

Freda J. Levenson (0045916)
Counsel of Record
ACLU OF OHIO FOUNDATION, INC.
4506 Chester Avenue
Cleveland, OH 44103
(614) 586-1972 x125
flevenson@acluohio.org

David J. Carey (0088787)
ACLU OF OHIO FOUNDATION, INC.
1108 City Park Avenue, Suite 203
Columbus, OH 43206
(614) 586-1972 x2004
dcarey@acluohio.org

Alora Thomas (PHV 22010-2022)
Julie A. Ebenstein (PHV 25423-2022)
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION
125 Broad Street
New York, NY 10004
(212) 519-7866
athomas@aclu.org

Robert D. Fram (PHV 25414-2022)
Donald Brown (PHV 25480-2022)
David Denuyl (PHV 25452-2022)
Janelle Lamb (PHV 25909-2022)*
COVINGTON & BURLING LLP
415 Mission Street, Suite 5400
San Francisco, CA 94105-2533
(415) 591-6000
rfram@cov.com
James Smith (PHV 25421-2022)

Sarah Suwanda (PHV 25602-2022)
Alex Thomson (PHV 25462-2022)
Kimberly Plumer (PHV 25888-2022)*
COVINGTON & BURLING LLP
One CityCenter
850 Tenth Street, NW
Washington, DC 20001-4956
(202) 662-6000
jmsmith@cov.com
Anupam Sharma (PHV 25418-2022)
Yale Fu (PHV 25419-2022)
COVINGTON & BURLING LLP
3000 El Camino Real
5 Palo Alto Square, 10th Floor
Palo Alto, CA 94306-2112
(650) 632-4700
asharma@cov.com
*Counsel for League of Women Voters
Petitioners*
Dave Yost
OHIO ATTORNEY GENERAL
Julie M. Pfeiffer (0069762)
Jonathan D. Blanton (0070035)
Michael A. Walton (0092201)
Allison D. Daniel (0096186)
Constitutional Offices Section
30 E. Broad Street, 16th Floor
Columbus, OH 43215
(614) 466-2872
Julie.Pfeiffer@OhioAGO.gov
*Counsel for Respondent Ohio Secretary of
State Frank LaRose*

Phillip J. Strach (PHV 25444-2022)
Thomas A. Farr (PHV 25461-2022)
John E. Branch, III (PHV 25460-2022)
Alyssa M. Riggins (PHV 25441-2022)
NELSON MULLINS
RILEY & SCARBOROUGH
LLP
4140 Parklake Avenue, Suite 200
Raleigh, NC 27612
(919) 329-3800
phillip.strach@nelsonmullins.com

W. Stuart Dornette (0002955)
Beth A. Bryan (0082076)
Philip D. Williamson (0097174)
TAFT STETTINUS & HOLLISTER LLP
425 Walnut Street, Suite 1800
Cincinnati, OH 45202-3957
(513) 381-2838
dornette@taftlaw.com
*Counsel for Respondents House Speaker
Robert Cupp and Senate President Matt
Huffman*

Erik J. Clark (0078732)
Ashley T. Merino (0096853)
ORGAN LAW LLP
1330 Dublin Road
Columbus, OH 43215
(614) 481-0900
ejclark@organlegal.com
*Counsel for Respondent Ohio Redistricting
Commission*

Abha Khanna (PHV 2189-2022)
Ben Stafford (PHV 25433-2022)
ELIAS LAW GROUP, LLP
1700 Seventh Avenue, Suite 2100
Seattle, WA 98101
(206) 656-0176
akhanna@elias.law

Jyoti Jasrasaria (PHV 25401-2022)
Spencer W. Klein (PHV 25432-2022)
Harleen K. Gambhir (PHV 25587-2022)
Raisa Cramer (PHV 25880-2022)
ELIAS LAW GROUP, LLP
10 G St. NE, Suite 600
Washington, DC 20002
(202) 968-4490
jjasrasaria@elias.law

