

IN THE SUPREME COURT OF OHIO

League of Women Voters of Ohio, et al.,

Relators,

v.

Governor Mike DeWine, et al.,

Respondents.

Case No. 2021-1449

Original Action Filed Pursuant to Ohio
Constitution, Article XIX, Section 3(A)

RESPONSE TO MOTION TO ENFORCE

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INTRODUCTION

The Ohio Redistricting Commission (“Commission”) does not exist to simply rubberstamp redistricting plans favored by Petitioners. It is a constitutionally created body with the same constitutional status as this Court and the general assembly. It is entitled to exercise reasonable discretion in balancing the highly complex factors that go into congressional redistricting. This Court should respect that discretion and the Commission’s constitutional status.

Nor is the redistricting process an endless beauty contest where the judge (this Court) strains to find the contestant (the dozens of competing redistricting plans) that is the prettiest, or most talented. If that was the case, Petitioners could do what they are doing here: endlessly move the goalposts until the Commission picks the beauty contest winner that Petitioners want it to pick. That is not constitutional governance. Respondents agree that “it is high time that Ohio’s congressional redistricting process be brought to a conclusion.” (Motion p. 2). This Court should cancel Petitioners’ proposed beauty contest, deny this motion, and let the people vote.

BACKGROUND

1. The Mechanics of Article XIX.

On May 8, 2018, the voters of Ohio approved an amendment to Ohio’s Constitution that, for the first time in Ohio’s history, governs congressional redistricting. That amendment, Article XIX of the Ohio Constitution, was submitted to the voters by the general assembly. Similar to the amendments to Article XI that voters approved in 2015, Article XIX sets forth a detailed process for how a congressional district plan is to be adopted in Ohio.

Under Article XIX, the general assembly is initially tasked with the authority to adopt a congressional district plan. During this first stage of the process, the general assembly can only pass a plan that will be effective for ten years. To do that, the plan must be supported by at least

two-thirds of the members of each house of the general assembly, including at least one-half of the members of each of the two largest political party represented in each house. *See* Art. XIX, Section 1(A).

If the general assembly does not pass such a plan by the last day of September during a redistricting year, congressional districting authority then transfers to the Commission. Like the general assembly, the Commission can only pass a plan at this stage that will be effective for ten years. To do that, a Commission congressional district plan must receive the support of at least four of the seven Commission members, including at least two Commission members from each of the two largest political parties represented in the general assembly. *See* Art. XIX, Section 1(B).

If the Commission does not adopt such a plan before the last day of October during a redistricting year, congressional districting authority returns to the general assembly. At this final stage, the general assembly must pass a congressional district plan no later than the last day of November during a redistricting year. A general assembly congressional district plan passed at this stage will be effective for ten years if it is supported by at least two-thirds of the members of each house of the general assembly, including at least one-third of the members of each of the two largest political parties in each house. If, however, a general assembly congressional district plan passed at this stage is only supported by a simple majority of each house of the members of the general assembly, any such plan will remain in effect for only four years. *See* Art. XIX, Section 1(C).

All congressional district plans must comply with the requirements of Article XIX, Section 2. These requirements include that districts be single member districts, that each district have equal population, that the plan complies with the Ohio Constitution and federal law, and that each district be contiguous. Art. XIX, Sections 2(A), 2(B)(1)-(3). All congressional district plans must also

comply with criteria for the division of counties and townships and municipal corporations. Art. XIX, Section 2(B)(4)–(8).

If the general assembly passes a 4-year, simple majority congressional district plan, Article XIX requires the general assembly to comply with the following additional criteria:

- (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)–(c) of this section.

None of these additional criteria apply at any point to the Commission.¹

2. *The First Congressional Redistricting Cycle under Article XIX.*

Following this Court's invalidation of the first congressional plan that had been enacted by the general assembly and signed into law by the governor, the general assembly did not pass a new remedial congressional plan within the thirty days provided under Section 3 of Article XIX. Thus, that obligation passed to the Commission.

The Commission met on February 24, March 1, and March 2, 2022 to hear public testimony and to discuss adopting a new congressional district plan.² On March 1, Senate President Matt Huffman put forth for discussion a plan uploaded to the Commission website by his staff. (Exhibit 2, 3.1.22 Transcript 10:6-7). Senator Huffman indicated that the plan was uploaded pursuant to a request from Minority Leader Russo, who had examined the plan earlier in the day with Senator

¹ When drawing a *general assembly* district plan under Article XI, the Commission must attempt to draw a general assembly district plan that “corresponds closely” to the “statewide preferences” of Ohio voters in certain elections. Article XIX has no such provision that applies to the Commission when drawing a congressional district plan.

² Transcripts of these hearings are attached as Exhibits 1-3 respectively.

Sykes. (*Id.* at 10:18-23). Senator Huffman also commented that all members of the Commission and their staff had been invited during the preceding week to meet with his staff who had worked on the plan for the Senate. (*Id.* at 10:24-11:4). Senator Sykes confirmed that this was the case, and that there had been a meeting regarding the proposed congressional plan over the prior weekend. (*Id.* at 27:22-25).

Senator Huffman stated that in drawing the proposed congressional plan, the mapdrawers made changes to remedy defects in the previous plan identified by the Court. (*Id.* at 13:6-12). For example, Senator Huffman testified that in the new District 13, that district now contained all of Summit and a portion of Stark Counties, thereby eliminating any splits of Summit county as compared to that district in the prior congressional plan. (*Id.* at 20:9-21:1). Senator Huffman also commented that this plan kept counties whole, only split Cuyahoga County once, and expressed his belief that the districts making up the northeastern portion of the state (7, 11, 13, 14) were compact. (*Id.* at 24:15-26:24). Specifically, Senator Huffman testified that the number of splits had been minimized and now there were only two districts inside Cuyahoga county (*Id.* at 26:9-12). Senator Huffman also testified that the plan kept Montgomery and Greene counties together so that Wright-Patterson Air Force base could be in the same district. (*Id.* at 21:2-15).

When the Commission reconvened the next day, Senator Huffman moved to adopt a plan identical to the map discussed on March 1, with two changes. (Exhibit 3, 3.2.22 Transcript 11:24-12:2). The first change was to Franklin County regarding districts 3 and 15 in response to a request from Congresswoman Beatty to ensure that her district office and Congressman Carey's district office were within their respective districts. (*Id.* at 12:2-13:3). Senator Huffman also pointed out a change in Hamilton County that was made based on feedback from Democratic members to

eliminate subdivision splits in District 1. (*Id.* at 13:4-15). Speaker Cupp praised this change noting that Hamilton County was now only being split once. (*Id.* at 41:8-11).

Minority Leader Russo offered what she styled as four amendments (although it was essentially an entirely new plan) that would swap territory from one district into the other that would create more democratic leaning districts.³ (*Id.* at 15:5-20:17). Senator Huffman discussed problems with those amendments, and separately explained how the “unduly favor” language that constrains the general assembly when passing a simple majority congressional plan did not apply to the Commission. (*Id.* at 23:11-29:17). Auditor Faber also questioned whether Leader Russo’s proposed amendments regarding Columbus complied with Article XIX, Section 2(B)(4)(a)’s requirements that a “significant portion” of the municipality be contained in a single district. (*Id.* at 36:24-38:19).

When put forth for a vote, the plan offered by Senator Huffman with the 2 changes was adopted by the Commission by a vote of 5-2 (the “Second Plan”). (*Id.* at 45:3).

ARGUMENT

I. The Commission is Not a Party and this Court Lacks Jurisdiction to Grant Petitioners the Relief they Seek.

Petitioners’ Motion purports to ask this Court to “enforce” its January 14, 2022 order against the Commission. But this Court did not retain jurisdiction over this case and instead disposed of the case. 2022- Ohio-89, ¶ 102 (“We hold that the General Assembly did not comply with Article XIX, Sections 1(C)(3)(a) and (b) of the Ohio Constitution in passing the congressional-district plan. We therefore declare the plan invalid and we order the General

³ These amendments are different than the amended whole state map offered by Senator Sykes during this meeting, which was the Yuko Map uploaded to the Commission website on February 8, 2022. In offering the amendment, Senator Sykes made no statement other than it was an 8-7 map. It is unclear how this map was developed, and if it follows the provisions of Article XIX. As such, this amendment was voted down without significant discussion. (Exhibit 3 at 5:2-25; 10:10-25).

Assembly to pass a new congressional-district plan, as Article XIX, Section 3(B)(1) requires, that complies in full with Article XIX of the Ohio Constitution and is not dictated by partisan considerations.”). This is unlike *League of Women Voters of Ohio v. Ohio Redistricting Comm’n*, where this Court expressly retained jurisdiction and provided a briefing schedule for objections to any new adopted remedial plans. 2022- Ohio-65, ¶ 139 (“We further order the commission to adopt a new plan within ten days of this judgment, **and we retain jurisdiction for the purpose of reviewing the new plan adopted by the commission. Petitioners shall file any objections to the new plan within three days of the plan’s adoption.**”) (emphasis added).

Thus, the Court currently lacks jurisdiction over the Respondents who remain in this matter. Petitioners can cure this lack of jurisdiction by filing a new action and properly serving a summons and complaint on any appropriate respondents. They have chosen not to do this, but instead seek relief through this inappropriate motion. Accordingly, this Court lacks jurisdiction to take any action regarding the Second Plan at this stage of the case and this motion should be denied.

To the extent Petitioners seek relief specifically as to the Commission, it is not a party to this litigation, nor are any of its members, as the Court sua sponte dismissed the Commission and all of its members on December 6, 2021. *See* December 6, 2021 Case Announcements #2, 2021-Ohio-4267. As such, the Court no longer has jurisdiction over the Commission or its members with respect to the claims in this case and cannot order it to act in the manner that Petitioners request.

Once a case has been dismissed, the court lacks jurisdiction to proceed against the dismissed party. *See State ex rel. Welt v. Doherty*, ___ N.E. 3d ___, 2021 WL 4155982, 2021-Ohio-3124 ¶19 (holding that “in general, when a trial court unconditionally dismisses a case or a case [has] been voluntarily dismissed under Civ. R. 41(A)(1), the trial court patently and

unambiguously lacks jurisdiction to proceed, and a writ of prohibition will issue to prevent the exercise of jurisdiction.”); *State ex rel. Fogle v. Steiner*, 74 Ohio St.3d 158, 164, 656 N.E.2d 1288,1295 (1995) (holding that the domestic relations court lacked jurisdiction over an issue of custody of children after the parents voluntarily dismissed the underlying divorce proceeding); *Schaefer v. Brokaw*, 10 Ohio Law Abs. 401, 1931 WL 2605 (Ohio Ct. App. 1931) (“It is apparent from the above quoted judgment entry that the court was in error in dismissing the defendants August Schaefer and Caroline Schaefer and then entering judgment against them.”). In addition, if a court dismisses claims against a party, it does not retain jurisdiction over that party unless the court clearly indicates it intends to do so. *See Infinite Sec. Sols., L.L.C. v. Karam Properties, II, Ltd.*, 143 Ohio St. 3d 346, 353, 37 N.E.3d 1211, 1219, 2015-Ohio-1101, ¶ 30.⁴

Recognizing that the Court now lacks jurisdiction over the Commission and its members because they were all previously dismissed from the case, Petitioners make several unavailing arguments that the Court can nonetheless award the relief they seek. Petitioners first argue that the Court’s inherent power to enforce its judgments and decrees is sufficient (Motion pp. 6-7). The case law cited by Petitioners, however, does not support this proposition. Indeed, the *Infinite Security Solutions* case, which considered when a court may enter post-dismissal orders against parties in connection with enforcing settlement agreements, determined that courts could only award such post-dismissal relief where the court’s dismissal order contains a “clear indication that the trial court intends to retain jurisdiction...” *Infinite Sec. Sols., L.L.C.* at ¶ 30. Here, the Court’s December 3, 2021 Order did not clearly indicate that it intended to retain jurisdiction; thus, under

⁴ Petitioners argued, in opposition to the Commission’s Motion to Dismiss, that it was important for the Court to deny the Motion to Dismiss due to the role of the Commission in any potential remedial process, and the Court nonetheless not only dismissed the Commission but also declined to retain jurisdiction over the Commission for any purpose. *See* December 6, 2021 Relators’ Response to Respondents’ Motion to Dismiss p 7; December 3, 2021 Case Announcements #2, 2021-Ohio-4267.

Infinite Security Solutions the Court did not retain jurisdiction over the Commission after its dismissal from the case.

The *Norwood* case likewise does not support Petitioners' inherent authority argument. *Norwood v. Horney*, 2006-Ohio-3799, 110 Ohio St. 3d 353, 853 N.E.2d 1115. *Norwood* involved a dispute between a city and landowners over whether the city could lawfully take land from the landowners via eminent domain and transfer it to a private entity for redevelopment. *Id.*, 2006-Ohio-3799, ¶ 1, 8, 110 Ohio St. 3d 353, 354-355, 853 N.E.2d 1115, 1122-1123. Relevant to the *Norwood* court's discussion of its inherent powers, the landowners challenged the constitutionality of a statute which prohibited a court from enjoining a taking after the compensation for the property has been deposited with the court. *Id.* 2006-Ohio-3799, ¶ 11, 110 Ohio St. 3d 353, 356, 853 N.E.2d 1115, 1123. The *Norwood* court held that the statutory provision that interfered with the court's ability to enter an injunction violated the judiciary's inherent powers and was in improper encroachment on the judiciary by the legislature, and thus was unconstitutional. *Id.*, 2006-Ohio-3799, ¶ 125, 110 Ohio St. 3d 353, 388, 853 N.E.2d 1115, 1150. *Norwood*, however, involved a dispute over whether the legislature had unconstitutionally limited the judiciary branch's inherent powers, not whether a specific court had jurisdiction over a previously-dismissed party in a specific case. *See id.* As such, *Norwood* does not support Petitioners' contention that the Court's jurisdiction extends to the Commission despite the Commission being dismissed from the case.

Petitioners next argue that the Court has the authority under Ohio R. Civ. P. 71 to enforce their requested relief against the Commission even though it was previously dismissed from the case. (Motion p. 7). Ohio R. Civ. P. 71, however, is an enabling rule which does not operate to extend the court's jurisdiction to where it does not already exist. Ohio R. Civ. P. 71 provides, in its entirety:

When an order is made in favor of a person who is not a party to the action, he may enforce obedience to the order by the same process as if he were a party; and, when obedience to an order may be lawfully enforced against a person who is not a party, he is liable to the same process for enforcing obedience to the order as if he were a party.

The staff notes to Ohio R. Civ. P. 71 provide, in pertinent part:

The rule is merely an enabling rule which allows orders in favor of and against persons not parties. It is intended to eliminate the necessity of making persons technical parties to suits in order to reach a just and proper result. No substantive rights are enlarged. The rule is intended to operate only in cases where the person not a party is entitled to an order or where there may be enforcement of an order against a person not a party.

Notably, Petitioners cite no case law for the prospect that Ohio R. Civ. P. 71 operates to extend the Court's jurisdiction to parties who were previously dismissed from the case. Rule 71 does not confer jurisdiction on the Court where none exists and, as discussed above, lacks jurisdiction over the Commission. Similarly, the Court's reference to the Commission in its January 14, 2022 decision also does not create jurisdiction over the Commission after its previous dismissal from the case. Properly applied, Rule 71 might allow a third party who is not a petitioner to move to enforce a Court's order, but what Rule 71 does not allow is a party to enforce a judgment against a separate entity or party who was not a party to the Court's order.

Petitioners next argue that Ohio R. Civ. 65(D) allows the Court to re-establish jurisdiction over the Commission on the theory that the "General Assembly handed off the task of enacting a map to the Commission – an entity that was surely on actual notice of this Court's January 14 order...." (Motion p. 8). Ohio R. Civ. 65(D), however, contemplates the court's authority over non-parties only where (1) such non-parties are acting "in active concert or participation" with the parties, and (2) pursuant to contempt proceedings for violation of the Court's order. Here, given that the Second Plan has not been ruled on by the Court and the Commission has not been afforded due process regarding the relief sought against it, Ohio R. Civ. 65(D) does not provide for the exercise

of jurisdiction over the Commission. See *Columbus Homes Ltd. v. S.A.R. Constr. Co.*, 2007 WL 1083254 ,2007-Ohio-1702, ¶ 32 (Ohio Ct. App. 2007) (reversing injunction against non-party entities and holding that “[b]inding nonparties to an injunction without notice and a right to be heard presents significant due process concerns. A fundamental principal of due process is notice and an opportunity to be heard.”). The *Columbus Homes* court distinguished *Planned Parenthood Ass'n. of Cincinnati, Inc. v. Project Jericho*, 52 Ohio St.3d 56, 61, 556 N.E.2d 157 (1990) by recognizing that the relief against the non-parties in that case involved a contempt proceeding against third parties that “all had actual notice of the injunction and intentionally violated it by acting collectively to prevent a clinic from providing medical services.” *Columbus Homes Ltd. v. S.A.R. Constr. Co.*, 2007-Ohio-1702, ¶ 30. Like *Columbus Homes*, the relief being sought against the Commission is not through contempt, but rather a remedy requested by Petitioners based on the merits of the positions they have taken in the litigation. As such, like in *Columbus Homes*, the Court lacks jurisdiction over the Commission, and cannot afford the relief against it sought by Petitioners without affording the Commission due process.⁵ The Court should deny Petitioners’ Motion to the extent that it seeks relief against the Commission.

II. In any event, the Requirements Petitioners Complain About are Not Applicable to a Commission-drawn Map Under the Plain Language of Article XIX, Section 3.

The text of Article XIX is clear: the Section 1(C)(3)/(F)(3) requirements do not apply to Commission-drawn plans—ever. The Commission is first mentioned in Article XIX in Section 1(B), when the general assembly has failed in the month of September to pass a congressional district plan in both of houses by bipartisan supermajorities. At that point, under Section 1(B), the Commission has the opportunity to adopt a congressional district plan, but can only do so with a

⁵ Affording the relief sought by Petitioners could also raise serious due process concerns under the federal 14th Amendment.

bipartisan majority. Up to this point, whether it is a bipartisan supermajority plan passed by the general assembly, or a bipartisan majority plan adopted by the Commission, the Section 1(C)(3)/(F)(3) requirements do not apply in either situation.

Where the 1(C)(3)/(F)(3) requirements first do come into play is when the requisite bipartisan majorities cannot be achieved by the general assembly or the Commission. Specifically, it is in Section 1(C)(1) when the Commission is unable to achieve a bipartisan majority, and the *general assembly* must adopt a congressional district plan. The plain language of Section 1(C)(3) cannot be any clearer: if *the general assembly* passes a congressional district plan at this point with a simple majority of the members of each house, 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)-(c) of this section.

Section 1(C)(3) (emphasis added). There is no doubt – the plain language of these requirements expressly apply solely to the general assembly, and are contained solely in the section describing the adoption of a plan by the *general assembly* by a simple majority vote.

Perhaps a later section of Section 1 applies these requirements to the Commission? Not so. The only other instance in which these requirements are mentioned anywhere in Article XIX is in Section 1(F), which applies when a new congressional district plan must be adopted mid-decade due to the expiration of a four-year, simple majority plan. Just like in the beginning of a decade, the general assembly gets the first try (Section 1(D)) but again needs a bipartisan supermajority in each of its houses to pass a plan at this stage. If it does, none of the Section

1(C)(3)/(F)(3) requirements apply. If it does not, the Commission get to try to adopt a congressional district plan (Section 1(E)) but again must do so with a bipartisan majority. Here again, the Section 1(C)(3)/(F)(3) requirements do not apply to a Commission-drawn plan. If it does not, the general assembly must then pass a congressional district plan. If the general assembly passes a congressional district plan at this stage with only a simple majority of the members of each house, 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)-(c) of this section.

Section 1(F)(3) (emphasis added). Again, there is no doubt – the plain language of these requirements expressly apply solely to the general assembly, and are contained solely in the section describing the adoption of a plan by the *general assembly* by a simple majority vote. Nothing in Article XIX applies these requirements to the Commission – ever. Not in Section 1; not in Section 2; and not in Section 3. Petitioners’ arguments to the contrary are fundamentally incorrect.

Turning to Section 3 of Article XIX, which pertains to the remedial process after a congressional district plan or any of districts are invalidated by this Court, nothing in Section 3 requires the Commission to comply with the Section 1(C)(3)/(F)(3) requirements. Section 3 simply sets up the timing of and procedure for providing a remedy for an invalidated plan. If a congressional district plan, or any of its districts, is invalidated by this Court, the general assembly has thirty days to “remedy any legal defects in the previous plan identified by the court” and “in accordance with the provisions of this constitution that are then valid”. Section 3(B)(1). As such,

the Section 1(C)(3)/(F)(3) requirements would apply here to any simple majority remedial plan passed *by the general assembly*. It would not, however, apply to the Commission if it is tasked with adopting a remedial plan under Section 3 within thirty days based on the general assembly not passing a plan within its allotted time.

Nevertheless, Petitioners claim the identical boiler plate language in the last sentences of Section 3(B)(1) and (2) — that a “congressional district plan adopted under this division shall remedy any legal defects in the previous plan”— actually means that the Section 1(C)(3)/(F)(3) requirements, for the first time anywhere in Article XIX, now somehow suddenly apply to the Commission despite no reference or even a hint at those requirements.

Petitioners’ interpretation collapses under its own weight. The boiler plate language referenced above (a “congressional district plan adopted under this division shall remedy any legal defects in the previous plan”) undoubtedly applies to both a general assembly remedial plan and a Commission remedial plan. Under Article XIX, an invalidated plan could have been drawn in the first instance by the general assembly or by the Commission. However, the Section 3 boiler plate language simply requires the relevant map-drawing authority whose plan was invalidated to address the reasons why its map was invalidated. Moreover, Petitioners’ argument would have the boilerplate language in the last sentence of Section 3 override the specific language directing the mapdrawing authority to “adopt a congressional district plan in accordance with the provisions of this constitution that are then valid”, none of which apply the Section 1(C)(3)/(F)(3) requirements to a Commission-drawn plan.

To hold that the cited language in Section 3 subjects the Commission to the Section 1(C)(3)/(F)(3) requirements would be to judicially amend the Constitution and add words that do not exist. That cuts against the grain of decades of precedent in this Court. *See Northeast Ohio*

Regional Sewer Dist. v. Bath Twp., 144 Ohio St.3d 387, 44 N.E. 3d 246, 250, 2015-Ohio-2705 at ¶¶ 13-14 (“[I]t is well known that our duty is to give effect to the words used, not the delete words used or to insert words not used.”) (internal quotations omitted); *Columbus–Suburban Coach Lines, Inc. v. Pub. Util. Comm.*, 20 Ohio St.2d 125, 127, 254 N.E.2d 8 (1969) (it is the Court’s duty to “give effect to the words used, not to delete words used or to insert words not used”); *see also State ex rel. Carmean v. Hardin Cty. Bd. of Edn.*, 170 Ohio St. 415, 422, 165 N.E.2d 918 (1960) (“It is axiomatic in statutory construction that words are not inserted into an act without some purpose”).

As written, Section 3 sets up a final Commission plan as a safety valve of sorts. Ohio must have congressional elections at some point and a congressional redistricting plan is a necessity under the United States constitution. Requiring enhanced majorities or similar requirements at this final stage of the mapmaking process, for which there is only thirty days, could lead to an impasse and give the minority party incentive to simply vote against any plan, so that they can get to this final stage of enhanced requirements. In the event of an impasse, however, this Court lacks the authority under both the Ohio and United States Constitutions from drawing the plan itself. Ohio Const. art. XIX, Section 3; U.S. Const. art. I, Section 4 (see *infra* at Section V). Rather than create a situation that could create an impasse and cede the mapdrawing to a federal court, *see Upham v. Seamon*, 456 U.S. 37, 44, 102 S. Ct. 1518, 1522, 71 L. Ed. 2d 725 (1982), the Ohio Constitution ensures that a plan drawn by the entity with legislative authority will be enforced.⁶

⁶ Petitioners resort to misrepresenting a recent Ohio Attorney General Opinion in order to support their argument. Nothing in that opinion states that the Commission is obligated to comply with the Section 1(C)(3)/(F)(3) requirements. The opinion had nothing to do with those requirements and to the extent the opinion mentioned them, it tied them to the general assembly, not the Commission. AG Op. 2022-004, p. 5.

III. The Second Plan is Constitutional.

Assuming arguendo that the Court's prior order and Section 1(C)(3) applied to the Commission, the Second Plan satisfies both.

First, it is important to remember that the people of Ohio made the Commission a creature of the Ohio Constitution, and separately provided it with duties independent of any other branch of government in Ohio. It consists of members who are either themselves or appointees of the executive and legislative branches established in the Ohio Constitution. It is the Commission and the general assembly who solely possess the legislative authority to create legislative and congressional districts.

As such, the people of Ohio entrusted the Commission to exercise its discretion when adopting a congressional district plan. *Voinovich v. Ferguson*, 63 Ohio St.3d 198, 204, 586 N.E.2d 1020 (1992). This Court must presume the constitutionality of any a congressional district plan adopted by the Commission. *Wilson v. Kasich* 981 N.E.2d 814, 824, 2012-Ohio-5367 ¶18. Here, Petitioners have the burden of proving the unconstitutionality of the Second Plan “beyond a reasonable doubt.” *Id.* Whether the Commission “wisely or unwisely” exercised its discretion is immaterial.⁷ *Voinovich*, 63 Ohio St.3d at 204. “For the wisdom or unwisdom of what they have done, within the limits of the powers conferred, they are answerable only to the electors of the state, and no one else.” *Id.*

⁷ Petitioners rely almost exclusively on the testimony of their paid experts in bringing this motion. None of these experts have been subject to discovery or cross examination by the Respondents. The effect of Petitioners' arguments, that the Court should overturn the Commission's plan based upon experts who have never been subject to cross examination, turns the presumption of constitutionality on its head. Instead of deferring to the Commission's reasonable interpretation of the law and facts, Petitioners argue that the Court should instead defer to interpretations by paid out-of-state academicians whose job is to provide testimony to help their principals achieve their desired goal.

Petitioners ignore the discretion and deference owed to the Commission and instead want this Court to subject the Second Plan to a beauty contest with other maps. Nothing in the Ohio Constitution supports this baseless approach. The Second Plan can pass constitutional muster “without having to defeat rival compact districts designed by plaintiffs’ experts in endless ‘beauty contests.’” *Bush v. Vera*, 517 U.S. 952, 977 (1996) (plurality). The issue in assessing the Second Plan here is *not* who has produced the “best” or “most constitutional” maps. *See Wilson*, 981 N.E.2d at 824, 2012-Ohio-5367 ¶31 (“[W]hether relators have presented a ‘better’ apportionment plan is irrelevant in determining whether relators met their burden to establish that the board’s . . . 2011 apportionment plan is unconstitutional.”); *Daly v. Hunt*, 93 F.3d 1212, 1221 (4th Cir. 1996) (providing that the existence of a “more constitutionally perfect” plan with smaller population variances does not in itself amount to a constitutional violation).

