

COMMONWEALTH OF KENTUCKY  
FRANKLIN CIRCUIT COURT  
DIVISION \_\_  
CASE NO. 22-CI-\_\_\_\_\_

*FILED ELECTRONICALLY*

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DERRICK GRAHAM, JILL ROBINSON, MARY LYNN  
COLLINS, KATIMA SMITH-WILLIS, JOSEPH SMITH, and  
THE KENTUCKY DEMOCRATIC PARTY

PLAINTIFFS

v.

MICHAEL ADAMS, in his official capacity as Secretary of State  
of the Commonwealth of Kentucky

DEFENDANTS

SERVE:  
Daniel Cameron  
Attorney General  
700 Capitol Avenue, Suite 118  
Frankfort, KY 40601-3449

and

KENTUCKY STATE BOARD OF ELECTIONS

SERVE:  
Daniel Cameron  
Attorney General  
700 Capitol Avenue, Suite 118  
Frankfort, KY 40601-3449

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**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiffs Derrick Graham, Jill Robinson, Mary Lynn Collins, Katima Smith-Willis, Joseph Smith, and The Kentucky Democratic Party (collectively, "Plaintiffs"), for their Complaint for Declaratory and Injunctive Relief, state and allege as follows:

## INTRODUCTION

1. This case challenges two aspects of the new maps enacted by the Kentucky General Assembly to govern the upcoming elections for members of the Kentucky and United States Houses of Representatives. *First*, it challenges the extreme partisan gerrymandering of the maps, which violates Sections 1, 2, 3, and 6 of the Kentucky Constitution by arbitrarily denying the citizens of the Commonwealth the rights to a free and equal election, free expression, and free association. *Second*, it challenges the mapmakers' violations of Section 33 of the Kentucky Constitution by excessively and unnecessarily splitting counties into multiple districts without a legitimate purpose, and impermissibly attaching portions of split counties to others more times than is necessary to achieve districts of roughly equal size. As explained below, the maps' excessive partisan gerrymandering and county splitting violate numerous provisions of Kentucky's Constitution.

2. **Partisan Gerrymandering**. The U.S. Supreme Court has repeatedly recognized that partisan gerrymandering is an “unjust” practice “incompatible with democratic principles.” *Rucho v. Common Cause*, 139 S. Ct. 2484, 2506 (2019) (quoting *Arizona State Legislature v. Arizona Indep. Redistricting Comm’n*, 576 U.S. 787, 791 (2015)).

3. In a partisan gerrymander, the party in control of the legislature uses the power to draw state and congressional districts in a manner that entrenches their own power and prevents the minority party from electing candidates of its choice. Using advanced computer technology and reams of voter data, these legislators can pick their voters and ensure their own re-election at the expense of their political rivals and the health of the democracy.

4. In recent years, state courts have stepped forward to safeguard the rights of the people to choose their representatives, rather than the other way around. These courts have relied on state constitutional provisions that guarantee the right to a free and fair election, or otherwise

prevent states from excessively favoring one party over another in drawing maps. *See, e.g., League of Women Voters of Ohio v. Ohio Redistricting Comm'n*, \_\_\_ N.E.3d \_\_\_, 2022 WL 110261 (Oh. Jan. 12, 2022); *League of Women Voters v. Commonwealth*, 178 A.3d 737 (Pa. 2018); *Common Cause v. Lewis*, No. 18 CVS 014001, 2019 WL 4569584 (N.C. Super. Sep. 03, 2019).

5. Kentucky, like Ohio, Pennsylvania, and North Carolina, has a constitution that guarantees its citizens the right to be free from extreme partisan gerrymandering. As explained below, that right is protected by many provisions in Kentucky's Constitution. But it can be most clearly seen in the Constitution's Bill of Rights, which guarantees that "[a]ll elections shall be free and equal." *See* Ky. Const. § 6. As the Kentucky Supreme Court has explained, that provision was designed to ensure that Kentucky's elections "obtain a full, fair, and free expression of the popular will upon the matter, whatever it may be." *Wallbrecht v. Ingram*, 175 S.W. 1022, 1026 (Ky. 1915).

6. Partisan gerrymandering also violates Kentuckians' right to equal protection, guaranteed by Sections 1, 2, and 3 of the Kentucky Constitution, which requires that every Kentuckian's vote carries the same voting power. *See Legislative Research Comm'n v. Fischer*, 366 S.W.3d 905, 910 (Ky. 2012); *Asher v. Arnett*, 280 Ky. 347, 132 S.W.2d 772, 776 (1939). Partisan gerrymandering violates this principle because, by seeking to diminish the electoral power of supporters of a disfavored party, it treats individuals who support candidates of one political party less favorably than individuals who support candidates of another party. *See Common Cause*, 2019 WL 4569584, at \*113.

7. Likewise, partisan gerrymandering violates Democratic (and other) voters' rights to free expression and association under the Kentucky Constitution. It makes their protected speech—voting—less effective, even though it does not prevent them from voting altogether. *See Common Cause*, 2019 WL 4569584, at \*121. It also makes it more difficult for Democrats (and

independents) to petition their representatives for relief under Section 1 of the Kentucky Constitution because representatives elected from these gerrymandered districts will inevitably care more about their party's interests—to be tested in the next primary—than those of the voters they are assigned by these maps to represent.

8. Furthermore, these partisan gerrymanders represent unconstitutional retaliation for protected political activity in the voting booth. The maps were drawn to punish and diminish Democratic voters' influence by using their past voting patterns to select Democratic-leaning precincts and specifically pair them with other areas that would more than cancel out their voting power. This intentional, data-driven targeting of Democratic voters can only be seen for what it is: disfavored treatment in response to past voting activity.

9. The gerrymandered districts also will cause unique harm to Plaintiff Kentucky Democratic Party, whose fundraising activities and expenditures, as well as those of its members, will be radically altered by this plan. The Party will be required to raise far more money than under a fair map, and spend it in far more places, to be competitive in future political races.

10. The Congressional map also improperly removes Franklin County from the 6<sup>th</sup> District and adds it to the 1<sup>st</sup> District for the sole purpose of accomplishing two nakedly partisan objectives: reducing the chances that elections for the 6<sup>th</sup> District will be competitive and allowing Rep. Jamie Comer, who currently resides in Frankfort but represents the 1<sup>st</sup> District, to now reside within his district. The resulting district is anything but “compact,” as required by traditional redistricting principles.

11. **Excessive County Splitting.** This case also concerns the General Assembly's obligation to respect “county integrity,” a principal of “at least equal importance” to population

equality under Section 33 of the Kentucky Constitution. *Fischer v. State Bd. of Elections*, 879 S.W.2d 475, 477 (Ky. 1994) (“*Fischer IP*”).

12. While the legislature is required to split some of Kentucky’s 120 counties to draw 100 House districts of nearly equal population, country integrity principles forbid it from aggressively carving up the resulting multi-district counties for partisan gain and attaching portions of those counties to neighboring ones to form new districts.

13. Indeed, Section 33 expressly forbids this practice: “No part of a county shall be added to another county to make a district . . .” Ky. Const. § 33. This constitutional command will only give way where it is necessary to satisfy the U.S. Constitution’s one-person-one-vote requirements; in all other circumstances, Section 33 expressly requires mapmakers to avoid pairing portions of one Kentucky county with another to form a legislative district.

14. Yet, that is precisely what the legislature has done again and again—for purely partisan ends. Forty-five separate times, the Kentucky House of Representatives map takes a portion of one county and attaches it to another to form a district.<sup>1</sup>

15. In total, that map splits counties twenty times more than is required to achieve population equality (as demonstrated by the alternative map Democratic Representatives proposed (HB 191)). And it does so solely for the purpose of increasing the size of the Republican supermajority, entrenching it in perpetuity, and stifling any effective dissent.

16. **Relief Sought.** This action seeks a declaration that House Bill 2 (“HB 2”) and Senate Bill 3 (“SB 3”), enacted by the Kentucky General Assembly over Kentucky Governor Andy

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<sup>1</sup> The relevant districts are Nos. 1, 2, 3, 5, 6, 8, 10, 14, 16, 18, 19, 22, 26, 27, 33, 37, 39, 45, 48, 52, 55, 56, 61, 63, 69, 71, 73, 78, 80, 82, 83, 85, 86, 87, 88, 89, 90, 91, 92, 94, 95, 96, 97, 98, and 100.

Beshear's veto, violate Sections 1, 2, 3, 6, and 33 of the Kentucky Constitution and are therefore invalid.

17. This relief is necessary and appropriate because the Kentucky House of Representatives districts created by HB 2 and the United States Congressional districts created by SB 3 constitute excessive partisan gerrymandering designed to increase and entrench Republican control of the General Assembly and Kentucky's Congressional delegation. Any elections held pursuant to the districts created by HB 2 and SB 3 would deprive the citizens of this Commonwealth of their right to a free and equal election; would violate Democratic voters' rights to equal protection; would prohibit those voters (and their party) from speaking and associating freely; and would unconstitutionally retaliate against them for protected political activity.

