirely within a district, eighteen counties may be split not more than once, and five counties may be split not more than twice. The authority drawing the districts may determine which counties may be split.

(6) If a congressional district includes only part of the territory of a particular county, the part of that congressional district that lies in that particular county shall be contiguous within the boundaries of the county.

(7) No two congressional districts shall share portions of the territory of more than one county, except for a county whose population exceeds four hundred thousand.

(8) The authority drawing the districts shall attempt to include at least one whole county in each congressional district. This division does not apply to a congressional district that is contained entirely within one county or that cannot be drawn in that manner while complying with federal law.

(C)(1) Except as otherwise provided in division (C)(2) of this section, for purposes of this article, a county, municipal corporation, or township is considered to be split if, based on the census data used for the purpose of redistricting, any contiguous portion of its territory is not contained entirely within one district.

(2) If a municipal corporation or township has territory in more than one county, the contiguous portion of that municipal corporation or township that lies in each county shall be considered to be a separate municipal corporation or township for purposes of this section.



### **Sec. 3 Jurisdiction; legal challenges; procedures upon invalidation of congressional district plan**

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

(B)(1) In the event that any section of this constitution relating to congressional redistricting, any congressional district plan, or any congressional district or group of congressional districts is challenged and is determined to be invalid by an unappealed final order of a court of competent jurisdiction then, notwithstanding any other provisions of this constitution, the general assembly shall pass a congressional district plan in accordance with the provisions of this constitution that are then valid, to be used until the next time for redistricting under this article in accordance with the provisions of this constitution that are then valid.

The general assembly shall pass that plan not later than the thirtieth day after the last day on which an appeal of the court order could have been filed or, if the order is not appealable, the thirtieth day after the day on which the order is issued.

A congressional district plan passed under this division shall remedy any legal defects in the previous plan identified by the court but shall include no changes to the previous plan other than those made in order to remedy those defects.

(2) If a new congressional district plan is not passed in accordance with division (B)(1) of this section and filed with the secretary of state in accordance with Section 16 of Article II of this constitution, the Ohio redistricting commission shall be reconstituted and reconvene and shall adopt a congressional district plan in accordance with the provisions of this constitution that are then valid, to be used until the next time for redistricting under this article in accordance with the provisions of this constitution that are then valid.

The commission shall adopt that plan not later than the thirtieth day after the deadline described in division (B)(1) of this section.

A congressional district plan adopted under this division shall remedy any legal defects in the previous plan identified by the court but shall include no other changes to the previous plan other than those made in order to remedy those defects.

## **Ohio Constitution, Article XI, Section 1(A)**

### **Sec. 1 Ohio Redistricting Commission**

(A) The Ohio redistricting commission shall be responsible for the redistricting of this state for the general assembly. The commission shall consist of the following seven members:

- (1) The governor;
- (2) The auditor of state;
- (3) The secretary of state;
- (4) One person appointed by the speaker of the house of representatives;
- (5) One person appointed by the legislative leader of the largest political party in the house of representatives of which the speaker of the house of representatives is not a member;
- (6) One person appointed by the president of the senate; and
- (7) One person appointed by the legislative leader of the largest political party in the senate of which the president of the senate is not a member.

No appointed member of the commission shall be a current member of congress.

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

...

### **Colorado Constitution, Article V, Section 44.3**

#### **Sec. 44.3 Criteria for determinations of congressional districts – definition.**

(1) In adopting a congressional redistricting plan, the commission shall:

(a) Make a good-faith effort to achieve precise mathematical population equality between districts, justifying each variance, no matter how small, as required by the constitution of the United States. Districts must be composed of contiguous geographic areas;

(b) Comply with the federal “Voting Rights Act of 1965”, 52 U.S.C. sec. 50301, as amended.

(2) (a) As much as is reasonably possible, the commission's plan must preserve whole communities of interest and whole political subdivisions, such as counties, cities, and towns.

(b) Districts must be as compact as is reasonably possible.

(3) (a) Thereafter, the commission shall, to the extent possible, maximize the number of politically competitive districts.

(b) In its hearings in various locations in the state, the commission shall solicit evidence relevant to competitiveness of elections in Colorado and shall assess such evidence in evaluating proposed maps.

(c) When the commission approves a plan, or when nonpartisan staff submits a plan in the absence of the commission's approval of a plan as provided in section 44.4 of this article V, the nonpartisan staff shall, within seventy-two hours of such action, make publicly available, and include in the commission's record, a report to demonstrate how the plan reflects the evidence presented to, and the findings concerning, the extent to which competitiveness in district elections is fostered consistent with the other criteria set forth in this section.

(d) For purposes of this subsection (3), “competitive” means having a reasonable potential for the party affiliation of the district's representative to change at least once between federal decennial censuses. Competitiveness may be measured by factors such as a proposed district's past election results, a proposed district's political party registration data, and evidence-based evidence-based analyses of proposed districts.

