

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

Michael Gonidakis, *et al.*,

Plaintiffs,

v.

Frank LaRose,

Defendant.

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Case No. 2:22-cv-773

Chief Judge Algenon L. Marbley

Circuit Judge Amul R. Thapar

Judge Benjamin J. Beaton

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**PLAINTIFFS' POST-HEARING BRIEF IN SUPPORT OF SECOND MOTION FOR  
PRELIMINARY INJUNCTION AND DECLARATORY RELIEF**

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## **I. STATEMENT OF THE CASE**

Because the primary election for state legislative offices was canceled, there is no question that Plaintiffs are suffering a constitutional harm. With the deadline to adopt a new plan two weeks away, one question remains, “What plan?”

Because this Court should defer to the legislative body vested by the Ohio Constitution to make redistricting decisions, this Court should adopt the most recent plan passed by a majority of the Ohio Redistricting Commission. That is the Fourth Plan. And this Court should do so even if the Ohio Supreme Court later finds the Fourth Plan out of compliance. This is required to protect Plaintiffs’ fundamental rights. *See Perry v. Perez*, 565 U.S. 388, 393 (2012); *Reynolds v. Sims*, 377 U.S. 533, 554 (1964). Alternatively, this Court should adopt the 2011 map on an interim basis.

## **II. FACTS**

The preliminary injunction hearing showed that Plaintiffs cannot exercise their constitutional rights related to the primary election for state legislative office, and this Court should adopt a map on or before April 20, 2022, to avoid the complete disenfranchisement of Plaintiffs.

### **A. Ohio’s 2011 legislative district maps.**

The State of Ohio has a bicameral legislature, with a House of Representatives and a Senate. Historically, the Ohio Constitution has provided for 99 Representatives and 33 Senators, with the districts determined using the federal decennial census to divide the total population of the state by 99 and 33. *See* Ohio Constitution, Article XI, Section 2.

Ohio’s 2011 legislative district maps were created after receipt of the 2010 U.S. Census data showing that Ohio had a population of 11,536,504 people. The 2011 legislative district maps were created in accordance with the U.S. Constitution and the Ohio Constitution. *See Wilson v. Kasich*, 134 Ohio St.3d 221, 2012-Ohio-5367, 981 N.E.2d 814, ¶ 48.

**B. 2015 amendments to the Ohio Constitution.**

In 2015, voters amended the Ohio Constitution with “Issue 1,” which created a bipartisan process for drawing new state legislative districts led by the Ohio Redistricting Commission. The Redistricting Commission, under Article XI, “shall be responsible for the redistricting of this state for the general assembly.” Ohio Constitution, Article XI, Section 1(A). Its seven members include four appointees controlled by the General Assembly and three executives, the governor, auditor of state, and secretary of state. *Id.*

State legislative district plans approved by a bipartisan majority of the Redistricting Commission are valid for ten years, while a district plan approved by a simple majority are valid for four years. *See* Ohio Constitution, Article XI, Sections 8(B) and 8(C)(1)(a). In approving the state legislative districts under Article XI, Section 1, the Redistricting Commission considers various factors, such as not splitting political subdivisions. *See* Ohio Constitution, Article XI, Section 3(B).

Article XI limits the role of the Ohio Supreme Court. Unlike federal courts, the Ohio Supreme Court cannot order that a particular plan for state legislative districts be adopted. *See* Ohio Constitution, Article XI, Section 9(D). Instead, the Ohio Supreme Court is limited to returning the issue to the Redistricting Commission. *Id.*

**C. The Redistricting Commission adopts First Plan and Second Plan, and both are rejected by the Ohio Supreme Court.**

The Redistricting Commission adopted the First Plan in September 2021. (First Plan, Plaintiffs’ Exhibit 2; March 30, 2022 Preliminary Injunction Hearing Transcript (“Tr”), ECF No. 150, PageID # 4241, 7:24–25). In January 2022, the First Plan was rejected by the Ohio Supreme Court. (01/12/2022 Case Announcements #2, 2022-Ohio-86, Pls. Ex. 3). The Redistricting

Commission was instructed to “adopt a new plan within ten days.” (*Id.*). Soon after, the Redistricting Commission adopted a new plan, the Second Plan. (Second Plan, Pls. Ex. 4).

Because of Ohio’s election calendar (Pls. Ex. 1), while the Second Plan was pending before the Ohio Supreme Court, the General Assembly passed uncoded law to temporarily alter Ohio’s statutory election structure. (Sub. H.B. No. 93 (“House Bill 93”), Section 4, p. 29, Pls. Ex. 5). House Bill 93 allowed Ohio’s Chief Election Officer, the Secretary of State, to adjust most election-related deadlines. (*Id.* at (G)). But the primary election remained on May 3, 2022. (*Id.*).

The Ohio Supreme Court then rejected the Second Plan. (02/07/2022 *Case Announcements* #2, 2022-Ohio-349, Pls. Ex. 6). The Court ordered that the Redistricting Commission “be reconstituted and . . . convene and draft an entirely new General Assembly-district plan . . .” (*Id.*). This new Third Plan was to be adopted on or before February 17, 2022, and filed with the Court on or before February 18, 2022. (*Id.*).

**D. The Redistricting Commission declares impasse, then adopts Third Plan, which is again rejected.**

In response to the Ohio Supreme Court’s latest rejection, the Redistricting Commission declared that there was an “impasse,” and it was no longer possible for a majority to adopt a plan. (Pls. Ex. 7). Despite the initial impasse, the Redistricting Commission later adopted the Third Plan. (Third Plan, Pls. Ex. 8).

Two days later, Secretary of State Frank LaRose issued a directive implementing the Third Plan, Directive 2022-26. (Pls. Ex. 9). Directive 2022-26 instructed the local boards of elections to immediately begin carrying out the Third Plan. (*Id.*, p. 2). As result, the local boards of elections began that work. (Tr., ECF No. 150, PageID # 4293, 59:16–21). Work on the Third Plan was reinforced through at least two other directives issued by Secretary LaRose. (Pls. Exs. 10, 11; Affidavit of Amanda Grandjean (“Grandjean Aff.”), ECF No. 88-1, ¶ 15, PageID # 1322).

Despite the time and effort invested by local boards of education, the Ohio Supreme Court invalidated the Third Plan. (03/16/2022 Case Announcements #2, 2022-Ohio-790, Pls. Ex. 12). The Ohio Supreme Court again ordered the Redistricting Commission to reconvene, but to draft the next plan in public. (*Id.*).

The next day, Secretary LaRose issued Directive 2022-30. (Pls. Ex. 13). This “paused” any new work by the local boards on the Third Plan. (Tr., ECF No. 150, PageID # 4274, 40:20). Because the state legislative races were paused yet Ohio law compelled the other races forward, the state legislative races were removed from the ballot. (*See* Pls. Ex. 14). As a result, the primary election for state legislative offices was canceled. (Tr., ECF No. 150, PageID # 4247, 13:17).

**E. The Fourth Plan is adopted and is likely to be rejected because it is much like the Third Plan.**

Following the rejection of the Third Plan, the Redistricting Commission adopted the Fourth Plan on March 28, 2022. (Pls. Ex. 15). Even though it was a new plan, there were few changes made from the Third Plan. (Tr., ECF No. 150, PageID # 4370, 136:5). Under the Third Plan, the districts that were “competitive” for a particular party (i.e., likely to vote for a particular party 50% to 52% of the time) were mainly assigned to Democrats rather than Republicans. (*Id.*). The same was true for the Fourth Plan. (*Id.*, PageID # 4370, 136: 11–21). The Fourth Plan has been challenged in the Ohio Supreme Court. That challenge remains pending.

**F. The Redistricting Commission rejects other plans.**

While the Redistricting Commission has sole authority under the Ohio Constitution to consider and adopt plans, advocates have pushed for alternate plans. The “MacDonald and Johnson Plan” or the so-called “Independent Plan” was rejected by the Redistricting Commission. (Tr., ECF No. 150, PageID # 4377, 143: 9–10). When presented to the Redistricting Commission, the “Independent Plan” was incomplete and had technical flaws. (*Id.*, 135:3). Dr. Johnson, who

developed the plan, explained that it was not in final form: “I cannot say it was a final constitutional map.” (Affidavit of Dr. Douglas Johnson (“Dr. Johnson Aff.”), Appendix, Exhibit A, ¶ 18). And even though it was incomplete, this plan it was introduced by one member of the Redistricting Commission. (Commission Meeting, Transcript – Part 5 at 1:13).<sup>1</sup> A 5-2 majority of the Redistricting Commission rejected it. (*Id.* at 21:32).