18. The case also seeks a declaration that HB 2 violates Section 33 of the Kentucky Constitution because it unnecessarily splits several of Kentucky's most populous counties into more districts than are necessary to comply with population equality requirements, and improperly combines portions of counties with others to form districts. The sole purpose of these excess splits was to dilute the influence of Democratic voters in those counties.

19. Plaintiffs seek immediate injunctive relief to prevent the conduct of the May 2022 primary election based on the House districts created by HB 2 and Congressional districts created by SB 3, including any additional relief necessary to make such relief meaningful, such as the extension of filing deadlines for candidates seeking election in those districts.

### **PARTIES**

20. Plaintiff Derrick Graham is a resident of Franklin County, a member of the Kentucky Democratic Party, a member of the Kentucky House of Representatives representing District 57, and the current Democratic Minority Caucus Chair. Plaintiff Graham lives within

Kentucky House District 57 and Kentucky's 1<sup>st</sup> Congressional District under the maps enacted by HB 2 and SB 3.

21. Plaintiff Jill Robinson is a Kentucky citizen, taxpayer, qualified voter and resident of Franklin County. She has supported Democratic candidates for the Kentucky and the United States House of Representatives in the past and anticipates supporting such candidates in the future. Plaintiff Robinson lives within Kentucky House District 57 and Kentucky's 1<sup>st</sup> Congressional District under the maps enacted by HB 2 and SB 3. Plaintiff Robinson's interest in translating her vote into representation under fair and constitutional maps has been prejudiced by the legislative maps presented by HB 2 and SB 3. SB 3 in particular deprives Plaintiff Robinson of a meaningful opportunity to petition her Congressional Representative by attaching Franklin County onto Kentucky's 1<sup>st</sup> Congressional District, which extends to the far western edge of the Commonwealth.

22. Plaintiff Mary Lynn Collins is a Kentucky citizen, taxpayer, qualified voter and resident of Franklin County. She has supported Democratic candidates for the Kentucky and the United States House of Representatives in the past and anticipates supporting such candidates in the future. Plaintiff Collins lives within Kentucky House District 57 and Kentucky's 1<sup>st</sup> Congressional District under the maps enacted by HB 2 and SB 3. Plaintiff Collins' interest in translating her vote into representation under fair and constitutional maps has been prejudiced by the legislative maps presented by HB 2 and SB 3. SB 3 in particular deprives Plaintiff Collins of a meaningful opportunity to petition her Congressional Representative by attaching Franklin County to Kentucky's 1<sup>st</sup> Congressional District, which extends to the far western edge of the Commonwealth.

23. Plaintiff Katima Smith-Willis is a Kentucky citizen, taxpayer, qualified voter and resident of Franklin County. She does not consider herself interested in partisan politics but wants the Kentucky House of Representatives to be populated with elected leaders who pursue common sense solutions that benefit all Kentuckians. Plaintiff Smith-Willis lives within Kentucky House District 57 and Kentucky's 1<sup>st</sup> Congressional District under the maps enacted by HB 2 and SB 3. Plaintiff Smith-Willis's interest translating her vote into representation under a fair and constitutional map has been prejudiced by the legislative maps presented by HB 2 and SB 3. SB 3 in particular deprives Plaintiff Smith-Willis of a meaningful opportunity to petition her Congressional Representative by attaching Franklin County to Kentucky's 1<sup>st</sup> Congressional District, which extends to the far western edge of the Commonwealth.

24. Joseph Smith is a Kentucky citizen, taxpayer, qualified voter and resident of Franklin County. He has supported Democratic candidates for the Kentucky and the United States House of Representatives in the past and anticipates supporting such candidates in the future. Plaintiff Smith lives within Kentucky House District 57 and Kentucky's 1<sup>st</sup> Congressional District under the maps enacted by HB 2 and SB 3. Plaintiff Smith's interest translating his vote into representation under a fair and constitutional map have been prejudiced by the legislative maps presented by HB 2 and SB 3. SB 3 in particular deprives Plaintiff Smith of a meaningful opportunity to petition his Congressional Representative by attaching Franklin County to Kentucky's 1<sup>st</sup> Congressional District, which extends to the far western edge of the Commonwealth.

25. Plaintiff The Kentucky Democratic Party ("KDP") is an association of Democratic voters and politicians seeking to help Democrats win elections in Kentucky, including for the Kentucky House of Representatives. KDP has associational standing to bring the claims herein



because its members would have standing to sue in their own right and the interests sought to be protected through this litigation are germane to the purpose of the KDP. Plaintiff KDP has its headquarters in Franklin County.

26. Defendant Michael Adams is the Secretary of State of Kentucky, and in that role serves as the state's chief election official and an *ex officio*, nonvoting member of the Kentucky State Board of Elections. KRS 117.015(2)(a). Pursuant to KRS 5.005(2), the Secretary of State shall be named as a defendant in any action challenging the constitutionality of any legislative district created by that chapter. He is sued in his official capacity.

27. Defendant Kentucky State Board of Elections ("State Board of Elections") is a state agency vested with the authority to administer elections in the Commonwealth of Kentucky. *See* KRS 117.015(1). The State Board of Elections has offices located at 140 Walnut Street, Frankfort, Kentucky 40601.

28. Pursuant to KRS 418.075 and CR 24.03, a copy of this Complaint is being served upon the Kentucky Attorney General.

### **JURISDICTION AND VENUE**

29. This Court has jurisdiction over this action pursuant to Section 112(5) of the Kentucky Constitution, KRS 23A.010, and KRS 418.040.

30. Venue is proper in this Court pursuant to KRS 5.005(1) and KRS 452.480.

31. Pursuant to KRS 418.705(1), notice of this action challenging the constitutionality of enactments of the General Assembly is being provided to the Attorney General by serving copies of the Complaint upon him.

### APPLICABLE LAW

32. Section 1 of the Kentucky Constitution provides, in relevant part:

All men are, by nature, free and equal, and have certain inherent and inalienable rights, among which may be reckoned:

First: The right of enjoying and defending their lives and liberties . . .

Third: The right of seeking and pursuing their safety and happiness . . .

Fourth: The right of freely communicating their thoughts and opinions . . .

Sixth: The right of assembling together in a peaceable manner for their common good, and of applying to those invested with the power of government for redress of grievances or other proper purposes, by petition, address or remonstrance. . .

33. Section 2 of the Kentucky Constitution provides: “Absolute and arbitrary power over the lives, liberty and property of freemen exists nowhere in a republic, not even in the largest majority.”

34. Section 3 of the Kentucky Constitution provides, in relevant part: “All men, when they form a social compact, are equal; and no grant of exclusive, separate public emoluments or privileges shall be made to any man or set of men, except in consideration of public services . . .”

35. Section 6 of the Kentucky Constitution provides: “All elections shall be free and equal.”

36. Section 33 of the Kentucky Constitution provides:

The first General Assembly after the adoption of this Constitution shall divide the State into thirty-eight Senatorial Districts, and **one hundred Representative Districts, as nearly equal in population as may be without dividing any county, except where a county may include more than one district**, which districts shall constitute the Senatorial and Representative Districts for ten years. Not more than two counties shall be joined together to form a Representative District: Provided, in doing so the principle requiring every district to be as nearly equal in population as may be shall not be violated. At the expiration of that time, the General Assembly shall then, and every ten years thereafter, redistrict the State according to this rule, and for the purposes expressed in this section. If, in making said districts, inequality of population should be unavoidable, any advantage resulting therefrom shall be given to districts having the largest territory. **No part of a county shall be added**

**to another county to make a district, and the counties forming a district shall be contiguous.** (emphasis added)

## FACTS

### House Bill 2

37. The Kentucky General Assembly in its 2022 regular session passed HB 2, which Kentucky Governor Andy Beshear vetoed on January 19, 2022, calling it “an unconstitutional political gerrymander that prevents some communities from having their voices heard in Frankfort.” Veto Message, *available at* <https://apps.legislature.ky.gov/record/22rs/hb2/veto.pdf>. Governor Beshear observed that HB 2 “appears designed to deprive certain communities of representation.” *Id.* “In particular, it excessively splits counties, including Fayette, Boone, Hardin, and Campbell, and carves up other counties such as Jefferson and Warren for partisan reasons, contrary to the Kentucky Constitution.” *Id.* In addition, the Governor noted, demographic data released only after HB was passed shows that the “plan appears to dilute the voices of certain minority communities.” *Id.*

38. That same day, the Kentucky House Republican Caucus issued a statement from House Speaker David Osborne on its official Twitter feed making clear the legislature “will use our legislative authority to override this veto.” *See* @KYHouseGOP, <https://twitter.com/KYHouseGOP/status/1483933650739777542>.

39. The House and Senate are convening on Jan. 20, 2022, where they are expected to override the Governor’s vetoes of HB 2.