(4) No map may be approved by the commission or given effect by the supreme court if:

(a) It has been drawn for the purpose of protecting one or more incumbent members, or one or more declared candidates, of the United States house of representatives or any political party; or

(b) It has been drawn for the purpose of or results in the denial or abridgement of the right of any citizen to vote on account of that person's race or membership in a language minority group, including diluting the impact of that racial or language minority group's electoral influence.

## **Florida Constitution, Article III, Section 20**

### **Sec. 20 Standards for establishing congressional district boundaries.**

In establishing congressional district boundaries:

(a) No apportionment plan or individual district shall be drawn with the intent to favor or disfavor a political party or an incumbent; and districts shall not be drawn with the intent or result of denying or abridging the equal opportunity of racial or language minorities to participate in the political process or to diminish their ability to elect representatives of their choice; and districts shall consist of contiguous territory.

(b) Unless compliance with the standards in this subsection conflicts with the standards in subsection (a) or with federal law, districts shall be as nearly equal in population as is practicable; districts shall be compact; and districts shall, where feasible, utilize existing political and geographical boundaries.

(c) The order in which the standards within subsections (a) and (b) of this section are set forth shall not be read to establish any priority of one standard over the other within that subsection.

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## Idaho Code Section 72-1506

### Sec. 72-1506 Criteria governing plans

Congressional and legislative redistricting plans considered by the commission, and plans adopted by the commission, shall be governed by the following criteria:

- (1) The total state population as reported by the U.S. census bureau, and the population of subunits determined therefrom, shall be exclusive permissible data.
- (2) To the maximum extent possible, districts shall preserve traditional neighborhoods and local communities of interest.
- (3) Districts shall be substantially equal in population and should seek to comply with all applicable federal standards and statutes.
- (4) To the maximum extent possible, the plan should avoid drawing districts that are oddly shaped.
- (5) Division of counties shall be avoided whenever possible. In the event that a county must be divided, the number of such divisions, per county, should be kept to a minimum.
- (6) To the extent that counties must be divided to create districts, such districts shall be composed of contiguous counties.
- (7) District boundaries shall retain the local voting precinct boundary lines to the extent those lines comply with the provisions of section 34-306, Idaho Code. When the commission determines, by an affirmative vote of at least five (5) members recorded in its minutes, that it cannot complete its duties for a legislative district by fully complying with the provisions of this subsection, this subsection shall not apply to the commission or legislative redistricting plan it shall adopt.
- (8) Counties shall not be divided to protect a particular political party or a particular incumbent.
- (9) When a legislative district contains more than one (1) county or a portion of a county, the counties or portion of a county in the district shall be directly connected by roads and highways which are designated as part of the interstate highway system, the United States highway system or the state highway system. When the commission determines, by an affirmative vote of at least five (5) members recorded in its minutes, that it cannot complete its duties for a legislative district by fully complying with the provisions of this subsection, this subsection shall not apply to the commission or legislative redistricting plan it shall adopt.

**Missouri Constitution, Article III, Section 3(b)**

**Sec. 3 Election of representatives—legislative redistricting methods—house independent bipartisan citizens commission, appointment, duties, compensation—court actions, procedure.**

...

(b) The house independent bipartisan citizens commission shall redistrict the house of representatives using the following methods, listed in order of priority:

(1) Districts shall be as nearly equal as practicable in population, and shall be drawn on the basis of one person, one vote. Districts are as nearly equal as practicable in population if no district deviates by more than one percent from the ideal population of the district, as measured by dividing the number of districts into the statewide population data being used, except that a district may deviate by up to three percent if necessary to follow political subdivision lines consistent with subdivision (4) of this subsection;

(2) Districts shall be established in a manner so as to comply with all requirements of the United States Constitution and applicable federal laws, including, but not limited to, the Voting Rights Act of 1965 (as amended). The following principles shall take precedence over any other part of this constitution: no district shall be drawn in a manner which results in a denial or abridgment of the right of any citizen of the United States to vote on account of race or color; and no district shall be drawn such that members of any community of citizens protected by the preceding clause have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice;

(3) Subject to the requirements of subdivisions (1) and (2) of this subsection, districts shall be composed of contiguous territory as compact as may be. Areas which meet only at the points of adjoining corners are not contiguous. In general, compact districts are those which are square, rectangular, or hexagonal in shape to the extent permitted by natural or political boundaries;

(4) To the extent consistent with subdivisions (1) to (3) of this subsection, communities shall be preserved. Districts shall satisfy this requirement if district lines follow political subdivision lines to the extent possible, using the following criteria, in order of priority. First, each county shall wholly contain as many districts as its population allows. Second, if a county wholly contains one or more districts, the remaining population shall be wholly joined in a single district made up of population from outside the county. If a county does not wholly contain a district, then no more than two segments of a county shall be combined with an adjoining county. Third, split counties and county segments, defined as any part of the county that is in a district not wholly within that county, shall each be as few as possible. Fourth, as few municipal lines shall be crossed as possible;