Another plan was developed by an individual hired for litigation purposes, Dr. Jonathon Rodden. But Dr. Rodden conceded that his plan failed the partisanship requirement of the Ohio Constitution. (*Id.*, 186:17–187:22). He also conceded that it was not suggested by any member of the Redistricting Commission, though it was uploaded to the public portal for consideration. (*Id.*, 199:12–15).

**G. The Secretary of State needs a map no later than April 20, 2022, for an August 2, 2022, primary election for state legislative offices.**

During the preliminary injunction hearing, this Court recognized that April 20, 2022 is the “drop-dead” date to adopt a plan for the 2022 General Assembly election. (Tr., ECF No. 150, PageID # 4347, 113:2). This would allow for the full primary election calendar. (*Id.*). Using April 20, 2022, facilitates a primary election on August 2, 2022. (*Id.*, PageID # 4269, 35:13). A primary election on August 2, 2022, for state legislative office is advantageous because many local boards of elections hold special elections that day, which means lower costs than a stand-alone primary election for General Assembly seats. (*Id.*, PageID # 4285, 51:7).

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<sup>1</sup> *Commission Meeting*, OHIO REDISTRICTING COMMISSION, March 28, 2022, Transcript – Part 5 available at <https://redistricting.ohio.gov/meetings> (last accessed April 5, 2022).

### III. STANDING

Because Plaintiffs have been disenfranchised, they have standing to bring their claims.<sup>2</sup> In voting rights-related cases, plaintiffs generally have standing by identifying their specific districts impacted, the election-activity impacted, and an imminent risk of harm. *See, e.g., Nemes v. Bensinger*, 467 F. Supp. 3d 509, 522 (W.D. Ky. 2020). Standing is more broadly conveyed when an election has been cancelled, creating a non-apportionment claim. *See Igartúa v. Obama*, 842 F.3d 149, 155 (1st Cir. 2016) (discussing *Adams v. Clinton*, 531 U.S. 941 (2000)). Even though disenfranchisement is felt widely, denying everyone the right to vote is “sufficiently concrete and personalized to confer standing.” *Weltner v. Raffensperger*, No. 1:20-cv-01407-ODE, 2020 U.S. Dist. LEXIS 247760, at \*18 (N.D. Ga. May 18, 2020) (the bar against generalized grievances does not apply to voting rights).

Plaintiffs have standing because they have each been disenfranchised. The hearing showed that Mr. Gonidakis is a registered voter in Ohio. (Tr., ECF No. 150, PageID # 4348, 114:13). He is the president of Ohio Right to Life. (*Id.*, 115:4). He typically engages in election activity, such as candidate research, going door-to-door, attending rallies, and handing out yard signs, among other election activity. (*Id.*, 114:22–25). But Mr. Gonidakis cannot vote because there is no primary election for general assembly candidates currently scheduled. (Tr., ECF No. 150, PageID # 4247, 13:17). As a result, Mr. Gonidakis’ voting and related rights have been denied. While Mr. Gonidakis is not alone in this harm, because voting is an individualized fundamental right, his harm is sufficiently particularized and concrete to confer standing.

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<sup>2</sup> Though the Bennett Petitioners conceded standing during the preliminary injunction hearing, Plaintiffs respond to the motions to dismiss. (ECF Nos. 132, 133).



#### IV. STANDARD OF REVIEW

In determining whether to grant a preliminary injunction, a district court considers four factors: (1) whether the movant has a strong likelihood of success on the merits; (2) whether the movant would suffer irreparable injury absent the injunction; (3) whether the injunction would cause substantial harm to others; and (4) whether the public interest would be served by the issuance of an injunction. *Daunt v. Benson*, 956 F.3d 396, 406 (6th Cir. 2020); *see also Bays v. City of Fairborn*, 668 F.3d 814, 818-19 (6th Cir. 2012). These factors “are not prerequisites, but rather are factors which the Court should balance.” *Golden v. Kelsey-Hayes Co.*, 73 F.3d 648, 653 (6th Cir. 1996). These four factors are met here because Plaintiffs’ fundamental rights risk denial, and there is no harm in securing the right to vote or associate.

#### V. ANALYSIS

The preliminary injunction hearing showed that Plaintiffs are likely to succeed on the merits of their constitutional claims, and the public interest requires state legislative districts.

##### **A. Plaintiffs are likely to succeed on the merits because their right to vote and right to associate risk denial.**

The preliminary injunction hearing confirmed that Plaintiffs’ constitutional rights are being violated because there is no primary election currently scheduled for state legislative offices.

##### **1. The cancelation of the primary election for state legislative office completely disenfranchised Plaintiffs.**

This Court should find that the canceled primary election completely disenfranchised Plaintiffs in violation of the U.S. Constitution. The right to vote is a fundamental right, and the Equal Protection Clause and the Substantive Due Process Clause prohibit blanket disenfranchisement. *George v. Hargett*, 879 F.3d 711, 727 (6th Cir. 2018) (citing *Warf v. Bd. of Elections of Green Cty.*, 619 F.3d 553, 559 (6th Cir. 2010)). Examples of complete disenfranchisement violations include a municipal government refusing to hold an election, as in

*Bonas v. Town of North Smithfield*, 265 F.3d 69, 74 (1st Cir. 2001), and the Governor of Georgia filling a seat on the Georgia Supreme Court rather than holding an election, as in *Duncan v. Poythress*, 657 F.2d 691, 702 (5th Cir. 1981). Constitutional rights are no less important when a primary election is involved. *Griffin v. Burns*, 570 F.2d 1065, 1074 (1st Cir. 1978).

Here, Plaintiffs have been disenfranchised so they are likely to succeed on the merits of their claims. The hearing showed that Mr. Gonidakis is a registered voter in Ohio. (Tr., ECF No. 150, PageID # 4348, 114:13). But Mr. Gonidakis cannot vote because there is no primary election for general assembly candidates currently scheduled. (*Id.*, 13:17). As result, Plaintiffs, including Mr. Gonidakis, have been completely disenfranchised. Because blanket disenfranchisement violates the U.S. Constitution, Plaintiffs are likely to succeed on the merits.

**2. The cancelation of the primary election for state legislative office violated Plaintiffs' right to associate.**

This Court should find that the canceled primary election for state legislative offices violated Plaintiffs' right to associate. "The rights of political association and free speech occupy a similarly hallowed place in the constitutional pantheon." *Graveline v. Benson*, 992 F.3d 524, 535 (6th Cir. 2021) (citation omitted). The "right to associate with the political party of one's choice is an integral part of the basic constitutional freedom." *Mich. State A. Philip Randolph Inst. v. Johnson*, 749 F. App'x 342, 363 (6th Cir. 2018) (quoting *Kusper v. Pontikes*, 414 U.S. 51, 57, 94 S. Ct. 303, 38 L. Ed. 2d 260 (1973)). This includes vetting candidates, as "Debate on the qualifications of candidates is at the core of our electoral process and of the First Amendment freedoms . . . ." *Republican Party v. White*, 536 U.S. 765, 781, 122 S. Ct. 2528, 2538 (2002) (citation and internal quotation marks omitted). And while the right to politically associate is not absolute, a severe restriction must be narrowly drawn to advance a state interest of compelling importance. *Kishore v. Whitmer*, 972 F.3d 745, 749 (6th Cir. 2020) (citation omitted).

Here, Plaintiffs cannot associate with members of their state legislative districts in violation of the U.S. Constitution, and there is no state interest for doing so. The hearing showed that Mr. Gonidakis is a registered voter in Ohio, and he engages in election-related speech, such as candidate research, going door-to-door, attending rallies, and handing out yard signs, among other things. (Tr., ECF No. 150, PageID # 4348, 114:13–25). But Mr. Gonidakis cannot engage in this speech for legislative candidates because he has no legislative districts. (*Id.*, 13:17). Secretary LaRose has advanced no state interest supporting this denial. This denial is a separate violation of the U.S. Constitution along with any disenfranchisement caused by eliminating the primary election. Plaintiffs are therefore likely to succeed on the merits of this claim.