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

Counsel for Neiman Petitioners

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
INTRODUCTION	1
INTERESTS OF AMICUS CURIAE.....	2
STATEMENT OF THE FACTS AND CASE	3
ARGUMENT	3
PROPOSITION OF LAW: THE PASSED GERRYMANDERED MAPS VIOLATE ARTICLE XIX, SECTION 3 OF THE OHIO CONSTITUTION.	3
CERTIFICATE OF SERVICE	2
SERVICE LIST FOR PARTIES OF RECORD	2

RETRIEVED FROM DEMOCRACYDOCKET.COM

TABLE OF AUTHORITIES

Cases

Adams v. DeWine, Slip Opinion No. 2022-Ohio-89..... 3, 5, 6
League of Women Voters of Ohio v. Ohio Redistricting Comm., 2022-Ohio-789..... 6

Other Authorities

Official Report to the Ohio General Assembly, Ohio Citizens’ Redistricting Commission,
September 2021, at 13, available at <https://ohredistrict.org/assets/images/unity-maps/OCRC-Congressional-Report.pdf>..... 7

Constitutional Provisions

Article XIX, Section 1(C)(3)(a)..... 5
Article XIX, Section 3(B)(1) 3
Article XIX, Section 3(B)(2) 4

RETRIEVED FROM DEMOCRACYDOCKET.COM

INTRODUCTION

Ohioans deserve fair maps, and no politicians can tell them otherwise. Thus the Ohio Advocacy Organizations submit this reply brief as amicus curiae to discuss two important issues raised through merit briefing. First, members of the Ohio Redistricting Commission have put forth an interpretation of the Ohio Constitution fundamentally at odds with the language, intent, and spirit of the 2018 constitutional reforms. They claim that on redraw, the Ohio Redistricting Commission has no obligation to account for partisan bias.

They are unequivocally wrong.

Second, the Ohio Advocacy Organizations filed their brief in support of the petitioners in these consolidated cases. However, both sets of petitioners have taken different approaches in this case, asking for slightly different remedies. Our assessment of the second gerrymandered congressional map finds the whole map invalid, rather than just parts of it.

Ohio communities do not deserve to be sliced and diced in haphazard shapes to serve the whims of partisan interests. The Ohio Redistricting Commission had the opportunity to consider constitutional maps, like the map created by the Ohio Citizens' Redistricting Commission, but it ignored these proposed maps beyond allowing their testimony. Instead, by creating the 2022 gerrymandered congressional map, the Commission cracked communities most at risk to environmental harms and most often excluded from political processes. The Ohio Advocacy Organizations submitting this brief stand together against the disparate and intentionally created harms of the Ohio Redistricting Commission's second gerrymandered congressional map. If, instead of gerrymandering, Ohio's elected leaders create a congressional map designed to keep connected communities together, rather than political parties, everyone wins. The environment wins. Ohio wins.

INTERESTS OF AMICUS CURIAE

Nine organizations have joined together to submit this brief in support of the petitioners. The Ohio Environmental Council, Ohio Organizing Collaborative, Ohio Farmers Union, LEAD Ohio, Red Wine & Blue, OPAWL - Building AAPI Feminist Leadership, Innovation Ohio, Ohio Coalition on Black on Black Civic Participation / Ohio Unity Coalition, and Ohio Citizen Action (collectively, the “Ohio Advocacy Organizations”) represent thousands of Ohioans from all corners of the state and many walks of life. We all work on many diverse issues in different places and spaces, but together we unite in our call for fair, constitutional, representative congressional maps. Our unified voice represents the Ohioans who refuse to wait another year for an end to partisan gerrymandering.

Accordingly, we incorporate by reference the interests of the Ohio Advocacy Organizations as described in our original amicus brief.