Worse, Petitioners would have this Court judge the beauty contest with so-called partisan metrics and measures of compactness. But none of this is in the Ohio Constitution. There is no requirement that the Commission adopt the opinions of mathematicians and law professors who have allegedly created “nonpartisan” algorithms that the people cannot see, or mathematical measures that no one understands. If the Commission was required to measure the constitutionality of its plans using a specific mathematical test or compactness score, it would have been included in the Constitutional Amendment passed by the general assembly and approved by Ohio voters. No such measures can be found anywhere in Ohio’s constitution.

There is a good reason courts choose not to rely on metrics like the compactness measures cited by Petitioners as “there is no particular score that divides compact from non-compact districts” *Covington v. North Carolina*, 316 F.R.D. 117, 154 (M.D.N.C. 2016), *aff’d*, 137 S. Ct. 2211, 198 L. Ed. 2d 655 (2017). Nor is a mapdrawing authority required to use the Polsby-Popper

or any other particular mathematical test for measuring compactness. *See Holt v. 2011 Legislative Reapportionment Comm'n*, 620 Pa. 373, 423, 67 A.3d 1211, 1242 (2013) (holding that the Legislative Reapportionment Committee was “not obliged to adopt [Polsby-Popper] or any other of an apparent variety of such compactness models,” and noting that no party had articulated a principle “by which [the Court] may assess which of multiple methods of assessing compactness could or should be employed.” In fact, some courts have specifically noted that because “[c]ompactness is a somewhat abstract concept” it doesn’t lend itself to a bright line approach. *Vesilind v. Virginia State Bd. of Elections*, 295 Va. 427, 445, 813 S.E.2d 739, 748–49 (2018). *See also Pearson v. Koster*, 367 S.W.3d 36, 55 (Mo. 2012) (noting agreement between both Defendants’ and Petitioners’ experts that there is “no bright line between a compact and non-compact district.”). The court in *Vesilind* noted that **social scientists have developed at least 50 different methods of measuring compactness**, but that “[t]he proliferation of measures does not provide clarity. It does exactly the opposite.” 295 Va. at 445, 813 S.E.2d at 748–49. Therefore, the *Vesilind* court found it appropriate to “give proper deference to the wide discretion accorded the General Assembly in its value judgment of the relative degree of compactness required when reconciling the multiple concerns of redistricting.” *Id.* at 749 (internal quotations omitted).

As the Supreme Courts of Missouri, Virginia, and Pennsylvania wisely recognized in the cases above, tests developed by social scientists and mathematicians provide no useful clarity when assessing the constitutionality of legislative or congressional maps. And yet Petitioners rely solely on these controversial compactness measures to challenge the validity of the Second Plan. Ironically, any differences in compactness scores are slight, at best, and cannot possibly be evidence that the Commission failed to draw districts that are compact.⁸ This logical conclusion is

⁸ Deference to the Commission’s determination that the Second Plan is compact is not only appropriate here, but also supported by the facts. A review of the attached Maptitude reports (Exhibits 4-6) and

reinforced by the text of Section 1(C)(3)(d), which does not define compactness at all. More importantly, what it clearly does not do is intimate any type of calculation of any sort when reviewing compactness. Nor did this Court's prior order, which did not require plans to maximize compactness in order to comply with Section 1(C)(3)(d).⁹ Indeed, "the fact that more compact

Petitioners' own expert reports support the contention that the Second Plan *is* compact. When comparing the Second Plan to Dr. Imai's plan submitted to the Commission ("Imai Plan") and Democratic Proposal uploaded to the Commission website on March 2, 2022 ("Democratic Plan"), the Second Plan has the highest "max" Reock and Polsby Popper scores of any of the three plans. In fact, when comparing the three plans, the Second Plan contains the most compact version of CD 3 as compared to the Imai or Democratic plans under either metric. CD 7 under the Second Plan is more compact than the Democratic Plan under both metrics, and more compact than the Imai plan under the Reock metric. Likewise CD4 is more compact than the Democratic Plan on both metrics and more compact than the Imai Plan on Polsby Popper.

And while Petitioners make much ado about the compactness scores of CD's 1 and 15, the data reveals that this is much ado about nothing. The difference in the Reock scores between the Second Plan and the Imai Plan for Districts 1 and 15 is .25 and .23 respectively. Compare this with the difference in the Reock scores between the Second Plan and the Imai Plan for Districts 12 and 3 which are .22 and .19 respectively, with the Second Plan being the more compact of the two. Therefore, based on Petitioners' own arguments, if Districts 1 and 15 are non-compact due to the difference in scores, or the difference reveals some sort of partisan intent, then the same argument applies to Dr. Imai's Districts 3 and 12.

Furthermore, the Second Plan's scores on Reock and Polsby Popper are *identical* to the Democratic Plan in 6 districts: Congressional Districts 2, 6, 10, 12, 13, 14. In Districts 2 and 13 the Reock score is also identical to Dr. Imai's. And in Districts 11, 12 and 14 the Second Plan and the Democratic Plan are both more compact than Dr. Imai's versions of the same districts. This means that in 8/15 districts the Second Plan's districts are at least as *or more* compact than Dr. Imai's districts on one or both compactness measures. The other 7 districts show miniscule differences. For example, the difference between the Reock score of Dr. Imai's District 10 is only -.04 greater than both the Second and the Democratic Plans. The plan-wide averages also show miniscule differences between the plans. The Second Plan is only .02 less compact on Reock than the Imai and Democratic Plans, and only .07 less compact than the Imai Plan and only .01 less compact than the Democratic Plan under Polsby Popper. These differences are miniscule even though Dr. Imai had advanced knowledge of the compactness scores of the Second Plan and had an opportunity to prepare a plan with higher compactness scores.

⁹ These measures can also be manipulated for litigation purposes. An expert can use one set of metrics for one purpose and then move the goalposts for another purpose if it so suits him. Dr. Imai does this. In his first report, Dr. Imai compared his calculation of the mean Polsby Popper score for the general assembly's first congressional plan against the average mean for his simulated maps. Dr. Imai also used a test called the "Edge-removal compactness test," a method not adopted by any of the other experts. In his second report, without explanation, Dr. Imai moves the goalposts. Instead of comparing the mean Polsby Popper score (or even the score under his Edge removal test) for the Second Plan versus the average for his own simulations, he changes focus and cherry picks two districts (1 and 15) and focuses only on Polsby Popper scores.

formulations can be devised is not . . . a sufficient basis for invalidating a map” *Cole-Randazzo v. Ryan*, 198 Ill. 2d 233, 238, 762 N.E.2d 485, 487–88 (2001). Courts have routinely held that minor differences in compactness scores not only do not raise any sort of inference regarding intent of the drafter, but are also evidence that the plans are comparable to each other. *See Id.* at 487 (noting that the mean differences in plans of .03 and .04 meant the plans were “comparable” to each other); *Radogno v. Illinois State Bd. Of Elections*, 836 F.Supp2d 759, 769 (N.D. Ill. Dec. 7. 2011) (holding that a difference of .03 less under Reock and .05 less under Polsby Popper was “far from raising eyebrows”). Under these circumstances, Petitioners cannot meet their burden to prove that the Second Plan is unconstitutional beyond a reasonable doubt.

Moreover, Petitioners’ own evidence demonstrates the unreliability of using so-called partisan metrics. Consider the evidence that has been submitted by Dr. Imai in this case and Dr. Chen for the first congressional plan. The Court has been relying on this evidence but it is now clear as day that it is both conflicting and contradictory. For example, in his first report, Dr. Imai reported that nearly 80% of his simulations resulted in 8 Republican districts, 20% resulted in 9 Republican districts, and none of his plans resulted in either 10 or 11 Republican districts. But then compare that to the evidence from Dr. Chen on the same issue. In his second report, Dr. Chen compared the political performance of his simulated districts to the Commission’s plan using various elections. In Figures A1 through A9, Dr. Chen makes these comparisons using election results in nine different elections.¹⁰ Dr. Chen also compares the Second Plan to his simulations under an index using statewide elections from 2016-2020. *See* March 4, 2022 Chen Report, Figure 1. Under this comparison, a majority of Dr. Chen’s simulations result in 10 Republican districts

¹⁰ Respondents’ brief in opposition to the Adams Petitioners’ Motion to Enforce discussed one of those elections, Chen A1, which used the 2016 presidential election to compare the Commission’s districts to Chen’s simulations.

and 5 Democratic districts. But Dr. Imai's analysis claims that only 8 Republican districts would be expected (and rarely 9) (2022-Ohio-89 ¶49). This Court relied upon Dr. Imai's analysis that, in effect, Democrats should expect at least 7 seats. (*Id.*). This conflicts with Dr. Chen's analysis which produces two fewer Democratic seats (5). Using Dr. Chen's result the Second Plan is just fine but using Dr. Imai's it is not. Moreover, using Dr. Chen's result, Dr. Imai's plan is a partisan outlier that unduly favors Democrats. This is not the kind of evidence courts should use to decide constitutional questions.

More critically, Dr. Imai's analysis conflicts with itself. In his first report Dr. Imai predicted that only 20% of his simulations would result in 9 Republican districts and he therefore concluded that plans which resulted in more than 8 Republican districts were partisan outliers that unduly favored Republicans. (2022-Ohio-89 ¶49). The Court expressly relied upon this testimony in its first decision. (*Id.*). But now in his second report, Dr. Imai submits an "example plan," Second Imai Report at 13, that contains 9 Republican districts.¹¹ Is Dr. Imai's example plan a partisan outlier? Is he gerrymandering for Republicans? Of course not. Is Dr. Chen's conclusion

¹¹ Dr. Imai's simulation analysis is fundamentally tainted by a racial target he employs and thus is useless for making the compactness and other comparisons he makes. In running his simulations, Dr. Imai admits that his algorithm was programed, at the request of "relators'" counsel, to always create a district based in Cuyahoga County containing a Black Voting Age Population ("BVAP") of at least 42%. Imai Report at 7. Every district drawn by the simulations is affected by and tainted by this racial target. This use of race to establish a mandatory racial target for the Cuyahoga district would violate the Fourteenth Amendment and subject the state to a claim for racial gerrymandering if the Court relied upon Dr. Imai's simulations to invalidate the Second Plan. There is no evidence here that would satisfy the threshold conditions required under *Gingles* before using race to draw a district at a specific target. See *Cooper v. Harris*, 137 S. Ct. 1455, 1470, 197 L. Ed. 2d 837 (2017) citing *Thornburg v. Gingles*, 478 U.S. 30, 50-51, 106 S.Ct. 2752 (1986). There is no evidence that Dr. Imai performed a racial polarization analysis or that legally significant racially polarized voting exists in Cuyahoga County or any other location in Ohio. Because Dr. Imai has not produced copies of his simulated maps with corresponding tables showing the BVAP in all of his other districts, we have no way of knowing whether Dr. Imai simulations improperly used race as a proxy for politics. *Bush v. Vera*, 517 U.S. 952, 968 (1996). Accordingly, Dr. Imai's intentional use of race to draw at least one crossover district in every one of his simulated maps, renders each of those maps constitutionally suspect. *Bartlett v. Strickland*, 556 U.S. 1, 13, 129 S.Ct. 1231, 173 L.Ed.2d 173 (2009).

that you could expect up to 10 Republican districts mean he is secretly consulting for the Republicans? Of course not. What this does mean, is that all of this “math” is unreliable, especially when Respondent have no opportunity to vet it through the proper adversarial process. It is now plainer than ever that it is dangerous and disingenuous to base Ohio constitutional law and the voting rights of millions of citizens on this untested and contradictory evidence conceived of by paid for hire mathematicians and social scientists. Petitioners’ motion should be denied.

IV. The Congressional Election Cycle is Underway and this Court Should Defer any Action on the Second Plan Until After the 2022 Election.

In a normal election cycle, “[r]unning elections state-wide is extraordinarily complicated and difficult.” *Merrill v. Milligan*, 142 S. Ct. 879, 880 (2022) (Kavanaugh, J., concurring in grant of applications for stays). Elections officials must navigate “significant logistical challenges” that require “enormous advance preparations.” *Id.* But, admittedly, the 2022 election cycle has been far from a “normal” cycle in Ohio. In addition to the challenge of needing to draw new districts and conduct elections under these new districts, this is the first redistricting cycle conducted under Ohio’s new constitutional provisions. Navigating these new provisions has proven difficult, with different interpretations of the new constitutional amendments, and changes to Ohio’s political geography over the last decade making the difficult work of drawing new congressional districts even more challenging. Exacerbating this already challenging scenario, the Covid-19 pandemic delayed the results of the 2020 census and, in turn, Ohio’s redistricting efforts. In fact, due to these converging factors, the Second Plan was adopted only days before the close of Ohio’s filing period for the May primary. That filing period has now passed, and campaigns are now in full gear.

In 2006 the United States Supreme Court held in *Purcell v. Gonzalez*, “[c]ourt orders affecting elections, especially conflicting orders, can themselves result in voter confusion and

consequent incentive to remain away from the polls. As an election draws closer, that risk will increase.” 549 U.S. 1, 4-5 (2006) (per curiam).

In the wake of this seminal opinion, the United States Supreme Court has consistently admonished courts not to alter state election laws and processes in the period close to an election *Andino v. Middleton*, 141 S. Ct. 9, 10 (2020) (Kavanaugh, J., concurring in grant of stay application) see also *Milligan*, 142 S. Ct. at 879; *Merrill v. People First of Ala.*, 141 S. Ct. 25 (2020); *Merrill v. People First of Ala.*, 141 S. Ct. 190 (2020); *Clarno v. People Not Politicians*, 141 S. Ct. 206 (2020); *Little v. Reclaim Idaho*, 140 S. Ct. 2616 (2020); *Republican Nat’l Comm. v. Democratic Nat’l Comm.*, 140 S. Ct. 1205 (2020) (per curiam), *Democratic Nat’l Comm. v. Wisc. State Legislature*, 141 S. Ct. 28 (2020) (declining to vacate stay); *Benisek v. Lamone*, 138 S. Ct. 1942 (2018) (per curiam); *Veasey v. Perry*, 574 U.S. 951 (2014).

The 2022 election cycle already underway is no exception. As recent as a month ago, the United States Supreme Court in *Milligan* issued a stay of the district court’s opinion that enjoined the use of Alabama’s congressional redistricting plan. In his concurring opinion, Justice Kavanaugh invoked the *Purcell* doctrine for the proposition that courts “should not enjoin a state’s election laws in the period close to an election.” 142 S. Ct. at 879-880. This is because, “filing deadlines need to be met” candidates need to “be sure what district they need to file for” or even determine “which district they live in.” *Id.* Three weeks after the *Milligan* opinion was issued, the Georgia district court in *Alpha Phi Alpha Fraternity, Inc., v. Raffensperger*, followed suit, declining to enjoin the State’s redistricting plan due to the *Purcell* doctrine. ___F.Supp.3d___, 2022 WL 633312, 1:21-cv-05337(N.D. Ga. Feb. 28, 2022). Later that same week, Judge McAllister who is assigned to the New York state court challenge to the state Senate and Congressional redistricting plans also indicated that the 2022 elections will proceed under the

current redistricting plans on March 3, 2022. See <https://www.nytimes.com/2022/03/03/nyregion/ny-judge-redistricting-maps.html>; <https://news.yahoo.com/ny-elections-maps-amid-redistricting-192447324.html>. And just this week the Supreme Court denied a stay application that would have resulted in different congressional districts in North Carolina after the close of their March 4 filing deadline and ahead of North Carolina's May 17 primary. *Moore v. Harper*, No. 21A455, 595 U.S. ____ (Kavanaugh, J. concurring). Importantly, in each of these states where changes to congressional districts have already been stayed, the impending primary election will occur *after* Ohio's.

Courts in Ohio have also routinely abided by the *Purcell* doctrine to not meddle with state election laws in a period close to an election. See *Ohio Democratic Party v. LaRose*, 2020-Ohio-4664, ¶ 82, 159 N.E.3d 852, 879 (reversing lower court's grant of preliminary injunction on new election law because "issuing an injunction close to an election increases the harm to the boards of elections and, as a result, the general public by placing the security and administration of the election at risk."); *League of Women Voters of Ohio v. LaRose*, 489 F. Supp. 3d 719, 740 (S.D. Ohio 2020) (noting that the Supreme Court has "repeatedly emphasized" that courts should not alter election rules "on the eve of an election.") citing *Kishore v. Whitmer*, No. 20-1661, 972 F.3d 745, 751, 2020 U.S. App. LEXIS, at *11 (6th Cir. Aug. 24, 2020); *Boustani v. Husted*, No. 1:06CV2065, 2012 WL 5414454, at *3 (N.D. Ohio Nov. 6, 2012) (declining to grant Plaintiffs relief requiring posting of election notices because court orders on the eve of an election "can themselves result in voter confusion").¹²

¹² Other state courts routinely apply the *Purcell* doctrine as well. See e.g. *In re Khanoyan*, 637 S.W.3d 762, 764 (Tex. Jan. 6 2022) (detailing the precedent of Federal and Texas Courts in support of refusal to interfere in imminent election through mandamus); *Alliance for Retired Americans v. Secretary of State*, 240 A.3d 45, 54 (Me. 2020) (denying injunctive relief while holding that a court should not alter election rules close to an election in order to "avoid judicially created confusion"); *Singh v. Murphy*, Doc. No. A-0323-20T4,

This precedent is designed to prevent 11th hour judicial intervention which risks impinging upon an individual's right with the "most fundamental significance under our constitutional structure"—the right to vote. *Burdick v. Takushi*, 504 U.S. 428, 433 (1992); *see also Purcell*, 549 U.S. at 4-5. Additionally, when a Court makes changes close to the election, these changes "can themselves result in voter confusion and consequent incentive to remain away from the polls." *Purcell*, 549 U.S. at 4-5. Late intervention can also impose significant burdens on state and local elections staff, as well as unfairly impact candidates or political parties. *Milligan*, 142 S. Ct. at 881 (Kavanaugh, J., concurring in grant of applications for stays).

Petitioners ask this Court to eschew this well-reasoned precedent and create election chaos. Petitioners ultimately ask this Court to strike down the Second Plan, but offer no timetable for a replacement, and don't foreclose the need for a court-ordered congressional plan in the future. This requested relief entirely ignores the reality that the eve of the election is already upon us. Even assuming *arguendo* the Court had the power to simply substitute its own congressional plan for the Commissions' plan, which it does not, Petitioners' suggested relief would take weeks to adjudicate. And Petitioners demand this relief despite essentially filing a new suit, disguised as a motion, less than eight weeks before the May 3rd primary date, and ten days before the start of absentee and overseas voting. (Exhibit 1, 2.24.21 Transcript at 45:14-46:13).¹³

2020 WL 6154223, at *14-15 (N.J. App. Div. 2020) (declining to grant an injunction based in *Purcell*); *League of United Latin American Citizens of Iowa v. Pate*, 950 N.W.2d 204, 216 (Iowa 2020) (same).

¹³ The Federal Uniformed Overseas Citizens Absentee Voting Act of 1986 also requires that ballots be transmitted to overseas military personnel no later than 45 days before a federal election. 52 U.S.C. § 20302(a) (formerly 42 U.S.C. §§ 1973ff(1)-(7), as amended by Pub. L. No. 111-84, subtitle H, 575-589, 123 Stat. 2190, 2318-2335 (2009)). This means that ballots must be transmitted to overseas military personnel by March 18, 2022 – 8 days from today And the Department of Defense has already denied Ohio's request to extend this deadline. *See* <https://www.msn.com/en-us/news/politics/feds-deny-ohios-request-to-delay-sending-military-ballots-as-primary-chaos-continues/ar-AAUEhzo?ocid=uxbndlbing>

This is the sort of relief the *Purcell* doctrine encourages courts to decline on the eve of an election. And this is true even if the Court believes the underlying election laws at issue may be constitutionally circumspect, which, as shown above, is not the case here. *See Milligan*, 142 S. Ct. 879, 880 (2022) (Kavanaugh, J., concurring in grant of applications for stays of enforcement where lower court found VRA violations in Alabama’s Congressional redistricting plan); *Covington*, 316 F.R.D. at 177 aff’d, 137 S. Ct. 2211, 198 L. Ed. 2d 655 (refusing to enjoin election 2.5 months away despite holding certain North Carolina legislative districts were racial gerrymanders because “such a remedy would cause significant and undue disruption to North Carolina’s election process and create considerable confusion, inconvenience, and uncertainty among voters, candidates, and election officials.”); *Raffensperger*, 2022 WL 633312 (noting that the Court’s denial of the preliminary injunction on the basis of the *Purcell* doctrine “should not be viewed as an indication of how the Court will ultimately rule on the merits at trial”); *Upham v. Seamon*, 456 U.S. 37, 44, 102 S. Ct. 1518, 1522, 71 L. Ed. 2d 725 (1982) (holding that even though there was error by the lower court the interim plan should be used because the filing date for candidates had “come and gone” and the primary was looming.) Therefore, even assuming *arguendo* the Court were inclined to believe Petitioners arguments that the Second Plan violates Article XIX, Sections 1(C)(3)(a) or (b), which it does not, the Court should allow the 2022 elections to go forward under the Second Plan while adjudicating the merits of Petitioners’ claims.

If Petitioners’ expansive relief is granted at this 11th hour, the prejudice to voters, and especially absentee and overseas voters will be immense. This is exactly the “increased risk” of confusion the Supreme Court warned about in *Purcell*. *See also Democratic Nat’l Comm. v. Wisc. State Legislature*, 141 S. Ct. 28, 42 (2020) (*DNC*) (Kagan, J., dissenting) (“Last-minute changes

to election processes may baffle and discourage voters...). This in addition to jeopardizing state and local election officials' ability to prepare for and administer the May 3 primary. This Court should follow *Purcell* and its progeny and decline to create election chaos in Ohio.

V. This Court Lacks Authority under the United States Constitution to Draw a Congressional Plan.

Despite their 11th hour request, Petitioners state it would be “premature at this juncture” for the Court to implement its own plan. But Petitioners attempt to sidestep the issue by requesting that this Court issue a mandate to the Commission or General Assembly so specific as to how to revise Districts 1 and 15 that any policy choice of legislative deliberation is eliminated and replaced with the ministerial task of executing the exact lines this Court directs. Petitioners also do not foreclose the notion of asking the Court to implement its own plan, or specific remedial districts in the future. Such an argument on any of these levels is misguided, however, because it ignores the application of the Election Clause in the federal constitution. The text of the Elections Clause is clear: “[t]he Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the *Legislature* thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of choosing Senators.” U.S. CONST. art. I, § 4, cl. 1 (*emphasis added*). The word “Legislature” in the Elections Clause was “not . . . of uncertain meaning when incorporated into the Constitution.” *Hawke v. Smith*, 253 U.S. 221, 227 (1920). And “the Legislature” means now what it meant then, “the representative body which ma[kes] the laws of the people.” *Id.* The Election Clause’s limitation on who could draw congressional plans was well established by 2018 when the people of Ohio adopted Article XIX regarding *congressional* apportionment. See *City of Centerville v. Knab*, 162 Ohio St.3d 623, 2020-Ohio-5219, 166 N.E.3d 1167, ¶ 28 (“[W]e presume that the voters who approved an

amendment were aware of existing Ohio law.”). The Elections Clause prevents this Court from enacting a congressional plan of its own.

This Court was one of the first to tackle the interpretation of the federal Elections Clause in *State ex rel. Davis v. Hildebrant*, 94 Ohio St. 154, 160, 114 N.E. 55, 57 (1916). There, interpreting Ohio’s referendum check on legislative power, this Court answered the question of how far the definition of “Legislature” goes. The United States Supreme Court affirmed this Court’s decision. It viewed the issue “from three points of view—the state power, the power of Congress, and the operation of the provision of the Constitution of the United States.” *State of Ohio ex rel. Davis v. Hildebrant*, 241 U.S. 565, 567 (1916). As to the validity of this application of the referendum as a matter of Ohio’s “Constitution and laws,” the Court held that “the decision below” in this Court upholding the challenged use of the referendum “is conclusive.” *Id.* at 568. With respect to “the power of Congress,” the Court cited legislation establishing Congress’s view “that where, by the state Constitution and laws, the referendum was treated as part of the legislative power, the power as thus constituted should be held and treated to be the state legislative power for the purpose of creating congressional districts by law.” *Id.* And with respect to the constraints imposed by the U.S. Constitution itself, the Court reasoned that the plaintiffs’ challenge “must rest upon the assumption that to include the referendum in the scope of the legislative power is to introduce a virus which destroys that power,” an assumption the Court rejected. *Id.* at 569.

More recently, in *Wilson v. Kasich*, 2012-Ohio-5367, ¶¶ 19-22, 134 Ohio St. 3d 221, 227–28, 981 N.E.2d 814, 821–22 (2012), this Court held that it would treat the redistricting plans of the apportionment board as part and parcel of the legislative process for three reasons: (1) the apportionment board was performing a legislative function, (2) a presumption of validity attaches to the adopted plans, and (3) “because the people of Ohio placed apportionment authority in the

hands of the board, the apportionment plan should be accorded the same, if not greater, consideration as a statute enacted by the General Assembly.” *Id.* Just recently, in a separate case, this Court noted that the work of the Redistricting Commission is legislative and the subject of highest standard of deference. *See League of Women Voters of Ohio v. Ohio Redistricting Comm'n*, 2022-Ohio-65 ¶76 (summarizing the holding of *Wilson*, in part, that “apportionment is a legislative task (albeit now delegated by the Ohio Constitution to the redistricting commission) and that the public officers are presumed to have properly carried out their duties.”). Upholding a commission charged with redistricting in Arizona as being consistent with the federal Elections Clause, the United States Supreme Court held that its “precedent teaches that redistricting is a legislative function, to be performed in accordance with the State’s prescriptions for lawmaking[.]” *Arizona State Legislature v. Arizona Independent Redistricting Com’n*, 576 U.S. 787, 808 (2015). Consistent with this Court’s holding in *Wilson* and the United States Supreme Court’s holding in *Arizona Independent Redistricting Commission*, Ohio’s Redistricting Commission undoubtedly falls comfortably within the ambit of the Elections Clause.