**B. Plaintiffs will suffer irreparable harm unless this Court adopts a plan before April 20, 2022.**

Because there is no primary election for state legislative office scheduled, Plaintiffs will suffer irreparable harm without this Court's action. When constitutional rights are threatened or impaired, irreparable injury is presumed. *See ACLU of Ky. v. McCreary County, Ky.*, 354 F.3d 438, 445 (6th Cir. 2003). The right to vote and the right to associate are constitutional rights. *Reynolds v. Sims*, 377 U.S. 533, 554–555, (1964). A restriction of these fundamental rights thus constitutes irreparable injury. *Obama for Am. v. Husted*, 697 F.3d 423, 436 (2012) (citation omitted); *see also Williams v. Salerno*, 792 F.2d 323, 326 (2d Cir. 1986).

Here, the hearing showed that Plaintiffs are suffering irreparable harm because their constitutional rights have been deprived. Plaintiffs would vote and associate with candidates but cannot do so because the primary election for state legislative offices was canceled. (Tr., ECF No. 150, PageID # 4348, 114). The denial of these rights is an irreparable harm that Plaintiffs will suffer absent an injunction by this Court because there is no statutory authority for the election of

state legislative offices to take place, and no election is currently scheduled. (Tr., ECF No. 150, 13:17).

**C. Adopting a plan will benefit third parties and the public.**

Because there is no primary election for state legislative offices, third parties and the public will benefit from this Court adopting a plan. As the Sixth Circuit has recognized, “it is always in the public interest to prevent the violation of a party’s constitutional rights.” *G & V Lounge v. Mich. Liquor Control Comm’n*, 23 F.3d 1071, 1079 (6th Cir. 1994). Although states have “a strong interest in their ability to enforce state election law requirements . . . members of the public, however, ‘have a strong interest in exercising the fundamental political right to vote.’” *Hunter v. Hamilton Cnty. Bd. of Elections*, 635 F.3d 219, 244 (6th Cir. 2011) (quoting *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006)). “That interest is best served by favoring enfranchisement and ensuring that qualified voters’ exercise of their right to vote is successful.” *Hunter*, 635 F.3d at 244.

Here, adopting a plan serves the public interest by protecting the constitutional rights of Ohioans. Because there is no scheduled primary election, action by this Court causing an election to take place will best serve the public and third parties. (Tr., ECF No. 150, 13:17). As this Court found during the hearing, the public interest is best served by scheduling the primary election for state legislative office on August 2, 2022, and adopting a plan no later than April 20, 2022.

**VI. REMEDY**

Because Plaintiffs’ rights will be violated if there are no state legislative districts, this Court should adopt the Fourth Plan no later than April 20, 2022, and move the primary election to August 2, 2022.

**A. This Court should adopt a plan blessed by the Redistricting Commission.**

This Court should look no further than a plan adopted by the legislative authority: the Redistricting Commission. Redistricting, including redistricting performed by a redistricting

commission, is a legislative function. *Ariz. State Legis. v. Ariz. Indep. Redistricting Comm’n*, 576 U.S. 787, 808 (2015) (redistricting legislative authority properly delegated to redistricting commission). District courts should be “guided by the *legislative* policies underlying a state plan—even one that was itself unenforceable . . . .” *Perry v. Perez*, 565 U.S. 388, 393 (2012) (emphasis added) (citation and quotation omitted). “[S]tate legislatures have ‘primary jurisdiction’ over legislative reapportionment.” *White v. Weiser*, 412 U.S. 783, 795 (1973) (citations omitted). Redistricting is a policy choice, and “courts aren’t supposed to second guess policymakers based on their own subjective judgments of what makes for good policy.” *Adams & Boyle, P.C. v. Slatery*, 956 F.3d 913, 936 (6th Cir. 2020) (Thapar, J., dissenting) (citing *Perry v. Perez*, 565 U.S. 388, 394 (2012)).

In adopting a plan, federal courts defer to legislative bodies—even if that legislative plan may violate state law. In *Navajo Nation v. Ariz. Indep. Redistricting Comm’n*, 230 F. Supp. 2d 998 (D. Ariz. 2002), a federal court found that an independent commission deserved deference even though it violated state law. *Id.* at 1008. In *Straw v. Barbour Cty.*, 864 F. Supp. 1148 (M.D. Ala. 1994), a district court deferred to a county commission that violated state law: “Assuming without so finding that a state law violation does exist, that would not cause the plan passed by the commission to lose its status as a legislative plan.” *Id.* at 1155. And in *Tallahassee Branch of NAACP v. Leon Cty.*, 827 F.2d 1436 (11th Cir. 1987), the 11th Circuit found that a district court properly deferred to a plan adopted by a board of county commissioners even though the commissioners violated state law. *Id.* at 1438–40. It was not the courts’ job to second guess policymakers.

Here, the Redistricting Commission is a legislative body that deserves deference from this Court, no matter if its plan conforms to the Ohio Constitution as interpreted by the Ohio Supreme

Court. First, The Ohio Constitution explicitly charges the members of the Redistricting Commission, most of which the General Assembly controls, to be “responsible for the redistricting of this state for the general assembly.” Ohio Constitution, Article XI, Section 1(A). Thus, the Redistricting Commission is the legislative body that decides redistricting-related policy issues. It deserves deference.

Second, the Redistricting Commission, not the Ohio Supreme Court, is the policy-making body. While the members of the Redistricting Commission hold the pen, the Ohio Supreme Court “rule[s] narrowly on the issues before us, leaving public-policy matters to the General Assembly.”<sup>3</sup> The Ohio Supreme Court cannot even draw its own maps or move the primary election. *See* Ohio Constitution, Article XI, Section 9(D). Thus, it cannot make the difficult district-drawing policy decisions that deserve deference.

Because the Redistricting Commission is a legislative body charged with the tough policy decisions related to map drawing, this Court should defer to the Redistricting Commission.

**1. Because this Court should defer to the Redistricting Commission, it should adopt the Fourth Plan.**

In deferring to the Redistricting Commission, this Court should adopt the most recent plan adopted by the majority of the Redistricting Commission, the Fourth Plan. The Fourth Plan was considered by seven members of the Redistricting Commission, including four General Assembly appointees, Speaker of the House Robert R. Cupp, Senator Vernon Sykes, Senate President Matt Huffman, and Minority Leader Allison Russo, and three executive members, Governor Mike DeWine, Auditor Keith Faber, and Secretary of State Frank LaRose.

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<sup>3</sup> *Hope Acad. Broadway Campus v. White Hat Mgmt., L.L.C.*, 2015-Ohio-3716, ¶ 2, 145 Ohio St. 3d 29, 31, 46 N.E.3d 665, 668.

In exercising their policy judgment, the members of the Redistricting Commission voted on the Fourth Plan in public session.<sup>4</sup> Co-Chair Speaker Cupp noted that there were 17 asymmetrical seats in the House of Representatives in this plan, down from 19 in Third Plan, and seven asymmetrical seats in this plan, down from eight in the Third Plan. (*Id.* at 32:28). A vote was held, and as required by Article XI, Section 1 of the Ohio Constitution, a 4-3 majority of the Redistricting Commission approved the plan. (*Id.* at 52:24).

The Redistricting Commission also considered the map created by Dr. Johnson and Dr. McDonald. (Transcript – Part 5 at 21:32).<sup>5</sup> It was rejected by a 5-2 vote. (*Id.*). Several reasons were provided. Governor DeWine noted that the plan sacrificed local communities to gain proportionality: “Yes, it did hit proportionality and did have a similar number of competitive districts or indeed, but less compact districts, fewer communities of interest being kept together, more splits, cities and fewer competitive districts.” (*Id.* at 9:18). Auditor Faber echoed that reasoning: “Few Democrats in Bellaire would feel represented by a Columbus Democrat, and few Republicans in Millersburg would feel represented by a Strongsville Republican. It has nothing to do with the partisan label and everything to do with the way local issues affect our politics.” (*Id.* at 13:09). It was a policy choice to reject the type of partisan map created by Dr. Johnson and Dr. McDonald in favor of keeping communities together.