(5) Districts shall be drawn in a manner that achieves both partisan fairness and, secondarily, competitiveness, but the standards established by subdivisions (1) to (4) of this subsection shall

take precedence over partisan fairness and competitiveness. “Partisan fairness” means that parties shall be able to translate their popular support into legislative representation with approximately equal efficiency. “Competitiveness” means that parties’ legislative representation shall be substantially and similarly responsive to shifts in the electorate’s preferences. To this end, the average electoral performance of the two political parties receiving the most votes in the three preceding general elections for governor, for United States Senate, and for President of the United States shall be calculated. This index shall be defined as the total votes received by each party in the three preceding general elections for governor, for United States Senate, and for President of the United States, divided by the total votes cast for both parties in these elections. Using this index, the total number of wasted votes for each party, summing across all of the districts in the plan shall be calculated. “Wasted votes” are votes cast for a losing candidate or for a winning candidate in excess of the threshold needed for victory. In any redistricting plan and map of the proposed districts, the difference between the two parties’ total wasted votes, divided by the total votes cast for the two parties, shall not exceed fifteen percent. To promote competitiveness, the electoral performance index shall be used to simulate elections in which the hypothetical statewide vote shifts by one percent, two percent, three percent, four percent, and five percent in favor of each party. The vote in each individual district shall be assumed to shift by the same amount as the state wide vote. In each of these simulated elections, the difference between the two parties’ total wasted votes, divided by the total votes cast for the two parties, shall not exceed fifteen percent.

...

## **New York Constitution, Article III, Section 4(c)**

### **Sec. 4 Readjustments and reapportionments; when federal census to control**

...

(c) Subject to the requirements of the federal constitution and statutes and in compliance with state constitutional requirements, the following principles shall be used in the creation of state senate and state assembly districts and congressional districts:

(1) When drawing district lines, the commission shall consider whether such lines would result in the denial or abridgement of racial or language minority voting rights, and districts shall not be drawn to have the purpose of, nor shall they result in, the denial or abridgement of such rights. Districts shall be drawn so that, based on the totality of the circumstances, racial or minority language groups do not have less opportunity to participate in the political process than other members of the electorate and to elect representatives of their choice.

(2) To the extent practicable, districts shall contain as nearly as may be an equal number of inhabitants. For each district that deviates from this requirement, the commission shall provide a specific public explanation as to why such deviation exists.

(3) Each district shall consist of contiguous territory.

(4) Each district shall be as compact in form as practicable.

(5) Districts shall not be drawn to discourage competition or for the purpose of favoring or disfavoring incumbents or other particular candidates or political parties. The commission shall consider the maintenance of cores of existing districts, of pre-existing political subdivisions, including counties, cities, and towns, and of communities of interest.

(6) In drawing senate districts, towns or blocks which, from their location may be included in either of two districts, shall be so placed as to make said districts most nearly equal in number of inhabitants. The requirements that senate districts not divide counties or towns, as well as the 'block-on-border' and 'town-on-border' rules, shall remain in effect.

...



## **Pennsylvania Constitution, Article II, Section 16**

### **Sec. 16 Legislative Districts**

The Commonwealth shall be divided into fifty senatorial and two hundred three representative districts, which shall be composed of compact and contiguous territory as nearly equal in population as practicable. Each senatorial district shall elect one Senator, and each representative district one Representative. Unless absolutely necessary no county, city, incorporated town, borough, township or ward shall be divided in forming either a senatorial or representative district.

## **Washington Revised Code Section 44.05.090**

### **Sec. 44.05.090 Redistricting Plan**

In the redistricting plan:

- (1) Districts shall have a population as nearly equal as is practicable, excluding nonresident military personnel, based on the population reported in the federal decennial census as adjusted by RCW 44.05.140.
- (2) To the extent consistent with subsection (1) of this section the commission plan should, insofar as practical, accomplish the following:
  - (a) District lines should be drawn so as to coincide with the boundaries of local political subdivisions and areas recognized as communities of interest. The number of counties and municipalities divided among more than one district should be as small as possible;
  - (b) Districts should be composed of convenient, contiguous, and compact territory. Land areas may be deemed contiguous if they share a common land border or are connected by a ferry, highway, bridge, or tunnel. Areas separated by geographical boundaries or artificial barriers that prevent transportation within a district should not be deemed contiguous; and
  - (c) Whenever practicable, a precinct shall be wholly within a single legislative district.
- (3) The commission's plan and any plan adopted by the supreme court under RCW 44.05.100(4) shall provide for forty-nine legislative districts.
- (4) The house of representatives shall consist of ninety-eight members, two of whom shall be elected from and run at large within each legislative district. The senate shall consist of forty-nine members, one of whom shall be elected from each legislative district.
- (5) The commission shall exercise its powers to provide fair and effective representation and to encourage electoral competition. The commission's plan shall not be drawn purposely to favor or discriminate against any political party or group.