At no point, however, has this Court or the United States Supreme Court held that the judiciary, exercising judicial review, is part of the legislative process. To the contrary, “[a] fundamental principle of the constitutional separation of powers among the three branches of government is that the legislative branch is the ultimate arbiter of public policy.” *Arbino v. Johnson & Johnson*, 2007-Ohio-6948, ¶ 21, 116 Ohio St. 3d 468, 472, 880 N.E.2d 420, 428 (2007). “It necessarily follows that the legislature has the power to continually create and refine the laws to meet the needs of the citizens of Ohio.” *Id.* If a court determines that a statute, or in this case a congressional district plan, is unconstitutional, it cannot make the policy choices to rewrite the plan itself directly under its own pen or indirectly through a line-by-line mandate to other officials;

rather, it must hold the act unconstitutional and allow the policy-makers, under Article XIX either the general assembly or the Commission, to redraw. Even if there was a basis for determining that the Commission's congressional plan was unconstitutional, this Court, consistent with the Elections Clause of the federal constitution could not redraw the plan on its own or dictate changes with such specificity that the Court is the "invisible hand" drawing the districts.

Long ago this Court held that "in this state the validity of an act passed by the legislature must be tested alone by the constitution, and that the courts have no right or power to nullify a statute upon the ground that it is against natural justice or public policy." *Probasco v. Raine*, 50 Ohio St. 378, 390–91, 34 N.E. 536, 538 (1893). "When the legislature, within the powers conferred by the constitution, has declared the public policy, and fixed the rights of the people by statute, the courts cannot declare a different policy, or fix different rights." *Id.*

Accordingly, "[t]he only provision in the Constitution that specifically addresses" the crafting of congressional districts "assigns [the matter] to the political branches," not to judges. *Rucho v. Common Cause*, 139 S. Ct. 2484, 2506 (2019). What is more, the Elections Clause is the sole source of state authority over congressional elections. Regulating elections to federal office is not an inherent state power. Instead, the offices of Senator and Representative "aris[e] from the Constitution itself." *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 805 (1995); see also *Cook v. Gralike*, 531 U.S. 510, 522 (2001). And because any state authority to regulate election to federal offices could not precede their very creation by the Constitution, such power "had to be delegated to, rather than reserved by, the States." *U.S. Term Limits, Inc.*, 514 U.S. at 804; cf. 1 Joseph Story, *Commentaries on the Constitution* § 627 (1833). ("It is no original prerogative of state power to appoint a representative, a senator, or president for the Union"). Thus, whatever power the state

has to craft congressional districts *must* derive from—and be limited by—the Elections Clause. Any other exercise of power is *ultra vires* as a matter of federal law.

In Ohio, congressional district plans are written by the general assembly or the Commission, not by the courts. The Elections Clause does not permit this Court—a judicial body, not a legislative body—to vest itself with the authority to draw congressional boundary lines. Article XIX, Section 3(A) provides this Court with plenary jurisdiction to invalidate a congressional district or group of congressional districts. However, the Constitution expressly places the remedy for that invalidation squarely either with the lawmaking, policy-making branch, general assembly, *see* Article XIX, Section (B)(1), or the Commission, Article XIX, Section (B)(2), and not with the court. While acts of the Commission or the general assembly are consistent with the Elections Clause, a plan adopted by or changes specifically dictated by this Court would violate federal law.

CONCLUSION

For the foregoing reasons, Respondents request that the Motion to Enforce be denied.

Respectfully submitted this the 10th day of March, 2022.

By:

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I hereby certify that on this the 10th day of March, 2022, I have served the foregoing document by email:

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Exhibit 1

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OHIO REDISTRICTING COMMISSION

FEBRUARY 24, 2022

RETRIEVED FROM DEMOCRACYDOCKET.COM

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1 SPEAKER CUPP: The Ohio Redistricting
2 Commission will reconvene pursuant to the
3 recess. I will ask first that the staff please
4 call the roll.

5 THE CLERK: Co-Chair Speaker Cupp.

6 SPEAKER CUPP: Present.

7 THE CLERK: Co-Chair Senator Sykes.

8 SENATOR SYKES: Present.

9 THE CLERK: Governor DeWine.

10 GOVERNOR DEWINE: Here.

11 THE CLERK: Auditor Faber.

12 AUDITOR FABER: Here.

13 THE CLERK: President Huffman.

14 PRESIDENT HUFFMAN: Here.

15 THE CLERK: Secretary LaRose.

16 SECRETARY LAROSE: Here.

17 THE CLERK: Leader Russo.

18 Mr. Co-Chair, a quorum is present.

19 SPEAKER CUPP: With a quorum present,
20 we will resume our meeting as a full commission.

21 At this time, the commission will hear;
22 public testimony from sponsors of complete
23 statewide congressional plans. These
24 proceedings will be recorded and broadcast by
25 the Ohio Channel so the board, in its

1 deliberations, may consider things that are said
2 here today.

3 We ask our audience to refrain from
4 clapping or other loud noise out of respect for
5 the witnesses and persons that may be watching
6 the proceedings remotely because that sort of
7 noise does interfere with the sound for those
8 who are listening remotely.

9 If you are here to testify, and have
10 not done so already, please complete a witness
11 slip and give it to one of our staff. If you
12 have written testimony, please submit a copy to
13 our staff so it can be included in the official
14 record of proceedings.

15 As previously agreed with the co-chair,
16 a witness may testify before the commission for
17 up to ten minutes on the plan. They are
18 testifying about subject to any further
19 limitation by the co-chairs. Witnesses should
20 limit their testimony to the complete statewide
21 congressional plan that they submitted.

22 We'll now begin with our first witness
23 here today whose name is Trevor Martin. So
24 please come forward. Is Trevor Martin here?

25 THE CLERK: He's not here yet.

1 SPEAKER CUPP: Not here yet. Okay.
2 Okay. We'll skip over him and come back later.

3 So our first witness will be Linus
4 Beatty. Mr. Beatty, come forward and please
5 state and spell your name for the record, speak
6 clearly, loudly enough for this panel to hear
7 and for the audience as well. So welcome.

8 LINUS BEATTY: Thank you so much.

9 My name is Linus Beatty. L-I-N-U-S
10 B-E-A-T-T-Y.

11 First, I'd like to thank all of the
12 commissioners, the media that's present, and all
13 of the public for giving us your time today to
14 hear my plan.

15 Like many in our state, I've been
16 deeply disappointed in how the process has
17 worked so far for redistricting. However, I'm
18 not here today to talk about the process so far.
19 Instead, I'd like to talk about a plan that I
20 have that can help move the state forward that I
21 believe is fair and compliant with the
22 constitution.

23 This map which I have submitted has a
24 9/6 breakdown which I believe is in line with
25 what the supreme court has asked this commission

1 to do. Furthermore, it avoids double-bunking
2 any incumbents who have -- who have signaled
3 that they are seeking reelection.

4 I believe that my map does an excellent
5 job of maintaining communities of interest
6 particularly when compared to the map from last
7 decade. The example that I would give is
8 examining last decade's 12th and 15th districts,
9 both of which went into Franklin county before
10 going eastward into Appalachia. I don't need to
11 tell you guys that these communities aren't that
12 similar in their culture and the economic
13 realities that they face. And as a result of
14 that not being what it is, several parts of
15 Appalachia were represented by two members from
16 Franklin county for a decent chunk of the
17 decade.

18 My map, however, splits Franklin county
19 only twice, the minimum number needed to comply
20 with the constitution. It keeps the 15th
21 district, which is currently occupied by Joyce
22 Beatty, entirely within Franklin county. And
23 the 12th district, which goes up into Delaware
24 county and slightly over into Licking, stays
25 entirely within the Columbus metropolitan area.

1 Furthermore, the 10th district, which
2 would be occupied by Charlie Balderson right
3 now, is about half contained within Appalachia
4 and the other half is in rural and exurban
5 communities near Columbus. This, in addition to
6 keeping the sixth district entirely within
7 Appalachia and the second district mostly within
8 Appalachia, will help ensure that this region is
9 accurately represented in Washington.

10 I don't know if you guys have the
11 district statistics. I submitted them, but --

12 SPEAKER CUPP: I believe they have been
13 distributed to members' folders. Yes, we have
14 them.

15 LINUS BEATTY: So as you can see, it
16 will most likely function as a 9/6 map, nine
17 Republican, six Democrats. The statistics there
18 are from a 2016 to 2020 composite. And I
19 believe that this map avoids splitting counties
20 whenever possible. There are only 14 county
21 splits, the minimum needed, and there are only
22 13 counties that are split, with Cuyahoga being
23 split twice.

24 As I wrap up my opening statement, I
25 would like to leave this commission with one

1 thought that I feel justifies where we're at
2 right now. I ask each and every one of you: Do
3 you weigh your own political future and your own
4 political fortune over the values of our
5 republic and the strength of our democracy?

6 I think that is a question that every
7 single public servant should ask themselves
8 before any action, and I ask that before every
9 single vote, whether it's for my map or another
10 map, you will do the same.

11 Thank you very much. And I yield for
12 any questions related to my map.

13 SPEAKER CUPP: Thank you very much for
14 taking the initiative to draw a map and come
15 here and submit it and to testify. I don't know
16 if you watched the hearing yesterday, but we do
17 have some basic questions that are just
18 requirements to go through to see whether your
19 map -- to ask you whether your map complies with
20 those.

21 LINUS BEATTY: Yes.

22 SPEAKER CUPP: The first is the
23 congressional ratio of representation, and that
24 is in Article XIX, Section 2(A)(2). The ratio
25 of representation is 786,630. Did you apply a

1 standard of strict mathematical equality for the
2 population of each district, or did you deviate
3 from the ratio of representation?

4 LINUS BEATTY: No district deviates
5 more than two people from that. And if I had
6 better software, I could probably make it less.
7 I did it on Dave's.

8 SPEAKER CUPP: Two is pretty good, and
9 one yesterday was pretty good too.

10 Do you believe your district population
11 meets the constitutional standard set out in the
12 federal case law for one person, one vote?

13 LINUS BEATTY: I believe so.

14 SPEAKER CUPP: All right. Next is
15 regarding the splits of political subdivisions.

16 Prior to drawing districts, did you
17 determine which counties had populations that
18 exceeded the ratio of representation pursuant to
19 Article XIX, Section 2(B)(4).

20 LINUS BEATTY: Yes.

21 SPEAKER CUPP: And can you tell us what
22 those are.

23 LINUS BEATTY: They are Franklin
24 county, Cuyahoga county, and Hamilton county.

25 SPEAKER CUPP: In any of those

1 counties, were there any cities or townships
2 whose population exceeded the congressional
3 ratio of representation?

4 LINUS BEATTY: Columbus does.

5 SPEAKER CUPP: And therefore, did you
6 follow the rules in Section 2(B)(4)(a) to
7 include a significant portion of that political
8 subdivision in one district?

9 LINUS BEATTY: Yes.

10 SPEAKER CUPP: I think you testified to
11 that.

12 Returning to those counties whose
13 population exceeded the ratio of representation,
14 were there any cities or townships that were
15 larger than 100,000 persons but less than the
16 congressional ratio of representation?

17 LINUS BEATTY: Parma would be, I
18 believe, above that. And Cuyahoga county, I did
19 not split that. And then -- oh, wait. Over
20 100,000?

21 SPEAKER CUPP: Yes.

22 LINUS BEATTY: Oh, then I guess it
23 would just be Cincinnati and then Cleveland
24 which are all kept whole. Sorry. My bad.

25 SPEAKER CUPP: And did you follow the

1 rule about not splitting?

2 LINUS BEATTY: Not splitting. No.
3 Those cities are not split.

4 SPEAKER CUPP: All right. Thank you.
5 How many counties in your plan are
6 whole in one congressional district?

7 LINUS BEATTY: It would be 75.

8 SPEAKER CUPP: And how many counties in
9 your plan are split once?

10 LINUS BEATTY: It would be 12.

11 SPEAKER CUPP: And how many counties in
12 your plan are split twice?

13 LINUS BEATTY: One.

14 SPEAKER CUPP: That would be Cuyahoga?

15 LINUS BEATTY: Yes, Cuyahoga.

16 SPEAKER CUPP: How many counties in
17 your plan are split more than twice?

18 LINUS BEATTY: None.

19 SPEAKER CUPP: And so do you believe
20 these numbers comply with Article XIX,
21 Section 2(B)(5) regarding county splits?

22 LINUS BEATTY: I do.

23 SPEAKER CUPP: In regard to the
24 contiguity of -- contiguity -- yeah, keeping
25 them together, does your plan comply with

1 Article XIX, Section 2(B) in that if a district
2 contains only part of a county, the part of the
3 district that lies in that district is
4 continuous within the boundaries of that county?

5 LINUS BEATTY: It does.

6 SPEAKER CUPP: All right. And then
7 portions relating -- question relating to the
8 portions of the territory in more than one
9 county.

10 Prior to drawing the districts, did you
11 determine which counties had populations that
12 exceeded 400,000 in population?

13 LINUS BEATTY: Yes.

14 SPEAKER CUPP: And those would be?

15 LINUS BEATTY: They would be -- let's
16 see if I can remember all of them. They would
17 be Lucas, Montgomery, Hamilton, Cuyahoga,
18 Franklin, and then Summit, I believe, are all of
19 them.

20 SPEAKER CUPP: Does your plan comply
21 with Article XIX, Section 2(B)(7) in that no two
22 congressional districts shall share portions of
23 the territory of more than one county except for
24 those counties whose population exceeds 400,000
25 persons?

1 LINUS BEATTY: Yes.

2 SPEAKER CUPP: And did you attempt to
3 include at least one whole county in each
4 congressional district in compliance with
5 Article XIX, Section 2(B)(8).

6 LINUS BEATTY: Yes, I did.

7 SPEAKER CUPP: All right. That's all
8 the questions I have.

9 Are there any members of the commission
10 that have further questions?

11 Hearing none, thank you very much for
12 your testimony.

13 Oh, I'm sorry. Auditor Faber.

14 AUDITOR FABER: I just had one. And I
15 appreciate your work in putting this together
16 because I know this took you a lot of time,
17 especially with the detail you paid to try and
18 keep communities of interest and it looks like
19 incumbents and minimize the splits.

20 But as I look at District 9, it looks a
21 lot like the famed Snake on the Lake that we've
22 heard a lot about. Can you explain that
23 distinction and why we heard so much concern
24 about that but yet this isn't it.

25 LINUS BEATTY: So one thing that I

1 would note is that the Snake on the Lake
2 does -- it splits Ottawa and Erie to go
3 basically very narrowly along the lake, and does
4 the same in Lorain before growing out and taking
5 western Cleveland, which is very strongly
6 Democrat, to make it into a vote sink.

7 When I designed my map, I tried to
8 avoid splits, and furthermore, I looked at
9 previous maps, including ones before this last
10 congressional map, to see what counties were
11 often kept together. For example, I put
12 Sandusky county with the 5th because that had
13 been with the 5th going back to the '70s prior
14 to this configuration.

15 Does that answer your question, or
16 would you like more clarity?

17 AUDITOR FABER: I guess it's as good as
18 any. I can't tell the details, but it looks
19 like you chose to slice Lorain county in half
20 and made some other adjustments, but again, I am
21 just curious --

22 LINUS BEATTY: I would note that this
23 is pretty much the 9th district that existed
24 prior to this decade. It's the same one that
25 was on the 2000s. Lorain's not split the exact

1 same way, but that is where that comes from.

2 SPEAKER CUPP: All right. Is there any
3 further questions? There being no further
4 questions, we thank you for coming and making
5 your presentation.

6 LINUS BEATTY: Thank you.

7 SPEAKER CUPP: So we also have Trevor
8 Martin checked in. Is Trevor Martin here today?
9 Trevor.

10 TREVOR MARTIN: Good afternoon. Thank
11 you, co-chairs, members of this commission, for
12 giving me this opportunity to speak.

13 My name is Trevor Martin. I'm a
14 community organizer and member of the
15 Fair Districts Ohio coalition. I have trained
16 over 80 individual community members to use
17 mapping software, specifically Dave's
18 Redistricting tool and Districtr, to participate
19 in the '22 Ohio redistricting process by
20 creating informative, descriptive, and
21 meaningful community maps that Ohio citizens can
22 share and thereby advocate for fair and
23 representative districts.

24 In addition, I have either facilitated
25 or sat in on dozens of community-mapping

1 sessions organized and hosted by community
2 members throughout Ohio. In doing so, I've
3 heard from hundreds of community members from
4 all over the state, and I've seen hundreds of
5 community maps made by Ohio citizens that
6 reflect a vision of their community, how they
7 define that community, and how they would like
8 to see these communities represented.

9 I was hoping to address some of the
10 critiques made yesterday, February 23, 2022, in
11 front of this body regarding the
12 Fair Districts Ohio Model Map. First and
13 foremost, the assertion that the Fair Districts
14 Model Map is least fair of all proposals
15 submitted to this commission. The fact is that
16 the Fair Districts Model Map scores the highest
17 of all submitted proposals on Dave's
18 Redistricting cumulatively and in nearly every
19 metric of fairness that we can observe, scoring
20 very high in proportionality, splitting, and
21 minority representation. It is the most compact
22 and the most competitive of any plan that has
23 been presented to this body during public
24 testimony.

25 I would like to point out that the

1 Fair Districts Ohio Model Map is the only truly
2 nonpartisan map that had been presented to this
3 commission yesterday, February 23, 2022.

4 Unlike other proposals that had been
5 presented on behalf of a particular party, the
6 Fair Districts Model Map is a product of many
7 people from across many walks of life. It is a
8 matter of fact that voting members of the
9 Republican Party in Ohio had participated in our
10 community mapping and in our district drawing
11 competitions. I myself sat in on a mapping
12 session in Wyoming, Ohio, down by Cincinnati,
13 that had several Republicans in attendance,
14 including the chair of the Wyoming, Ohio,
15 Republican Club. I was also present at a heated
16 discussion in Portage county that was attended
17 by both liberal and conservative Ohio voters.

18 The Fair Districts Model Map is a
19 collaboration of multiple community maps created
20 by self-proclaimed Democrats, Republicans, and
21 unaffiliated Ohio citizens. To say that it
22 unduly favors any party is preposterous.

23 More specifically, the district
24 variance calculations presented by witness Paul
25 Miller at the February 23, '22, meeting of the

1 Ohio Redistricting Commission should not be used
2 to determine the constitutionality of any
3 district plan being considered by this
4 commission. In short, statistical variance
5 measures the proximity of each data point, in
6 this case a congressional district, in relation
7 to an identified target outcome.

8 In the case of Mr. Miller's analysis,
9 his target outcome is a 50/50 Republican-to-
10 Democrat vote total per district and what he
11 categorizes as a fair district. This is how
12 Mr. Miller concluded that the GOP congressional
13 plans were the fairest because those maps
14 gerrymandered certain communities to produce a
15 map with a higher number of districts with a
16 relatively low partisan index split.

17 This argument was rightly struck down
18 by the Supreme Court as a map that unduly
19 favored the GOP because it was specifically
20 Democratic counties that were split in such a
21 way to create an artificially competitive
22 environment.

23 This is a highly-flawed metric for
24 identifying gerrymandering for several reasons.
25 First, Ohio's political geography is not

1 conducive to a 15 district 50/50 split map.
2 This is obvious to anyone who has spent even a
3 marginal amount of time looking at the state.
4 In fact, producing a map with little variance
5 between districts requires gerrymandering.
6 Think about it. How do you produce a 50/50
7 district in Cuyahoga county or along Ohio's
8 western border? You can't unless you
9 specifically crack and pack together distant
10 communities to construct a single district.

11 We know some districts in Ohio are
12 going to be solid Republican and others will be
13 solid Democrat. That's just reality. A higher
14 level of variance between districts is a sign
15 that communities of interest are being
16 respected.

17 The Fair Districts Model Map inherently
18 scores lower using Mr. Miller's approach
19 precisely because it does represent communities
20 of interest, keeping them together and within a
21 given district. To be sure the Fair Districts
22 Model Map does address competitiveness, but it
23 does so within the areas of the state where the
24 natural distribution of population and partisan
25 spread of voters is competitive rather than the

1 artificial application of competitiveness across
2 all districts.

3 Second, statistical variance analysis
4 was never put forth as evidence during any of
5 the court proceedings challenging the
6 constitutionality of either the general assembly
7 maps or congressional maps. This is striking
8 considering Mr. Miller's analysis concluded the
9 GOP maps were the fairest. If the methodology
10 of statistical variance had even a fraction of
11 legitimacy of other measures for identifying
12 gerrymandering, for example, the efficiency gap,
13 the vote-seat ratio, or mean-median analysis,
14 then I'm sure lawyers representing the
15 defendants in these cases would have made this
16 analysis a central component to their legal
17 arguments. Instead, they did not even mention
18 this form of analysis in their court filings.

19 I would also like to confront the
20 accusation made yesterday that the Fair
21 Districts Model Map is racist. I and my fellow
22 colleagues and citizen mapmakers who put much
23 work into this map found it to be utterly
24 disrespectful, offensive, and patently false.
25 The Fair Districts Model Map is a product of

1 dozens, if not hundreds, of diverse individuals
2 and organizations throughout the state,
3 including members of black fraternities and
4 sororities, including Alpha Kappa Alpha in the
5 Cleveland area.

6 The model map scores a 50 for minority
7 representation in Dave's Redistricting tool
8 which is equal to or higher than any other map
9 that has been presented to this commission that
10 I am aware of.

11 The Fair Districts Model Map preserves
12 the majority-minority district in CD 11 and
13 creates a second opportunity district in CD 1 in
14 Hamilton county in addition to the already
15 present opportunity district in Franklin county,
16 Congressional District 3.

17 In comparison, other proposals
18 submitted to this body yesterday dilute CD 11 so
19 that it is downgraded from a majority-minority
20 district to an opportunity district which could
21 run afoul of the federal Voting Rights Act.
22 They also provided fewer or weaker opportunity
23 districts than the Fair Districts Model Map
24 does. Therefore to say that the
25 Fair Districts Model Map is racist, though very

1 offensive, that declaration is laughable and
2 demonstrably false.

3 Furthermore, the claim that the model
4 map is out of compliance with the Court's
5 opinion in Adams v Dewine is also incorrect.
6 The assumption is based off a misreading of the
7 text. Splitting Summit county is permissible.
8 The Court found that the struck down
9 Senate Bill 258 splits of Summit and Cuyahoga
10 counties unduly favored Republicans, conferring
11 a partisan advantage, thus it was not that these
12 counties were split but rather how they were
13 split. The splits that are present in the
14 Fair Districts Model Map confer no such
15 advantage for either party and are there solely
16 to preserve community boundaries, school
17 districts, or other such nonpartisan criteria.

18 Now, as a community member -- or
19 community organizer myself, I have a keen
20 interest in keeping communities of interest
21 together and to advocate for fair representation
22 of those communities.

23 The definition of community can mean a
24 lot of different things to a lot of different
25 people, and each individual can be a member or

1 multiple communities. Believe me, this came up
2 often in my discussions with Ohio voters about
3 community and who the people were supposedly
4 representing these communities.

5 what these community made maps do show
6 is where these people live, where they work,
7 where their children go to school, where they
8 shop, where they eat, their parks, their trails,
9 their community centers, their places of
10 worship. These community maps tell stories of
11 community concerns, what they considered
12 important to them, and how decisions should be
13 made when drawing district lines that will
14 affect their day-to-day lives.

15 In conclusion, I would like to assert
16 that the Fair Districts Model Map keeps
17 political subdivisions and communities together
18 as much as possible and more accurately reflects
19 the partisan balance of this great state of
20 Ohio. Fair Districts Ohio urges you to adopt
21 this nonpartisan constitutionally compliant map
22 that prioritizes voters. And please remember
23 that Ohio voters overwhelmingly approved a new
24 process to put an end to partisan
25 gerrymandering. Thank you.

1 SPEAKER CUPP: Are there questions for
2 Mr. Martin?

3 I do not believe there are. So thank
4 you for coming and making your presentation. I
5 think I asked about the map yesterday, the
6 constitutional requirements, so we don't need to
7 repeat that today.

8 TREVOR MARTIN: I appreciate it. Thank
9 you.

10 SPEAKER CUPP: That is all of the
11 witnesses that we have checked in to testify to
12 submitted whole state congressional
13 redistricting maps.

14 At this time, is there further business
15 to come before the commission?

16 The chair recognizes Senator Huffman.

17 PRESIDENT HUFFMAN: Yeah. Thank you,
18 Mr. Speaker and members of the commission.

19 As I think all commissioners know,
20 we've been working a lot of these past several
21 days to try to resolve the general assembly
22 maps. We have had a map which we believe
23 comports with all of the requirements of the
24 Supreme Court, 54 -- well, we will call I think
25 the Republican 54/18 map that I believe that's

1 been presented at -- in a session with the
2 Democratic commissioners and their various
3 experts.

4 My understanding is that all of the
5 Republican commissioners have had an opportunity
6 to review that and look at it. Unfortunately,
7 at the moment, there are not paper copies.
8 We're doing this as quickly as we can.

9 And also, I understood that at the
10 request of Senator Sykes there was going to be
11 some sort of break between this hearing and full
12 consideration of that map.

13 So I don't have anything more than that
14 other than we believe it comports with
15 everything in the constitution and in the
16 dictates that the Court has given us. So at
17 that -- at the point in time when I have -- at
18 6:00, after the requested three-hour break, I'll
19 present that and talk in detail.

20 SPEAKER CUPP: Any further questions?
21 Comments?

22 SENATOR SYKES: One question,
23 Mr. Co-Chair. Has this map or plan been
24 distributed or made available to the public?

25 PRESIDENT HUFFMAN: It's my

1 understanding is it's not been. It's about to
2 be shortly. It's kind of getting in final form,
3 and I'm not sure how quickly it can be loaded up
4 to the website, but hopefully that will be
5 in -- oh, apparently, in the next half an hour
6 or so, so well before the hearing here in a few
7 hours.

8 SENATOR SYKES: We're all the
9 members -- if I can make --

10 SPEAKER CUPP: Go right ahead.

11 SENATOR SYKES: Have all the members,
12 majority members of the commission, were they
13 involved in the drafting of this -- of this
14 plan?

15 PRESIDENT HUFFMAN: Senator, I
16 don't -- I don't have a daily log or diary of
17 what each of the other six members of the
18 commission did. Everyone's had a chance to see
19 it, make comments, suggestions, whatever it may
20 be. So I don't -- I don't know the detail of
21 what everybody said and did and when they did
22 it.

23 SENATOR SYKES: Okay.

24 SPEAKER CUPP: All right. Without
25 objection, the commission will recess until

1 6:00. In the meantime, the proposed map will be
2 uploaded to the public website and maps will be
3 printed and made available as quickly as
4 possible. So the committee will recess until
5 6:00 p.m.

6 (Recess.)

7 SPEAKER CUPP: The redistricting
8 commission will come back to order pursuant to
9 the recess earlier today. I would note for the
10 record that all members of the commission are
11 present here as we have reconvened.

12 Is there business to come before the
13 commission? The chair recognizes Senator
14 Huffman.

15 PRESIDENT HUFFMAN: Thank you, Co-Chair
16 Cupp.

17 At this time I would move that the
18 commission adopt the plan that is submitted on
19 the commission's website known under the name
20 Paul DeSantis. And that is my motion, and I'd
21 like to speak to the motion.