The Fourth Plan was also adopted over the Johnson and McDonald plan because of technical issues with the latter plan. (*Id.* at 1:13). Members of the Redistricting Commission noted that the map was not completed when it was put before the Redistricting Commission. (*Id.*; *see*

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<sup>4</sup> *Commission Meeting*, OHIO REDISTRICTING COMMISSION, March 28, 2022, Transcript – Part 4 available at <https://redistricting.ohio.gov/meetings> (last accessed April 5, 2022).

<sup>5</sup> *Commission Meeting*, March 28, 2022, Transcript – Part 5

also Dr. Johnson Aff., Appendix, Exhibit A, ¶ 18). This would have also required work beyond the March 28, 2022, deadline afforded to the Redistricting Commission by the Ohio Supreme Court. (*See* Transcript – Part 5 at 4:39).

As a result, the Fourth Plan was formally adopted by the Redistricting Commission and submitted to Secretary of State and the Ohio Supreme Court. As of today, it has not been invalidated by the Court. Thus, this Court should defer to the policy considerations of the Redistricting Commission and adopt the Fourth Plan as its own on or before April 20, 2022 for an August 2, 2022 primary election.

**2. Alternatively, this Court should adopt the Third Plan.**

Alternatively, this Court should adopt the Third Plan. The Third Plan was also adopted by the Redistricting Commission, consistent with Ohio Constitution, Article XI, Section 1. (Tr. ECF No. 150, PageID # 4370, 136:5). There are few differences between the Fourth Plan and Third Plan in terms of substance. (*Id.*). Yet the Third Plan has the advantage of prior implementation by the local boards of elections, meaning it is the least disruptive to implement. (*See id.*, PageID # 4296, 62:8). So this Court, in the alternative, should adopt the Third Plan on or before April 20, 2022 for a primary election held on August 2, 2022.

**3. It matters not that the Redistricting Plans may conflict with the Ohio Constitution.**

This Court should adopt one of the Redistricting Commission's plans even if the Ohio Supreme Court found it unconstitutional.

*First*, Plaintiffs' remedy accords with the Supremacy Clause. "When there is an unavoidable conflict between the Federal and a State Constitution, the Supremacy Clause of course controls." *Reynolds v. Sims*, 377 U.S. 533, 584, 84 S. Ct. 1362, 1393 (1964). The Supremacy



Clause requires that a state constitution must yield to prevent the deprivation of rights guaranteed by the U.S. Constitution. *See Espinoza v. Mont. Dep't of Revenue*, 140 S. Ct. 2246, 2288 (2020).

Here, the Ohio Constitution—as applied to Plaintiffs—deprived them of their rights under the U.S. Constitution, so the Ohio Constitution must yield. Through back-and-forth between the Redistricting Commission and the Ohio Supreme Court, Mr. Gonidakis and the other plaintiffs ended up with no primary election for state legislative office. (Tr., ECF No. 150, PageID # 4247, 13:17). This violates the U.S. Constitution, including the right to vote and the right to associate. As a result, this Court may implement a plan adopted by the Redistricting Commission, even it is later rejected by the Ohio Supreme Court.

**Second**, Plaintiffs' remedy is appropriate based on the present exigent circumstances. *Straw v. Barbour Cty.*, 864 F. Supp. 1148, 1155 (M.D. Ala. 1994). This Court found that it should adopt a plan no later than April 20, 2022, which is two weeks away from today. There are currently few maps to choose from. Only four maps have been approved by the Redistricting Commission and are ready to use. Plaintiffs specifically request that this Court adopt the Fourth Plan. While the Fourth Plan's constitutionality remains pending before the Ohio Supreme Court (and even if it is rejected), it is better than no plan. Additionally, unlike the other plans this Court could consider, it was adopted by the elected officials that may be held accountable at the ballot box. This makes the Fourth Plan an appropriate solution, especially given the looming "drop dead" date.

**Third**, this Court should not be troubled by finding that the Ohio Constitution yields under these circumstances because there is nothing sacrosanct about the Ohio Constitution. State constitutions, while important, are different than the U.S. Constitution. Unlike the U.S. Constitution, which requires three-quarters of the states to ratify any proposed change to it, a "mere

majority of the electorate may amend the constitutions of forty-seven states.”<sup>6</sup> State constitutions, as a result, have been collectively amended more than 7,500 times through legislative amendments and amendments proposed by voters.<sup>7</sup> This makes state constitutional rights “more akin to statutory rights than to constitutional constraints.”<sup>8</sup>

Ohio is no exception. The Ohio Constitution carries out a range of functions, such as creating a Livestock Care Standards Board and preventing an “idiot” from voting, to name a few. *See* Ohio Constitution, Article XIV, Section 1; Ohio Constitution, Article V, Section 6. It is more statutory than capital “C” constitutional, meaning this Court should not be concerned about adopting a plan that may be found unconstitutional by the Ohio Supreme Court.

For these reasons, this Court should find no issue finding that the Ohio Constitution as applied to Plaintiffs, rather than a particular statute, yields so that Plaintiffs may exercise rights provided by the U.S. Constitution.

**B. Alternatively, this Court may adopt the 2011 map for the 2022 election only.**

This Court has authority to adopt the 2011 map for temporary use in the 2022 elections, notwithstanding the fact that it is malapportioned as of 2022. *Watkins v. Mabus*, 771 F. Supp. 789 (S.D. Miss. 1991) (three-judge panel) (per curiam), *aff’d mem. in part and vacated as moot in part*, 502 U.S. 954 (1991). But a non-malapportioned map should be adopted either by this Court or by the state authorities in time for future General Assembly elections.

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<sup>6</sup> Jeffrey S. Sutton, *What Does - and Does Not - Ail State Constitutional Law*, 59 U. KAN. L. REV. 687, 690 (2011).

<sup>7</sup> Jessica Bulman-Pozen & Miriam Seifter, *The Democracy Principle in State Constitutions*, 119 MICH. L. REV. 860, 882 (2021).

<sup>8</sup> Tom Ginsburg & Eric Posner, *Subconstitutionalism*, 62 STAN. L. REV. 1583, 1606 (2010).

In *Watkins*, a three-judge panel was convened on July 10, just two months before the primary election scheduled for September 17. *Id.* at 791. Multiple parties submitted proposed maps, and the court waited for the legislative body to agree to one. *Id.* at 793. The court set a deadline of August 2 for a resolution. *Id.* at 795. The afternoon of August 2, with no agreed-on map in sight, the court issued an order that maintained the prior plan based on old census data. *Id.* at 797; *Watkins v. Mabus*, CIVIL ACTION NO. J91-0364(L), 1991 U.S. Dist. LEXIS 20379, at \*5 (S.D. Miss. Aug. 2, 1991) (order adopting prior map despite changes in population).

The *Watkins* court reasoned that it was better to have a malapportioned plan than no plan: “[A]lthough the legislative districts under the 1982 plan are doubtless unconstitutionally malapportioned for a full four-year term of office, this court, exercising its equitable powers, holds that under the facts in this case, including the imminent elections, they may be constitutionally utilized for interim relief” and that “if elections are to be timely held, they must be held pursuant to existing law – the 1982 plan” and further noted that “the 1982 plan has the advantage of having been adopted by the entire Legislature.” *Id.* at 789, 801

Here, just as in *Watkins*, there are no state legislative districts just two weeks from the April 20, 2022 “drop dead” date to execute a primary election. As in *Watkins*, Ohio’s 2011 map was fully litigated, and approved. *See Wilson v. Kasich*, 134 Ohio St.3d 221, 2012-Ohio-5367, ¶ 2, 48 (2012) (“relators failed to rebut the presumes constitutionality accorded the 2011 apportionment plan by establishing that the plan is unconstitutional beyond a reasonable doubt.”); *Ohio A. Philip Randolph Institute v. Householder*, Case No. 18-cv-00357 (S.D. Ohio Oct. 29, 2019) (ECF No. 287) (“[T]his case is dismissed for lack of jurisdiction.”).