In sum, the gerrymandered congressional map harms the Ohio Advocacy Organizations’ members, supporters, and missions by dividing Ohio’s communities in haphazard ways while diluting votes, especially Democrat votes, for the purpose of maintaining a Republican advantage. The gerrymander results in a Congressional delegation that need not be responsive to Ohioans because their elections are often decided before a vote is even cast. And when lines divide communities experiencing injustices, the members of that community have their voice diluted. Whether they want to elect a Republican, a Democrat, or someone else entirely to represent their interests, their votes are split between multiple congressional districts. These harms are especially poignant for the Ohio Advocacy Organizations representing Ohio’s diverse communities, whether it's the growing AAPI community in Central Ohio, Black communities across the state, Ohio’s

farmers committed to social justice and an end to corporate control of political processes, or another important Ohio community. They all matter equally.

The congressional map adopted on March 2, 2022 perpetuates the need for continued and excess investment in educational efforts regarding Ohio’s democratic institutions. Because the gerrymandered plan encourages apathy and discourages voters from engaging in the democratic process, the Ohio Advocacy Organizations will need to expend additional resources over the next decade. Communities across Ohio will have a more difficult time advocating for their needs in Congress. Ohio will suffer. People will suffer. Our planet will suffer.

STATEMENT OF THE FACTS AND CASE

Amicus Curiae hereby adopts and incorporates by reference the Statement of the Facts and Case delineated by petitioners, League of Women Voters, et. al. and Neiman, et. al.

ARGUMENT

PROPOSITION OF LAW: THE PASSED GERRYMANDERED MAPS VIOLATE ARTICLE XIX, SECTION 3 OF THE OHIO CONSTITUTION.

I. The Ohio Redistricting Commission must create a map that remedies any legal defects in the previous plan identified by the court.

In *Adams v. DeWine*, this Court held: “the General Assembly did not comply with Article XIX, Sections 1(C)(3)(a) and (b) of the Ohio Constitution We therefore declare the plan invalid and we order the General Assembly to pass a new congressional-district plan, as Article XIX, Section 3(B)(1) requires, that complies in full with Article XIX . . . and is not dictated by partisan considerations.” *Adams v. DeWine*, Slip Opinion No. 2022-Ohio-89, ¶102. The expectations of the Court were crystal clear. And Article XIX, Section 3(B)(1) says that “a

congressional district plan passed under this division shall remedy any legal defects in the previous plan identified by the court but shall include no changes to the previous plan other than those made in order to remedy those defects.” While Section 3(B)(1) applies to the General Assembly, a similar provision governs the Ohio Redistricting Commission’s step in the redraw, namely Section 3(B)(2). The Ohio Redistricting Commission also has an obligation, when drawing a new congressional district plan, to “remedy any legal defects in the previous plan identified by the court but shall include no other changes to the previous plan other than those made in order to remedy those defects.” Article XIX, Section 3(B)(2). Importantly, Section 3(B)(2) only comes into effect if the General Assembly fails to pass a map under Section 3(B)(1); it is activated by the procedures of that particular clause. Thus, the Ohio Redistricting Commission must also carry out the Ohio Supreme Court’s commands: draw a new congressional plan in accordance with Article XIX *not dictated by partisan considerations*.

We emphasize this language because some members of the Ohio Redistricting Commission make a spurious argument regarding the “plain language” of the Ohio Constitution. They argue that Section 3(B)(2) does not require the Commission to make a map without partisan bias, and that the Section 1(C)(3)/(F)(3) requirements only apply when the Ohio General Assembly passes a map. They argue that requiring the Commission to follow *this Court’s own ruling* would “judicially amend” the Ohio Constitution.