40. Once the veto is overridden, HB 2 will immediately become effective by virtue of its “emergency clause.” A copy of HB 2 is attached as Exhibit A.

41. Plaintiffs’ injury is therefore imminent—particularly in light of the upcoming filing deadline of January 25, 2022 for those seeking to run for office under the new maps.

42. The Republican supermajority in the House of Representatives drew up HB 2 behind closed doors without any input from their Democratic colleagues, the Governor, or the public. The first versions of HB 2 were not publicly released until December 30, 2021—just days before the start of the legislative session, with the New Year’s holiday weekend looming. The detailed precinct-level data describing the maps was not released until after the map’s final passage was assured. (The Senate maps and the Congressional redistricting plan were released even later, after the legislative session started.)

43. The public had no ability to meaningfully review or comment on the redistricting proposals, which were passed on party-line votes before the first week of the session was out.

44. For purposes of “one person, one vote” principles of equal protection in connection with legislative redistricting following the 2020 census, the “ideal” population of a Kentucky House of Representatives district is 45,058.

45. Redistricting requires a minimum of 23 counties to be divided or split, either because their populations are too large to contain a single House of Representatives district or because the geography and population of the counties requires an additional split to form districts that comply with Section 33. HB 2 splits 23 counties, which is constitutionally required by Section 33 as interpreted by the Kentucky Supreme Court. *See Legislative Research Com’n v. Fischer*, 366 S.W.3d 905, 911 (Ky. 2012).

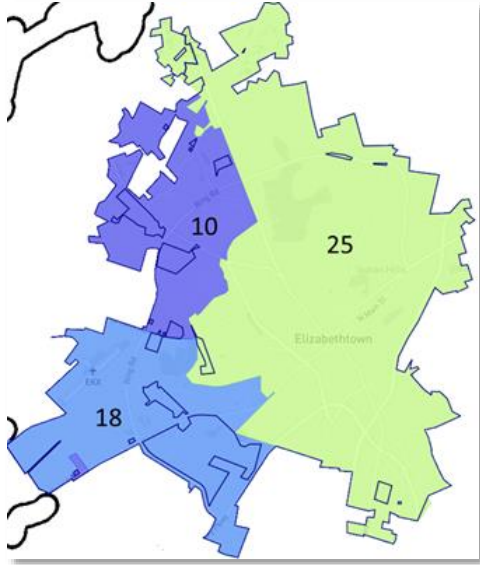
46. However, the 23 counties split by HB 2 are split far more times than is necessary to accommodate “one person, one vote” principles. These excessive splits were drawn solely to sub-divide counties in ways that favor Republican voters and candidates over Democratic ones.

47. For these same reasons, the maps also favor rural voters over urban ones, whose communities of interest have been “cracked” to pair pockets of urban voters with more rural districts guaranteed to drown out their votes.

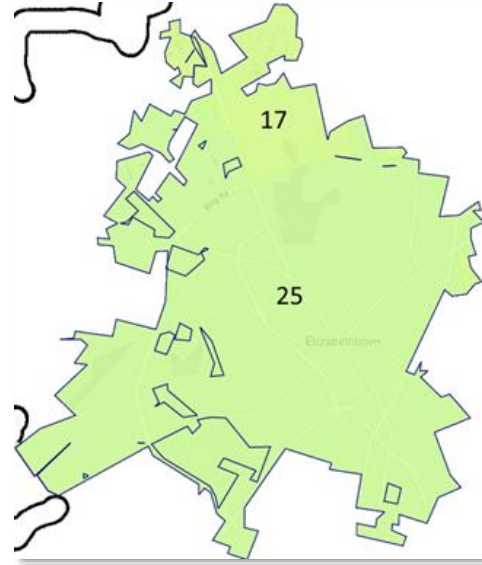
48. In its 2022 regular session, and before the passage of HB 2, the Kentucky General Assembly had before it an alternative bill (HB 191) that provided for redistricting of the Kentucky House of Representatives in a manner that avoided the violations of Kentucky’s Constitution described herein. HB 191 split 23 counties 60 times, compared to the 80 splits inflicted by HB 2. A copy of HB 191 is attached as Exhibit B.

49. The counties which are excessively split by HB 2 are Fayette (8 splits instead of 7 required), Boone (5 splits instead of 3 required), Hardin (4 splits instead of 2-3 required), Campbell (2 splits instead of 1 required), Madison (3 splits instead of 2 required), Bullitt (2 splits instead of 1 required), Christian (2 splits instead of 1 required), McCracken (3 splits instead of 1-2 required), Oldham (2 splits instead of 1 required), Pulaski (4 splits instead of 1 required), Laurel (5 splits instead of 1-3 required), Pike (3 splits instead of 1 required), and Jessamine (3 splits instead of 1 required). A range of required splits is provided for some counties because changes to the district splits in one county have a spillover effect into other counties.

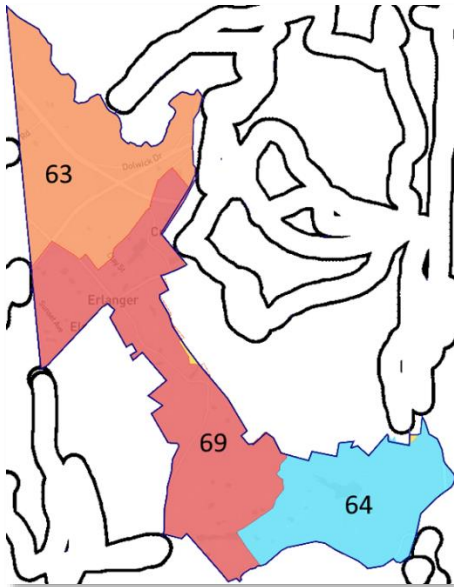
50. HB 2 unnecessarily splits population centers to combine voters living in cities with voters living in suburban or rural areas into one district. To be sure, population centers sometimes need to be split to accommodate population growth in cities. But a comparison to HB 191 establishes that some splits created by HB 2 are excessive and not required by population changes. These splits were made primarily to favor Republican voters and candidates over Democratic ones. For example:



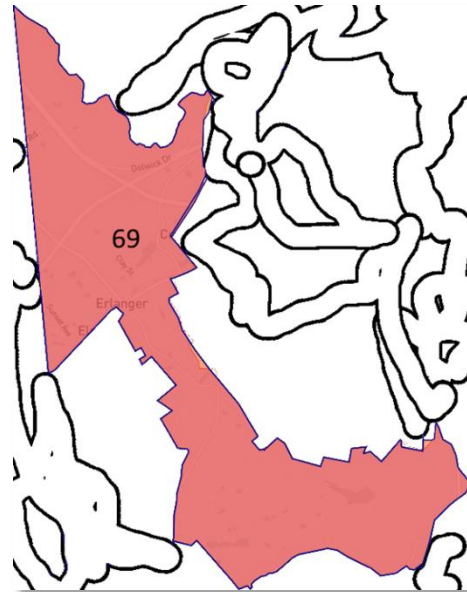
**HB 2 Map for Elizabethtown**



**HB 191 Map for Elizabethtown**



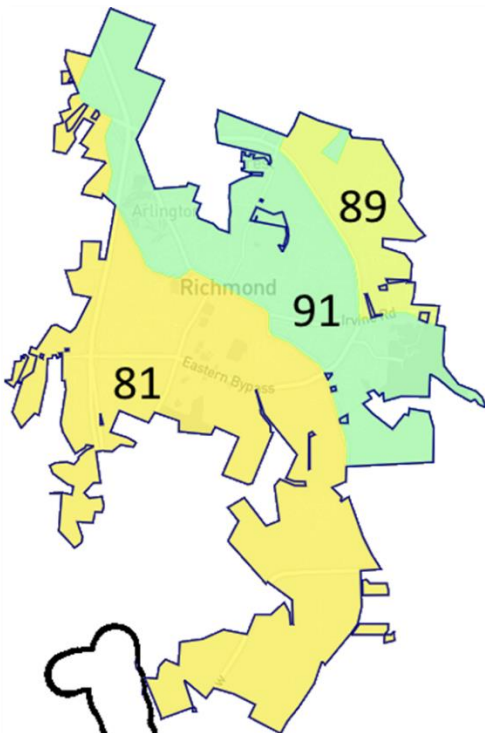
**HB 2 Map for Erlanger**



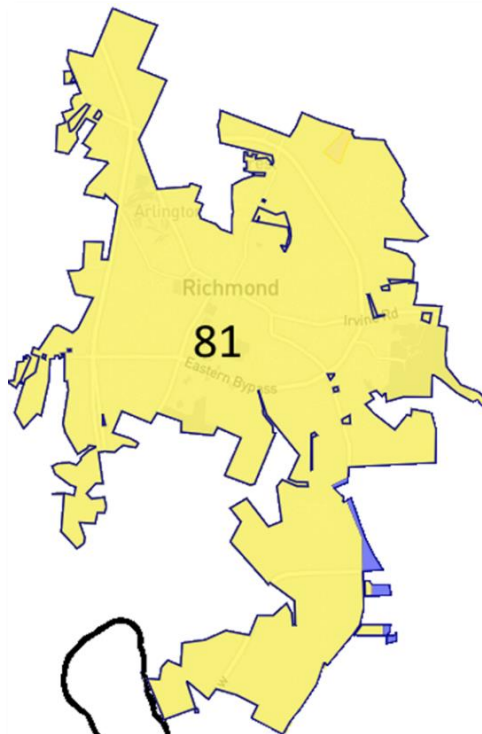
**HB 191 Map for Erlanger**

Presiding Judge: HON. THOMAS DAWSON WINGATE (648243)