The 2011 map has the advantage of having been fully approved by all state authorities and having been upheld by both state and federal courts. However, the 2011 map has the disadvantage

of being malapportioned as of 2022. (Complaint, ECF No. 1, PageID # 12, ¶¶ 65–70). Thus, Plaintiffs prefer Ohio Redistricting Commission plans, the Fourth Plan or the Third Plan. If the 2011 map is adopted by this Court, Plaintiffs would ask that it be used only for the 2022 General Assembly elections.

**C. There is no time for a new map by April 20, 2022.**

The undisputed testimony at the preliminary injunction hearing was that a 2022 General Assembly plan must be in place no later than April 20, 2022, for an August 2, 2022, primary to take place, and that August 2, 2022, is the last date on which a primary can be conducted without significantly impairing Ohio’s ability to conduct a safe and secure 2022 general election.

Given that timeline, it is simply too late for this Court to create a new plan for 2022—with or without the use of a “Special Master”. The expressions of optimism that a Special Master could have a plan in a matter of days are unwarranted and contrary to the experiences of courts who have used such experts.<sup>9</sup>

“Not only must experts be retained and given appropriate guidelines, there must also be a reasonable opportunity for review and comment by interested parties and DOJ as well as time for any necessary revisions that result from this process.” *Diaz v. Silver*, 932 F.Supp. 462, 467 (E.D.N.Y. 1996).

Typically, there are several months between the appointment of a special master and the adoption of a plan. *See, e.g., Wright v. Sumter Cty. Bd. of Elections & Registration*, No. 1:14-CV-42 (WLS), 2020 U.S. Dist. LEXIS 17348, at \*\*6–22 (M.D. Ga. Jan. 29, 2020) (129 days from the appointment of the special master to the district court adopting the special master’s proposed map as the interim remedial plan); *Dillard v. City of Greensboro*, 956 F. Supp. 1576, 1577-1582 (M.D.

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<sup>9</sup> *See* Motion for Appointment of Special Master, ECF No. 149.

Ala. May 22, 1997) (112 days from the initial appointment of the special master to the district court adopting the special master's supplemental redistricting plan).

The shortest period that Plaintiffs could find between the appointment of a Special Master and a Court's adoption of a plan was 21 days, which the court found required a "Herculean" effort. *Favors v. Cuomo*, No. 11-CV-5632 (RR)(GEL)(DLI)(RLM), 2012 U.S. Dist. LEXIS 36910, at \*15 (E.D.N.Y. Mar. 19, 2012). Here, we do not have even 21 days before the April 20, 2022, drop-dead date. *Favors v. Cuomo* involved the lack of any plan to elect members of congress from New York. Since the number of New York Congressional Districts had been reduced from 29 to 27, the use of the prior congressional district maps was not possible, and there were no other authorized maps to choose from.

Here, there is not enough time for a Special Master to draft a new plan, let alone consider other factors that may be proposed. Plaintiffs moved as fast as possible. (*See* Emergency Motion, ECF No. 53; Emergency Motion, ECF No. 73; Emergency Motion, ECF No. 75). "Ohio has some of the most complex rules for map drawing in the county; as well as the political geography of the boundaries of cities, townships, villages, et cetera, it's some of the most challenging as well." (Tr., ECF No. 150, PageID # 4356, 122:12–16). There is not enough time in the next two weeks for this Court to appoint a Special Master, for that Special Master to finalize a report, for objections to be filed to the Special Master's findings, and for this Court to rule on the new plan.

Instead, Plaintiffs submit that the best way to meet the April 20, 2022, deadline would be for this Court to choose between the Third Plan, the Fourth Plan, and 2011 map.

**D. This Court should avoid the alternative plans unendorsed by the Redistricting Commission.**

Because this Court should defer to the legislative body, and there is no time for a Special Master, it should adopt one of the maps adopted by the Redistricting Commission. The alternative maps offered by the Parties should not be considered.

**1. The so-called “Independent Plan” has significant flaws, including previously undisclosed involvement by Mr. Glassburn.**

This Court should not consider the so-called Independent Plan because it has significant problems. First, the plan violates the Ohio Constitution. A key component of the Ohio Constitution is adoption by the Redistricting Commission. *See* Ohio Constitution, Article XI, Section 1(A). That failed to happen here. In fact, this plan was considered—and rejected—by the Redistricting Commission. (*Commission Meeting*, March 28, 2022, Transcript – Part 5 at 21:32). As a result, this proposed plan cannot meet the requirements of the Ohio Constitution, and this Court would be adopting policy rejected by Ohio’s elected officials.

Second, the plan has technical flaws, and was significantly influenced by a Democrat staffer, Mr. Glassburn. During the hearing, it was conceded that the map had technical flaws and could not be implemented without more delay. (Tr., ECF No. 150, 135:3). This was confirmed by sworn testimony provided by Dr. Douglas Johnson, one of the authors of the McDonald and Johnson plan. (*See* Dr. Johnson Aff., Exhibit A). As explained by Dr. Johnson, the map was not final: “I cannot say it was a final constitutional map.” (*Id.*, ¶ 18). More troubling, Dr. Johnson also revealed that Mr. Glassburn, acting as a Democratic staffer, drafted portions of the map that were not approved by Dr. Johnson, Dr. McDonald, or a member of the Redistricting Commission. (*Id.*, ¶¶ 12–13). Mr. Glassburn testified at this Court’s hearing and failed to mention his unapproved role. (*See* Tr., ECF No. 150).

For these reasons, this Court should not consider the so-called Independent Plan, especially considering the previously undisclosed involvement of Mr. Glassburn.

**2. Dr. Rodden conceded that his plan should not be used.**

Dr. Jonathon Rodden also prepared a plan, the “Rodden III” plan. This plan was not approved by the Redistricting Commission, so it suffers a similar deficiency as one mostly drawn by Dr. Johnson and Dr. McDonald. Dr. Rodden also conceded that his map failed to meet the strict partisan proportionality, which the Ohio Supreme Court stated is a requirement. *League of Women Voters of Ohio v. Ohio Redistricting Comm’n*, 2022-Ohio-342, ¶ 64 (“54 percent in favor of the Republican Party and 46 percent in favor of the Democratic Party”). Because Dr. Rodden’s suggested plan fails this test, he acknowledged that this map should not be an option for this Court. (Tr. ECF No. 150, 186:17–187:22, 199:12–15; Affidavit of Jonathan Rodden, ECF No. 107-3, ¶ 30, PageID # 2614).

For these reasons, this Court should not consider the Rodden III plan as an option.

**E. The Simon Parties’ claims should not prevent the adoption of the Third or Fourth Plan.**

This Court should disregard the Simon Parties’ challenges to the Redistricting Commission’s plans, including claims under Section 2 of the Voting Rights Act (“VRA”). “[A] court, as a general rule, should be guided by the legislative policies underlying the existing plan, to the extent those policies do not lead to violations of the Constitution or the Voting Rights Act.” *Abrams v. Johnson*, 521 U.S. 74, 79 (1997). “Where a State’s plan faces challenges under the Constitution or § 2 of the Voting Rights Act, a district court should still be guided by that plan, except to the extent those legal challenges are shown to have a likelihood of success on the merits.” *Perry v. Perez*, 565 U.S. 388, 394 (2012). A Section 2 claim requires showing discrimination in the *results* of a state’s electoral procedures. 52 U.S.C. § 10301(a); *see also Thornburg v. Gingles*,

478 U.S. 30, 35 (1982). This means demonstrating “under the totality of the circumstances, the [challenged electoral law] results in unequal access to the electoral process.” *Thornburg*, 478 U.S. at 46. “[N]o court has ever construed the Voting Rights Act as prohibiting the use of any particular method of redistricting.” *Bonilla v. City Council of Chi.*, 809 F. Supp. 590, 596 (N.D. Ill. 1992) (emphasis in original).

The Simon Parties challenge the Redistricting Commission’s method. But a methodology challenge, specifically a failure to consider race by the Redistricting Commission, fails the “results test” required by Section 2. The Simon Parties have not raised a single factual allegation about the results of the Third Plan, or of any plan. The Simon Parties have also failed to put forward evidence that shows, under the totality of the circumstances, there is unequal access to the electoral process as required by this stage of litigation.