The Ohio Redistricting Commission’s members are trying to avoid their very explicit obligations. They attempt legal and linguistic gymnastics to justify their gerrymandering. The truth is simple. The Ohio Constitution requires the Commission, under Section 3(B)(2), to “remedy any legal defects in the previous plan *identified by the court* but shall include no other changes to the previous plan other than those made in order to remedy those defects.” (emphasis added) The Ohio

Supreme Court held that the first congressional map “did not comply with Article XIX, Section 1(C)(3)(a) and (b) of the Ohio Constitution” and that the whole plan was invalid. *Adams v. DeWine*, ¶102. A new map must “not be dictated by partisan considerations.” *Id.* Thus, the Commission’s task is to ensure a new map complies with Article XIX, Section 1(C)(3)(a) and (b). The Court’s order mandates it, as does Section 3(B)(2). The arguments put forth by the Commission members cannot ignore the words as written.

II. The Ohio Supreme Court should invalidate the entire plan, not just a few districts.

Briefly, the Ohio Advocacy Organizations wish to emphasize the breadth of our arguments illustrated in our first amicus brief. In these two consolidated cases, the two sets of petitioners, *Neiman, et al* and *League of Women Voters, et al* have taken slightly different positions regarding remedies before this Court. The Ohio Advocacy Organizations collectively support invalidating the entire second gerrymandered congressional map, not only a few of its districts.

The entire map’s construction is designed to enshrine an undue partisan advantage for one political party over another. From the boundaries of Districts 1 and 8 to the boundaries of Districts 3, 4, and 15 and beyond, every line is deliberately drawn to give as extreme an advantage as possible. Simply fixing one or two districts will not eliminate the fundamental flaw baked into the entire map.

The second gerrymandered congressional map passed by the Ohio Redistricting Commission violates Article XIX, Section 1(C)(3)(a), and its violations are obvious by a simple observation of the data. The explicit, mandatory language in the Constitution says “the general assembly shall not pass a plan that unduly favors or disfavors a political party or its incumbents.” *Id.* In *Adams v. DeWine*, this Court made clear what it means to favor a political party over another:

When the dealer stacks the deck in advance, the house usually wins. That perhaps explains how a party that generally musters no more than 55 percent of the

statewide popular vote is positioned to reliably win anywhere from 75 percent to 80 percent of the seats in the Ohio congressional delegation. By any rational measure, that skewed result just does not add up. 2022-Ohio-89, ¶ 100.

Similarly, a map that results in, at minimum, 66% of the seats in the Ohio Congressional delegation for the Republican Party is also a stacked deck, especially when it generally only musters no more than 55% of the statewide popular vote.

Only correcting one or two of the map's districts will not adequately represent the voting preferences of Ohioans. And the Court should closely consider the partisan asymmetry of the 2022 gerrymandered congressional map. While an initial glance at the map on a website like Dave's Redistricting may indicate five districts lean Democrat and ten Republican, Expert Testimony submitted by the *Neiman* petitioners demonstrates a different reality. Based on the 2020 congressional election results, for instance, Christopher Washaw shows how the 2022 gerrymandered congressional map would result in Republicans winning 80% of Ohio's seats in Washington D.C. See *Evidence of Meryl Neiman - Volume 3 of Exhibits*, at 143. According to Washaw, the "plan is more extreme than 77% of previous plans and more pro-Republican than 89% of previous plans." *Id.* Specifically, the map has a symmetry bias of 17% in favor of the Republican Party. *Id.* Essentially, the 2022 gerrymandered map creates a situation where the Democratic Party can win, at most, five seats in a good year, while the Republican Party can win twelve seats, potentially thirteen seats, in a good year. But in *League III*, this Court made clear that partisan asymmetry in "competitive districts" unduly favors one party over another: "The remarkably one-sided distribution of toss-up districts is evidence of an intentionally biased map, and it leads to partisan asymmetry." *League of Women Voters of Ohio v. Ohio Redistricting Comm.*, 2022-Ohio-789, ¶ 33. While the congressional map only has fifteen districts, compared to the 99 House seats and 33 Senate seats of the statehouse district plans, the principle still applies.

The Court should invalidate the entire 2022 gerrymandered congressional map on similar grounds, not just one or two of its districts.