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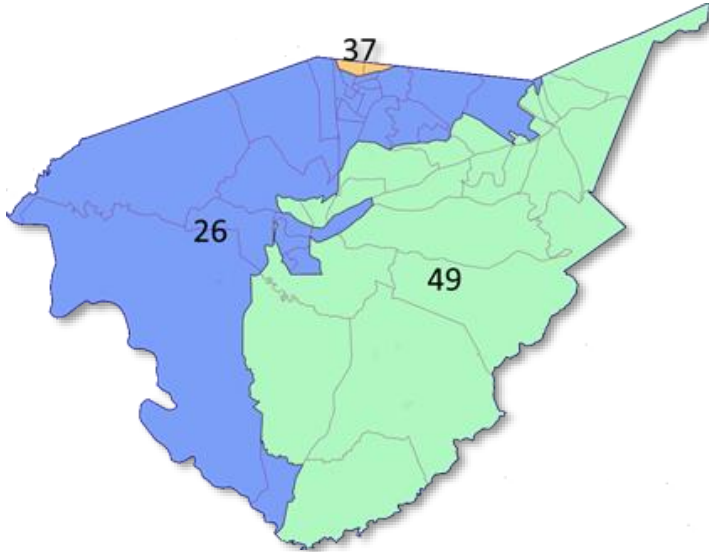


**HB 2 Map for Richmond**

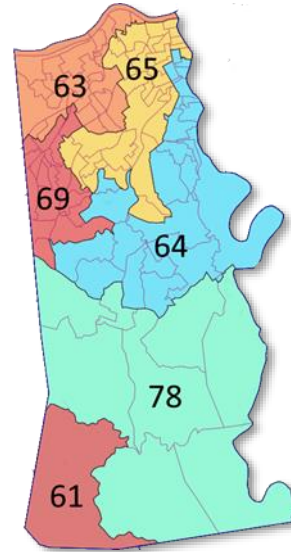


**HB 191 Map for Richmond**

51. HB 2 also violates Section 33 (“No part of a county shall be added to another county to make a district . . .”) by creating districts that unnecessarily spill over county lines, encroaching into neighboring counties, sometimes to claim just 1-2 precincts. Indeed, forty five of the 100 districts HB 2 creates cross county lines in violation of the plain language of Section 33. Examples of this include:



**HB 2 Map for Bullitt County**



**HB 2 Map for Kenton County**

52. Once again, this was done primarily to favor Republican voters and candidates over Democratic ones.

53. Other gerrymanders are apparent by evaluating the partisan voting history of the precincts, which makes clear that HB 2’s goal was to dilute the influence of Democratic-leaning precincts in urban areas.

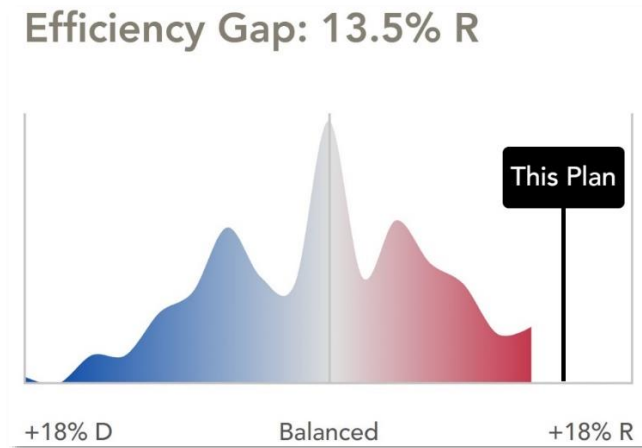
54. Partisan gerrymandering is typically carried out by cracking a party’s supporters among many districts, in which their preferred candidates lose by relatively narrow margins; and/or by packing a party’s backers in a few districts, in which their preferred candidates win by enormous margins. Both cracking and packing produce votes that are inefficient in the sense that they do not contribute to a candidate’s election. In the case of cracking, all votes cast for the losing candidate are inefficient. In the case of packing, all votes cast for the winning candidate, above the 50% (plus one) threshold needed for victory, are inefficient or “wasted.”

55. The degree of political gerrymandering in HB 2 can be measured by the “efficiency gap,” which is calculated by taking one party’s total wasted votes in an election, subtracting the

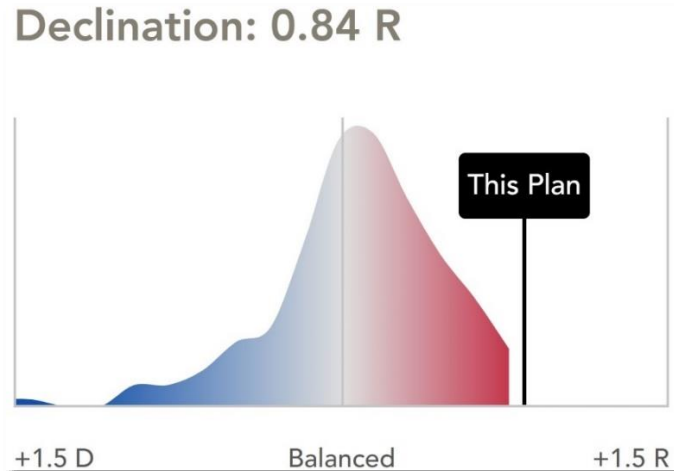


other party’s total wasted votes, and dividing by the total number of votes cast. It captures in a single number the extent to which district lines crack and pack one party’s voters more than the other party’s voters. See N. Stephanopoulos & E. McGhee, *Partisan Gerrymandering and the Efficiency Gap* (October 1, 2014), 82 *University of Chicago Law Review*, 831 (2015), available at <https://ssrn.com/abstract=2457468>.

56. As shown below, the efficiency gap for the districts created by HB 2 is quite literally off the chart. Votes for Republican candidates are expected to be inefficient at a rate 13.5% lower than votes for Democratic candidates, favoring Republicans in >99% of predicted scenarios.



57. Equally extreme is the map’s “declination,” which measures the difference between mean Democratic vote share in Democratic districts and mean Republican vote share in Republican districts (each divided by the fraction of seats won by the respective party). This metric shows the relative lopsidedness of Democratic-won and Republican-won districts:

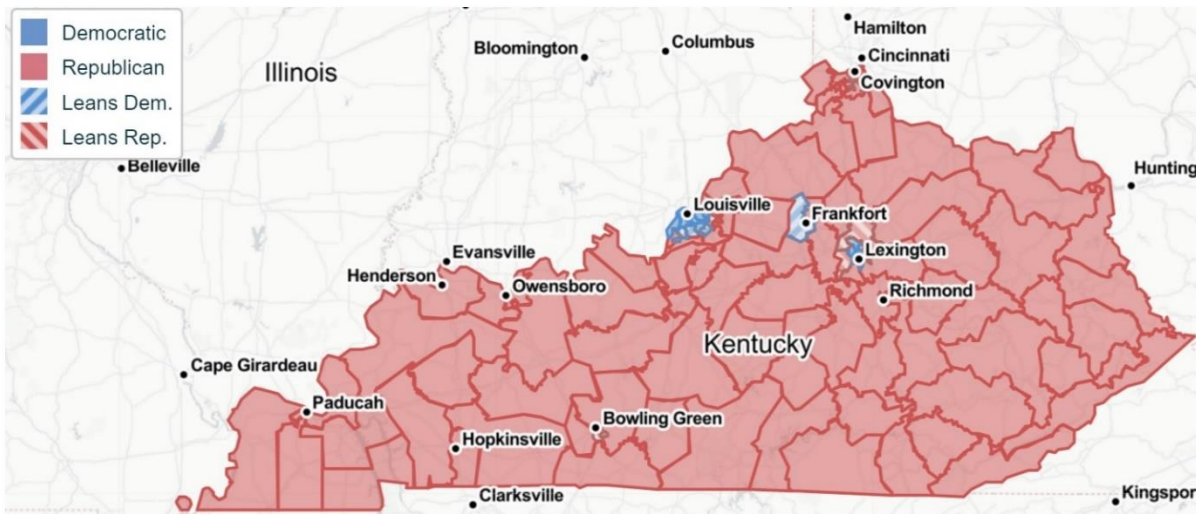


58. These efficiency and declination scores were calculated using the “PlanScore” website created by the Campaign Legal Center, a national nonprofit organization that fights for every American’s right to participate in the democratic process. PlanScore’s analysis of HB 2 can be viewed here: <https://planscore.campaignlegal.org/plan.html?20220105T004232.738098368Z>.