Nor can the Simon Parties rely on *Armour v. Ohio* to establish the foundation for a Section 2 violation. *Armour* made very specific findings invalidating two specific electoral districts nearly 31 years ago. 775 F. Supp. 1044 (N.D. Ohio 1991).<sup>10</sup> A three-decades old analysis of two electoral districts that no longer exist cannot serve as the basis to prove that different districts drawn just months ago violate the VRA. This is particularly true concerning how significantly the area has changed. For example, the area’s largest city, Youngstown, Ohio, dropped from around 95,000 people to 60,000 people in the intervening years, a population change of nearly 40%. The *Armour* opinion also relies on institutions that have changed significantly, such as the Youngtown City School District, which has undergone multiple fiscal emergencies and academic distress

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<sup>10</sup> “Because *Armour* based its decision, at least in part, on a finding that *Gingles* did not apply to single-member-district claims, the validity of *Armour* was put in doubt by *Grove v. Emison*, 507 U.S. 25, 122 L. Ed. 2d 388, 113 S. Ct. 1075. Moreover, *Armour* has been heavily criticized by other courts. See, e.g., *DeBaca*, 794 F. Supp. at 996-97; *Hastert*, 777 F. Supp. at 652-53.” *Rodriguez v. Pataki*, 308 F. Supp. 2d 346, 383 n.42 (S.D.N.Y. 2004)



commissions. *See* O.R.C. § 3302.10. The Mahoning Valley of 1991 is different from the Mahoning Valley of today—and nothing in the record closes this multiple decade gap.

As a result, this Court should not be concerned by the Simon Parties’ allegations in terms of adopting the Third Plan, or the Fourth Plan, if possible.

## **VII. CONCLUSION**

For all these reasons, Plaintiffs respectfully request that this Court adopt the most recent map adopted by the Redistricting Commission for the 2022 election for state legislative office, the Fourth Plan, on or before April 20, 2022, for a primary election on August 2, 2022.

Respectfully submitted,

**Isaac Wiles & Burkholder LLC**

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**CERTIFICATE OF SERVICE**

I hereby certify that on April 6, 2022, a copy of the foregoing was filed electronically.  
Notice of this filing will be sent to all parties by operation of the Court's electronic filing system.  
Parties may access this filing through the Court's system.

/s/Donald C. Brey  
Donald C. Brey (0021965)

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**APPENDIX**

Exhibit A: Affidavit of Dr. Douglas Johnson dated April 3, 2022.

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# EXHIBIT

A

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**IN THE SUPREME COURT OF OHIO**

League of Women Voters of Ohio, *et al.*,

Petitioners,

v.

Ohio Redistricting Commission, *et al.*,

Respondents.

Case No. 2021-1193

Bria Bennett, *et al.*,

Petitioners,

v.

Ohio Redistricting Commission, *et al.*,

Respondents.

Case No. 2021-1198

Ohio Organizing Collaborative, *et al.*,

Petitioners,

v.

Ohio Redistricting Commission, *et al.*,

Respondents.

Case No. 2021-1210

**AFFIDAVIT OF DR. DOUGLAS JOHNSON**

1. I am over the age of eighteen (18) and am competent to testify to the matters set forth herein. The following is true of my own personal knowledge and I otherwise believe it to be true.

2. I am the President of National Demographics corporation and have consulted on redistricting nationally. A copy of my CV is attached.

3. I was hired by the Ohio Redistricting Commission on March 21, 2022 to serve as an independent mapmaker to draft a fourth General Assembly districting plan along with Dr. Michael McDonald.

4. The primary six requirements applied to our work:

- a. Equal Population (state and federal requirement)
- b. Meet the geographic requirements of Ohio Constitution Sections 2, 3, 4, and 7
- c. Meet the Section 5 Senate drawing and assignment requirements of the Ohio Constitution
- d. Meet the Section 6 requirement of the Ohio Constitution to not favor a political party
- e. Meet the Section 6 requirement of the Ohio Constitution for partisan proportionality
- f. Meet the Section 6 requirement of the Ohio Constitution to draw compact maps

5. Ohio's complex geography and complex geographic requirements for redistricting mean that mapmakers must alternate back and forth between House and Senate maps until arriving at a map that meets the requirements for both House and Senate districts. No House map is complete until the Senate map is complete, and vice versa.

6. The intricate boundaries of Ohio villages, cities and townships also require a thorough review after a set of General Assembly maps are drawn to ensure that all of the Section 2, 3, 4, 5 and 7 geographic requirements are met. As the various Ohio Supreme Court rulings note, drafters of a number of earlier map proposals thought they have satisfied the Constitutional requirements of sections 2, 3, 4, 5 and 7 but were later determined to be unconstitutional.

7. We used the software Maptitude for Redistricting, which is customarily used for redistricting work across the county. It has been used by all the various mappers in Ohio redistricting, and it includes a number of reports that are handy in identifying inadvertent and potentially unconstitutional splits of counties, townships, cities and villages. Because the Maptitude reports are not tailored to the specific requirements of Ohio, the reports require a line-by-line review once they are generated to identify what are, and are not, constitutional divisions of the various jurisdictions. For example, a Maptitude report will identify a city split but the mappers must review the split to identify whether it is across a county boundary (and thus constitutional) or if it is unconstitutional.

8. As independent mapmakers, Dr. McDonald and I met with the Commission on Wednesday, March 23, 2022 and began our mapping work on Thursday, March 24, 2022.

9. Dr. McDonald and I suggested to the Commission that we would consult with the staff of the Republican and Democratic commissioners. If we asked for guidance on an issue and both sides agreed we would incorporate that into our maps, but if there was disagreement we would bring it to the Commission for direction. The Commission did not formally approve that direction, but there was no objection and I proceeded using that approach through Sunday.

10. On Thursday, Friday, Saturday and Sunday, I believe Dr. McDonald and I generally operated as independent mapmakers: we would ask, and staff from the Republican and Democratic caucuses would tell us, if an option we were considering was sure to run into a violation of Sections 2, 3, 4 and/or 7 (the Constitutional geographic requirements for redistricting). But otherwise I, and I believe Dr. McDonald as well, generally made the mapmaking decisions on our own for our separate maps. (I am sure some exceptions to this have been noted from the video and transcripts, but as a general rule this was true through Saturday and for most or all of Sunday).



11. On Monday, March 28, 2022, it was clear that we were not going to finish a map before the Court's midnight deadline without more direct guidance from Commission members' staff.

12. As the deadline loomed, Mr. Chris Glassburn, of Democratic staff, provided us a "seven counties" map he had previously drawn. This map cleaned up the Section 5 concerns in the seven northeast counties of the state, covering seven senate districts and twenty-one house districts. If Dr. McDonald and I had drawn this area on our own, we would never have come close to finishing a map in time for the midnight deadline. No Republican staff member or Commission member gave approval of the use of Mr. Glassburn's districts.<sup>1</sup>

13. Dr. McDonald and I reviewed the partisan lean of Mr. Glassburn's "seven counties" districts and we made small changes to a handful of the districts in Cuyahoga County to maintain the partisan symmetry of our previous map. We did not – as Senator Huffman asked us to do when the map was first presented to the Commission with a split of Cleveland Heights – do a thorough review of every change that the "seven counties" map made to the previous House and Senate maps Dr. McDonald and I had drawn.

14. Given the time crunch of the midnight deadline, map revisions/alternatives requested by the State Auditor were never drawn. Also, per the policy mentioned above, the final map that was drafted included a configuration of Mahoning County that Dr. McDonald and I drew into the map on the condition that it would be run past the commission members' staff or the Commission. Mr. Blake Springhetti, Majority Director of Finance for the Ohio House of Representatives and Commission staffer for Speaker Robert R. Cupp, later conveyed the Republican commissioners' objection to that configuration of the districts in Mahoning County,

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<sup>1</sup> That said, I was informed that Ray DiRossi, budget director for the Ohio Senate, was very sick that day and unable to attend.



but I ran out of time to change it (at that point in the timeline Dr. McDonald had been required to leave due to his teaching commitment the next day).