22 SPEAKER CUPP: I'll second the motion.
23 Senator Huffman.

24 PRESIDENT HUFFMAN: Thank you,
25 Mr. Chair.

1 Just briefly, and obviously happy to
2 answer any questions, this plan is a plan that
3 designates 18 Republican Senate seats and 54
4 House Republican seats, or an 18/15, 54/45 map
5 which was designated in the Supreme Court's
6 decision.

7 I would note that the Democratic map
8 submitted last week had the same number as I
9 believe the Rodden map referred to in the
10 Supreme Court's decision at an 18/57 map.

11 I did want to comment that this --
12 these maps, all of them, were drawn -- or at
13 least I think the Glassburn map, Democratic map
14 and ours, were done pursuant -- or with the data
15 that was provided by Ohio University pursuant to
16 the contract that was issued by the
17 redistricting committee and the commission, in
18 other words, the census data sent to Ohio
19 University, and that's the data that was used
20 and agreed to be used by everyone. I think
21 since -- at least in the last few hours some
22 folks have said, well, there may be districts on
23 third party websites -- or opinions on third
24 party websites that use different data. I think
25 we've had a lot of testimony about how a lot of

1 that is inaccurate or not quite according to
2 Hoyle. So these are -- this -- the indexes in
3 the total are pursuant to the official data from
4 Ohio University that the mapmakers on both sides
5 of the aisle have been using, so it's an 18/54
6 map.

7 The other requirement that the Supreme
8 Court indicated in its second opinion is the
9 issue regarding symmetry. I'm going to talk a
10 little bit more about the Senate map. I'll
11 allow Speaker Cupp to talk about the House map.
12 But there are -- the issues or the districts
13 regarding asymmetry are two in the Senate and
14 five in the House. This is identical to, again,
15 to the Democratic map that was submitted last
16 Thursday.

17 And otherwise, this map follows all the
18 other technical line-drawing rules provided in
19 the constitution.

20 And I think that's the extent of my
21 remarks. Obviously, we're all interested in
22 getting this done quickly and -- as we've got a
23 May 3rd primary. I'll let Secretary LaRose talk
24 about that, if he chooses, regarding the
25 urgency, perhaps talk even more than he already

1 has. I think he's put the commission in a
2 pretty good place knowledgewise about it.

3 So those are the extent of my remarks
4 now, Mr. Speaker. I'd be happy to answer any
5 questions at this time.

6 SPEAKER CUPP: Before you do that, let
7 me just talk a bit about the House map.

8 So I want to first say that I honestly
9 believe that all members of the redistricting
10 commission have worked long and hard to achieve
11 a new General Assembly District Plan that is in
12 compliance with all the requirements of the Ohio
13 Constitution. The fact is that it is a new
14 constitutional provision that has never before
15 been utilized or navigated or litigated. And as
16 such, it naturally results in differing opinions
17 and understanding about what is required.

18 Decisions of the Ohio Supreme Court
19 have subsequently filled in some of the meaning
20 of certain constitutional provisions, thus the
21 map -- this map before us now starts anew, with
22 a goal of meeting those provision as
23 adjudicated.

24 The House districts in this new General
25 Assembly plan proposal I believe meets the

1 requirements of the Ohio Constitution as
2 interpreted by the Ohio Supreme Court, including
3 these requirements that the Court has ordered
4 beyond those expressly stated in the text of
5 Article XI.

6 In regard to partisan proportionality,
7 the Supreme Court has held that the appropriate
8 ratio based on the percentage of statewide votes
9 for each major political party in statewide
10 elections over the last ten years translates
11 into 54 Republican-leaning House districts and
12 45 Democrat-leaning House districts provided
13 other requirements of the Ohio Constitution are
14 not violated in drawing districts to meet this
15 proportionality. The district plan approved by
16 the commission in January of this year included
17 57 Republican-leaning districts and 42
18 Democrat-leaning districts.

19 The proposed new district map before us
20 has 54 Republican-leaning seats and 45
21 Democratic-leaning seats. I would point out
22 that this was very difficult to achieve, and it
23 was time-consuming to navigate the
24 constitutional limitations on splits and
25 divisions of political subdivisions in the

1 state, but after months of trying and retrying
2 and trying again, and after several court
3 decisions refining the meaning of the terms of
4 the constitution, the target partisan
5 proportionality as determined by the Court has
6 been achieved in this proposed map.

7 The House plan, House part of this plan
8 approved by this commission in January included
9 12 so-called asymmetrical districts as defined
10 by the Court. This new plan includes only five
11 asymmetrical districts which is the same number
12 of asymmetrical districts as contained in the
13 House plan that Representative Russo moved to
14 adopt and have this commission -- asked this
15 commission to adopt on February 17th.

16 I have used the term new plan several
17 times because this General Assembly District
18 Plan has been developed anew. Approximately
19 70 percent of the House districts are different
20 from the districts approved by the commission in
21 January and, taken together, approximately
22 73 percent of all 132 general assembly districts
23 are new.

24 That will conclude my overview of the
25 House districts of the plan, and I would be

1 happy to respond to any questions that I may be
2 able to answer.

3 So the floor is open.

4 SENATOR SYKES: Mr. Co-Chair, you know,
5 I am just disappointed, you know, not so much
6 for myself but disappointed in the -- for the
7 Court and for the people of the state of Ohio
8 particularly as it relates to, you know, just
9 the process. You know, I'm the sponsor of
10 Ohio's open meetings law, and, you know, we have
11 some guidelines to try to make sure that the
12 people's business, that they have access to it,
13 have information about it, they have a chance to
14 petition us, to hold us accountable, to give
15 input whether that's through a public hearing or
16 even just a telephone call.

17 We've been told that you've been
18 working on this since February 11th, and we have
19 not had a chance, an opportunity to give any
20 input or have any knowledge about what you're
21 doing.

22 So we're just wondering, do you expect
23 us to vote on this? We just got it, the
24 information about this, just a few hours ago.
25 We've been deliberating over districts and

1 redistricting issues since the summer, but now,
2 with just a few hours' notice, you want us -- do
3 you want us to vote on this today?

4 SPEAKER CUPP: What's the pleasure of
5 the commission?

6 PRESIDENT HUFFMAN: Mr. Chair. Yeah,
7 well, a couple of things. I mean, I don't
8 think -- and I appreciate what you're saying.
9 And, you know, Senator Sykes, there are many,
10 many, many meetings that are productive meetings
11 that don't take place -- our -- you and I talked
12 about this issue in your office, and the press
13 and the public weren't a part of that. We've
14 had phone conversations, things like that, so
15 sometimes those are productive meetings.

16 I don't think these issues are new to
17 anyone sitting here on the commission.
18 Much -- you know, much of this plan are actually
19 adoptions from the Democratic map and not in
20 whole but at least in concept. And I would
21 prefer to vote on the plan tonight for a couple
22 of reasons. One is the Supreme Court has made
23 it clear as to the urgency of responding to
24 them. And more importantly, I think, or as
25 importantly is that we have a May 3rd election

1 and the secretary has made clear -- again, I'll
2 let him speak to the specifics of it -- about
3 the importance of having this -- and hopefully
4 still possible, having these general assembly
5 district elections on May 3rd.

6 And, you know, all of the other options
7 are bad. Two primaries, bad idea because I
8 happened to suggest it and people let me know
9 pushing back the primary, people are not in
10 favor of that also.

11 So I don't know. You know, I think at
12 this point, a while ago days matter, at this
13 point hours matter, and so I would prefer to
14 vote on it tonight, and those are the reasons
15 why. So those are my comments about the timing.

16 SENATOR SYKES: Mr. Co-Chair, the Court
17 has instructed us to work on a commission plan
18 and have the commission work on a plan, not to
19 have a Democratic plan or a Republican plan.

20 And so what is your rationale since we
21 have reached out to you to be involved to offer
22 input, but we haven't been given any
23 information, just the map once you finished and
24 completed. How is that compliant with the
25 directive of the Court?

1 PRESIDENT HUFFMAN: well, if I could,
2 we're here now and we can talk about it. I'm
3 not sure how else the commission can meet and
4 talk about it unless we notice up a meeting and
5 we're all here to do that. So we have a
6 meeting, we can talk about it now, things you
7 like or dislike or whatever it may be.

8 SENATOR SYKES: well, you know, we did
9 have an opportunity in the last few hours to
10 take a look at the map, and it looks like it
11 puts the minority party in a more inferior
12 position than before, with only six -- 26
13 districts that are -- that would be most likely
14 won by Democrats in the House and only eight
15 districts that would most likely be won by
16 Democrats in the Senate.

17 And so, you know, we don't believe that
18 this -- we appreciate the idea that you maybe
19 embrace the concept that you need to comply with
20 the proportionality guidelines, but the Court
21 also indicated that symmetry was also important,
22 and we don't believe that you've complied with
23 that. We believe that you've made that worse.

24 SPEAKER CUPP: If I might ask, what is
25 your rationale for that?

1 SENATOR SYKES: Rationale, you
2 have -- in the plan that was turned down by the
3 Court, in the House, districts that had a DPI
4 from 50 to 52, there were 14 leaning Democrat.
5 In this plan you have 19 for the House. And for
6 the Senate you have in fact five in the plan
7 that was turned down by the Court and then you
8 have seven in the one being presented here
9 today, between 50 and 52. And so we believe
10 that that placed the minority party in a more
11 inferior position.

12 SPEAKER CUPP: Well, if I might respond
13 to that, I actually -- I read the Supreme Court
14 decision again today, Decision Number 2, and
15 specifically looked at the asymmetry question.
16 And when the Court addressed asymmetry, they
17 discussed the districts that were 51 percent or
18 less Democrat-leaning, and that's the -- that is
19 my understanding is the point where the Court
20 took issue. It did not take issue with any of
21 the districts that had a greater than 51 percent
22 partisan lean.

23 In this map, as I've already indicated,
24 it does have five districts that are
25 asymmetrical. That is the same number of

1 asymmetrical districts that were in the map that
2 Representative Russo moved and you seconded just
3 a week ago to adopt. So I'm not sure I
4 understand your issue unless you're saying that
5 you don't believe districts that are over
6 51 percent leaning Democratic based on the ratio
7 that we're required to use are not winnable. So
8 I completely don't understand because clearly
9 the percentage is leaning Democrat. It's
10 certainly not leaning Republican, and it's
11 certainly not neutral.

12 SENATOR SYKES: Well, the point that
13 we're making is that all of these districts, 52
14 or less, 52 percent with the Democratic index or
15 less are all Democratic districts. There are
16 none -- there are zero in the Republican area,
17 and so we're just concerned, we're concerned
18 about it.

19 SPEAKER CUPP: Is this a new issue
20 you're raising? Because that was not --
21 52 percent was not something that the Court
22 addressed, between 51 and 52. They addressed it
23 between, you know, 50 and 51 is what I read.

24 Representative Russo, did you --

25 LEADER ELECT RUSSO: Thank you,

1 Mr. Co-Chair.

2 I'm just going to be frank here. I
3 think this discussion and claiming that you
4 addressed asymmetry as smoke and mirrors. Here,
5 I am going to read paragraph 40 from the
6 decision itself so that we're not interpreting
7 what the Court said. We're actually reading the
8 words.

9 In paragraph 40, it says.

10 "Article XI, Section 6(B) provides that
11 the commission shall attempt to draft a plan in
12 which the statewide proportion of districts
13 whose voters favor each political party shall
14 correspond closely to the statewide preferences
15 of the voters of Ohio. (Emphasis added.)

16 "Yet the commission knowingly adopted a
17 plan in which all the House districts whose
18 voters favor Republicans do so at vote shares of
19 52.6 percent and above, while more than a
20 quarter (12 of 42) of the House districts whose
21 voters favor Democrats do so at a vote share
22 between 50 and 51 percent (meaning that a
23 1 percent swell in Republican vote share would
24 sweep 12 additional districts into the
25 Republican column). Nine of those districts

1 favor Democrats at a level under 50.5 percent."

2 So that has been pointed out, but it
3 goes on further to say:

4 "while the Constitution does not
5 require exact parity in terms of the vote share
6 of each district, the commission's adoption of a
7 plan in which the quality of partisan favoritism
8 is monolithically disparate is further evidence
9 of a Section 6(A) violation. In other words, in
10 a plan in which every toss-up district is a
11 Democratic district, the commission has not
12 applied the term favor as used in Section 6(B)
13 equally to the two parties.

14 "The commission's adoption of a plan
15 that absurdly labels what are by any definition
16 competitive or toss-up districts as
17 Democratic-leaning -- at least when the plan
18 contains no proportional share of similar
19 Republican-leaning districts -- is demonstrative
20 of an intent to favor the Republican Party."

21 So I will go back to the maps that you
22 have submitted claiming that you have addressed
23 this issue of symmetry, and in fact, what you
24 have proposed is a 26/54 split for the House
25 because you have 19 districts that fall between

1 50 and 52. Amazingly, you've actually created a
2 bigger problem because previously you only had
3 14 that fell within that range. Now, you've
4 created 19 and claim that you have addressed
5 symmetry.

6 The same is true in the Senate
7 districts. You created a map that has seven
8 districts that fall between 50 and 52, amazingly
9 expanding the issue whereas previously there
10 were five in the map that was declared
11 unconstitutional and thrown out by the courts.

12 So, you know, this argument that you
13 somehow have addressed asymmetry by creating
14 fewer districts between the 50 and 51 percent
15 range seems to ignore what the Court was saying
16 in its decision.

17 So I ask the question: How have you
18 addressed asymmetry given the full reading of
19 the Court's decision in paragraph 40?

20 SPEAKER CUPP: Representative Russo,
21 I'd ask you how many Democrat-leaning districts
22 are between 50 and 51 percent which is what the
23 Court addressed?

24 LEADER ELECT RUSSO: In which map?

25 SPEAKER CUPP: The House map.

1 LEADER ELECT RUSSO: In the House map
2 that has been moved to be adopted, it is five.
3 And you are correct that there were five in the
4 Democratic district, but again, the Court
5 decision is pretty clear that when you have
6 monolithic asymmetry, regardless of whether
7 we're using a threshold of 50.5, 50.8, 51, 51.5,
8 52, the important piece of this is that you have
9 zero Republican districts that fall within those
10 ranges: 19 on the House side versus zero on the
11 Republicans. And in the Senate, seven that are
12 between 50 and 52 for Democrats and zero on the
13 Senate.

14 So in my view, I don't think that this
15 at all addresses what the Court noted was the
16 issue as a violation of Section 6(A) and 6(B) in
17 their decision.

18 SPEAKER CUPP: I guess you and I are
19 reading it differently.

20 Any further discussion? Questions?

21 I think the issue you threw out is, you
22 know, when do we vote. So shall we go ahead and
23 vote now or what?

24 LEADER ELECT RUSSO: Mr. Speaker, I do
25 have another question.

1 SPEAKER CUPP: Sure.

2 LEADER ELECT RUSSO: Thank you.

3 I would ask to the commissioners, do
4 the majority of the commissioners believe that
5 this map which actually worsens partisan
6 asymmetry, it does not improve it, will satisfy
7 the Court and show that the commissioners, each
8 member of this commission, when we appear on
9 Tuesday before the Court, is not contemptuous of
10 the Court and does not remain in contempt or
11 possibly in contempt?

12 SPEAKER CUPP: Well, as I've indicated
13 to the press, I'm not commenting on pending
14 litigation, and I don't think it's wise for
15 anybody to do that.

16 LEADER ELECT RUSSO: Mr. Co-Chair, I'm
17 sorry, but we're sitting here because of pending
18 litigation discussing these maps, so I would
19 disagree with that assessment.

20 SPEAKER CUPP: All right. If there's
21 no further discussion, is there a motion on the
22 floor and a second? Are we --

23 Staff call the roll.

24 THE CLERK: Co-Chair Speaker Cupp.

25 SPEAKER CUPP: Yes.

1 THE CLERK: Co-Chair Senator Sykes.

2 SENATOR SYKES: No.

3 THE CLERK: Governor Dewine.

4 GOVERNOR DEWINE: Aye.

5 THE CLERK: Auditor Faber.

6 AUDITOR FABER: No.

7 THE CLERK: President Huffman.

8 PRESIDENT HUFFMAN: Yes.

9 THE CLERK: Secretary LaRose.

10 SECRETARY LAROSE: Yes.

11 THE CLERK: Leader Russo.

12 LEADER ELECT RUSSO: No.

13 THE CLERK: Co-Chair, it's 4-3.

14 SPEAKER CUPP: The vote is four to
15 three. The motion does pass. It is not passed
16 by the required majority to be a ten-year
17 district plan, so it passes as a four-year
18 district plan.

19 Secretary LaRose, did you have a
20 motion?

21 SECRETARY LAROSE: Yeah, I do. Thank
22 you, Mr. Co-Chair.

23 And I do want to reemphasize that which
24 I have said many times from this seat and that
25 which I have said many times in letters that

1 I've sent to the members of the general assembly
2 and to the leadership that we are in one heck of
3 a time crunch. And as it relates to conducting
4 the election on May 3rd, I'm duty bound to make
5 sure people understand really what's at peril
6 for any further delay. I'm glad that we've just
7 conducted this vote, by the way.

8 But one other thing that I thought we
9 should consider here as we wrap up the work of
10 this commission, having just adopted what I
11 believe are constitutional maps, is to take a
12 look at the Section 9(C) provision that says, in
13 part, "A General Assembly District Plan made
14 pursuant to this section shall allow" -- again,
15 shall allow -- "30 days for persons to change
16 residence in order to be eligible for election."

17 My read of that is that the plan that
18 we just adopted shall allow 30 days for persons
19 to change residence in order to be eligible for
20 the election. Of course, what that means is
21 that a candidate who filed their petitions back
22 on February 2nd to run for the House or Senate
23 must now from today, from adoption of this plan,
24 have an additional 30 days to notify the Board
25 of Elections that they intend to move and then

1 to in fact move to a new residency and be
2 eligible for the ballot. Because of that
3 provision, the county boards of elections may
4 read that to mean that they just have to wait
5 30 days now for that to happen. My hope is to
6 give them more clear guidance than that and, in
7 fact, ask candidates to notify the Board of
8 Elections of their intention to move. My guess
9 is there may be very few that do so, but in the
10 case where your county has somebody who has
11 notified you that there's that intention, then
12 the board would know how to deal with that based
13 on the directive I would give them.

14 of course, that would take -- if they
15 did just simply wait for 30 days, that would
16 mean that they can't certify any petitions until
17 March 26th. March 26th is a date long after the
18 overseas and military ballots are required to go
19 out. In fact, I'll remind us that we have three
20 weeks until overseas and military ballots go
21 out. That's three weeks from tomorrow until I'm
22 required by law to mail out overseas and
23 military ballots to our men and women serving
24 overseas and to their families and those who are
25 studying abroad, et cetera.

1 That is effectively the beginning of
2 the election. Of course, election day is on
3 May 3rd, but voting begins starting three weeks
4 from now, and that is the time crunch that we're
5 operating under, and to get this work done in
6 those three weeks is nearly unimaginable,
7 perhaps possible with some real amazing work by
8 our county boards of elections.

9 So back to the matter at hand. Because
10 of the severely compressed timeframe, we now
11 have to hold primaries for these races
12 potentially, you know, under a very compressed
13 the timeframe.

14 What I'm asking the members of the
15 commission to consider is simply adopting a
16 statement that I have distributed to all of you,
17 and I'll read it. It says:

18 "The General Assembly District Plan
19 that this commission just adopted would
20 authorize me as Secretary of State to issue to
21 the boards of elections directives by which
22 House and Senate candidates who have filed to
23 run shall comply with Article XI, Section 9(C)
24 if any candidates wish to do so."

25 Again, that they would have the

1 opportunity to meet that 30-day residency
2 requirement under the rules that I would send to
3 the boards of elections by directive and that we
4 are adopting this as part of the plan that we
5 just passed.

6 UNIDENTIFIED SPEAKER: Second.

7 SENATOR SYKES: Point of order.

8 SPEAKER CUPP: Mr. Co-Chair.

9 SENATOR SYKES: Yeah. Mr. Co-Chair,
10 you know, I don't think we have the authority to
11 authorize the Secretary of State to do anything.
12 This motion exceeds the authority of the
13 commission. The residency deadline is both a
14 constitutional and a statutory issue, and I
15 don't believe that the commission has the
16 authority to change the election law to
17 accommodate the 30-day residency requirement.
18 This motion will not resolve the issue raised by
19 the Secretary of State and Attorney General.

20 SECRETARY LAROSE: I'd like to respond
21 to that, Mr. Co-Chair.

22 SPEAKER CUPP: Secretary LaRose.

23 SECRETARY LAROSE: First of all,
24 arguably, I have the directive authority already
25 to tell the boards of elections how to comply

1 with this part of the constitution, but I would
2 argue that we as a commission have the duty to
3 include this language in the plan that we're
4 adopting right now because what the constitution
5 says, again, is that a general assembly plan
6 adopted pursuant to this section, the plan that
7 we just adopted pursuant to this section shall
8 allow 30 days for persons to change residence.

9 By adopting the statement that I just
10 read into the record, we are allowing, as part
11 of this plan that we just adopted, the 30 days
12 for candidates to change residence in order to
13 be eligible for election.

14 SPEAKER CUPP: Auditor Faber.

15 AUDITOR FABER: Thank you.

16 I tend to believe the secretary already
17 has this authority. I believe the constitution
18 makes it clear without regard to whether we give
19 authority or don't give authority that somebody
20 gets 30 days to move into the district once the
21 district maps are final regardless of when
22 they're on the ballot. And candidly, I suggest
23 that the secretary could just issue guidance
24 saying that file a statement if you intend to
25 relocate and then verify that relocation when

1 you certify the election. I think that
2 certainly would be within his discretion and
3 certainly compliant with the constitution.

4 And for that reason, I support this
5 motion because I think it just makes it clear to
6 everybody that that is the intent of what should
7 happen to comply with the constitution. So in
8 that regard, I think this is only a statement of
9 intent. I don't know that it gives him any new
10 authority, but I think it certainly is
11 appropriate to make it clear to everybody that
12 we believe people who may have already filed for
13 one district and something got changed in a line
14 adjustment, I think it's only fair for them to
15 know that they can move under the constitution,
16 which the constitution already gives them that
17 right, within 30 days, so I have no problem
18 putting in that statement for that reason.

19 SPEAKER CUPP: Senator Sykes.

20 SENATOR SYKES: Yes. If I could ask a
21 question on the motion.

22 What about those persons who had not
23 filed already but based on the new configuration
24 of the districts decided they want to run? Will
25 they be given a constitutional right to 30 days

1 to move into the -- to file?

2 SECRETARY LAROSE: That's a question,
3 Co-Chair, that only you and your colleagues in
4 the general assembly can answer. I don't have
5 the power to do that right now. As you know, my
6 Boy Scout handbook is Title 35. I do what you
7 all tell me to do and that is follow the law.

8 The law currently says that the
9 petitions that were filed are the only ones that
10 are being filed, and those were filed back on
11 February 2nd.

12 SPEAKER CUPP: Senator Sykes.

13 SENATOR SYKES: How does that comply
14 with the constitution giving someone 30 days in
15 fact to move into the district?

16 SECRETARY LAROSE: Mr. Co-Chair, two
17 separate matters. One relates to residency.
18 The other one relates to declaring yourself a
19 candidate for the ballot.

20 The candidates -- those who declared
21 themselves a candidate for the ballot on
22 February 2nd are a fixed group of people, we
23 know who those are. What the constitution says
24 is that group of people now have the ability to
25 move if they find themselves living in a place

1 that is not where they intended to run or the
2 district for which they intended to run. That's
3 what 9(C) of Article XI allows for.

4 SENATOR SYKES: I respectfully
5 disagree.

6 SPEAKER CUPP: The chair recognizes
7 Senator Huffman.

8 PRESIDENT HUFFMAN: Thank you,
9 Co-Chair.

10 I think some similar questions were
11 raised last Thursday. There was a creation --
12 and I'm not sure, there might have been some
13 House districts, but at least one Senate
14 district, where there would have been no one who
15 had filed and no one who had the correct number
16 in signatures, and I think Representative Russo
17 raised a number of potential solutions,
18 including write-in ballots and other perhaps
19 legislative fixes.

20 And I guess I would say regarding these
21 kinds of issues, you know, from my
22 perspective -- I can't speak for the other 32
23 members of the Senate, but perhaps I can
24 tentatively speak for my caucus, we would be
25 certainly interested and willing to draft

1 legislation on an emergency basis next week to
2 make whatever rules are necessary for basic
3 fairness to allow folks to go ahead and file for
4 the various districts. Obviously, the timing of
5 this has been difficult on everyone. So if
6 there are changes, you know, maybe we can even
7 get to work on that this weekend.

8 SPEAKER CUPP: Okay. The motion has
9 been made and seconded. I believe it's been
10 seconded.

11 UNIDENTIFIED SPEAKER: Yes, it has
12 been.

13 SPEAKER CUPP: Okay. Thank you.
14 Any further discussion? If not, the
15 staff will call the roll, please.

16 THE CLERK: Co-Chair Speaker Cupp.

17 SPEAKER CUPP: Yes.

18 THE CLERK: Co-Chair Senator Sykes.

19 SENATOR SYKES: No.

20 THE CLERK: Governor DeWine.

21 GOVERNOR DEWINE: Aye.

22 THE CLERK: Auditor Faber.

23 AUDITOR FABER: Yes.

24 THE CLERK: President Huffman.

25 PRESIDENT HUFFMAN: Yes.

1 THE CLERK: Secretary LaRose.

2 SECRETARY LAROSE: Yes.

3 THE CLERK: Leader Russo.

4 LEADER ELECT RUSSO: No.

5 THE CLERK: Five to two, Mr. Co-Chair.

6 SPEAKER CUPP: The vote is five to two.

7 The motion has carried.

8 SENATOR SYKES: Mr. Co-Chair, I move
9 that we accept the written testimony for
10 kathleen Clyde who had planned on testifying
11 here today, but we changed the time period and
12 she was not able to stand around and wait, and
13 so I respectfully submit it on her behalf.

14 SPEAKER CUPP: And I would second that
15 and, without objection, it will be submitted
16 into the record from the testimony for this
17 afternoon.

18 Now, is there any further business to
19 come before the commission this evening?

20 Auditor Faber.

21 AUDITOR FABER: Thank you.

22 Do we have an intention to set dates to
23 continue our work on the congressional for next
24 week, or do we have an idea of what we're
25 looking at?

1 SPEAKER CUPP: I think probably next
2 Tuesday. That doesn't prevent any plan from
3 being circulated before that time.

4 Does that sound satisfactory, or do you
5 have something else in mind?

6 SENATOR SYKES: That's fine.

7 SPEAKER CUPP: All right. We'll
8 schedule a commission meeting for next Tuesday,
9 and we may do it -- well, we have session next
10 Wednesday as well so we can get this
11 congressional districts done, wrap that up, at
12 least our end of it, very quickly.