CONCLUSION

The Ohio Advocacy Organizations once again reaffirm that it's possible to draft a map truly representative of Ohio communities and Ohioan voting preferences. A first glance at the Ohio Citizen's Redistricting Commission's map should illustrate how it accurately represents the various regions of Ohio. Franklin County includes District 3, and District 12 includes the northern sections of Franklin County with similarly situated communities in Delaware County, the next most populous county in Central Ohio. Lucas County is contained within District 9, and includes other similarly situated districts along Lake Erie and associated watersheds. The northwestern rural counties of Ohio are all contained within District 5, while many of the southwestern rural counties are included within District 8. The southern Ohio counties are included in District 2, while southeastern Ohio has District 15. Central northeastern Ohio has District 7, and eastern Ohio has District 6. And of course, Cuyahoga County and Summit County, as well as nearby communities, have Districts 4, 11, 13, and 14. As a result, the OCRC's "proposed map has eight districts that lean over 50% Republican and seven districts that lean over 50% Democratic." *Official Report to the Ohio General Assembly, Ohio Citizens' Redistricting Commission*, September 2021, at 13, available at <https://ohredistrict.org/assets/images/unity-maps/OCRC-Congressional-Report.pdf>.

This map closely corresponds "with the 54% / 46% partisan make-up of Ohio's voters over the last 10 years." *Id.* The Ohio Advocacy Organizations present the OCRC's map to illustrate how a group can listen to community input on how a map should be drawn while meeting the rules

in Article XIX, particularly the anti-gerrymandering provisions of Section 1(C)(3).¹ The Commission, or the General Assembly, should be required to draw a map similar to that of the Ohio Citizens' Redistricting Commission.