15. So the final House map that was drafted included the Mahoning County configuration that should have been redrawn if there had been sufficient time, and essentially all of the "seven counties" map drawn by Mr. Glassburn was incorporated despite a lack of sign-off on those districts by the Commissioners or their representatives.

16. All of these issues arose from the very challenging timeline. Here is the rough breakdown of independent mapmaker activity on Monday. These are from my memory and the "created" dates on the data handover demographic summary and block assignment files. If there is disagreement between my recollections and what is shown on the available videos, the video should be the controlling source.

<b>Monday, March 28 timeline</b>	
11:30 am	Excel file with list of House and Senate incumbents received
Roughly 12pm	List of House and Senate incumbents geocoded and imported into independent mapmakers' House maps
7:20pm	House map drawn addressing House pairings ("House Merged 5")
9:04pm	Senate map built from the pm House map hit a "brick wall" and failed (This was "Senate Merged 5", which has two House districts unassigned to Senate districts and completely surrounded by House districts already assigned to Senate districts, and thus was never provided to Commission staff or posted online)
10:23pm	House map redrawn in the hopes of creating pathways around those "brick walls" without creating new problems ("House Merged 6")
11:25pm	Senate map drawn based on the 10:23pm House map drawn ("Senate Merged 6"); House and Senate "Merged 6" maps provided to Democratic Commission staff

17. While Dr. McDonald had to leave at 5pm on Monday, March 28, 2022, he called me from the airport to say that he recognized a population problem in one of the House districts in Wood County. Dr. McDonald also said Mr. Glassburn knew how to fix the population problem while preserving the competitive nature of that district. I took an initial shot at fixing the district

on my own, but it was getting clear at that point (6:07pm) that there was no way to complete an "independent" map by the midnight deadline. Thus I relied on Mr. Glassburn to identify the township that could be shifted to population balance the district while keeping the district competitive.

18. After drawing the 10:23pm House map, I am confident that I could have eventually found the way to a Senate map that worked with the 10:23pm House map but not by the deadline. Thus I relied on Mr. Glassburn guiding me to at least one of the pathways to a Senate and House map that could work. I handed that Senate map off to Democratic Commission staff at 11:25pm, simultaneously confirming that (as far as I know) it worked with the 10:23pm draft House map. While it seemed to work, for the reasons listed below, I cannot say it was a final constitutional map.

19. As noted above, the Maptitude software has a number of reports that measure compactness and that are handy in identifying whether a map complies with the Section 2, 3, 4 and 7 requirements of the Ohio Constitution. Unfortunately I did not have any time to run those reports before the midnight deadline. In drawing the maps I believe I can speak for Dr. McDonald and myself in saying we made every effort to ensure they followed all federal, state constitution and Ohio Supreme Court direction. But we did not have time to run and review the reports that would have confirmed that.

20. And there was no time for any of the following:

- a. Balancing the compactness and partisan symmetry requirements of Section 6 as directed by the Ohio Supreme Court;

- b. Addressing any of the Commission's requested revisions to the map (the change in Mahoning County and the Auditor's requested alternative map with redrawn House districts in Toledo and Cincinnati);
- c. Delivering the map for any substantive review by Commission staff, much less by the Commissioners themselves, such as the review that led to Senator Huffman's note in the afternoon meeting that the House map at the time unconstitutionally split Cleveland Heights;
- d. Reviewing the maps to determine if there was a way to eliminate any relevant pairings among the three House districts and four Senate districts that contained pairings.

21. I also had no time to analyze, much less to present to the Commission, the challenges involved in balancing the partisan symmetry requirements of the Supreme Court rulings on Section 6 with the compactness requirements of Section 6. Nor was there any time to incorporate or even attempt any significant Commission requests for amendments other than Mr. Glassburn's "seven counties" map idea included by Mr. Glassburn.

22. The work of Dr. McDonald and I was highly constrained by the combination of (1) the state's extremely complex geographic features; (2) the state's extremely complex rules for pairing and uniting those geographic features; and (3) the extremely limited window of time to draw the maps. I hope that the final maps submitted by me (and on behalf of Dr. McDonald) met the constitutional requirements of Sections 2, 3, 4, 5 and 7, and Dr. McDonald and I made every effort as we were drawing the maps to follow those requirements, but I did not have the time to conduct the detailed review to confirm whether that is the case.

FURTHER THE AFFIANT SAYETH NAUGHT.

*9<sup>th</sup> April*  
This the 3<sup>rd</sup> day of ~~March~~, 2022.

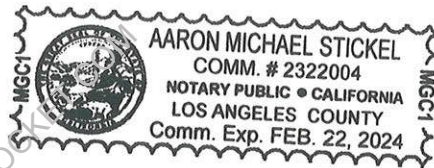
By:

*[Signature]*  
\_\_\_\_\_  
Dr. Douglas Johnson

SWORN TO AND SUBSCRIBED BEFORE ME

*APRIL 8*  
This the 3<sup>rd</sup> day of ~~March~~, 2022.

*AARON MICHAEL STICKEL*  
\_\_\_\_\_  
Notary Public



My Commission Expires:

02-22-2024

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National Demographics Corporation

SEARCH...



## Douglas Johnson

### Current Employment

President, National Demographics Corporation, 2006 – present

### Research

Research Affiliate, Rose Institute of State and Local Government at Claremont McKenna College, 2001 – present

### Past Employment

Senior Analyst, National Demographics Corporation, 2001 – 2006

Project Manager and Senior Manager at three internet startup companies, 1999 – 2001

U.S. Representative Stephen Horn, Legislative Director and System Manager, 1993 – 1997

Coro Foundation, Fellowship in Public Affairs, 1992 – 1993

Rose Institute for State and Local Government, Student Manager, 1989 – 1992

### Education

Ph.D.: Claremont Graduate University, Political Science, 2015, Dissertation: "*Independent Redistricting Commissions: Hopes and Lessons Learned*."

MBA: UCLA Anderson Graduate School of Management, 1999

BA: Claremont McKenna College, 1992

Graduated Cum Laude and Phi Beta Kappa from Claremont McKenna College, with the Philip Roland Prize for Excellence in Public Policy

### Publications and Articles

- Quiet Revolution in California Local Government Gains Momentum, Rose Institute of State and Local Government White Paper on California Voting Rights Act, November 3, 2016.
- Visalia Times, "How to draw new city council districts," September 19, 2014.
- Christian Science Monitor, "Let the public help draw voting districts," October 25, 2013.
- Redistricting in America, Rose Institute of State and Local Government, 2010.
- New York Times, "The Case for Open Primaries," February 19, 2009.
- Los Angeles Times Opinion Articles:
  - "A neighbor's help on redistricting" June 24, 2007.
  - "A Trojan horse primary for the GOP" February 25, 2007.
  - "Where a porn palace stood" (article on redevelopment in Long Beach, California), July 30, 2006.

- Restoring the Competitive Edge: California's Need for Redistricting Reform and the Likely Impact of Proposition 77. Rose Institute of State and Local Government, 2005.
- Competitive Districts in California, Rose Institute of State and Local Government, 2005.
- Fresno Bee Opinion Article: "The Poison Handshake" June 15, 2004.
- Latinos and Redistricting: "Californios For Fair Representation" and California Redistricting in the 1980s. Rose Institute of State and Local Government, 1991.
- Quoted hundreds of times in newspaper, radio and television, including interviews on CNN, the Los Angeles PBS Affiliate, Fox, and in the 2010 documentary "Gerrymandering."