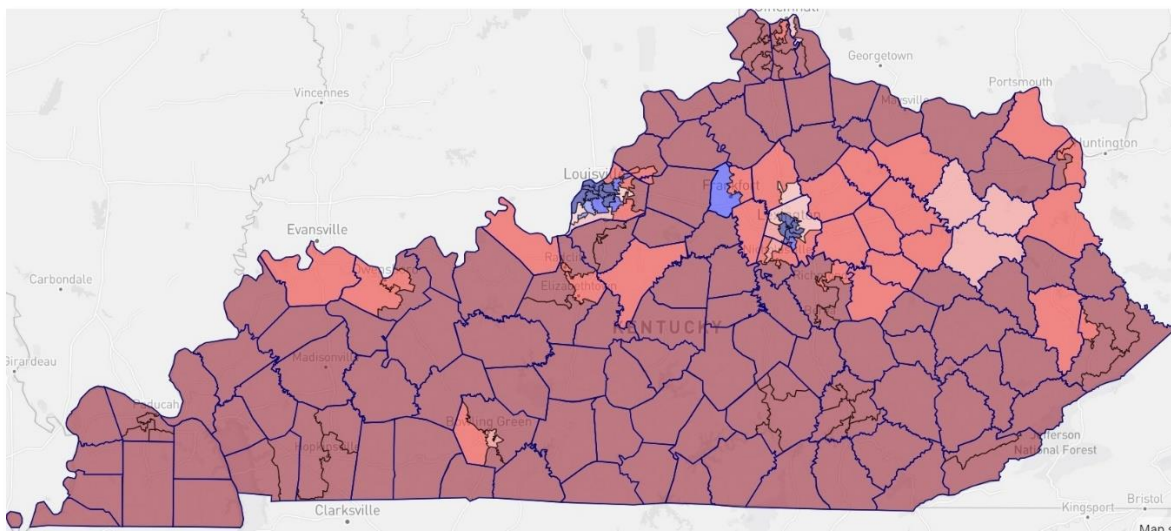
59. The PlanScore analysis rates the extent of HB 2’s partisan gerrymander as more extreme than 98% of the “Historical Plans” in its dataset, which includes enacted U.S. House, State House, and State Senate apportionment plans. *Id.*

60. Moreover, PlanScore also conducts a “sensitivity testing” analysis to show how the plan’s partisan bias would change under certain circumstances. That analysis for HB 2 shows that if Democratic candidates outperformed expectations by 1-4 points, it would actually increase the number of wasted Democratic votes and resulting “efficiency gap,” making this plan an even greater historical outlier. The effects of the gerrymander appear to be most severe if the Democratic candidates outperform expectations by 2 percentage points; in that event, the efficiency gap would climb to 14%. *Id.*

61. The Plan Score analysis also makes clear that, after HB 2, there may well be no Democratic representatives in the Kentucky House of Representatives outside of Louisville, Lexington, and—perhaps—Frankfort (a portion of which “leans” Democratic under this plan):



62. The following “heat map” tells the same story, but with more detail; it shows the relative partisan lean of each district. The darker the shade of red or blue, the “safer” the seat:



63. The partisan gerrymandering reflected in HB 2 has caused certain districts to swing from strongly Democratic-leaning to Republican-leaning. For example, using data from statewide

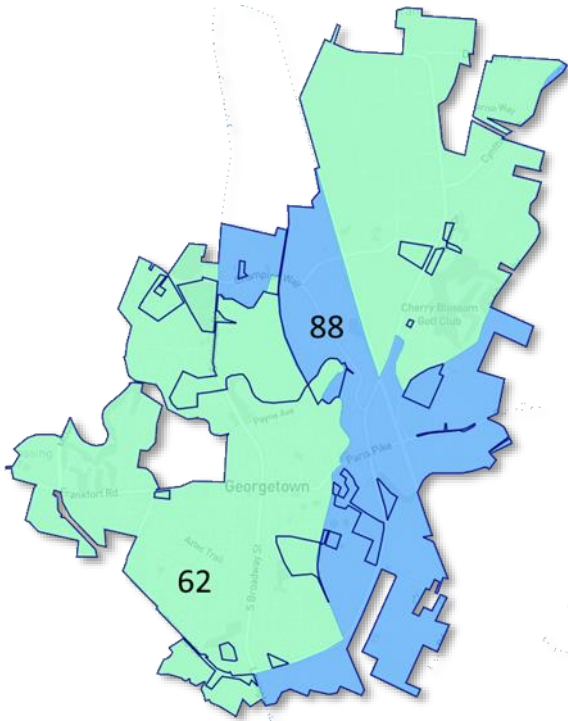
elections from 2012-2019, the 65<sup>th</sup> District, currently represented by Rep. Buddy Wheatley, has changed from 55% Democratic to 55% Republican.

64. The 20<sup>th</sup> legislative district has historically been wholly within the city of Bowling Green and has elected a Democrat every election since 1976. But HB 2 does not include a district that is wholly within Bowling Green and instead cracks Bowling Green into 3 separate districts solely to maximize Republican partisan advantage—the 20th (54% Republican), the 19th (63% Republican, and the 17th (58% Republican)—thereby diluting Bowling Green votes and depriving its citizens of their right to translate their votes into representation.

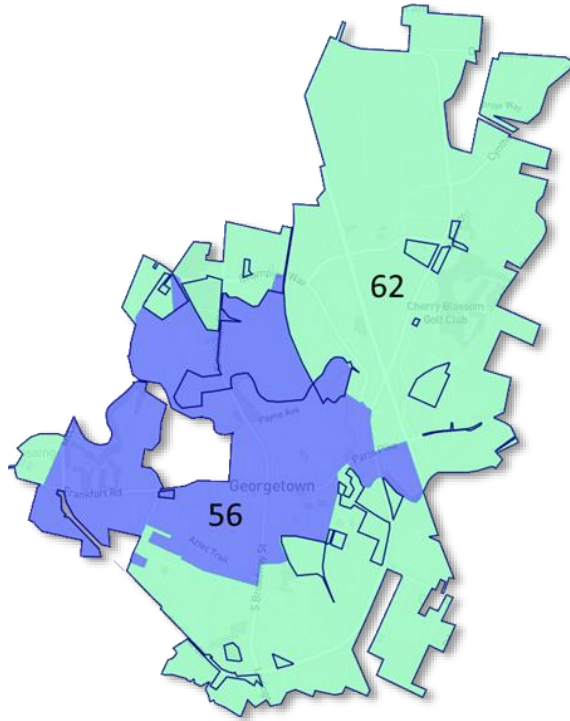
65. One of those three districts—the 19<sup>th</sup>—unconstitutionally takes a part of Warren County and pairs it with Edmonson County. The nearby 22<sup>nd</sup> District likewise violates Section 33 by taking a portion of Warren County and pairing it with Simpson and Allen Counties to form a new district.

66. By contrast, HB 191 creates two districts within the city of Bowling Green that accurately reflect the area's communities of interest—the 20th (57% Democrat) and the 18th (62% Republican).

67. HB 2 also draws a spike through the heart of the city of Georgetown, dividing the city in half and cracking the City's voters into two unrepresentative majority Republican districts—District 62 (58% Republican) and District 88 (52% Republican). By contrast, HB 191 is drawn to keep Georgetown intact within District 56 and creates a competitive district that allows the city's voters a free and equal opportunity to select their representatives. The spike through Georgetown created by HB 2 is obvious from the district map:



**HB 2 Map for Georgetown**

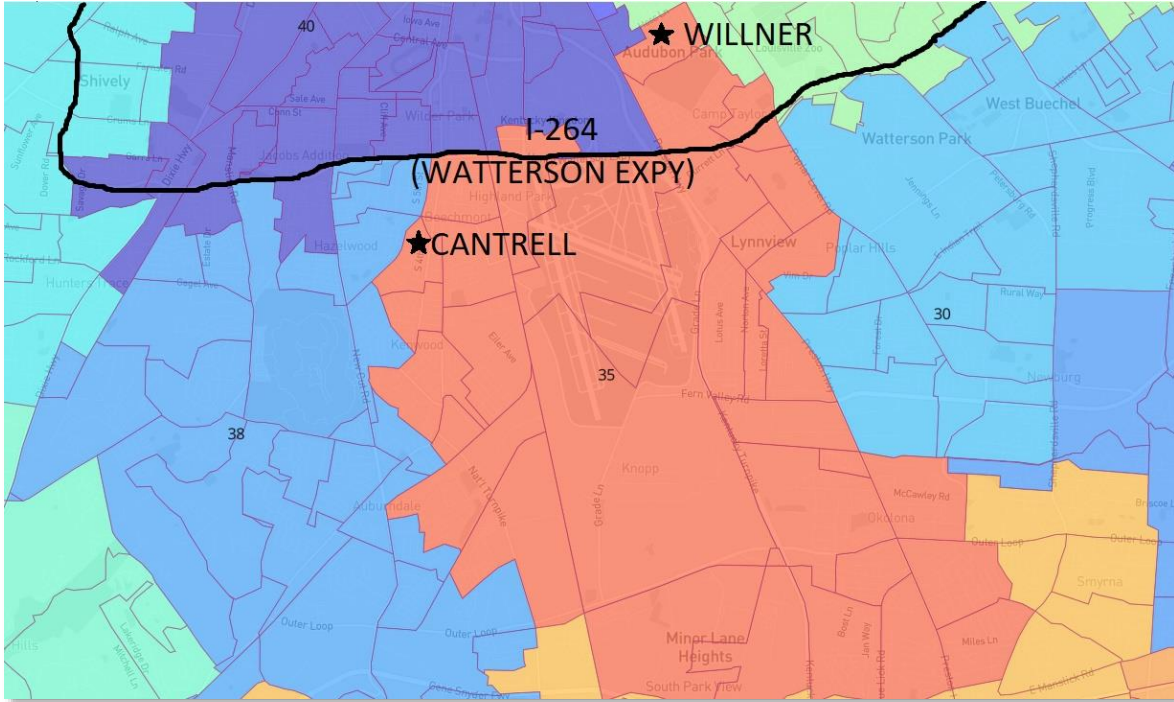


**HB 191 Map for Georgetown**

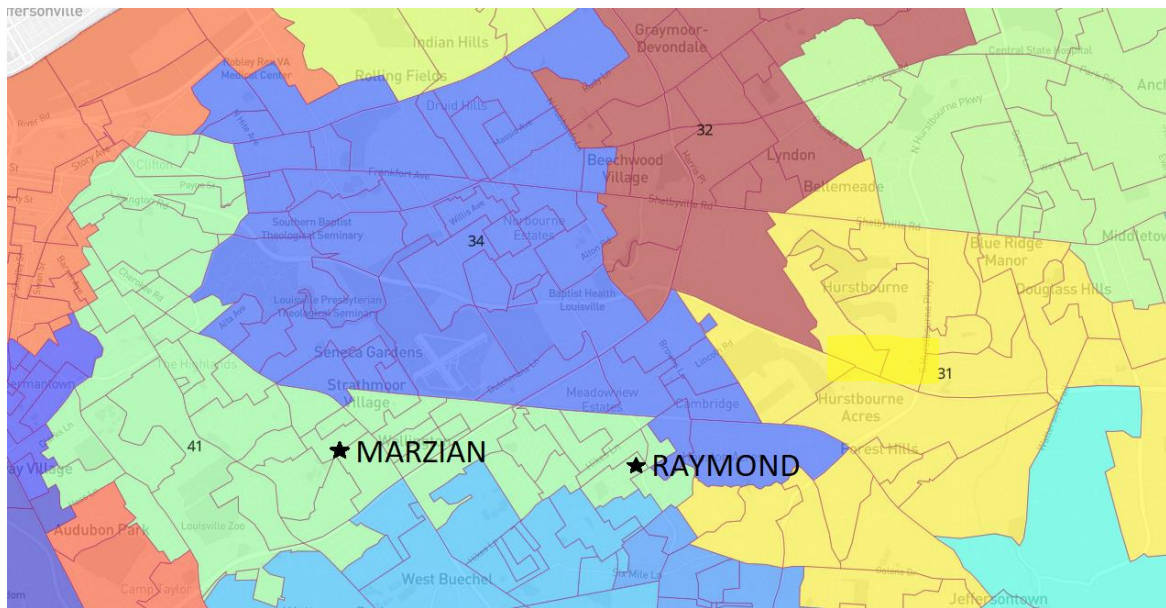
68. As a further example, although Hopkinsville has historically been kept mostly intact within one district, HB 2 cracks neighboring precincts Walnut Street Center #1 and Walnut Street Center #2, both of which have historically voted to elect a Democratic representative, into two different districts, making it less likely that Hopkinsville will be represented by a Democratic representative.

69. The changes in Jefferson County also show the partisan political nature of the redistricting plan. Mapmakers appear to have gone out of their way to pair two sets of incumbent Democrats against each other: Rep. Lisa Willner and Rep. McKenzie Cantrell in District 35 and Rep. Mary Lou Marzian and Rep. Josie Raymond in District 41. Indeed, the boundaries of District 35 were drawn across an Interstate—I-264, the “Watterson Expressway”—just to pick up the neighborhood where Rep. Cantrell lives, which was formerly in District 38:





70. Similarly, the 41<sup>st</sup> district was extended eastward just far enough to include Rep. Raymond’s house, formerly in the 31<sup>st</sup> District:



71. These oddly shaped and opportunistically drawn districts plainly violate the Kentucky Constitution's prohibition on excessive partisan gerrymanders, as well as other guarantees set forth in Sections 1, 2, 3, and 6 of the Kentucky Constitution.

72. As a result of these changes, fully 75 of the new districts created by HB 2 are considered safe Republican seats—that is, more than 55% of the voters in the district are likely to vote Republican. Only 9 of the seats are considered competitive, meaning that the gap between likely party voting is 10% or less. Even if Republicans win only half of those theoretically “competitive” seats, they will secure approximately 80% of the seats in the Kentucky House. They could secure as many as 84.

73. In addition, this excessive county splitting violates Section 33 of the Kentucky Constitution. Although Kentucky's Supreme Court has ruled that Section 33 does not require that every county that has a population sufficient to contain a whole district within its boundaries must have a whole district (*Jensen v. Kentucky State Bd. of Elections*, 959 S.W.2d 771 (Ky. 1997)), the Court has never squarely addressed the question here: whether the legislature can aggressively over-split counties solely to achieve partisan ends. Plaintiffs respectfully submit that this excessive splitting for purely partisan reasons violates Section 33, which was created because “preservation of county integrity was a paramount consideration.” *Fischer v. State Bd. of Elections*, 879 S.W.2d 475, 479 (Ky. 1994).

74. Moreover, HB 2 plainly violates the final sentence of Section 33 by joining a portion of one county with another county to form a district. Indeed, 45% of HB 2's new districts were drawn using this unconstitutional technique—far more than was required to achieve districts of roughly equal population.

**Senate Bill 3**

75. The Kentucky General Assembly in its 2022 regular session passed SB 3, which Kentucky Governor Andy Beshear vetoed on January 19, 2022 “because it was drafted without public input and reflects unconstitutional political gerrymandering.” SB 3 Veto Message, available at <https://apps.legislature.ky.gov/record/22rs/sb3/veto.pdf>. “One look at the map reveals what those who drafted it in secret were trying to hide: the redistricting plan is a political gerrymander.” Most egregiously, it re-draws the First Congressional District to wind across hundreds of miles, from Franklin County to Fulton County.” The Governor noted that “[u]nder this map, someone driving from Lexington to Louisville would cross five of the state’s congressional districts, but it would take over four hours to get from one side of the First District to the other.” *Id.* “Plainly, this map is not designed to provide fair representation to the people of Kentucky and was not necessary because of population changes.” *Id.*

76. The following day, the Kentucky Senate Republican Caucus issued a statement from Senate President Robert Stivers making clear that “the next step in the process is an override of his gubernatorial veto by the Kentucky General Assembly.” *See* @KYSenateGOP, <https://twitter.com/KYSenateGOP/status/1484186271614386177>.

77. The House and Senate are convening on Jan. 20, 2022, where they are expected to override the Governor’s vetoes of SB 3.

78. Once the veto is overridden, SB 3 will immediately become effective by virtue of its “emergency clause.” A copy of SB 3 is attached as Exhibit C.

79. Plaintiffs’ injury is therefore imminent—particularly in light of the upcoming filing deadline of January 25, 2022 for those seeking to run for office under the new maps.