13 LEADER ELECT RUSSO: Mr. Speaker.

14 SPEAKER CUPP: Yes.

15 LEADER ELECT RUSSO: Are we going to do
16 8(C)(2) statements from the majority and from
17 the minority?

18 SPEAKER CUPP: We will, but I think
19 we're going to need to recess to prepare the
20 statement.

21 How much time do we think we're going
22 to need?

23 I am advised that it will probably take
24 one hour.

25 LEADER ELECT RUSSO: To clarify, you're

1 going to recess for an hour?

2 SPEAKER CUPP: Yes. I'm hoping to so
3 we can comply with that portion that we're
4 required to comply with.

5 LEADER ELECT RUSSO: Okay. Great. So
6 we're reconvening this evening to read this.

7 SPEAKER CUPP: Yes. Yes.

8 All right. Without objection, the
9 commission will be in recess for one hour. By
10 my clock, that means it would be ten minutes
11 till 8:00 and we'll reconvene.

12 (Recess.)

13 SPEAKER CUPP: Pursuant to the recess,
14 the Ohio Redistricting Commission will come back
15 to order.

16 I would note that all members of the
17 commission are present.

18 Is there any -- we have a motion for
19 the required statement? Well, we don't have one
20 yet. All right. Well, in order to -- all
21 right. Well, I guess there's nothing wrong with
22 doing this in what might be considered reverse.

23 So, Representative Russo, are you ready
24 with your statement?

25 LEADER ELECT RUSSO: Yes. Thank you,

1 Mr. Chair.

2 First I'd like to say that the maps
3 approved by the majority commissioners tonight
4 yet again fail to meet the Ohio Constitution and
5 fail to meet the directive of the Ohio Supreme
6 Court. We have had several opportunities to
7 work together as a commission to draw maps, and
8 each time the majority commissioners have
9 squandered the chance to do so.

10 We would ask the commission: Have we
11 learned nothing after two court orders? We have
12 been directed to work together and put aside
13 partisan interest in order to draw maps that
14 meet the constitution of the state of Ohio,
15 something that we are both duty and oath bound
16 to uphold.

17 Instead of working together, this map
18 that was passed this evening was drawn entirely
19 by Republican legislators on the commission
20 without our involvement and without allowing
21 feedback or changes.

22 The Court has told us that this is
23 problematic and a sign of partisan intent. In
24 fact, they state in their decision in
25 paragraph 31:

1 "We observed that when a single party
2 exclusively controls the redistricting process,
3 it should not be difficult to prove that the
4 likely political consequences of the
5 reapportionment were intended."

6 We should not repeat the same mistake
7 again. And while the majority commissioners may
8 claim that these maps meet the requirements of
9 Article XI, Section 6, in reality, they fall
10 short of that metric. Unequivocally, the Ohio
11 Supreme Court has directed us to draw that
12 closely -- maps that closely match statewide
13 voter preferences.

14 And as the Court noted in paragraph 40,
15 in fact, the most recent invalidated
16 unconstitutional map had 14 Democratic-leaning
17 House seats in the 50 to 52 percent Democratic
18 index range. Today's plan has 19, five more.
19 There are zero Republican-leaning House seats
20 that are in the 50 to 52 percent range. The
21 most recent invalidated unconstitutional map had
22 five Democratic-leaning Senate seats in that
23 range, and today's plan actually increases that
24 asymmetry with seven districts between 50 and
25 52 percent. There are zero Republican-leaning

1 Senate seats that are in the same 50 to
2 52 percent range.

3 It is not hard to see that these maps
4 do not meet the Court's direction on partisan
5 symmetry and are yet again in violation of
6 Article XI, Section 6.

7 Even with a contempt hearing on the
8 horizon, the majority commissioners continue to
9 show their contempt for the Court, the
10 constitution, and the rule of law.

11 And to go back and state exactly what
12 the language is in paragraph 40, it says:

13 "While the constitution does not
14 require exact parity in terms of the vote share
15 of each district, the commission's adoption of a
16 plan in which the quality of partisan favoritism
17 is monolithically disparate is further evidence
18 of a Section 6(A) violation. In other words, in
19 a plan in which every toss-up district is a
20 Democratic district, the commission has not
21 applied the term favor as used in Section 6(B)
22 equally to the other two parties.

23 "The commission's adoption of a plan
24 that absurdly labels what are by any definition
25 competitive or toss-up districts as

1 Democratic-leaning -- at least when the plan
2 contains no proportional share of similar
3 Republican-leaning districts -- is demonstrative
4 of an intent to favor the Republican Party."

5 Again, those are not my words. Those
6 are the words from the Court's decision.

7 With time and collaboration, we could
8 amend these maps to make them compliant with the
9 law and the Court's orders. We know that it is
10 possible to put forward constitutional maps for
11 this body to consider. We developed these maps
12 in a process where we continually -- we being
13 the Democrats -- continually invited feedback
14 from other members of the commission.
15 Unfortunately, the majority members of the
16 commission voted them down and would not work
17 with us.

18 The public has been completely shut out
19 of any meaningful opportunity to analyze these
20 maps, let alone provide testimony. This was not
21 the process contemplated by Ohio voters in
22 passing this constitutional reform. Instead of
23 proportional and fair maps, Ohioans are once
24 again left with maps that fail to meet the
25 constitution. It is disappointing that instead

1 of simply working together, the majority
2 commissioners are flagrantly ignoring Ohio
3 voters and the Supreme Court of Ohio in an
4 attempt to tighten their unyielding grasp on
5 their supermajority power.

6 Thank you, Mr. Chair.

7 SPEAKER CUPP: Without objection, the
8 statement that is authorized by the constitution
9 will be considered submitted for the record.

10 Is there further motion?

11 PRESIDENT HUFFMAN: Mr. Chairman, the
12 Section 8(C)(2) statement has been presented to
13 the commissioners for their review, and I would
14 move that it be accepted.

15 SPEAKER CUPP: I'll second that.

16 Is there any discussion on that
17 statement?

18 All right. I guess in the interest of
19 symmetry, I probably should read this statement.
20 So it's the Section 8(C)(2) statement required
21 under the Ohio Constitution.

22 In the League of Women Voters versus
23 Dewine, Slip Opinion Number 2022-Ohio-342, the
24 Ohio Supreme Court ordered the commission to
25 draft and adopt an entirely new General Assembly

1 District Plan that conforms with the Ohio
2 Constitution including Article XI, Section 6(A)
3 and 6(B). The redistricting commission did so.

4 The commission drew an entirely new
5 plan in which the statewide proportion of
6 Republican-leaning to Democrat-leaning districts
7 precisely corresponds to 54 percent
8 Republican-leaning and 46 percent
9 Democrat-leaning districts.

10 In doing so, the commission was mindful
11 that all of Section 6, Article XI of the Ohio
12 Constitution was to be complied with, not just
13 certain sections. Plus no one division of
14 Section 6 is subordinate to another.

15 The commission was also mindful that
16 compliance with Section 6 shall not result in
17 violations of Section 2, 3, 4, 5, or 7 of
18 Article XI of the Ohio Constitution.

19 All members of the commission, through
20 their respective staff and individually, were
21 given the opportunity to meet with the map
22 drawers to express concerns, make suggested
23 edits and otherwise participate in the mapmaking
24 process in a collaborative fashion. The final
25 adopted plan contains input from those members

1 of the commission directly or through their
2 staff who chose to participate.

3 The final adopted House district plan
4 contains 54 Republican-leaning districts. This
5 corresponds to approximately 55 percent of the
6 total number of House districts.

7 The final adopted Senate district plan
8 contains 18 Republican-leaning districts. This
9 corresponds to approximately 54 percent of the
10 total number of Senate districts.

11 In total, the final adopted General
12 Assembly District Plan contains a total of 72
13 Republican-leaning districts and 60
14 Democrat-leaning districts. This corresponds to
15 approximately 54 percent Republican-leaning
16 districts and approximately 45 percent
17 Democratic-leaning districts. These percentages
18 meet strict proportionality.

19 The redistricting commission addressed
20 the asymmetry holding -- asymmetry holding
21 identified in League of Women Voters 2. Only
22 five of the 99 House districts have a partisan
23 lean between 50 and 50.99 percent. All other
24 districts have a partisan lean greater than
25 51 percent.

1 In the Senate map, only two districts
2 have a partisan lean between 50 and
3 50.99 percent. This is the exact same number of
4 asymmetric House and Senate districts found in
5 the Sykes-Russo House proposal map.

6 The commission believes that the number
7 of Republican-leaning districts and
8 Democrat-leaning districts meets the strict
9 proportionality despite the distribution of
10 voters and geography of Ohio.

11 Moreover, the final adopted General
12 Assembly Plan does not contain any violations of
13 Section 2, 3, 4, 5, or 7 of Article XI of the
14 Ohio Constitution and complies with Section 6 of
15 Article XI of the Ohio Constitution.

16 Any objection to submitting this as the
17 8(C)(2) statement? Hearing no objection, it's
18 considered admitted.

19 You object.

20 SENATOR SYKES: Yes.

21 SPEAKER CUPP: All right. The clerk
22 will -- the secretary will call the roll.

23 THE CLERK: Co-Chair Speaker Cupp.

24 SPEAKER CUPP: Yes.

25 THE CLERK: Co-Chair Senator Sykes.

1 SENATOR SYKES: No.

2 THE CLERK: Governor DeWine.

3 GOVERNOR DEWINE: Yes.

4 THE CLERK: Auditor Faber.

5 AUDITOR FABER: For the purposes of
6 having that submitted as a statement, I guess my
7 answer is yes.

8 THE CLERK: President Huffman.

9 PRESIDENT HUFFMAN: Yes.

10 THE CLERK: Secretary LaRose.

11 SECRETARY LAROSE: Yes.

12 THE CLERK: Leader Russo.

13 LEADER ELECT RUSSO: No.

14 THE CLERK: 5-2, Mr. Co-Chair.

15 SPEAKER CUPP: The vote is five to two.
16 The statement is adopted and submitted with the
17 record.

18 Any further business come before the
19 commission this evening?

20 Auditor Faber.

21 AUDITOR FABER: Thank you, Mr. Speaker.

22 I want to make it clear on the record
23 that the minority report issued by Senator Sykes
24 and House minority leader is not a report that I
25 concur with.

1 SPEAKER CUPP: Any further business?

2 Hearing no further business, the
3 commission is adjourned for tonight.

4 (End of recording.)

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R E P O R T E R ' S C E R T I F I C A T E

STATE OF NORTH CAROLINA

--o0o--

I, DENISE MYERS BYRD, Court Reporter,
do hereby certify that the transcription of the
recorded OHIO REDISTRICTING COMMISSION held on
February 24, 2022, was taken down by me
stenographically to the best of my ability and
thereafter transcribed under my supervision; and
that the foregoing pages, inclusive, constitute
a true and accurate transcription of said
recording.

Signed this the 2nd day of March 2022.

Denise Myers Byrd
Denise Myers Byrd
CSR 8240, RPR, CLR 102409-2

Exhibit 2

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OHIO REDISTRICTING COMMISSION

MARCH 1, 2022

RETRIEVED FROM DEMOCRACYDOCKET.COM

Transcribed by:

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1 SENATOR SYKES: ... bring the Ohio
2 Redistricting Commission to order. Will the
3 staff please call the roll.

4 THE CLERK: Co-Chair Speaker Cupp.

5 SPEAKER CUPP: Present.

6 THE CLERK: Co-Chair Senator Sykes.

7 SENATOR SYKES: Present.

8 THE CLERK: Governor DeWine.

9 GOVERNOR DEWINE: Here.

10 THE CLERK: Auditor Faber.

11 AUDITOR FABER: Yes.

12 THE CLERK: President Huffman.

13 PRESIDENT HUFFMAN: Here.

14 THE CLERK: Secretary LaRose.

15 SECRETARY LAROSE: Here.

16 THE CLERK: Leader Russo.

17 LEADER RUSSO: Here.

18 SENATOR SYKES: Quorum being present,
19 we will meet as a full committee.

20 The minutes are in your folder from our
21 previous meeting. Is there a motion to accept
22 the minutes?

23 SPEAKER CUPP: I'll move the minutes be
24 accepted.

25 SENATOR SYKES: Is there a second?

1 UNIDENTIFIED SPEAKER: Second.

2 SENATOR SYKES: Are there any changes
3 to the minutes? Any objection to the minutes?
4 We will accept them, then, as
5 presented.

6 At this time we have before the
7 commission another item. The Tribune, the
8 Chronicle, an expense that's eligible to be paid
9 by the commission. Is there a motion to approve
10 this expenditure?

11 SPEAKER CUPP: I'll move to approve the
12 payment in the amount of \$7,004.61 for the
13 advertisement.

14 SENATOR SYKES: Is there a second?

15 SPEAKER CUPP: Or notice, I guess,
16 rather than advertisement.

17 LEADER RUSSO: Second.

18 SENATOR SYKES: Any further comments or
19 questions on the motion? Are there any
20 objections to approving this expenditure?

21 Hearing none, we will accept the
22 expenditure, approve the expenditure.

23 The next item on the agenda will be
24 presentations of congressional maps. This
25 proceeding will be recorded so that we can

1 deliberate over it, and it will be archived. We
2 ask the audience to refrain from clapping or
3 other loud noise out of respect for the
4 witnesses and the persons watching this
5 remotely.

6 If you want to testify, please complete
7 a witness slip and we'll take care of that. The
8 witnesses can testify up to ten minutes and is
9 regulated by the co-chairs.

10 The first person to testify and present
11 a plan is Ryan Brunn. Can you state and spell
12 your name for the record, please.

13 RYAN BRUNE: Yes. My name is Ryan
14 Brune. R-Y-A-N B-R-U-N-E.

15 SENATOR SYKES: You have ten minutes,
16 sir.

17 RYAN BRUNE: How many minutes?

18 SENATOR SYKES: Ten.

19 RYAN BRUNE: All right. So I had some
20 prepared remarks which you find in front of you
21 today. I'm going to change it up a little bit,
22 though, given the new map that I see will
23 be -- well, not voted on today but likely
24 tomorrow.

25 Before I begin, though, I would like to

1 say that it's an incredible experience to be
2 before all of you. I've never seen the
3 governor. I've never seen the auditor. I've
4 never seen the majority or the minority leaders.
5 I've never seen the secretary of state. The
6 fact that that's possible is truly awesome and
7 may be one of the better things about this
8 commission which has obviously had some
9 problems.

10 So the map that I made and present
11 before you is not my favorite map. It is not an
12 ideal map. In my opinion, an ideal map would be
13 a proportional map, but I think everybody here
14 knows that's not in the cards. If you want a
15 map that I think is ideal, I would look at the
16 League of Women Voters map.

17 But the map that I have before you here
18 today has a slight Republican bias, but I think
19 does not disfavor any political party too much
20 one way or the other.

21 I would note that, unlike the
22 legislative maps, there are no -- there are no
23 constitutional requirements for a strictly
24 proportional map, but as Maureen O'Connor said
25 in her brief, it's a starting place of where to

1 look.

2 My map has -- you know, it varies a
3 little bit throughout elections. In the 2020
4 presidential election, Trump won ten districts,
5 Biden won five, but Biden was .1 percent short
6 of carrying a sixth, 2 percent short of carrying
7 a seventh. In the 2018 gubernatorial election,
8 Cordray, Dewine's 2018 opponent, won seven to
9 Dewine's eight. It can vary around a little
10 bit.

11 Also, I went to great lengths to ensure
12 that -- incumbents should be pretty happy with
13 this map. No incumbents that are running for
14 reelection are double-bunked with the exception
15 of Latta and Kaptur in the 8th -- you know,
16 maybe you think of it as the 9th, but I call it
17 the 8th, but in that district, it is narrowly
18 Democratic by composite, but Trump won it in
19 2020. It's, you know, about as even of a
20 district as you can possibly have. It would be
21 a fair fight between the two of them. I think
22 that's the most reasonable way to have an
23 incumbent-on-incumbent matchup.

24 You can look through the document I
25 provided for specific partisan breakdowns

1 between the 2020 presidential and 2018
2 gubernatorial elections. It's not a perfect
3 map. It's a good map in my opinion. Satisfies
4 all the constitutional requirements that are
5 laid out, and I think it's a reasonable map in
6 that I would hope that you guys would be able to
7 accept it.

8 I mean, I'm just looking at this new
9 map that you have here, and I'm sure it follows
10 all of the requirements regarding splitting,
11 not -- you know, not splitting cities,
12 et cetera, et cetera, et cetera, zeroed out
13 population, like everything like I have, but I
14 hope -- I hope the commissioners here know,
15 like, I'm sure this is going to pass tomorrow,
16 but there's no way that the Supreme Court is
17 going to accept this map. Like -- it's just a
18 fact. I mean, like, it's just going to create
19 more chaos if you pass your map. It's --
20 they're not -- I mean, there's even, like, a
21 chance of a special master unlike for the
22 legislative redistricting where I believe
23 Section 5 strictly prohibits the court from
24 ordering a specific map or drawing a map
25 themselves. There's no such requirement for the

1 Supreme Court in this case.

2 I mean, if you draw this map, I think
3 there's a strong chance that incumbents from
4 both parties are going to be drawn in a
5 court-ordered map into districts together and
6 everyone's going to be unhappy.

7 I'm offering a map, in my opinion,
8 where I think both parties aren't exactly happy,
9 but both parties, you know, can live with it. I
10 mean, that's what I'm trying to offer, a map you
11 can live with. The map that's going to pass
12 tomorrow isn't going to be the map. I mean, I'm
13 convinced of that. But I will take questions.

14 SENATOR SYKES: Thank you. I
15 appreciate it. Any questions?

16 SPEAKER CUPP: I have a question.

17 SENATOR SYKES: Yes.

18 SPEAKER CUPP: Thank you, Mr. Chairman.

19 I have a question, Ryan. What got you
20 interested in this, and what is your occupation
21 or status?

22 RYAN BRUNE: Sure. So I work at
23 Huntington Bank as a model risk analyst. I'm
24 also pursuing a master's degree at Ohio State
25 University in statistics.

1 SPEAKER CUPP: And what got you
2 interested in this? Statistics? Modeling?

3 RYAN BRUNE: I don't know. I don't
4 exactly know how it started, but I run a Twitter
5 account @BruneElections which has nearly 10,000
6 followers now, so it's kind of a passion.

7 SPEAKER CUPP: Have my -- have you met
8 all of the constitutional requirements
9 about -- in terms of not splitting or splitting
10 and keeping districts within certain counties
11 and not -- I'm sure you're familiar with those.

12 RYAN BRUNE: Yes.

13 SPEAKER CUPP: Thank you, Mr. Co-Chair.

14 SENATOR SYKES: Are there any
15 additional questions? If not, we'd like to
16 thank you very much. I appreciate it. I hope
17 you had a good opportunity here to meet
18 everybody.

19 RYAN BRUNE: Yeah.

20 SENATOR SYKES: You didn't mention my
21 name, but that's all right.

22 RYAN BRUNE: Okay. I'm sorry,
23 Mr. Sykes.

24 SENATOR SYKES: Next we have David
25 Helmick, who has written testimony only, and

1 then Michael Metzinger. Michael Metzinger he's
2 not here. Okay.

3 Is there any other business to be
4 brought before the commission?

5 Commissioner Huffman.

6 PRESIDENT HUFFMAN: Thank you very
7 much, Co-Chairman Sykes. I would like to
8 present, although I think we're going to wait
9 until tomorrow's hearing to make a motion. I
10 understand that's the preferred procedure from
11 the chair.

12 I'd like to present the map. I think
13 it's styled now on the website as Strigari 2022
14 Congressional Map. Certainly we'll get the name
15 right, but it might be a little bit longer. So
16 I'll present that at the time. It is presented
17 on the website.

18 Pursuant to request from Leader Russo,
19 that was presented to -- I believe to at least
20 Leader Russo and Senator Sykes earlier today for
21 their examination. And I'm not -- I'm not sure,
22 frankly, about the other commissioners. I think
23 they've had an opportunity to look at it.

24 As I mentioned in my letter of last
25 week, I invited all the commissioners and/or

1 their staff to visit at least with the folks who
2 are working on the map for the Senate. I
3 believe that happened with the House also. So
4 it's been about a five-day process.

5 So this is the map that I'm presenting
6 to the commission today. And again, I
7 understand that a formal motion and vote would
8 be tomorrow. And the map is there, the index
9 and then all the specifics. If people want to
10 look at particular counties or townships or what
11 have you, that's all -- they can do that on the
12 commission website.

13 So I'll be happy to answer any
14 questions now, or perhaps that's better for
15 tomorrow, whatever the preference of the members
16 are.

17 SENATOR SYKES: Leader Russo.

18 LEADER RUSSO: Thank you, Mr. Co-Chair.

19 Thank you, Commissioner Huffman. I do
20 appreciate the invitation on Friday from both
21 you and Speaker Cupp. I believe our staff were
22 able to meet on Sunday, and we -- there was not
23 a map to share at that point. And I appreciate
24 you honoring my request this morning to send
25 over -- I think we got it at about 12:00, so we

1 have had just a few minutes to look over the map
2 before coming in here.

3 And I guess my first, you know, couple
4 of questions for you -- and again, I know we
5 will have more questions tomorrow because we've
6 had a very limited amount of time so far to look
7 at the details of this. But when I look at
8 Hamilton county, currently the Hamilton county
9 district that you've drawn here, which looks
10 like it's got a dem index -- well, it's -- I
11 would call it a maybe a warren county-Cincinnati
12 district of 51 percent.

13 Is there a reason that this -- a
14 congressional district for Hamilton county was
15 not drawn to be included entirely within
16 Hamilton county? Is there a reason to split
17 Hamilton county?

18 I mean, we have kept at least the city
19 of Cleveland all within Cuyahoga county.
20 We've -- in a Cuyahoga county district. We've
21 kept Columbus entirely within a Franklin county
22 district.

23 Is there a reason that we're not
24 keeping Cincinnati within a Hamilton county
25 district and moving it up into warren county?

1 PRESIDENT HUFFMAN: Well, the
2 first -- Mr. Chairman, Co-Chair Sykes, I can
3 proceed.

4 SENATOR SYKES: Yes.

5 PRESIDENT HUFFMAN: Thank you.

6 First thing that we tried to do
7 pursuant to the constitution, which is
8 Section 3(B)(2), is remedy any legal defects in
9 the previous plan identified by the Court which
10 shall include no other changes. Everyone can
11 read the rest of the language there if they want
12 to that's relevant.

13 And the Court did identify Cuyahoga
14 county and Hamilton county as two problematic
15 areas, I guess I'll put it. I don't think they
16 used that word, but those are two things that
17 they did. So part of this is trying to draw a
18 map that, first of all, comports with what the
19 Supreme Court directed. We think that it does
20 that.

21 Now, after that, there are still policy
22 preferences and choices that commission members
23 make. We, of course, are bound by the
24 constitution and the law in this case as the
25 Supreme Court identifies it, but I don't think

1 that simply means that the commission members
2 individually and then collectively, as a body,
3 don't have any separate preferences.

4 So it may be your preference that it's
5 all inside Hamilton county. We think this is a
6 better version of the map.

7 LEADER RUSSO: Follow-up.

8 SENATOR SYKES: Yes.

9 LEADER RUSSO: So looking back at the
10 decision specifically about Hamilton county, I
11 believe the concern of the enacted plan, I think
12 it was Justice Donnelly concluded carves out the
13 Hamilton county's northern black population from
14 its surrounding neighborhoods and combines it
15 with mostly a rural district that ends 85 miles
16 to the north, extracts Cincinnati from its
17 immediate inner ring suburbs, and combines the
18 city proper with Warren county.

19 Do you think that this map addresses
20 the concern about carving out the northern black
21 suburban populations in Hamilton county from the
22 surrounding neighborhoods in Hamilton county by
23 drawing it up with Warren county? Would it be
24 more compact, for example, to draw this district
25 entirely within Hamilton county?

1 PRESIDENT HUFFMAN: Through the chair,
2 I'll try to answer each of those.

3 As I've indicated throughout this
4 process, we did not use racial data when drawing
5 these maps. And so, you know, obviously, that
6 was not an intent or motive of any kind.

7 And, you know, again, I think, you
8 know, each of us can have policy preferences.
9 Perhaps somebody from Hamilton county is in a
10 better position to say what goes with what. As
11 you know, in the multiple public hearings we had
12 on the general assembly map and this map,
13 keeping -- some people talked about splitting up
14 various communities, but, you know, at some
15 point you have to draw a line someplace, and I
16 think this is appropriate, but certainly didn't
17 have anything to do with racial data since we
18 didn't have -- we didn't use that.

19 LEADER RUSSO: Thank you.

20 SENATOR SYKES: Yes.

21 LEADER RUSSO: Mr. Co-Chair, I have a
22 couple of other questions.

23 Thank you, Commissioner Huffman. You
24 know, I would say just about the Hamilton county
25 district, if we're making a list of

1 recommendations, at least from me as a
2 commissioner, it would be to consider drawing a
3 district that is entirely within Hamilton
4 county, and I think that that is achievable.

5 My second question is in northwest Ohio
6 specifically. Is there -- we seem to have two,
7 you know, Districts 9 and 5 that are quite
8 extensive, and I'm trying to understand why
9 Lucas county, for example, in District 9, to
10 make it more compact would not be drawn over to
11 Lorain county to create one district which would
12 certainly be more compact than I think what we
13 currently see for 9.

14 I know -- I don't remember if it's you
15 or Auditor Faber in the past has brought up
16 concerns about the Snake on the Lake districts.
17 You know, this doesn't seem really to solve at
18 least the appearance of that. I believe it's
19 less compact than it should be or could be.

20 PRESIDENT HUFFMAN: Through the chair,
21 I guess I'll respond to a variety of things
22 there. And if I could -- just so I know that I
23 covered this, Mr. Chair, the map is uploaded
24 under the name Frank Strigari and is called
25 March 1, 2022, for those in the public who may

1 be looking for that.

2 So back to the comments regarding
3 Congressional District 9.

4 You know, one of the things that we
5 tried to do, and I think we did a pretty good
6 job of accomplishing this, is to try to keep
7 areas together where there are some central
8 cities. Now, some may say, well, you know,
9 warren county and parts of Hamilton county,
10 certainly, if you look at population growth --
11 and these are just -- these are just
12 observations. A lot of folks who live in Butler
13 and warren and Clermont county at some point
14 lived in Hamilton county. That's not
15 necessarily true for everyone, but when you look
16 at Toledo, folks from Toledo look at Toledo as
17 the central core city for what we call the
18 lakefront in northwest Ohio.

19 Now, folks in Lima don't consider
20 themselves in northwest Ohio. We're in west
21 central Ohio, and -- but everybody has their own
22 versions of what regions there are.