### Speaker or Panelist

- California School Board Association, Panelist: "Voter Districts: The Link Between Strong Community Engagement and a Successful Process," November 30, 2018 (upcoming).
- California League of Cities, Mayors and Councilmembers Executive Forum, Moderator, "The California Voting Rights Act and the District-Drawing Process," June 29, 2018.
- League of Women Voters of Burbank and Glendale, Keynote Speaker, "Town Hall meeting on SB415" (The California Voter Participation Rights Act), May 8, 2018.
- California League of Cities, City Attorney Department, panelist, "The California Voting Rights Act: Recent Legislation & Litigation Outcomes," May 3, 2018.
- California League of Cities, City Clerk Department, keynote, "California Voting Rights Act – Transitioning From At-Large To By-District Elections: A Practical Guide For City Clerks," April 19, 2018.
- California School Board Association, Panelist: "15 Years Later: The California Voting Rights Act & Lessons Learned," December 1, 2017.
- California League of Cities, City Clerk Department, Panelist: "California Voting Rights Act: Putting the 2016 Legislation into Practice," April 13, 2017.
- California League of Cities, Riverside County Chapter, presenter: "The California Voting Rights Act and Redistricting: The Demographer's Perspective," May 9, 2016.
- California League of Cities, Inland Empire Chapter, presenter: "The California Voting Rights Act and Redistricting: The Demographer's Perspective," April 14, 2016.
- California School Board Association, Panelist: "The California Voting Rights Act: What Board Members Must Know," December 4, 2015.
- National Conference of State Legislatures, Redistricting and Elections Standing Committee: 2011 Winter Forum, "Citizen Voting Age Data from a line-drawer's viewpoint."
- Luncheon Keynote Speaker, Santa Barbara's Channel Cities Club, "California's next experiment: independent, public redistricting," January 18, 2011.
- Annual Conference, Arizona League of Cities and Towns, Presenter at "Redistricting Law and the Voting Rights Act: What It Means for Your City or Town in 2011," August 25, 2010.
- National Conference of State Legislatures, Redistricting and Elections Standing Committee: 2010 Spring Forum, "Communities of Interest in Redistricting: A key to drawing 2011 plans (and for their defense)."
- Arizona Election Law 2010 Continuing Legal Education Conference, "Communities of interest and technology in redistricting," sponsored by the Arizona State Bar Association, March 2010
- Redistricting, The 2010 Census, and Your Budget, Sponsored by the Rose Institute of State and Local Government, California League of Cities, October 15, 2009.
- California's New Independent Redistricting Commission, sponsored by the Irvine Foundation and the California Redistricting Collaborative, December 15, 2009
- Tribal Association of Sovereign Indian Nations (TASIN) Legislative Day 2009, "The 2010 Census and 2011 Redistricting in California," December 2, 2009.
- California School Board Association, "Litigation Issues and the California Voting Rights Act," December 4, 2009.

- National Conference of State Legislatures, Redistricting and Elections Standing Committee: 2009 Fall Forum, "The Key to Successful Redistricting."
- California Latino School Boards Association, "Introduction to the California Voting Rights Act," August 20, 2009.
- National Conference of State Legislatures, Redistricting and Elections Standing Committee: 2008 Spring Forum, "Communities of Interest In Redistricting: A Practical Guide."
- Voices of Reform, a project of the Commonwealth Club of San Francisco: multiple forums on redistricting and / or term limits, 2006 – 2007
- National Conference of State Legislatures, Redistricting and Elections Standing Committee: 2007 Spring Forum, "The Arizona Independent Redistricting Commission's experiences with the first-ever independent redistricting."
- "Building a National Reform Movement," Salt Lake City, Utah, conference on redistricting reform hosted by the League of Women Voters, Campaign Legal Center, and The Council for Excellence in Government, 2006
- Texas Tech University, "A Symposium on Redistricting," May, 2006
- California League of Cities, "Introduction to the California Voting Rights Act."
- Classroom speaker at Pepperdine University, the University of La Verne, Pomona College, Claremont McKenna College, and Bellflower High School.

### Independent and Advisory Commission Redistricting Projects

- City of Menlo Park Advisory Districting Commission, lead technical consultant, 2018
- Arizona Independent Redistricting Commission, lead technical consultant, 2001-2008
- San Diego City Council Independent Redistricting Commission, lead technical consultant, 2011
- City of Surprise Advisory Commission on Redistricting, 2011
- Pasadena City Council Advisory Commission on Redistricting, co-lead technical consultant, 2011
- Pasadena Unified School Board Advisory Commission on Redistricting, co-lead technical consultant, 2011
- City of Modesto Independent Redistricting Commission, lead technical consultant, 2011
- City of Modesto Independent Districting Commission, lead technical consultant, 2008

### Traditional Districting and Redistricting Projects

- Initial as Senior Analyst and later as President, Dr. Johnson led NDC's work on **over 250** districting and redistricting projects across California, Nevada and Arizona between 2001 and today. Many are listed on NDC's [sample client list page](#).

### Expert Witness Testimony and other Litigation Experience

- Expert witness declaration for the City of Redondo Beach, California, in *City of Redondo Beach vs State of California*, Los Angeles County Superior Court Case No. BS172218, litigation regarding the California Voter Participation Act (currently pending).
- Expert witness declaration for West Contra Costa Unified School District in *Ruiz-Lozito vs West Contra Costa Unified School District* litigation under the California Voting Rights Act, Contra Costa Superior Court Case Number C18-00570 (currently pending).
- Expert witness declaration, deposition and testimony for Kern County, California, in *Luna v County of Kern* litigation under the Federal Voting Rights Act.
- Expert witness declaration and testimony for North Carolina in *Covington v State of North Carolina* litigation under the Federal Voting Rights Act.
- Expert witness declaration for City of Fullerton in *Jamarillo v City of Fullerton* litigation under the California Voting Rights Act.

- Expert witness declaration for City of Whittier in *Diego v City of Whittier* litigation under the California Voting Rights Act.
- Expert witness declaration and deposition for plaintiff in *Harris vs Arizona Independent Redistricting Commission* litigation.
- Expert witness declaration and deposition for Santa Clarita Community College District in *Solis v Santa Clarita Community College District* litigation under the California Voting Rights Act.
- Expert witness declaration, deposition and testimony for City of Highland in *Garrett v City of Highland* litigation under the California Voting Rights Act.
- Expert witness declaration, deposition and testimony for City of Palmdale in *Jauregui et al vs City of Palmdale* and *Garrett v City of Highland* litigation under the California Voting Rights Act.
- Testified as 30(b)(6) "Most Knowledgeable" witness for Arizona Independent Redistricting Commission in *Arizona Minority Coalition v Arizona Independent Redistricting Commission*, including seven days of direct testimony and cross-examination in the state court case. Also testified in the related federal court case.
- Consulting expert for the following jurisdictions on their California Voting Rights Act-related cases, including preparing analysis and assisting with witness and attorney preparation:
  - City of Anaheim
  - City of Compton
  - City of Modesto
  - City of Poway
  - City of Santa Clara
  - City of Santa Clarita
  - City of Whittier
  - Santa Clarita Community College District
  - Tulare Health Care District.

### Charter and/or Ballot Language Consultant

- City of **El Cajon**: consulted on writing of charter revision and public education campaign for ballot measure changing from at-large to by-district City Council elections. (2016)
- **Castaic Lake Water Agency and Newhall County Water District** consultant advising on process, rules and legislation language for merger of the two districts including changing from at-large to by-district election system. (2015-2016)
- City of **Corona**: consultant for City Council on a potential city charter and a move to by-district elections. (2015-2016)
- City of **Pasadena** (on behalf of Pasadena Unified School District): advised commission that successfully developed a city charter change moving Pasadena Unified from at-large to by-district elections and created a redistricting commission. (2011 – 2012)
- City of **Menifee**: advised commission considering language on by-district elections. (2009 – 2010)
- City of **Modesto**: advised commission that successfully developed a city charter change moving Pasadena Unified from at-large to by-district elections and created an independent redistricting commission. (2006 – 2008)
- City of **Goleta**: consulted on development of ordinances and ballot language asking voters what election system they preferred. (2003 – 2004)

### Racial Bloc Voting Analysis

Extensive experience with all racial bloc voting statistical methods: homogeneous precinct analysis, Ordinary Least Squares (OLS) regression, Weighted OLS, Seemingly Unrelated Regression (SUR) and EZI ecological inference analysis.



Attorney-client privilege bars the listing of most of NDC's specific clients, but NDC has performed racial bloc voting analysis for clients of the following law firms: Nielsen, Merksamer, Parrinello, Gross & Leoni; Lozano, Smith; Atkinson, Andelson, Loya, Ruud & Romo; Dooley, Herr & Peltzer; Fagen Friedman & Fulfroost; Rutan & Tucker; among others.



### CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on the following counsel of record  
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