80. SB 3 improperly removes Franklin County from the 6<sup>th</sup> District and adds it to the 1<sup>st</sup> District solely to accomplish two nakedly partisan objectives: removing Democratic voters from

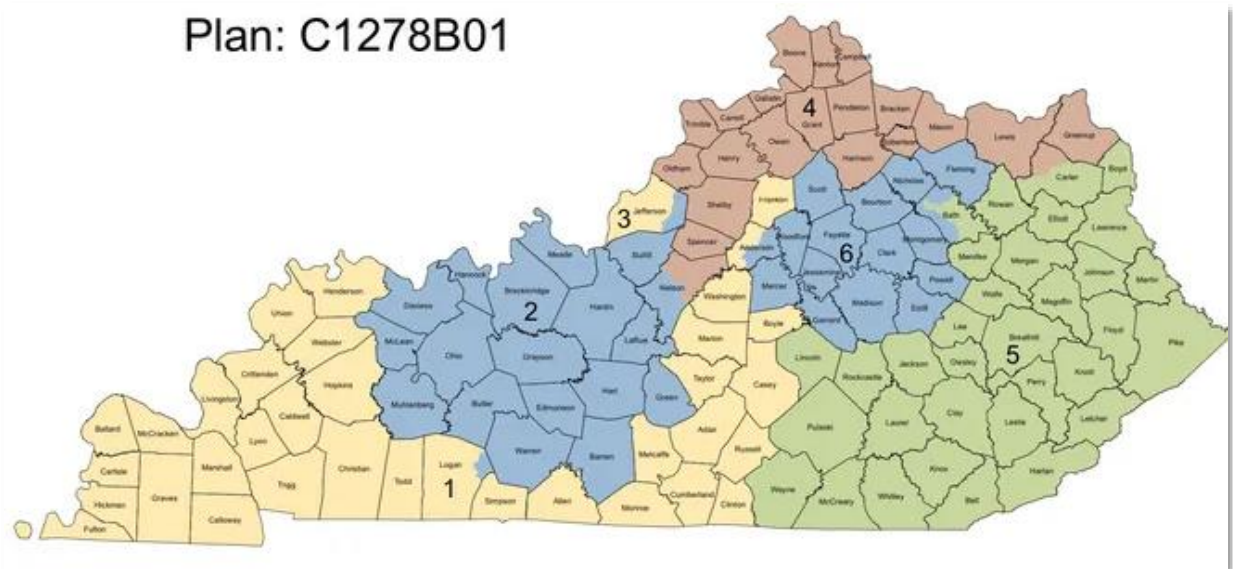


the 6<sup>th</sup> District and allowing Rep. Jamie Comer, who primarily resides in Frankfort although he represents the 1<sup>st</sup> District, to actually live within his District.

81. The map of Kentucky's Congressional Districts based on the 2010 census is as follows:



82. The map created by SB 3 is as follows:



83. District 1 is patently irregular, snaking all the way from the westernmost tip of the state up to Franklin County. To illustrate the geographical absurdity of District 1: if one chose to

drive the full length of District 1, staying entirely within District 1, it would require driving approximately 370 miles and would take approximately 6 hours and 45 minutes. Even driving from Franklin to Fulton County traveling through the 2<sup>nd</sup> district would require almost 4 hours and 30 minutes.

84. Moreover, the approximately 90-minute drive from Louisville to Lexington—the state’s two biggest cities—would require a person to pass through 5 of the state’s 6 Congressional districts.

85. The gerrymander reflected by SB 3 was not necessary to accommodate population changes. It would have been possible to keep Franklin County in District 6.

86. By going out of its way to move Franklin County into the 1<sup>st</sup> District, the map intentionally dilutes the votes of Democratic voters in Franklin County by attaching them to far-away counties in Western Kentucky to form a district where Republican voters will easily cancel out their votes.

87. To achieve that goal, the map gratuitously bisects Anderson County, splitting its population between the 1<sup>st</sup> and 6<sup>th</sup> districts. It also moves the entirety of Washington County into the 1<sup>st</sup> District, whereas most of it previously was attached to the adjacent 2<sup>nd</sup> District.

88. Thus, the entire populations of three Kentucky counties were used as pawns to achieve the personal and partisan ends of two incumbent Congressman.

89. This map can only be seen as an improper partisan gerrymander designed to dilute Democratic votes and make it easier for two Republican incumbents to win on their home turf—for one of them, literally.

### Upcoming Election Deadlines

90. Pursuant to KRS 118.165(1), as extended by HB 172, the filing deadline for candidates for the Kentucky House of Representatives is 4:00 p.m. on January 25, 2022.

91. Pursuant to KRS 117.085(8)(b), KRS 117.145(1), and KRS 117A.150 the deadline for printing of regular and absentee ballots for the May 2022 primary election is March 28, 2022.

92. Pursuant to KRS 118.025(3), the first election using the unconstitutional districts created by HB 2 and SB 3 is scheduled to be held on Tuesday, May 17, 2022.

### CAUSES OF ACTION

#### Count I – Violation of Right to a Free and Equal Election (Partisan Gerrymandering)

93. Plaintiffs repeat and incorporate by reference the preceding paragraphs of the Complaint as if fully set forth herein.

94. HB 2 violates Sections 2 and 6 of the Kentucky Constitution by creating districts that reflect extreme partisan gerrymandering that will result in the election of a House of Representatives that does not fairly and truthfully reflect the will of the citizens of the Commonwealth of Kentucky, thereby depriving those citizens of a free and equal election.

95. Other state courts interpreting similar free-election clauses in their constitutions have concluded that extreme partisan gerrymandering, like that found in HB 2, violates the right to a free and fair election. *See, e.g., League of Women Voters v. Commonwealth*, 645 Pa. 1, 178 A.3d 737 (2018); *Common Cause v. Lewis*, No. 18 CVS 014001, 2019 WL 4569584 (N.C. Super. Sep. 03, 2019).

96. The decision of the Pennsylvania Supreme Court interpreting its free-election clause to bar extreme partisan gerrymandering is particularly persuasive here because the drafters of Kentucky's Bill of Rights "borrowed almost verbatim from the Pennsylvania Constitution of

1790.” *Commonwealth v. Wasson*, 842 S.W.2d 487 (Ky. 1992), *overruled on separate grounds by Calloway Cty. Sheriff’s Dep’t v. Woodall*, 607 S.W.3d 557 (Ky. 2020). Accordingly, “decisions of the Supreme Court of Pennsylvania, when interpreting provisions of the Pennsylvania Constitution similar to that of the Kentucky Constitution, are very persuasive to the Courts of the Commonwealth and should be given as much deference as any non-binding authority receives.” *Yeoman v. Com., Health Pol’y Bd.*, 983 S.W.2d 459 (Ky. 1998).

97. HB 2 and SB 3 violate this constitutional ban on excessive partisan gerrymandering.

**Count II - Violation of Section 33  
(Excessive County Splitting)**

98. Plaintiffs repeat and incorporate by reference the preceding paragraphs of the Complaint as if fully set forth herein.

99. HB 2 violates Section 33 of the Kentucky Constitution by its excessive splitting of several of Kentucky’s most populous counties into more districts than are necessary to comply with applicable Constitutional mandates.

100. “The dominant political subdivision in Kentucky is the county.” *Fischer v. State Bd. of Elections*, 879 S.W.2d 475, 478 (Ky. 1994) (“*Fischer II*”).

101. Since the first reapportionment under the 1890 Constitution, Kentucky courts have applied Section 33 to forbid the splitting of any Kentucky county unless it is “necessary in order to effectuate that equality of representation which the spirit of the whole section imperatively demands.” *Ragland v. Anderson*, 125 Ky. 141, 100 S.W. 865 (1907).

102. HB 2 purports to satisfy this county-integrity principle by splitting only 23 total counties. However, HB 2 aggressively over-splits those 23 counties a total of 80 times without valid justification.

103. In contrast, HB 191 would have split the same number of counties—23—only 60 times, which is the fewest number of splits necessary to comply with the U.S. Constitution’s equal-representation requirements. This proposal demonstrates that the excessive splitting of counties HB 2 requires is simply not necessary to achieve the necessary population equality.

104. The Kentucky Supreme Court has never squarely addressed the question here: whether Section 33 permits the legislature to aggressively carve up counties for partisan gain if those counties must be split at least once to meet equal-representation requirements.

105. However, the Kentucky Supreme Court has declared that the Tennessee Supreme Court’s decision in *State ex rel. Lockert v. Crowell*, 656 S.W.2d 836 (Tenn. 1983)—a decision addressing this very question—is “highly persuasive” to Kentucky’s Section 33 jurisprudence because it interpreted a “virtually indistinguishable” provision of that state’s constitution. *See Fischer*, 879 S.W.2d at 477.

106. *Lockert* expressly rejected the legal assumption argument upon which HB 2 was built: that the relevant constitutional language “does not really prohibit the severing of a fractional part of a multi-district county . . . and attachment to a contiguous county or counties to form a . . . district.” *Lockert*, 656 S.W.2d at 839. It likewise further refused to “sanction a single county line violation not shown to be necessary to avoid a breach of federal constitutional requirements.” *Lockert*, 656 S.W.2d at 839.

107. Here, HB 2 aggressively carves up the counties required to be split for equal-representation purposes, repeatedly attaching portions of multi-district counties to neighboring counties solely for the purpose of achieving maximum partisan advantage.

108. Moreover, Section 33 provides that “[n]o part of a county shall be added to another county to make a district, and the counties forming a district shall be contiguous.” Ky. Const § 33.

109. HB 2 repeatedly violates this command by creating forty-five separate districts that combine part of one county with another county or counties.