23 And I'm not sure who first termed the
24 District 9 as the Snake on the Lake. That was
25 a -- maybe Jim Provence did, I would guess.

1 It's clever enough that he probably did it, but
2 the -- that, of course, district was created
3 because there was a deal the Democrats wanted to
4 make in 2011 to make sure that Dennis Kucinich
5 couldn't run and beat Marcy Kaptur, so we
6 consented to that, and that's how we ended up
7 getting Democrat votes for the map in 2011.

8 This map doesn't do that, although all
9 of these districts, with the exception of
10 Defiance county, are either on the lake or on
11 the Michigan border. So if you're traveling in
12 those parts, if you're traveling on the
13 interstate or traveling on Route 20, I think it
14 is, that goes through that it, those are all
15 convenient places to go to and from. Lorain is
16 a little bit further away, obviously.

17 So, you know, again, choices wherever
18 you start drawing the line, someone can say,
19 well, it would be better to include this county
20 here. As you know, this is a little bit like,
21 you know, a toy where if you push down here,
22 another part pops up. But for the folks who
23 would represent District 9, it's a pretty
24 consistent part of the state.

25 LEADER RUSSO: Thank you, Mr. Co-Chair.

1 Thank you, Commissioner Huffman, for
2 answering that question. You know, again, the
3 decision to not include Lucas county with going
4 towards the east with Lorain county not only
5 makes it more compact but, frankly, you know,
6 this drawing, this decision seems to unduly
7 favor Republicans and disfavor Democrats because
8 it, frankly, drives the DPI down.

9 My second -- my third question
10 is -- and again, you know, this would be another
11 recommendation that I would add, that you
12 consider redrawing this -- these two districts
13 so that they are more compact in these areas.

14 My third question here regards Franklin
15 county and District 15 in Franklin county. And
16 at this point, we've got Franklin county, of
17 course, paired -- it goes almost all the way
18 over to the western side of the state. Just
19 looking at this map, I'm not entirely sure what
20 counties those are.

21 But is there a reason that the decision
22 was made not to make this district more compact,
23 for example, by pairing it with Union county or
24 Delaware county or some combination of both?

25 PRESIDENT HUFFMAN: Yeah. And through

1 the chair, Senator Sykes.

2 Just real quickly on District 9, I
3 think that district remains unchanged from the
4 previous map, and the Court did not comment on
5 that map or on that district. And again, the
6 constitutional charge is to try to make changes
7 or remedy the defects that a court identifies in
8 their opinion.

9 So back to your regarding 15, however.
10 So one of the phenomenon is as you try to draw
11 compact districts in districts that don't carve
12 up counties and as most of these districts
13 don't, at some point, really, as a necessity,
14 you end up with what I would call a -- maybe a
15 Frankenstein district or a district that is the
16 parts that are left over, and we've largely
17 avoided that in this map.

18 As you can see on the new District 13,
19 all of Summit county and a portion of Stark
20 county we've eliminated the -- where
21 previous -- I think the current map maybe has
22 four splits in Summit county. We've taken that
23 down to one -- or four districts, we've taken it
24 down to two. So Summit county had two or three
25 divisions in it. It's all whole. Stark county

1 with only one.

2 And as you look around, you can see
3 this is just a much different looking map than
4 there was before, but as you try to do that, you
5 know, you have to make choices in particular
6 places. So, for example, in the 10th district,
7 which includes Montgomery and Greene county, and
8 the request from ten years ago from Republicans
9 and Democrats and independents alike is that
10 Wright-Patterson Air Force Base should be in the
11 same district because part of it is in Greene
12 county and part of it is in Montgomery county.
13 If those two are combined, there have to be --
14 with our equal population requirement, there has
15 to be folks who come from somewhere.

16 So those trying to keep each of these
17 districts and not divide counties, at some point
18 I think you have to have a district where there
19 are -- that certainly is less compact than other
20 districts, and that's what you have with 15.

21 But again, going back to the Court's
22 decision and the constitution, what we've done
23 in this map is remedy those things that the
24 Court pointed out.

25 LEADER RUSSO: Through the co-chair.

1 Thank you, Commissioner Huffman. You
2 know, I would say, again, you know, 15 looks
3 pretty much like a Frankenstein district to me
4 when you can simply go north into Union and
5 Delaware county. It certainly would look
6 prettier and would be more compact, and there is
7 an argument particularly for that northwestern
8 corner of Franklin county which shares in fact
9 even a school district with some of Union county
10 and Delaware county. And again, you know, the
11 decision I think not to do that to me represents
12 a potential example where the Republicans were
13 unduly favored and the Democrats unduly
14 disfavored.

15 My fourth question is about Cuyahoga
16 county. You have a second district that is
17 drawn in Cuyahoga county. I do appreciate that
18 at least the Cleveland district was included
19 entirely in Cuyahoga county, but that second
20 district has the western and southern suburbs of
21 Cuyahoga county going all the way into Amish
22 country. That seems like very dissimilar
23 communities there.

24 Is there a reason -- you know, to me,
25 there were a couple of choices that could have

1 been made. You could have gone to Lorain,
2 Geauga county. You could have gone to Lake and
3 Ashtabula county. That certainly would have
4 perhaps made the district more compact and kept
5 areas that were a little bit more similar
6 together.

7 Can you explain why the decision was
8 made to go down into Wayne and Holmes county and
9 include that with the suburbs of Cuyahoga
10 county.

11 PRESIDENT HUFFMAN: Through the chair.

12 SENATOR SYKES: Yes.

13 PRESIDENT HUFFMAN: Senator Sykes.
14 Thanks.

15 So just, I guess, for the public's
16 edification and, frankly, maybe for some of the
17 commission members, because this is actually a
18 new phenomenon to me. There is an animal called
19 the Polsby-Popper scoring having to do with
20 compactness. Is that right? Did I get that
21 right, guys?

22 And this is -- this is a scoring method
23 that they use to look at maps and decide how
24 compact they are. It doesn't talk about other
25 constitutional principles, some of the other

1 things, but just compactness.

2 So this proposal taken as a whole --
3 and certainly we can look at one district and
4 et cetera, but this proposal taken as a whole is
5 either as compact or more compact than the
6 Senate Democrat proposals. And again, taking
7 the proposal altogether. So I would invite
8 commission members to look at that scoring and
9 see that. So it doesn't mean we can't be
10 critical of individual districts or we shouldn't
11 ask opinions, but if this is a compactness
12 argument, then this is actually a better
13 proposal than what Senate Democrats have put
14 together.

15 So on to the questions regarding
16 Cuyahoga county.

17 There's really -- and I think most
18 people know this, but really a pretty massive
19 concentration of population in northeast Ohio.
20 In first what I would call the kind of seven
21 districts and then from Cuyahoga to Summit,
22 Geauga, Portage, Trumbull, Ashtabula, and Lake
23 county, and then kind of an outer ring that
24 would include Medina and Wayne and Stark and on
25 into Mahoning county. And I might have left one

1 out there. So the first thing you have to
2 consider -- and again, you need to draw
3 these -- and consider these with all of the
4 other population in mind. You can say, well, do
5 this instead of that. Again, how does that
6 affect everything.

7 So the 14th district which is bounded,
8 of course, on the east by Pennsylvania, in the
9 north by Lake Erie, there are only so many
10 places you can go. Well, we've been able to
11 draw this district, as you can see, with simply
12 five counties. And I think there's an incursion
13 into one of those counties. And again, that's
14 strictly for the population. So I don't think
15 there can be much of an argument about the
16 compactness of that.

17 Next is the 13th district which is
18 again all of Summit county, what the Court
19 specifically provided, and part of Stark county,
20 and that is a Democratic-drawn district. And
21 that district, of course, is also as compact as
22 it can be, one full county and a part of another
23 county. We hear a lot the phrase the
24 Canton-Akron corridor. If you're from Akron, I
25 guess you say the Akron-Canton corridor. But

1 those in fact are often twin cities, so those
2 districts are combined. And then, you know, the
3 parts of inner city Cleveland.

4 Now, perhaps the 7th district is a
5 little bit like 15 where it's made up of parts,
6 but you have two full counties which are Wayne
7 and Medina, I believe, and then the rest of
8 Cuyahoga county. So we've done as the Court
9 instructed us. Let's only have two districts
10 inside Cuyahoga county. Let's try to keep
11 counties whole. That's been part of the charge
12 in this thing.

13 And, you know, these are the things
14 that not only the Court has dictated in the
15 constitution, but these are things that have
16 been part of this public discussion for years
17 and years.

18 So, you know, we can say the 7th
19 district is not compact. Well, you know, it's
20 one continuous line. I think some of these are
21 appearance things, some of these are, you know,
22 how to govern after the district is created and
23 after the election, but I certainly think 7 is a
24 compact district as is 13 and 11 and 14.

25 LEADER RUSSO: Thank you, Mr. Co-Chair.

1 Thank you, Commissioner Huffman. You
2 know, to clarify, again, this would be another
3 area that I would recommend changes to the draft
4 map that we see before us because, again, my
5 concern here really goes back to the question
6 of -- again, what the constitution makes very
7 clear is that a congressional plan shall not
8 unduly favor or disfavor a political party, and
9 my concern about some of the decisions that are
10 made that I've asked about in these districts is
11 that it appears that decisions were made and
12 intentionally not made, again, to favor
13 Republicans and unduly favor Democrats.

14 But I look forward to more discussions,
15 and I hope that you will take some of these
16 areas of recommended changes into consideration
17 before we come back tomorrow, and again make
18 myself and my staff available to have those
19 discussions.

20 And that's all that I have right now,
21 Mr. Co-Chair.

22 SENATOR SYKES: I'd like to also thank
23 Commissioner Huffman for extending his staff,
24 that they did meet over the weekend and had an
25 opportunity to have some dialogue. You know,

1 unfortunately, it was -- it was just a one-way
2 communication for the most part. We were
3 sharing our ideas about what we thought, our
4 suggestions and recommendations. There weren't
5 any necessarily forthcoming suggestions from the
6 majority as it relates to the map.

7 So the first time we had any indication
8 of what the map -- your proposal looks like is
9 just an hour or so ago. And I'm just wondering
10 in this phase of cooperation, or lack of
11 cooperation, and trying to make sure we
12 collaborate, particularly as it relates to this
13 commission, this commission about -- in guidance
14 and conformity with the constitution was put in
15 place to really try to promote a bipartisan
16 process particularly as it relates to
17 congressional districts.

18 In fact, going through the second step
19 is that you in fact have a bipartisan plan, have
20 an opportunity to adopt a bipartisan plan
21 through the commission. And I'm just concerned
22 about you being open to some of the
23 recommendations, some of the suggestions that
24 Leader Russo has indicated. We have others. We
25 haven't had a whole lot of time to look at this,

1 but I'm hopeful that some consideration would be
2 given to suggestions and recommendations to try
3 to move this in a more collaborative way and
4 to -- in a more bipartisan way for a ten-year
5 map, ten-year plan.

6 PRESIDENT HUFFMAN: Mr. Chairman, can I
7 respond.

8 SENATOR SYKES: Yes.

9 PRESIDENT HUFFMAN: First of all, I
10 differ with you in your characterization of the
11 meetings over the weekend. As you know, I wrote
12 a letter to you and to all the commissioners
13 inviting them to meet personally with
14 Mr. DiRossi. Mr. Springhetti works for the
15 Speaker, and I think he did the same thing. And
16 you were invited personally to come. You sent
17 staff, that's fine with you, but I guess I'm
18 going to disagree with you that that was all one
19 way. Mr. DiRossi came to you, asked what your
20 ideas were, told them what they were thinking.
21 If you want to characterize it as a one-way
22 conversation, I think that's unfair, but
23 everybody has their own ideas.

24 The second thing I would say is it's
25 one thing to say we have recommendations. If

1 you have a motion to change this map when this
2 is formally moved, if you have specific ideas,
3 let's hear them. We kind of got to this with
4 the GA map where there were criticisms but no
5 changes recommended.

6 And, you know, we -- so I -- throughout
7 this process there's been sort of this
8 suggestion that we were unwilling to work with
9 you. I think that's unfair. When I met with
10 you last April and the other caucus leaders, I
11 suggested that we get another 30 days in
12 September because we would be on very short time
13 to work out. The result of that wasn't someone
14 coming back to me and saying, no, we disagree,
15 how about 60 days, how about 15. It was a press
16 conference where I was told what a rotten idea
17 that was. So that's not my idea of working
18 together.

19 Now, I think we have the same issue
20 here and throughout this process is there have
21 to be alternative ideas, specific alternative
22 ideas coming back and not merely criticisms of
23 what's being done.

24 And finally, I would say I'm not the
25 only commissioner on this. I'm one of seven. I

1 don't have the ability to force a vote or get
2 three other people to agree to this. I have
3 ideas that I've brought forth that not only
4 are -- comport with the constitution and what
5 the Court said but are based on the input of all
6 of the commissioners, or at least the
7 commissioners who came and met or sent staff or
8 otherwise sent ideas. I think it was all of
9 them. It may not be that we did what you wanted
10 to do, but as we know, that's probably not
11 possible because not only do you and I disagree
12 about all of these things, but Speaker Cupp and
13 I disagree and Auditor Farber and I disagree and
14 on and on and on, and that's the difficulty of
15 saying, well, somehow four people are going to
16 agree on something anyway.

17 So if there are changes to this map
18 that you have, Leader Russo have, Speaker Cupp
19 or anybody else, love to hear them. This is a
20 proposal I'm bringing forward. I think it
21 addresses what the Court wanted to do. And I
22 stand ready to hear those at this moment, later
23 tonight, tomorrow morning, whenever it is the
24 commission would meet.

25 SENATOR SYKES: And thank you for your

1 comments. We will have particular and specific
2 suggestions or recommendations or motions as it
3 relates. I've talked previously with the
4 co-chairs seeing if you're -- the majority was
5 open to suggestions, recommendations or
6 amendments. In the meetings that were held,
7 again, I say they were one way in that we did
8 not receive any detailed information about what
9 ideas that you were having, and we did not
10 receive those until we got access to this map
11 just an hour or so ago.

12 So we will have more detailed
13 recommendations and motions, and we're hopeful
14 that they will be considered.

15 LEADER RUSSO: Mr. Co-Chair.

16 SENATOR SYKES: Yes.

17 LEADER RUSSO: I do have a question in
18 regards to that. You know, if the members of
19 this commission would consider any of our
20 recommended changes, what is the timeline in
21 which they would like to receive them to fairly
22 consider them other than making motions tomorrow
23 before the meeting, because I think we all know
24 that they will be denied at that point.

25 Are there -- is there a time that other

1 commissioners would like to have those changes?
2 Again, we got the map at 12:00, about 12:00, a
3 little bit after, but, you know, certainly we
4 can put forward those changes so that you all
5 have time to fairly consider them.

6 SPEAKER CUPP: Mr. Chairman, I'll just
7 speak for myself. I'm available this afternoon
8 and early evening to sit down and see what those
9 changes are.

10 One of the -- one of the constraints,
11 of course, is the time it would take to, you
12 know, move things around because it's very
13 difficult to move one thing without having to
14 move a whole bunch of things because they're so
15 interrelated. So I certainly make myself
16 available to listen to that and then go back and
17 see whether these are feasible or not. I'm open
18 to that.

19 LEADER RUSSO: Well, thank you,
20 Mr. Co-Chair. I appreciate that, and we will
21 certainly work on these as quickly as possible.

22 You know, when we met -- our staff met
23 on Sunday afternoon at 1:00. It was one of the
24 reasons that we repeatedly asked for a draft of
25 the map, which I understand some other members

1 of this commission actually saw on Sunday
2 evening, but yet we were not able to, and we
3 certainly would have been able to give some of
4 this feedback at that point as well, but we can
5 work as quickly as possible and get those to you
6 as quickly as possible.

7 SENATOR SYKES: We're just hopeful that
8 we take the adequate time to be able to review
9 the proposals that we have available.

10 PRESIDENT HUFFMAN: Mr. Co-Chair.

11 SENATOR SYKES: Yes.

12 PRESIDENT HUFFMAN: I'd like to clarify
13 a comment that Leader Russo made.

14 There was no map for other members of
15 the commission to look at on Sunday night. That
16 is not true. Because this is the map that I am
17 proposing. This map did not exist until
18 sometime Monday afternoon or Monday night. So
19 there was -- certainly there were concepts that
20 were presented to members of the commission,
21 there were concepts that were presented by
22 Mr. DiRossi to your staff. This map did not
23 exist on Sunday, so that's not true.

24 And, you know, one of the problems with
25 this whole thing is we all want to talk about

1 who got to see what, when and how instead of
2 making specific proposals on how to change this.
3 So that's what this is. If you want to make a
4 motion and change something on the map,
5 certainly the commission will consider it.
6 That's what we're here to do, but there has to
7 be a proposal for the commission to consider.

8 SENATOR SYKES: One thing to just
9 clarify, we have had a proposal on the table.
10 Our map has been on the table. That's been our
11 suggestion or recommendation all along, and we
12 did make additional recommendations and
13 suggestions as we move around the map to explain
14 different aspects of it.

15 PRESIDENT HUFFMAN: Right.

16 SENATOR SYKES: But we did not get that
17 same type of input when we met -- when our staff
18 met, and that's the issue.

19 LEADER RUSSO: Mr. --

20 SENATOR SYKES: Yes.

21 LEADER RUSSO: Mr. Co-Chair. And
22 again, you know, I believe I said a draft map,
23 not the map that sits before us. And I do want
24 to clarify that our staff did not get any
25 concepts presented to them during that meeting.

1 But the other question I have for this
2 commission is, you know, there seems to maybe
3 not be agreement in the constitutional
4 requirement that in order for a map to come out
5 of this commission, it does have to have
6 Democratic votes with it. So we are very
7 motivated to get some -- to get to some
8 agreement about the map.

9 But my understanding from my
10 conversations with Commissioner Huffman is that
11 he does not agree with that assessment; that
12 Article XIX does explicitly layout that at this
13 stage in the process, when it comes back to the
14 commission, that it requires minority votes for
15 us to even have a map come out of this
16 commission.

17 SPEAKER CUPP: Mr. Chairman.

18 SENATOR SYKES: Yes.

19 SPEAKER CUPP: I would like to address
20 that issue because I know this discussion has
21 been at least bouncing around for a couple of
22 weeks as to what kind of vote is required and
23 whether this commission can do a four-year map
24 or must only do a ten-year map and must only be
25 approved with members of the minority party.

1 So in order to kind of get some clarity
2 to that, I asked the attorney general if he
3 would issue an opinion on it. That is something
4 the attorney general does when requested by the
5 general assembly. And I'll just pass out the
6 full opinion, but just read the syllabus on it
7 which I think is sort of -- there's -- not sort
8 of -- is the conclusion.

9 That the Commission acting under Ohio
10 Constitutional Article XI, Section 3(B)(2) may
11 enact a congressional map by a simple majority
12 vote.

13 And the second paragraph on the
14 syllabus is a map adopted to Ohio Constitution
15 Article XI, Section 3(B)(2) is valid for the
16 time period that the previous map was valid for
17 before becoming unconstitutional. This means
18 that for the current redistricting cycle an
19 adopted map would be valid for four years as the
20 map that was found unconstitutional was valid
21 for only four years.

22 And then there are citations and there
23 is rationale. So I'm happy to pass that out,
24 but that is the official from the state attorney
25 general.

1 SENATOR SYKES: Well, I've got a
2 question. Just a point of order, really, and
3 that is that the general assembly can ask the
4 attorney general, not the speaker of the House
5 or a co-chair. Maybe the co-chairs could have
6 asked the attorney general, but not just one
7 co-chair. So I'm asking what authority did you
8 have to -- for the attorney general to give you
9 this opinion.

10 SPEAKER CUPP: I asked the attorney
11 general what his opinion was because it was
12 necessary to resolve the issue. And in
13 response, this is the opinion the attorney
14 general issued.

15 So, I mean, you're all free to
16 disregard it, but I think it is certainly
17 persuasive in deciding, you know, what the
18 constitution requires or not.

19 SENATOR SYKES: Yeah. I think it's
20 improper to reach out unilaterally to the
21 attorney general without it being a request from
22 the general assembly or the co-chairs of this
23 commission, so I don't think it's proper.

24 LEADER RUSSO: Mr. Co-Chair, just in
25 response to that. You know, to be clear, the

1 constitution and Article XI says unless
2 otherwise specified in this article or in
3 Article XIX of the Constitution. well,
4 Article XIX does in fact otherwise specify.

5 Article XIX provides in Section 1(B)
6 that the commission shall adopt a ten-year
7 congressional map by the affirmative votes of
8 four members of the commission, including at
9 least two members of the commission who
10 represent each of the two largest political
11 parties represented in the general assembly.

12 And, you know, certainly, there can be
13 some discussion about the appropriateness of
14 asking the attorney general to issue an opinion
15 on this, but frankly, the attorney general both
16 solicited and not has issued many opinions
17 throughout the course of these commission --
18 this commission's meetings that the Court has
19 firmly disagreed with.

20 So I think that if we're going to go
21 down this path and use this opinion as a reason
22 not to get bipartisan support of a map, then we
23 will certainly find ourselves back in the same
24 position that we have been in both with the
25 state maps and with this map previously in that

1 this will be determined by the Court and we will
2 be no further along with the citizens of Ohio
3 knowing exactly what these districts are so that
4 we can conduct an election.

5 SPEAKER CUPP: Mr. Co-Chair, may I
6 respond to that.

7 SENATOR SYKES: Yes.

8 SPEAKER CUPP: Well, first of all, it
9 was my understanding before, and it's just been
10 reconfirmed, that there's a long history of the
11 speaker of the House being able to ask the
12 attorney general for an opinion on some
13 constitutional issue that is coming before the
14 general assembly or, in this case, you know, as
15 a member of the redistricting commission, and so
16 this is not unusual.

17 The second is I don't think this should
18 be taken as an indication that there is not a
19 desire for a ten-year bipartisan map. I think
20 it should be taken as an indication that if we
21 aren't able to do that within the timeframe that
22 we have facing us that there is not a
23 constitutional requirement for it. That doesn't
24 mean there isn't necessarily a desire for it or
25 an ability to do it. So that would be what I

1 would want to -- an impression I would want to
2 leave in regard to this matter.

3 PRESIDENT HUFFMAN: Mr. Co-Chair.

4 SENATOR SYKES: Yes.

5 PRESIDENT HUFFMAN: Could I also
6 comment on this issue.

7 So part of -- I think we can read
8 different parts of the constitution. The
9 redistricting commission was created in
10 Article XI. Article XI clearly says unless
11 otherwise specified, all actions of the
12 commission will be taken by a majority vote, and
13 that's the provision that guides here. And but
14 for -- you know, we can read that, obviously
15 look at the attorney general's decision, but for
16 those who would like a little more global
17 understanding of this.

18 So, you know, obviously, there's a
19 census every ten years, and what this says is
20 when that census is ready, it's on the blocks,
21 there's a lot of discussion, that if in the year
22 ending in 1, the general assembly, by the end of
23 September, passes a map that has sort of these
24 super majorities in both caucuses, we have a
25 ten-year map. That didn't happen in this case.

1 And then the redistricting commission has an
2 opportunity to pass a -- to work on this during
3 the month of October.

4 when -- but the redistricting
5 commission in that can only pass a ten-year map.
6 And what that, of course, means is that that
7 must include minority party votes in order to do
8 that. well, there actually wasn't a vote and
9 unlikely that there -- there wasn't a map
10 presented in October. And this then went back
11 to the general assembly.

12 In the month of November, under this
13 scheme, under this constitutional scheme that is
14 set up, there's two things that can happen. The
15 general assembly can pass a map also requiring
16 certain minority party votes. It's lesser than
17 it is in September, but under a lesser
18 requirement, one third of the minority party in
19 order to get a ten-year map. So you can still
20 get a ten-year map in November of the year
21 ending in 1, in this case 2021, if only one
22 third of the minority party will agree in both
23 the House and the Senate.

24 well, we didn't get one third. In
25 fact, none of the minority party voted for this.

1 So we went ahead and passed a map with no
2 Democratic support at the end of November, close
3 to the -- maybe mid to late November. So there
4 we are, we've passed a map. It's November of
5 2021. We've go to a map. We're ready to run an
6 election, and we had no Democratic votes for
7 that because that's what the constitution
8 requires.

9 The map is challenged in court. The
10 Supreme Court comes back and says we see these
11 problems, especially, specifically, in Cuyahoga
12 and Hamilton and Summit county, and those are
13 specifics things that we think need to be
14 remedied.

15 So we look at Section 3 of Article XIX
16 that tells us how to do this, and there's two
17 things that can happen. And if you look at
18 this -- if you want to look at them as stages,
19 Stage 1, 2, and 3 at the beginning. If it's
20 challenged and sent back, Stages 4 and 5 or
21 silos 4 and 5, whatever.

22 So in Silo 4, the general assembly then
23 has 30 days to pass a map. There is no
24 requirement that the general assembly include
25 Democratic or minority party votes. In fact, we

1 can pass a new map as long as it does the things
2 that the Supreme Court told us to do with no
3 Democratic or minority party votes.

4 Now, in fact, that might have happened,
5 but because of the time crunch we needed to do
6 that with an emergency -- or 66 votes in the
7 House and 22 votes in the Senate. In all
8 probability, achievable in the Senate, but, as I
9 understood it, not achievable in the House
10 because there would not be minority -- enough
11 minority party votes to get 66 votes in the
12 House. And that was only to suspend it so we
13 could do certain things and make it available
14 for the May 3rd primary.

15 So we then go on to -- the map had to
16 be available by May 3rd. By the time it got
17 there wouldn't be effective by May 3rd and
18 therefore we had to have 66 votes and didn't do
19 it. So then we move on to the redistricting
20 commission, which is where we are now. This
21 comes back on February 14th. We have until
22 March 14th to do something.

23 The attorney general, through the
24 opinion requested by the speaker, is confirming
25 what, of course, the constitutional scheme is.

1 We are now in Stage 5. We're at the end of this
2 which necessarily -- after you've gotten to the
3 end of November, there's been a challenge, the
4 Court has sent it back, the general assembly has
5 30 days. This redistricting commission could
6 not even act until that 30 days was up after the
7 general assembly.

8 So in every situation when this
9 redistricting commission, when we get to
10 Stage 5, it's really close to the primary, and
11 if the answer is now -- even though we didn't
12 need any minority party votes in Stage 4 and we
13 didn't need any in Stage 3 in order to pass a
14 map, now we need minority votes in Stage 5 as we
15 get close to the election, it not only doesn't
16 comport with the plain language of the
17 constitution, it doesn't make sense in the whole
18 scheme of how this works.