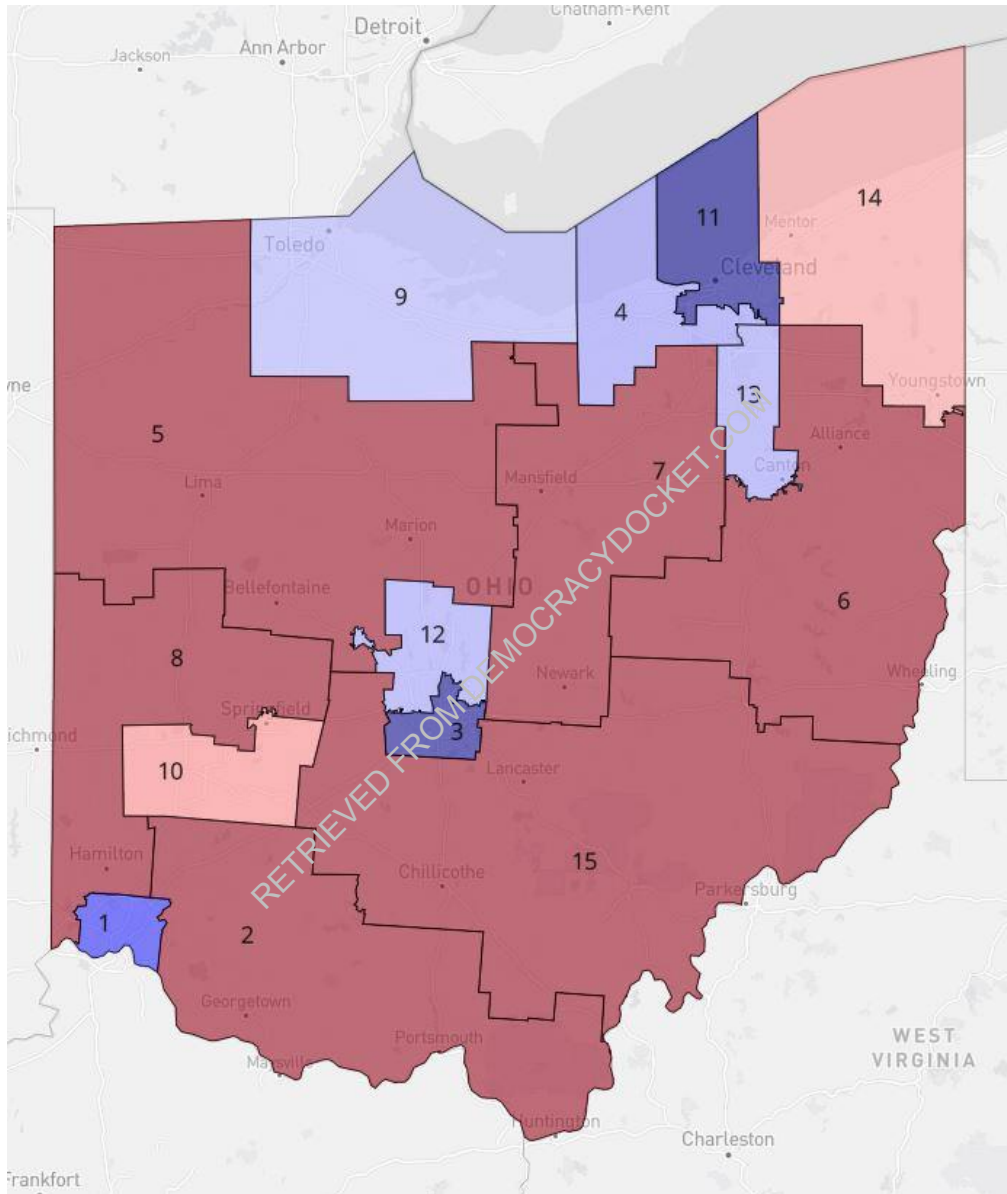


Figure 1 - OCRC Congressional Map²

¹ Unfortunately, the Ohio Redistricting Commission's process during redraw did not create any meaningful way for citizen groups to submit maps for consideration and have committees vote on those maps.

² This image was generated utilizing the shapefiles created by the Ohio Citizens' Redistricting Commission and submitted to the Ohio Redistricting Commission. See the February 8, 2022 submission of Jeniece Brock on behalf of the Ohio Citizens' Redistricting Commission, in the section titled *Congressional District Plans / Maps – General Public Sponsors*. Available at: <https://redistricting.ohio.gov/maps>

The Ohio Advocacy Organizations know the Ohio Supreme Court understands the significance of its decision both in this case and in the cases reviewing the statehouse district plans. We have provided our amicus brief to further contextualize the impacts of partisan gerrymandering, especially upon BIPOC communities and those communities significantly impacted by environmental injustices. Partisan gerrymandering impacts every Ohioan, whether they are Republican, Democrat, Independent, or any other political persuasion. When one party disproportionately controls seats, whether in Congress or in Columbus, Ohioans aren't properly represented in our political systems. Ohioans feel unheard, and they feel disenfranchised. When a map divides communities and separates them from other similarly situated communities, it dilutes their collective voice.

Therefore, we ask the Ohio Supreme Court to rule in favor of the petitioners by finding the 2022 gerrymandered congressional map unconstitutional and granting the requested relief. If instead of gerrymandering, the Ohio Redistricting Commission creates a congressional map designed to keep similar and connected communities together, rather than political parties, everyone wins. The environment wins. Ohio wins.

Respectfully submitted,

June 1, 2022

Chris Tavenor
(0096642)
(Counsel of Record)
1145 Chesapeake Ave, Suite I
Columbus, OH, 43212
ctavenor@theoec.org
614-558-8913

Trent Dougherty (0079817)
Hubay|Dougherty LLC
1292 Mulford Rd
Columbus, OH 43212
trent@hubaydougherty.com
614-330-6752

Counsel for Amicus Curiae
Ohio Advocacy Organizations

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Reply Brief of Amicus Curiae Ohio Advocacy Organizations in Support of petitioners* was served upon the following parties of record via electronic transmission this June 1, 2022.

/s/Chris Tavenor
Chris Tavenor
*Counsel for Amicus Curiae
Ohio Advocacy Organizations*

SERVICE LIST FOR PARTIES OF RECORD

Freda J. Levenson (0045916)
Counsel of Record
ACLU OF OHIO FOUNDATION, INC.
4506 Chester Avenue
Cleveland, OH 44103
flevenson@acluohio.org

Alora Thomas (PHV 22010-2022)
Julie A. Ebenstein (PHV 25423-2022)
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION
125 Broad Street
New York, NY 10004
athomas@aclu.org

Robert D. Fram (PHV 25414-2022)
Donald Brown (PHV 25480-2022)
David Denuyl (PHV 25452-2022)
Janelle Lamb (PHV 25909-2022)*
COVINGTON & BURLING LLP
415 Mission Street, Suite 5400
San Francisco, CA 94105-2533
rfram@cov.com

James Smith (PHV 25421-2022)
Sarah Suwanda (PHV 25602-2022)
Alex Thomson (PHV 25462-2022)
Kimberly Plumer (PHV 25888-2022)*
COVINGTON & BURLING LLP
One CityCenter
850 Tenth Street, NW
Washington, DC 20001-4956
jmsmith@cov.com

Anupam Sharma (PHV 25418-2022)
Yale Fu (PHV 25419-2022)
COVINGTON & BURLING LLP
3000 El Camino Real
5 Palo Alto Square, 10th Floor
Palo Alto, CA 94306-2112
asharma@cov.com

David J. Carey (0088787)
ACLU OF OHIO FOUNDATION, INC.
1108 City Park Avenue, Suite 203
Columbus, OH 43206
dcarey@acluohio.org

*Counsel for League of Women Voters
Petitioners*

Dave Yost
OHIO ATTORNEY GENERAL
Julie M. Pfeiffer (0069762)
Jonathan D. Blanton (0070035)
Michael A. Walton (0092201)
Allison D. Daniel (0096186)
Constitutional Offices Section
30 E. Broad Street, 16th Floor
Columbus, OH 43215
Julie.Pfeiffer@OhioAGO.gov

*Counsel for Respondent Ohio Secretary of
State Frank LaRose*

Phillip J. Strach (PHV 25444-2022)
Thomas A. Farr (PHV 25461-2022)
John E. Branch, III (PHV 25460-2022)
Alyssa M. Riggins (PHV 25441-2022)
NELSON MULLINS
RILEY & SCARBOROUGH LLP
4140 Parklake Avenue, Suite 200
Raleigh, NC 27612
phillip.strach@nelsonmullins.com

W. Stuart Dornette (0002955)
Beth A. Bryan (0082076)
Philip D. Williamson (0097174)
TAFT STETTINUS & HOLLISTER LLP
425 Walnut Street, Suite 1800
Cincinnati, OH 45202-3957
dornette@taftlaw.com

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

Erik J. Clark (0078732)
Ashley T. Merino (0096853)
ORGAN LAW LLP
1330 Dublin Road
Columbus, OH 43215
ejclark@organlegal.com

*Counsel for Respondent Ohio Redistricting
Commission*

Abha Khanna (PHV 2189-2022)
Ben Stafford (PHV 25433-2022)
ELIAS LAW GROUP, LLP
1700 Seventh Avenue, Suite 2100
Seattle, WA 98101
akhanna@elias.law

Jyoti Jasrasaria (PHV 25401-2022)
Spencer W. Klein (PHV 25432-2022)
Harleen K. Gambhir (PHV 25587-2022)
Raisa Cramer (PHV 25880-2022)
ELIAS LAW GROUP, LLP
10 G St. NE, Suite 600
Washington, DC 20002
jjasrasaria@elias.law

Donald J. McTigue (0022849)
Derek S. Clinger (0092075)
MCTIGUE COLOMBO & CLINGER, LLC
545 East Town Street
Columbus, OH 43215
dmctigue@electionlawgroup.com

Counsel for Neiman Petitioners