19 And again, the point of all of this is
20 at the very beginning there are a set of
21 incentives for the minority party and the
22 majority party to get together in September and
23 see if they can come up with a deal. And that's
24 why I thought it was so important last April
25 that we had additional time to work this out,

1 and that was rejected. No one apparently
2 thought that was a good idea other than
3 Speaker Cupp and I, but we weren't -- that was
4 rejected by the minority party. And that's the
5 time when we can get together, make a deal,
6 there can be concessions made on both sides to
7 get a ten-year map.

8 Now, can that still happen? Yes, but
9 there has to be something specific for there to
10 be a yea and a nay on rather than simply we'd
11 like to hear -- we'd like for you to hear our
12 proposals. We have to have something to
13 specifically act on. It would have been good to
14 do this in September or October or November, but
15 those weren't forthcoming.

16 So constitutional language is clear.
17 The attorney general has opined. It makes sense
18 in terms of the scheme, and that's why I wanted
19 to give that history.

20 Thank you, Mr. Co-Chair.

21 SENATOR SYKES: Thank you,
22 Mr. President, for the history lesson, although
23 just reliving it is still a little painful.

24 PRESIDENT HUFFMAN: I'm with you,
25 brother.

1 SENATOR SYKES: Are there any other
2 items?

3 LEADER RUSSO: Mr. Co-Chair, I would
4 like to respond to that. And, you know, I will
5 respectfully disagree.

6 I do agree that the constitutional
7 language is very plain, and I think any argument
8 at this stage in the process that, you know,
9 there is no check and that the people who voted
10 for these changes didn't intend for there to be
11 a check on gerrymandering is just simply a
12 convenient interpretation of the constitution.

13 I think the constitution is very clear
14 that at this point, after the Court has
15 invalidated maps and you've exhausted the GA,
16 which, by the way, there was no plan presented
17 for legislators to even vote on, nor did we ever
18 see a map to say if we would have the votes or
19 not have the votes, or the commission, you know,
20 there are no more get-out-of-jail-free cards.
21 It is time for us to come to the table and come
22 up with some agreement that we can all agree to.

23 And it is possible. I've laid out a
24 few suggestions. You certainly don't have to
25 take all of those suggestions. And we will give

1 more specifics about that, but to at least have
2 the conversation and have some good faith
3 negotiations at this stage in the process is, I
4 think, both required by the constitution for
5 this commission to even have valid maps come out
6 of it, but it's also what the people of Ohio are
7 asking us to do.

8 And, you know, certainly, we can all
9 die on this hill if we want to, but again, that
10 then leaves it up to the Court yet again to
11 decide whether or not these were constitutional
12 maps and whether or not they were even valid
13 maps that came out of this commission without
14 Democratic votes.

15 So that's all that I have to say.
16 Thank you.

17 PRESIDENT HUFFMAN: Mr. Co-Chair.

18 SENATOR SYKES: Yes.

19 PRESIDENT HUFFMAN: One of the things
20 that is seemingly lost over this is when
21 Leader Russo says there's not a check, there is
22 a check. This map, unless it gets minority
23 party support, is only for four years, and that
24 built-in check is a concession automatically to
25 the minority party. Unless the majority party

1 does what they want or concedes or there can be
2 some sort of agreement, however we want to
3 describe it, the majority party doesn't get to
4 do what the majority party gets to do everywhere
5 else, and that is draw a map for the next ten
6 years. And that is the check.

7 If there was a version of this which
8 isn't quite as good from the majority party
9 standpoint -- again, assuming we could get a
10 majority of the commission -- Republican
11 commissioners to vote for it, that may or may
12 not be true, but if there is some version of
13 that that is -- I'll just call it less than this
14 that the minority party would vote for, well,
15 then we could get our ten-year map, but the
16 majority is already penalized by only getting a
17 four-year map, and that's the penalty that is
18 built in. And unless we can come to some
19 consensus, the majority is going to be penalized
20 and there is going to be a check.

21 SENATOR SYKES: The only other comment
22 is that also the map should be constitutional,
23 they should comply with the constitution, and
24 the Ohio Supreme Court still has some purview as
25 to --

1 UNIDENTIFIED SPEAKER:

2 [Unintelligible.]

3 SENATOR SYKES: Yeah, absolutely, to be
4 considered.

5 At this time, seeing and hearing no
6 other comments, I don't believe, we will --

7 AUDITOR FABER: I have a question.

8 SENATOR SYKES: Yes.

9 AUDITOR FABER: Do we have tomorrow's
10 meeting schedule decided already? Did we
11 announce that?

12 SENATOR SYKES: We have tentatively
13 agreed -- we have agreed 10:00 tomorrow morning,
14 to recess until 10:00 tomorrow morning.
15 Hopefully, during that time, we will have an
16 opportunity to exchange ideas and possibly come
17 up with a collaboration.

18 AUDITOR FABER: Do we have a meeting
19 time set for Thursday?

20 SENATOR SYKES: We have not -- we do
21 not at this time.

22 Seeing and hearing no further business,
23 we will recess until tomorrow at 10:00 a.m.

24 (End of recording.)

25 --o0o--

R E P O R T E R ' S C E R T I F I C A T E

STATE OF NORTH CAROLINA

--o0o--

I, DENISE MYERS BYRD, Court Reporter,
do hereby certify that the transcription of the
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Signed this the 7th day of March 2022.

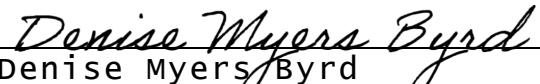

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Exhibit 3

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OHIO REDISTRICTING COMMISSION

MARCH 2, 2022

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1 SPEAKER CUPP: I would ask that the
2 staff please call the roll at this time.

3 THE CLERK: Co-Chair Speaker Cupp.

4 SPEAKER CUPP: Present.

5 THE CLERK: Co-Chair Senator Sykes.

6 SENATOR SYKES: Present.

7 THE CLERK: Governor DeWine.

8 GOVERNOR DEWINE: Here.

9 THE CLERK: Auditor Faber.

10 AUDITOR FABER: Yes.

11 THE CLERK: President Huffman.

12 PRESIDENT HUFFMAN: Here.

13 THE CLERK: Secretary LaRose.

14 SECRETARY LAROSE: Here.

15 THE CLERK: Leader Russo.

16 LEADER RUSSO: Here.

17 THE CLERK: You have a quorum.

18 SPEAKER CUPP: All members are present.

19 Is there business to come before the
20 meeting -- this meeting of the Ohio
21 Redistricting Commission?

22 The chair recognizes Co-Chair Sykes.

23 SENATOR SYKES: Thank you,
24 Mr. Co-Chair.

25 At this time I'd like to move to amend.

1 The amendment aims to replace the map that's
2 before us and to accept our map that we
3 submitted here before and to the commission.
4 It's Senate Bill 237. We have three different
5 versions of it, but this would be the most
6 recent version. It is an 8-7 map, and it does
7 not unduly favor a political party, and we would
8 ask that the commission consider this map.

9 SPEAKER CUPP: There's a motion to
10 adopt the map presented. What is the
11 designation on that map? Do we know? Or the
12 date that it was uploaded on to the website.

13 SENATOR SYKES: February 8th.

14 SPEAKER CUPP: February 8th's map. I'm
15 not sure what name it was uploaded under.

16 Is there a second to the motion?

17 LEADER RUSSO: Second.

18 SPEAKER CUPP: It's been moved and
19 seconded. Is there discussion?

20 PRESIDENT HUFFMAN: Mr. Chairman.

21 SPEAKER CUPP: Senator Huffman.

22 PRESIDENT HUFFMAN: Yeah, just to
23 clarify if there was a motion to amend and then
24 a motion to adopt. Is this a motion to amend?

25 SENATOR SYKES: Motion to adopt.

1 Motion to adopt.

2 PRESIDENT HUFFMAN: Oh, there's no
3 amendment.

4 SENATOR SYKES: The amendment -- we are
5 looking at the general assembly motion -- map
6 that was presented and was denied, invalidated
7 by the Court, and so we're offering it as an
8 amendment to that.

9 SPEAKER CUPP: Is it -- are you
10 offering an amendment to the general assembly
11 map or to the congressional map?

12 SENATOR SYKES: To the congressional
13 map that was approved by the -- adopted
14 initially by the general assembly but was in
15 fact invalidated by the Court.

16 SPEAKER CUPP: My understanding is the
17 motion is to amend the map that was previously
18 approved by the commission and returned --

19 PRESIDENT HUFFMAN: To the general
20 assembly.

21 SPEAKER CUPP: -- to the commission by
22 the -- the map that was adopted by the general
23 assembly for congressional districts and that
24 was invalidated by the Ohio Supreme Court and
25 returned to the redistricting process.

1 SENATOR SYKES: Yes.

2 SPEAKER CUPP: All right. And you have
3 amendments to that map.

4 SENATOR SYKES: Yes. We're offering
5 the map that we submitted to the commission on
6 February 8th, to amend that map.

7 SPEAKER CUPP: Are you -- I'm sorry.
8 Are you offering a whole map?

9 SENATOR SYKES: Yes, a whole map.

10 SPEAKER CUPP: Okay.

11 SENATOR SYKES: It's like a substitute.

12 SPEAKER CUPP: All right. Are we able
13 to identify what that is?

14 SENATOR SYKES: It's on the commission
15 website, February 8th.

16 SPEAKER CUPP: Okay. February 8th. Is
17 it the only one, or is it under a name as well?

18 SENATOR SYKES: It was the Dem's
19 congressional map.

20 SPEAKER CUPP: Democrat congressional
21 map. Yuko -- would this be the title?

22 SENATOR SYKES: Yes.

23 SPEAKER CUPP: Yuko/Sykes
24 Substitute Senate Bill 237 February 8th revision
25 is the map that is offered.

1 Do you want to describe the map or your
2 amendments?

3 SENATOR SYKES: It is an 8-7 map that
4 complies with the constitution. It was
5 presented prior, and you've gone over it in
6 detail in the prior meeting. And we'd just like
7 it to be considered now.

8 SPEAKER CUPP: All right. It's been
9 moved and seconded that the Yuko/Sykes
10 Senate Bill 237 February 8th revised map that
11 was uploaded be adopted by the commission.

12 Discussion? There's no discussion.
13 I'll ask the clerk to call the roll.

14 UNIDENTIFIED SPEAKER: May we see a
15 copy of it. Do we have a copy of it?

16 SPEAKER CUPP: All right. The
17 commission will be at ease for a moment while we
18 make some copies.

19 (At ease.)

20 SPEAKER CUPP: We have had a request
21 from Ryan Brune -- I'm not sure I'm pronouncing
22 your name right, but you testified yesterday and
23 you have an updated map.

24 Do you want to take a few moments to
25 tell us what that is.

1 RYAN BRUNE: Sure.

2 SPEAKER CUPP: Why don't you come up to
3 the microphone and state your name for the
4 record, please.

5 RYAN BRUNE: Thank you. My name is
6 Ryan Brune. I presented yesterday with a map.
7 I'm here to present a different map, calling it
8 compromise -- Compromise Map V2.

9 This map that I'm presenting is
10 identical to the one that the Republicans
11 proposed yesterday, with two districts being
12 changed: The 4th district and the 15th district.

13 I made some simple county swaps, which
14 citizens can see on the redistricting website.
15 The commissioners, you have these in front of
16 you, all the changes I've made.

17 I've reduced the total number of county
18 splits. I've combined municipalities that were
19 previously split. Municipalities that cross
20 county lines are allowed to be split given the
21 guidelines, but what I was able to do, I was
22 able to reconnect Dublin with its Union and
23 Franklin portions, and I was able to reconnect
24 Plain City which is in Madison and Union county.

25 I talk a little bit about the

compactness in my brief, but basically what I propose is the exact same as the Republican map. Two districts changed. It's more compact in pretty much any metric you use. It doesn't have a split district connect to a split district connect to a split district, and it has the added benefit of being a little bit more fair. Instead of having five composite Democratic districts, it now has six, and all that in one change. The map's pretty much the exact same thing presented yesterday, just a little bit better in every way.

SPEAKER CUPP: Thank you.

Any questions for the witness?

Thank you for your continued work on this. It's quite impressive that you have this kind of interest and continue to work on it. Thank you.

RYAN BRUNE: Thank you.

SPEAKER CUPP: The commission will be back at ease while we're waiting on the map copies.

(At ease.)

SPEAKER CUPP: ... entitled Yuko/Sykes SB 237, February 8th revision that is before the

1 commission.

2 Is there any discussion on the motion?

3 The chair recognizes Senator Huffman.

4 PRESIDENT HUFFMAN: Thank you,
5 Mr. Chairman.

6 So there was a map that was presented,
7 although not yet moved, which I'll be doing
8 later in this meeting, and there was a series of
9 meetings as there have been, but I met with
10 Senator Sykes and Leader Russo. As I understand
11 it, the speaker did, I believe the auditor did.
12 There may have been a meeting also with
13 secretary and variety of folks. And then last
14 night there was a series of amendments proposed
15 to that map by the -- I believe by Senator Sykes
16 and Leader Russo. So there is that version of
17 that map which is also on the website.

18 This is a completely different setup.
19 And as of today, I guess, maybe if we're trying
20 to negotiate, this is a step backwards in what
21 at least we were talking about and is a
22 completely different consideration. So it's
23 unclear to me why this is even being presented
24 at this time since it's not related at all to
25 what we were discussing at least in the meeting

1 that I was in last night.

2 So I think it's a step backwards in
3 terms of, you know, trying to put in a capsule
4 what the differences are between the parties, so
5 I would oppose the motion.

6 SPEAKER CUPP: Further discussion.

7 The motion is to adopt the plan that
8 has been presented. And the staff will call the
9 roll, please.

10 THE CLERK: Co-Chair Speaker Cupp.

11 SPEAKER CUPP: No.

12 THE CLERK: Co-Chair Senator Sykes.

13 SENATOR SYKES: Yes.

14 THE CLERK: Governor Dewine.

15 GOVERNOR DEWINE: No.

16 THE CLERK: Auditor Faber.

17 AUDITOR FABER: No.

18 THE CLERK: President Huffman.

19 PRESIDENT HUFFMAN: No.

20 THE CLERK: Secretary LaRose.

21 SECRETARY LAROSE: No.

22 THE CLERK: Leader Russo.

23 LEADER RUSSO: Yes.

24 THE CLERK: Thank you. Five to two,
25 Mr. Co-Chair.

1 SPEAKER CUPP: The vote is five to two.
2 No. The vote is two to five. The motion has
3 not carried.

4 Is there further business to come
5 before the commission?

6 Senator Huffman.

7 PRESIDENT HUFFMAN: Thank you. At this
8 time, Mr. Chairman, I move the commission adopt
9 the updated congressional district plan which
10 was uploaded to the commission's website this
11 morning that is called March 2nd, 2022, under
12 the name of Frank Strigari. And --

13 SPEAKER CUPP: Senator Huffman, is that
14 the map that is -- that we have the map
15 distributed.

16 PRESIDENT HUFFMAN: That's correct.

17 SPEAKER CUPP: Does everyone have that
18 map? All right. You may proceed.

19 PRESIDENT HUFFMAN: Do I need a second?

20 SPEAKER CUPP: Is there a second to the
21 motion?

22 I'll second the motion.

23 PRESIDENT HUFFMAN: Okay. Thank you.

24 So, Mr. Chairman, members of the
25 commission, this map is identical to the map

1 that was submitted yesterday with two slight
2 changes. One is our changes, then, in Franklin
3 county which really completes a series of
4 changes that were made in regarding Districts 3
5 and 15.

6 My office, and perhaps other offices,
7 received an inquiry from Congresswoman Beatty's
8 office. I think one of the initial maps that
9 was -- or renderings here in the last week or so
10 had Congresswoman Beatty's district office
11 outside of District 3. And it might be a
12 federal requirement, but I believe that it's
13 required that congressional district offices be
14 inside the congressional district, so they asked
15 us to make that change. And initially, I
16 believe also Congresswoman Beatty's residence
17 was outside of District 3, and so there were
18 some changes made regarding both of those also
19 resulting in Congressman Carey outside of
20 District 15.

21 So the net result of all these changes,
22 including the one that we're including today, is
23 that Congresswoman Beatty's district office is
24 in District 3, her residence is, and Congressman
25 Carey is in his District 15. When I say his and

1 hers, of course I'm referring to the fact that
2 they're both incumbents. So that solves that
3 problem. So that's one change.

4 The second change is in Hamilton
5 county, and it was pointed out to us that we
6 could eliminate some subdivision splits in
7 District 1, and so -- and if you compare -- if
8 you have both of the maps in front of you,
9 yesterday, today, not only did we repair those
10 subdivision splits, but certainly how the
11 district is divided is much cleaner.

12 So those are the two changes. Of
13 course, in moving the map as a whole, and I
14 would ask the commission to adopt the map
15 pursuant to my amendment. Thank you.

16 SPEAKER CUPP: It's been moved and
17 seconded. Do we have a description for this
18 map, a name on this?

19 PRESIDENT HUFFMAN: Yes. Excuse me.
20 This is called March 2nd, 2022, map, and it's
21 submitted under the name of Frank Strigari.

22 SPEAKER CUPP: Thank you. It's been
23 moved and seconded.

24 Is there discussion?

25 LEADER RUSSO: Mr. Co-Chair.

1 SPEAKER CUPP: The chair recognizes
2 Representative Russo.

3 LEADER RUSSO: Thank you, Mr. Co-Chair.
4 Just to clarify the difference
5 specifically in Districts 3 and 15 from the map
6 that we saw yesterday that was uploaded to the
7 website to the map we saw today. The primary
8 difference here is that this revision puts
9 Congressman Carey back into the 15th because I
10 believe the issues with Congresswoman Beatty and
11 her office were resolved in the map that we saw
12 yesterday. So the primary change here is to put
13 Congressman Carey back in his 15th district, is
14 that correct, his residence?

15 SPEAKER CUPP: You are recognized,
16 President Huffman.

17 PRESIDENT HUFFMAN: Yes. Mr. Chairman,
18 that is accurate. In doing those other changes,
19 I think we had -- that's what resulted and
20 that's what we're trying to -- in remedying some
21 things, we caused other problems, but the only
22 change today from yesterday does as Leader Russo
23 described.

24 SPEAKER CUPP: Further discussion.

25 LEADER RUSSO: Mr. Co-Chair, would it

1 be appropriate, I'd like to suggest some
2 amendments to this.

3 SPEAKER CUPP: Yes, that would be in
4 order.

5 LEADER RUSSO: Thank you.

6 I have a number of amendments here
7 because we are here because the general assembly
8 drew a map that the state court held violated
9 the state constitution. Specifically, the Court
10 was clear that the congressional district plan
11 that the general assembly passed in November is
12 invalid in its entirety because it unduly favors
13 the Republican Party and disfavors the
14 Democratic Party in violation of Article XIX,
15 Section 1(C)(3)(A).

16 The Court gave the example of Franklin
17 county where Democratic-leaning voters were
18 packed into only one district to confer partisan
19 advantage to the party drawing the map, and the
20 Court also held that the plan unduly splits
21 Hamilton, Cuyahoga, and Summit counties in
22 violation of Section 1(C)(3)(B).

23 The Court has ordered the general
24 assembly, or the commission, if needed, to adopt
25 a new congressional district plan that complies

1 in full with Article XIX of the Ohio
2 Constitution and the directives of the Court.

3 So the task now is in the commission's
4 hands because the state constitution calls for
5 the commission to act as backup to the general
6 assembly when the general assembly fails to
7 assemble the bipartisan vote required by the
8 voters in the state constitutional reform to
9 pass a replacement map.

10 So my amendment, as was discussed with
11 I believe nearly every member of this commission
12 over the last 12 hours, makes four primary
13 changes to the map that we see before -- it was
14 the map that was presented yesterday, but these
15 changes would also apply to the map that we see
16 before us today.

17 We have actually uploaded these
18 Democratic amendments to the Strigari March 1,
19 2022, map on the commission website for the
20 public to see and commissioners to see. Of
21 course, we can slightly adapt that uploaded map
22 to accommodate the two small changes that have
23 been described by Senate President Huffman this
24 morning with the map that he has offered before
25 us.

1 But here are the four amendments again
2 that have been discussed in detail with multiple
3 members of this commission. And to note, these
4 changes abided by the principle of taking the
5 map that has been presented to us and making the
6 least changes necessary to get this map to a map
7 that we feel, again, upholds the constitution by
8 not unduly favoring the Republicans and
9 disfavoring the Democrats.

10 So the first changes to amend the
11 districts in southwest Ohio, specifically
12 Districts 1 and 8, this amendment -- or
13 modification -- or this change, sorry, swaps
14 territory from one district to the other with
15 the result that District 1 would still contain
16 Cincinnati, but it would be wholly within
17 Hamilton county.

18 District 8 would now contain Warren
19 county instead of -- Warren county being
20 disconnected from Cincinnati, and the partisan
21 index would change on each district accordingly.
22 District 1 would move slightly above the toss-up
23 range, and the heavily Republican-leaning
24 District 8 would be slightly more Republican.
25 And you can see those changes in the map

1 printout that we have provided as well as the
2 table.

3 The second change is to amend districts
4 in northwest Ohio. This amendment specifically
5 would change the boundary between Districts 5
6 and 9, and this modification swaps territory
7 from one district to the other, with the result
8 that District 9 would be more compact and its
9 partisan index would move slightly above the
10 toss-up range, and we also believe that the
11 communities linked in this district would be
12 more cohesive. The partisan index would change
13 in each district accordingly. Again, you can
14 see that in the printout that was provided.

15 Now, I will note specifically about
16 this change, we had a nice, long discussion with
17 Auditor Faber last evening. He had some other
18 changes in this part of the state that we were
19 very willing to consider and discuss further if
20 we are given time to do that.

21 The third amendment is -- it would
22 change the districts in central Ohio,
23 specifically centered on District 15. This
24 amendment would change the boundaries between
25 15, 4 and 3. This modification swaps territory

1 from one district to another, with the result
2 that District 15 and 4 would be more compact,
3 and District 15 would have a partisan index that
4 would be slightly above the toss-up range. We
5 also believe that the communities linked in this
6 district are more cohesive. For example,
7 communities in the Delaware, Franklin, Union,
8 and Madison, where those counties meet in that
9 portion of the district.

10 I will also note, again, we discussed
11 multiple potential options within this change.
12 Again, if commissioners are willing to discuss
13 this further, we certainly have shown a
14 willingness to be open to further discussions
15 with that change.

16 And then the final change that we have
17 proposed amends -- or, sorry, impacts districts
18 in northeast Ohio, touching Cuyahoga county.
19 This amendment specifically would change the
20 boundaries between District 7 and 11. This
21 modification swaps territory from one district
22 to the other, with the result that District 7
23 would have a partisan index that would place it
24 in the dem-leaning toss-up range.

25 And the purpose of this and the other

1 change is to have a total map that reflects the
2 preferences of the Ohio -- of the voters of Ohio
3 and does not unduly favor the Republican Party
4 in excess of their support at the ballot box.

5 So, Mr. Speaker, again, I would like to
6 thank the members of the commission who had
7 these discussions with us. We have gone into
8 these discussions about these amendments to the
9 general assembly passed plan using your map that
10 you have put forwarded today and yesterday as
11 the basis for coming up with some sort of
12 compromise that we believe, again, results in an
13 overall map that is in line not only with the
14 Court's decision but with the constitution and
15 does not unduly favor the Republican Party and
16 unduly disfavor the Democratic Party.

17 Thank you.

18 SPEAKER CUPP: Thank you, Leader Russo.

19 Let me ask, are these being offered as
20 a single motion, or did you want to do these
21 seriatim?

22 LEADER RUSSO: At this point,
23 Mr. Speaker, these are being offered as a single
24 motion. Certainly, again, we have not heard
25 directly back from commissioners about what

1 individual changes they might be willing to
2 entertain, but if we can continue discussions,
3 we certainly can offer them as separate, but at
4 this point they are offered in whole.

5 SPEAKER CUPP: All right. And are
6 these -- the details of these, are they uploaded
7 or available? I'm just -- so if they were
8 adopted, are we going to know what they are is
9 my point, I guess.

10 LEADER RUSSO: Thank you. Mr. Speaker,
11 yes, the details of these changes, not only have
12 they been uploaded, but they were provided to
13 all of the commissioners and their staff last
14 evening, I believe at approximately 9:30, 9:45.
15 To your staff, we discussed them in detail. And
16 again, we certainly can harmonize based on the
17 two minor modifications that have been presented
18 this morning, certainly can harmonize those, but
19 they have been available not only to your staff
20 and commissioners but also to the public.

21 SPEAKER CUPP: Yes. Do we have a name
22 by which they were uploaded so we can identify
23 them.

24 LEADER RUSSO: Yes. I believe they are
25 named as the Democratic Amendments to Remedy

1 Invalidated General Assembly Plan.

2 SPEAKER CUPP: And the date of the
3 upload is March 2nd?

4 LEADER RUSSO: March 2nd, yes.

5 SPEAKER CUPP: All right. Are
6 there -- did you make a motion to move?

7 LEADER RUSSO: So I make a motion.
8 Thank you. I know it's easy to get lost in the
9 discussion here.

10 Making a motion to adopt these
11 amendments to the general -- invalidated general
12 assembly plan but adopt these changes to the
13 plan that Mr. Huffman has put forward.

14 SPEAKER CUPP: All right. It's been
15 moved. Is there a second?

16 SENATOR SYKES: Second.

17 SPEAKER CUPP: All right. It's been
18 moved and seconded.

19 Discussion. The chair recognizes
20 Senator Huffman.

21 PRESIDENT HUFFMAN: Thank you,
22 Mr. Chairman.

23 I oppose the motion, and I guess a
24 couple of comments. One -- and I appreciate
25 Leader Russo's description as these are changes

1 to essentially the map that I moved today but
2 was presented yesterday with slight changes.
3 This, of course, is a wholly different map than
4 what leader -- or Senator Sykes presented just a
5 few minutes ago, so this is -- these are two
6 different maps. I guess I want everyone --
7 commission members and public who are listening
8 to understand that. So these are two, I think
9 fair to say, completely different plans
10 presented here this morning.

11 I think it's important, again, and I
12 went on a little bit of a history lesson
13 yesterday, to understand Article XIX and its
14 effects and how it was that -- or how it came to
15 be and how -- why this unduly language does not
16 in fact imply to the commission.

17 First, you could say simply because the
18 constitution doesn't say anything about that as
19 it relates to the commission. But why is that?
20 why is that the design of this?

21 And keep in mind that we get the
22 census -- as we all know, it's at the end of
23 every ten years. Typically, we get the census
24 data on April 1st, and it takes about three
25 months to put it in the political, and then

1 there's an opportunity over a couple of months,
2 perhaps, to come up with an agreement. And you
3 know, we've talked a lot about how there were
4 problems with that this year.

5 But in the first stage of this, when
6 there's a substantial amount of minority party
7 buy-in that has to happen, so this is in
8 September of any year, and there is no unduly
9 requirement in there. If in fact the parties
10 can agree, it may be that some feel -- maybe a
11 court or others feel that it unduly favors or
12 disfavors a party, but there's no requirement
13 regarding that in that September timeframe.
14 Now, there is a requirement for substantial
15 minority party buy-in, but the language doesn't
16 appear anywhere in that stage.

17 If that doesn't happen in October, the
18 redistricting commission can adopt a map, but
19 they can only adopt a ten-year map, and it must
20 have -- and to do that you must have minority
21 party buy-in. However, there's no unduly
22 language in there either. And some might
23 recall, when we passed this map some time ago, I
24 asked some advocates, well, what if -- what if
25 there was an agreement among minority and

1 majority party members, but it wasn't a map that
2 advocates wanted, and the response was no
3 sweetheart deals. I don't know if anybody
4 remembers that response. And what that
5 anticipates is that there can be agreement on
6 these maps for a whole variety of reasons, but
7 this means, in the first stage in September,
8 that unduly doesn't apply; in the second stage,
9 unduly doesn't apply because the language isn't
10 in there. Okay.

11 So in Stage 3, November, it goes back
12 to the general assembly. And if the general
13 assembly passes a congressional map pursuant to
14 (C)(1) of the constitution -- and again, this is
15 Section 1(C)(1). If the general assembly does
16 it and has this enhanced minority vote, the
17 unduly doesn't apply. There's no requirement
18 that the general assembly do that under
19 Section (C)(2) of the constitution, but again,
20 you have an enhanced minority requirement,
21 minority party requirement, and it's not as big
22 as it is in September, it actually lowers, but
23 that -- it, again, unduly doesn't apply there
24 either.

25 Finally, if the general assembly passes

1 a map in November, which we did, without the
2 requisite minority buy-in, the unduly part does
3 apply. And the Court in their opinion said,
4 well, we think it unduly favors one party over
5 another and ruled the map invalid. well, what
6 happens?

7 And before we get to Stage 4, I would
8 point out that in the mid decennial
9 redistricting, under Section (F)(1), we have
10 that same unduly language appears again. So
11 there are parts of the constitution that have
12 the unduly language and parts that do not. So
13 you can take a look at (F)(1). We all worry
14 about that in four years, or those of you who
15 are still standing can worry about it in four
16 years.

17 So -- but what happens, then, if a
18 court says, for whatever reason, we don't like
19 the map, and it could be for a whole variety of
20 reasons. well, in the -- in Section 4, if the
21 general assembly passes a map pursuant -- or
22 this is Section 3. Excuse me. In Silo 4, the
23 general assembly can pass a map, but the unduly
24 language doesn't appear there either. well, if
25 the general assembly passes a map, they have all

1 the other requirements, but there's no unduly
2 requirement, but the general assembly doesn't do
3 that, and likely we could have passed some map,
4 but we had restrictions on time and needed --
5 and Leader Russo, I think, made a good point,
6 said, well, we didn't take a vote. well, we
7 didn't, but, you know, it's a bit of a fool's
8 errand at that point, but now we go to the
9 redistricting commission in Silo 5 which is
10 where we are right now.

11 silo 5 doesn't have any language in it
12 about unduly. And the question is, well, why
13 not? well, remember, folks, this is a plan --
14 this constitutional plan is designed to create a
15 series of incentives on both sides to make an
16 agreement. And the big incentive for the
17 majority to make an agreement is if you don't
18 do -- get enough support from the minority
19 party, your map only lasts for four years, and
20 that is not good for the majority because
21 everybody wants to be able to draw their map for
22 ten years and keep it where it is. well, they
23 can't do that. So as we're sitting here in Silo
24 5, there's no unduly requirement. And we can
25 talk about that and go back and forth and make

1 whatever arguments we want to do about that.

2 So I guess I want to point that out to
3 commission members. And again, going back to
4 where we are, typically, you're going to be at
5 the end of November with no map. The general
6 assembly may be able to -- if it's challenged
7 and the court sends it back maybe in the month
8 of December perhaps -- we didn't in this case
9 didn't get a court decision until January,
10 but -- and if it comes back, the general
11 assembly needs to come back, pass a map or not
12 or then come to the redistricting commission all
13 in a very short period of time.

14 And if in fact what is required is this
15 substantial buy-in that the minority party is
16 describing, it's going to make it very, very
17 difficult to get this map. And obviously, we're
18 on a very short period of time. What the courts
19 want, and I think what we all want, is to be
20 able to have an election.

21 And I would note that one of
22 the -- there's a couple of things that I argue
23 when I -- things, provisions that I wanted to
24 put into this back in 2018. One is rather than
25 have a general assembly bill that could be

1 referenda, we ought to do it by resolution.
2 That was shot down, so we're stuck with a longer
3 process with the bill.

4 And I also pointed out that if we
5 stretch this out to the end of November, then a
6 court hearing and then a general assembly action
7 and then commission action, it's going to be a
8 problem when we get to elections. And as I
9 noted to some of the media yesterday, you think
10 the timing on this is a problem now, wait until
11 2032 when the presidential primary is in March.
12 And if we start going down this path that all of
13 these additional requirements in other parts of
14 the constitution apply to this stage, well,
15 we're never going to make a primary the first
16 week in March. And Secretary LaRose probably
17 won't be secretary then, but maybe.

18 SECRETARY LAROSE: Thank God.

19 PRESIDENT HUFFMAN: Thank God. So
20 that -- I just want to, I guess, let -- make
21 sure that commission members are aware of that.

22 Thanks very much, Mr. Chairman. And
23 again, I oppose the motion.

24 LEADER RUSSO: Mr. Chairman.

25 SPEAKER CUPP: The chair recognizes

1 Representative Russo.

2 LEADER RUSSO: Thank you, Mr. Chair.

3 Those are certainly very interesting
4 conclusions about the reading of not only the
5 Court's decision but also the constitution.

6 So essentially what we are hearing is
7 that Commissioner Huffman is arguing that there
8 is no need to follow any of the
9 anti-gerrymandering provisions of the
10 constitution, including what the Court
11 specifically stated in their decision that the
12 plan that they overruled unduly favored the
13 Republican Party over the Democratic Party.

14 That is essentially like me robbing a
15 bank and saying that is my money. That is,
16 frankly, absurd. And if this is, I think, the
17 direction that this whole commission is going
18 to -- or at least the majority members of this
19 commission are going to buy into in this
20 process, I can guarantee that we will be back
21 here in a couple of weeks not only probably
22 redrawing state maps but also again
23 congressional maps.

24 The only reason that we are in this
25 state is not because of the constitution and the

1 provisions that were overwhelmingly passed by
2 Ohio voters, it's simply because we have
3 commissioners who do not want to follow the
4 constitution and do not want to follow the rule
5 of law and do not want to follow the Court's
6 decisions.

7 what we find ourselves in now regarding
8 the election, completely avoidable and also
9 easily remedied by moving the primary date and,
10 most importantly, bypassing a constitutional
11 map.

12 And we have an opportunity to work
13 together as a commission. This deadline that we
14 have this morning at 10:00 is completely
15 artificial. We can right now meet and discuss,
16 as long as it takes, to get this done, to come
17 to some agreement, get to a map that will pass
18 constitutional muster that will get bipartisan
19 support, will be in effect for ten years and
20 will allow us to conduct elections. And it's
21 really that simple.

22 PRESIDENT HUFFMAN: Mr. Chairman.

23 SPEAKER CUPP: Senator Huffman.

24 PRESIDENT HUFFMAN: Thank you,
25 Mr. Chairman.

1 So in regards to following -- I think
2 the phrase was none of the anti-gerrymandering
3 provisions. I think that's inaccurate.

4 Section 2, for example, has a variety
5 of things that were built into this, in fact
6 were demands of the various advocate groups.
7 And I'll just go through some of those.

8 We wanted to make sure that each
9 district included at least one whole county.
10 This is Section 2 -- Section 2(B)(8). So that
11 was included. That's something that has to be
12 followed.

13 No two congressional districts shall
14 share portions of the territory or more -- of
15 more than one county except for a county
16 population that exceeds 400,000. And that was
17 done because if you -- for those of you who
18 remember, they complained about District 4 that
19 split two or three counties getting up to a
20 certain point. We eliminated that as a -- if
21 you want to call it gerrymandering or whatever
22 you want to call it.

23 Of the 88 counties, 65 counties have to
24 remain whole, 18 counties may be split, not more
25 than once, and five counties may be split not

1 more than twice. Well, in this case, there's
2 only -- we've eliminated counties that are split
3 more than twice. So we've gone beyond the
4 line-drawing requirements that are in the
5 constitution.

6 And I'll let everyone read section 2
7 and look at all of those various things that
8 were demands by various folks to prevent all of
9 this.

10 And of course, you have a much more
11 compact map that's presented -- the map that I
12 presented here to the commission today than what
13 was presented in 2011. So I think that's
14 inaccurate.

15 And the other part -- the part of
16 this -- you know, the constitutional setup here
17 is this is a different group of people making
18 this decision than the general assembly. The
19 general assembly can pass a map and each of the
20 folks there may be affected by different things,
21 you know, namely, their own congressional people
22 and who may affect how they vote and, of course,
23 getting 50 votes and 17 votes sometimes is very
24 difficult to do, but we have folks on this
25 commission who have a different view potentially

1 because they don't represent the same kind of
2 constituencies, caucuses, all of those that the
3 legislative members on this commission do.

4 So I disagree with the comments
5 respectfully, and I appreciate, again, and would
6 ask that the motion to amend be denied.

7 SPEAKER CUPP: Is there further
8 discussion?

9 Senator Sykes. Co-Chair Sykes.

10 SENATOR SYKES: Thank you, Co-Chair.

11 Just briefly. You know, it's been
12 indicated that the -- you know, it's a major
13 incentive to get a ten-year plan to -- in order
14 to have bipartisan agreement, but when we look
15 at both of the constitutional amendments, the
16 largest component, the most significant aspect
17 was really a different concept than just
18 anti-gerrymandering. It was -- it was fairness,
19 and that fairness in both of the changes was
20 equated to proportionality with the state
21 districts, and then with undue favor, not to
22 unduly favor a political party with the
23 congressional districts.

24 And it's not just the line-drawing
25 requirements. The line-drawing requirements are

1 not the focal here. And to simply overlook or
2 try to bypass or not to consider the main focus
3 of the initiative as, again, I agree with
4 Leader Russo is absurd.

5 SPEAKER CUPP: Let me just, first of
6 all, object to the assertion that Representative
7 Russo made that the only reason we don't have
8 maps that have so far withstood consideration by
9 the Court is because the commissioners don't
10 want to.

11 As I've pointed out on multiple
12 occasions, this is a new provision of the
13 constitution. We're working our way through it,
14 trying to find a pathway forward. There are
15 legitimate differing interpretations of what it
16 means and what it requires. There's conflict on
17 the Supreme Court as to what it requires.

18 This is not a clear path forward, and I
19 do not agree that members of this commission
20 have not tried to do this in good faith, erring
21 in some respects for what the Court has looked
22 at it and we have consistently tried to find our
23 way forward.

24 So in all this rhetoric and
25 disagreement and stuff, I think it's important

1 that we don't attribute bad faith to either side
2 of this. And so I just want to go on record as
3 what my position is on that.

4 Any further discussion?

5 The chair recognizes Auditor Faber.

6 AUDITOR FABER: Thank you. A question
7 for the sponsors of the amendment.

8 As I look at it -- and it may be that I
9 just can't tell. District 3 was reconvened
10 significantly from the proposed map. How does
11 that or does that comply with Article 2,
12 Section (B)(4)(A) with regard to keeping
13 Columbus largely in one district? And I can't
14 tell. I don't know whether it does or doesn't,
15 but it looks, based on the geography, that a
16 substantial portion of this district is outside
17 the city of Columbus. And so therefore it looks
18 to me like you're doing what you indicated the
19 concern was in other areas for the opposite
20 effect. So I'm just curious about that. If you
21 can help me understand that.

22 LEADER RUSSO: Sure. Through the
23 chair.

24 Auditor Faber, yes, there were some
25 changes made to District 3. It actually still

1 includes a substantial and I believe almost
2 exactly the same proportion of Columbus that the
3 previous version did, it's just a different way
4 to split it. And overall, it creates a plan
5 that meets the -- does not unduly favor
6 Republicans and does favor Democrats, a
7 requirement of the Court's decision.

8 Now, as we discussed in our meeting
9 last evening, that change in particular to 15,
10 4 and 3, there are a couple of different options
11 there that we certainly are willing to discuss
12 and consider. One of which, frankly, you know,
13 does not require necessarily a change to
14 District 3. Many different options. We are
15 willing to continue those discussions about that
16 particular district. This is certainly one
17 option. Frankly, in my mind, there were
18 probably about three to five different options.

19 AUDITOR FABER: And thank you for that,
20 Leader Russo. And I'm just -- and maybe this is
21 a question to everybody in general, but as I try
22 and read and understand Section (B)(2)(4)(A), is
23 it -- and was it when you guys drafted this
24 provision the understanding that to the extent
25 you can, we are required to -- it was easy with

1 Cincinnati because Cincinnati needs to be wholly
2 within a district because of those ratios, but
3 because the city of Columbus is larger than one
4 congressional district, is it your understanding
5 of this provision that you're supposed to put
6 the majority of the city of Columbus, even
7 though it's larger than one district, in one
8 whole congressional district versus splitting
9 Columbus in multiple different ways and
10 essentially creating different options?

11 My interpretation is that you're
12 required, to the extent you can, to keep
13 Columbus -- most of Columbus in one district,
14 and if not, you're supposed to affiliate it with
15 communities that are closely affiliated with
16 that at a minimum. And I'm just curious if
17 that's your read of this as well, and if that's
18 the case, it, frankly, doesn't look to me like 3
19 is going to follow that.

20 LEADER RUSSO: Through the chair,
21 Auditor Faber, yes, we believe that we have met
22 the provision in the constitution and have kept
23 a majority of Columbus within that district.
24 And again, there are multiple -- Columbus is big
25 enough, frankly, that there are multiple ways do

1 that.

2 AUDITOR FABER: So again, I don't want
3 to belabor this because I can't see the detail,
4 and I'll take your word for it, but your
5 interpretation is my interpretation is correct,
6 we're required, to the extent we can, to keep
7 Columbus largely together in one district. Is
8 that the baseline understanding? I assume you
9 did that because I can't tell. Am I -- does
10 your view -- when I tried to draw my version,
11 that's what I tried to do, and I just want to
12 make sure we're in agreement on that.

13 LEADER RUSSO: Through the chair,
14 Mr. Auditor, yes. Certainly, again, we believe
15 that we have met the provision. There are
16 multiple ways do that. I would also note that
17 Columbus is an interesting city and that we have
18 many non-contiguous parts of the city as well.
19 And so, you know, again, there are multiple ways
20 do this.

21 AUDITOR FABER: Very good.

22 SPEAKER CUPP: Is there further
23 discussion?

24 I would just say that I did appreciate
25 the conversation that we had yesterday late

1 afternoon, I guess, in terms of the proposed
2 changes that were being suggested. And as far
3 as I'm concerned, in the House side, we spent
4 considerable amount of time with our map drawer
5 to take a look at these and see how they would
6 impact the overall map. But like with any
7 change, it does create some -- you know, some
8 opposite impacts as well.

9 So, for example, Congressional
10 District 9, which is in northwest Ohio, it then
11 creates a district that runs from the Indiana
12 line all the way to Lorain, I think, which is
13 even less compact than it was before. And so in
14 a constitutional sense, I don't believe it
15 really makes any contribution to the
16 constitutionality of it, although it might in
17 terms of shifting the Republican-Democrat index.

18 I look at District 15, and that one
19 kind of stretches out across Ohio to the west
20 because it was a remnant of other changes that
21 were made, but to move that -- make that one
22 more compact, House District 4 becomes less
23 compact, and now you have a district that runs
24 from -- I'm not sure what county that is,
25 actually -- way below I-70 going all the

1 way -- almost all the way back up to Lorain
2 which was a constant example of a gerrymandered
3 district in the public hearings that we had. So
4 those have some adverse impacts to it.

5 And I believe that the map that was
6 offered does meet the constitutional objections
7 that were pointed out to the Court -- by the
8 Court in terms of the concerns. They pointed
9 out particularly Hamilton county and that was
10 because it was split twice instead of once. In
11 the Strigari map, it is now split once.

12 I'm not entirely sure, but I think the
13 compact ratio in District 7 that would be
14 reconfigured makes it at least somewhat less
15 compact.

16 And so the amendments don't
17 particularly solve any of the problems. And I
18 realize this is as much of an art as a science,
19 but there are some things that it doesn't make
20 it a perfect map either.

21 LEADER RUSSO: Mr. Chair.

22 SPEAKER CUPP: Yes. Representative
23 Russo.

24 LEADER RUSSO: Thank you. Mr. Chair, I
25 would like to respond to a couple of your

1 comments regarding certainly, you know, some of
2 the changes to other districts and concerns
3 about compactness.

4 I would note that overall, the map,
5 with the changes that we have proposed, actually
6 make the map -- they score higher on the overall
7 compactness score, but certainly, if there are
8 specific concerns about districts -- for
9 example, you noted Districts 5 and 4, I will
10 note that certainly in our discussions with
11 Auditor Faber, he actually brought forward a
12 couple of different recommendations that I
13 believe he may have shared with some other
14 commissioners that I think reasonably may also
15 address some of those concerns and address some
16 of our concerns as well.

17 So I say all of this to say, again, you
18 know, let's take a day to have these discussions
19 and come to some sort of resolution and
20 compromise on this because I do believe that
21 there is a path forward to do that. And again,
22 not sure why we are under this artificial
23 deadline to vote on this today when there are
24 clearly some alternatives here that possibly
25 could get us to bipartisan agreement, meet our

1 objectives, if the object is to get to a
2 constitutional map that is bipartisan that lasts
3 ten years, which that is my objective, and to
4 not have the Court have to intervene in this
5 again. If that is the objective, then we should
6 take the time to do that. And I think that
7 there are members on this commission from the
8 majority party who have a willingness to do
9 that, and I would strongly encourage that.

10 SPEAKER CUPP: Further discussion.

11 The question then is on the amendment,
12 shall the amendment proposed by Representative
13 Russo be adopted?

14 The staff will call the roll, please.

15 THE CLERK: Co-Chair Speaker Cupp.

16 SPEAKER CUPP: No.

17 THE CLERK: Co-Chair Senator Sykes.

18 SENATOR SYKES: Yes.

19 THE CLERK: Governor Dewine.

20 GOVERNOR DEWINE: No.

21 THE CLERK: Auditor Faber.

22 AUDITOR FABER: No.

23 THE CLERK: President Huffman.

24 PRESIDENT HUFFMAN: No.

25 THE CLERK: Secretary LaRose.

1 SECRETARY LAROSE: No.

2 THE CLERK: Leader Russo.

3 LEADER RUSSO: Yes.

4 THE CLERK: Mr. Speaker, two to five.

5 SPEAKER CUPP: The vote is two to five.

6 The amendment has not been agreed to.

7 We are now back to the original motion
8 from Senator Huffman to approve the March 2,
9 2022, Strigari map, by name, that has been
10 uploaded.

11 Is there further discussion?

12 If there's no further discussion, the
13 staff will call the roll, please.

14 THE CLERK: Co-Chair Speaker Cupp.

15 SPEAKER CUPP: Yes.

16 THE CLERK: Co-Chair Senator Sykes.

17 SENATOR SYKES: No.

18 THE CLERK: Governor DeWine.

19 GOVERNOR DEWINE: Yes.

20 THE CLERK: Auditor Faber.

21 AUDITOR FABER: Yes.

22 THE CLERK: President Huffman.

23 PRESIDENT HUFFMAN: Yes.

24 THE CLERK: Secretary LaRose.

25 SECRETARY LAROSE: Yes.

1 THE CLERK: Leader Russo.

2 LEADER RUSSO: No.

3 THE CLERK: Mr. Speaker, 5-2.

4 SPEAKER CUPP: The vote is five to two.

5 The motion has been agreed to and the map has
6 been adopted, and would direct staff to upload
7 this to the secretary of state as soon as
8 possible so that the March 4th filing deadline
9 will be available to candidates and that we can
10 proceed with the March -- the May 3rd -- the May
11 primary election.

12 Any further business come before the
13 commission? Hearing none, the commission is
14 adjourned.

15 (End of recording.)

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R E P O R T E R ' S C E R T I F I C A T E

STATE OF NORTH CAROLINA

--o0o--

I, DENISE MYERS BYRD, Court Reporter,
do hereby certify that the transcription of the
recorded OHIO REDISTRICTING COMMISSION held on
March 2, 2022, was taken down by me
stenographically to the best of my ability and
thereafter transcribed under my supervision; and
that the foregoing pages, inclusive, constitute
a true and accurate transcription of said
recording.

Signed this the 7th day of March 2022.

Denise Myers Byrd
Denise Myers Byrd
CSR 8240, RPR, CLR 102409-2

Exhibit 4

RETRIEVED FROM DEMOCRACYDOCKET.COM

User:

Plan Name: **CD March 2nd Enacted**

Plan Type:

Measures of Compactness Report

Wednesday, March 9, 2022

10:23 AM

| | Reock | Polsby-Popper |
|-----------|--------------|----------------------|
| Sum | N/A | N/A |
| Min | 0.23 | 0.14 |
| Max | 0.69 | 0.65 |
| Mean | 0.40 | 0.32 |
| Std. Dev. | 0.13 | 0.13 |

| District | Reock | Polsby-Popper |
|-----------------|--------------|----------------------|
| 1 | 0.31 | 0.24 |
| 2 | 0.49 | 0.31 |
| 3 | 0.69 | 0.50 |
| 4 | 0.37 | 0.31 |
| 5 | 0.23 | 0.20 |
| 6 | 0.28 | 0.21 |
| 7 | 0.32 | 0.22 |
| 8 | 0.29 | 0.28 |
| 9 | 0.26 | 0.27 |
| 10 | 0.50 | 0.43 |
| 11 | 0.46 | 0.39 |

| | Reock | Polsby-Popper |
|-----------|--------------|----------------------|
| Sum | N/A | N/A |
| Min | 0.23 | 0.14 |
| Max | 0.69 | 0.65 |
| Mean | 0.40 | 0.32 |
| Std. Dev. | 0.13 | 0.13 |

| District | Reock | Polsby-Popper |
|-----------------|--------------|----------------------|
| 12 | 0.59 | 0.31 |
| 13 | 0.41 | 0.27 |
| 14 | 0.48 | 0.65 |
| 15 | 0.28 | 0.14 |

RETRIEVED FROM DEMOCRACYDOCKET.COM

Measures of Compactness Summary

| | |
|----------------------|---|
| Reock | The measure is always between 0 and 1, with 1 being the most compact. |
| Polsby-Popper | The measure is always between 0 and 1, with 1 being the most compact. |

RETRIEVED FROM DEMOCRACYDOCKET.COM

Exhibit 5

RETRIEVED FROM DEMOCRACYDOCKET.COM

User:

Plan Name: **CD Dem March 2nd PProposal**

Plan Type:

Measures of Compactness Report

Wednesday, March 9, 2022

10:24 AM

| | Reock | Polsby-Popper |
|-----------|--------------|----------------------|
| Sum | N/A | N/A |
| Min | 0.28 | 0.18 |
| Max | 0.59 | 0.65 |
| Mean | 0.42 | 0.33 |
| Std. Dev. | 0.10 | 0.12 |

| District | Reock | Polsby-Popper |
|-----------------|--------------|----------------------|
| 1 | 0.56 | 0.43 |
| 2 | 0.49 | 0.31 |
| 3 | 0.42 | 0.31 |
| 4 | 0.36 | 0.18 |
| 5 | 0.30 | 0.25 |
| 6 | 0.28 | 0.21 |
| 7 | 0.29 | 0.21 |
| 8 | 0.33 | 0.27 |
| 9 | 0.33 | 0.34 |
| 10 | 0.50 | 0.43 |
| 11 | 0.44 | 0.41 |

| | Reock | Polsby-Popper |
|-----------|--------------|----------------------|
| Sum | N/A | N/A |
| Min | 0.28 | 0.18 |
| Max | 0.59 | 0.65 |
| Mean | 0.42 | 0.33 |
| Std. Dev. | 0.10 | 0.12 |

| District | Reock | Polsby-Popper |
|-----------------|--------------|----------------------|
| 12 | 0.59 | 0.31 |
| 13 | 0.41 | 0.27 |
| 14 | 0.48 | 0.65 |
| 15 | 0.56 | 0.42 |

RETRIEVED FROM DEMOCRACYDOCKET.COM

Measures of Compactness Summary

| | |
|----------------------|---|
| Reock | The measure is always between 0 and 1, with 1 being the most compact. |
| Polsby-Popper | The measure is always between 0 and 1, with 1 being the most compact. |

RETRIEVED FROM DEMOCRACYDOCKET.COM

Exhibit 6

RETRIEVED FROM DEMOCRACYDOCKET.COM

User:

Plan Name: **CD Kosuke Imai LWV Proposal**

Plan Type:

Measures of Compactness Report

Wednesday, March 9, 2022

1:44 PM

| | Reock | Polsby-Popper |
|-----------|--------------|----------------------|
| Sum | N/A | N/A |
| Min | 0.31 | 0.25 |
| Max | 0.56 | 0.52 |
| Mean | 0.42 | 0.39 |
| Std. Dev. | 0.08 | 0.08 |

| District | Reock | Polsby-Popper |
|-----------------|--------------|----------------------|
| 1 | 0.56 | 0.47 |
| 2 | 0.49 | 0.34 |
| 3 | 0.50 | 0.47 |
| 4 | 0.45 | 0.26 |
| 5 | 0.36 | 0.35 |
| 6 | 0.35 | 0.30 |
| 7 | 0.31 | 0.25 |
| 8 | 0.42 | 0.34 |
| 9 | 0.33 | 0.35 |
| 10 | 0.54 | 0.52 |
| 11 | 0.32 | 0.41 |

| | Reock | Polsby-Popper |
|-----------|-------|---------------|
| Sum | N/A | N/A |
| Min | 0.31 | 0.25 |
| Max | 0.56 | 0.52 |
| Mean | 0.42 | 0.39 |
| Std. Dev. | 0.08 | 0.08 |

| District | Reock | Polsby-Popper |
|----------|-------|---------------|
| 12 | 0.37 | 0.37 |
| 13 | 0.41 | 0.42 |
| 14 | 0.44 | 0.51 |
| 15 | 0.51 | 0.43 |

RETRIEVED FROM DEMOCRACYDOCKET.COM

Measures of Compactness Summary

| | |
|----------------------|---|
| Reock | The measure is always between 0 and 1, with 1 being the most compact. |
| Polsby-Popper | The measure is always between 0 and 1, with 1 being the most compact. |

RETRIEVED FROM DEMOCRACYDOCKET.COM