110. Many of these violations of Section 33 were not necessary to create districts of roughly equal population. Rather, they were done for partisan gain.

111. HB 2's excessive county-splitting violates the principle of county integrity protected by Section 33 as well as that Section's plain text.

### **Count III – Violation of Right to Equal Protection (Partisan Gerrymandering)**

112. Plaintiffs repeat and incorporate by reference the preceding paragraphs of the Complaint as if fully set forth herein.

113. Citizens of Kentucky are guaranteed equal protection of the law under Sections 1, 2, and 3 of Kentucky's Constitution. *Zuckerman v. Bevin*, 565 S.W.3d 580, 594 (Ky. 2018). Section 2 further protects Kentuckians from exercises of "[a]bsolute and arbitrary power" even by "the largest majority." Ky. Const. § 2.

114. These constitutional guarantees require that every Kentuckian's vote carries the same voting power. *See Legislative Research Comm'n v. Fischer*, 366 S.W.3d 905, 910 (Ky. 2012); *see also Asher v. Arnett*, 280 Ky. 347, 132 S.W.2d 772, 776 (1939) ("equal" comprehends the principle that every elector has the right to have their vote "counted for all it is worth," and that, when cast, their vote "shall have the same influence as that of any other voter").

115. Partisan gerrymandering constitutes an equal protection violation because, by seeking to diminish the electoral power of supporters of a disfavored party, a partisan gerrymander treats individuals who support candidates of one political party less favorably than individuals who support candidates of another party. *See Common Cause*, 2019 WL 4569584, at \*113.

116. Moreover, because the right to vote is a fundamental right, laws regulating the vote are subject to strict scrutiny. *See Mobley v. Armstrong*, 978 S.W.2d 307, 309 (Ky. 1998), as modified (Oct. 22, 1998).

117. To survive strict scrutiny—the “highest standard of review”—a “challenged statute can survive only if it is suitably tailored to serve a ‘compelling state interest.’” *D.F. v. Codell*, 127 S.W.3d 571, 575 (Ky. 2003) (citation omitted).

118. The partisan gerrymandering reflected in HB 2 and SB 3 violates the guarantee of equal protection contained in Sections 1, 2, and 3 of Kentucky’s Constitution because *the Commonwealth* has no legitimate interest—let alone a compelling one—in diminishing the electoral power of Kentucky’s Democratic voters and depriving them of the right to vote on equal terms with Republican voters.

119. Further, the partisan gerrymander reflected in HB 2 and SB 3 violates Section 2 of the Kentucky Constitutional because it represents an exercise of absolute and arbitrary power by the Republican super-majority to punish and diminish its political opposition.

#### **Count IV – Violation of Right to Freedom of Speech and Assembly (Partisan Gerrymandering)**

120. Plaintiffs repeat and incorporate by reference the preceding paragraphs of the Complaint as if fully set forth herein.

121. Section 1 of the Kentucky Constitution provides that all Kentuckians shall have the inalienable rights of “freely communicating their thoughts and opinions” and “assembling together in a peaceable manner for their common good, and of applying to those invested with the power of government for redress of grievances or other proper purposes, by petition, address or remonstrance . . . .” Ky. Const. § 1 (4) & (6).

122. Voting for the candidate of one's choice and associating with the political party of one's choice are core means of political expression protected by Kentucky's freedom of speech and assembly clauses. *See Associated Industries of Kentucky v. Commonwealth*, 912 S.W.2d 947, 952 (Ky. 1995) (Section 1 of Kentucky's Constitution is "designed to protect the rights of citizens in a democratic society to participate in the political process of self-government").

123. HB 2 and SB 3 burden Democratic voters' right to free expression by making their votes less effective, even if it does not prevent them from voting outright. *See Common Cause*, 2019 WL 4569584, at \*121. "It is . . . no answer to say that petitioners can still be 'seen and heard'" if the burdens placed on their speech "have effectively stifled petitioners' message." *McCullen v. Coakley*, 573 U.S. 464, 489-90 (2014).

124. HB 2 and SB 3 also burden the ability of Democratic voters to "assembl[e] together in a peaceable manner for their common good, and . . . apply[ ] to those invested with the power of government for redress of grievances or other proper purposes, by petition, address or remonstrance." Ky. Const. § 1 (6). By creating highly polarized cracked districts where the views of Democratic voters will matter far less to an elected representative than the representative's concerns about losing the next primary, HB2 and SB 3 severely limit the ability of Democratic voters to apply to their representatives and obtain redress on important issues. HB 2 and SB 3 likewise prohibit the Kentucky Democratic Party from effectively organizing to accomplish its purposes. These laws "burden[] the ability of like-minded people across the State to affiliate in a political party and carry out [their] activities and objects." *Gill v. Whitford*, 138 S. Ct. 1916, 1939 (2018) (Kagan, J., concurring). Similarly, these laws inhibit KDP's ability to solicit campaign donations and make campaign expenditures by requiring the party to raise and spend more money to be competitive in elections than would be required under non-partisan redistricting plans.



125. HB 2 and SB 3 also violate Plaintiffs' right to be free from retaliation for their protected political speech—voting. These plans single out Democratic voters because of their past voting history and intentionally pair them with more Republican areas specifically to dilute their voting power. That represents unconstitutional viewpoint discrimination prohibited by Kentucky's Constitution.

**Count V – Violation of Protection against Absolute and Arbitrary Power  
(All Claims)**

126. Plaintiffs repeat and incorporate by reference the preceding paragraphs of the Complaint as if fully set forth herein.

127. The Kentucky Constitution provides that “[a]bsolute and arbitrary power over the lives, liberty and property of freemen exists nowhere in a republic, not even in the largest majority.” Ky. Const. § 2.

128. HB 2 and SB 3 violate this right to be free from arbitrary and absolute power because they make the will of the voters of Kentucky subservient to the desire of the Republican supermajority to be re-elected, in perpetuity.

129. By drawing House maps that guarantee Republicans will claim at least 75 seats, with a chance of winning almost ten more, HB 2 represents an arbitrary exercise of absolute control over the redistricting process to predetermine the outcome of the next decade of House elections.

130. SB 3 also represents an arbitrary exercise of absolute power to favor two incumbent U.S. House members. The voters of Franklin, Washington, and part of Anderson counties were used as pawns to draw a district that allows Rep. Comer to live among the voters he represents in Washington. Those central Kentucky counties have interests far different than the rest of the Western Kentucky counties they are now paired with in District 1.

131. The way in which HB 2 and SB 3 were enacted also violate the constitutional Due Process guarantees protected by Section 2 of the Constitution. The bills were drafted entirely behind closed doors and passed before voters even had a chance to see the underlying precinct data that would allow them to meaningfully assess, and comment on, the districts in which they live.

**Count VI – Declaratory and Injunctive Relief  
(All Claims)**

132. Plaintiffs repeat and incorporate by reference the preceding paragraphs of the Complaint as if fully set forth herein.

133. This is an actual and justiciable controversy with respect to enforcement of Kentucky’s constitutional requirements for the conduct of elections for the Kentucky House of Representatives.

134. For the reasons set forth above, Plaintiffs are likely to succeed on their claims that HB 2 and SB 3 violate Sections 1, 2, 3, 6, and 33 of the Kentucky Constitution.

135. Plaintiffs’ rights are being violated and they will suffer immediate and irreparable harm through implementation of HB 2 and SB 3 for the May 2022 primary election, including with respect to the current candidate filing deadline and the deadline to print ballots for the Kentucky House of Representatives.

136. There is no adequate remedy at law with respect to Plaintiffs’ claims under Sections 1, 2, 3, 6, and 33 of the Kentucky Constitution.

137. The strong public interest in ensuring free and equal elections that comply with the requirements of Kentucky’s Constitution weigh in favor of granting Plaintiffs’ requested injunctive relief.

138. Plaintiffs are therefore entitled to temporary and permanent injunctive relief, as set forth below.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request the following relief:

- A. A Judgment on Plaintiffs' Causes of Action;
- B. A Temporary and Permanent Injunction enjoining implementation of the Kentucky House districts created by HB 2 and Congressional districts created by SB 3 and granting any additional relief necessary to make such relief meaningful, such as the extension of filing deadlines for candidates seeking election to Kentucky's House of Representatives and Congress;
- C. A declaratory judgment that HB 2 and SB 3 are unconstitutional, are invalidated in their entirety, and are of no force and effect;
- D. An injunction directing Defendants to implement, enforce, and conduct elections for the Kentucky House of Representatives and Congress pursuant to the district maps previously enacted as KRS 5.200, *et seq.*, or under the provisions of any new duly enacted redistricting plan that complies with all applicable laws;
- E. An expedited hearing on the merits of this declaratory judgment action; and
- F. All other relief to which the Plaintiffs may be entitled, including their costs and expenses incurred herein.

Dated: January 20, 2022

Respectfully submitted,

/s/ Michael P. Abate  
Michael P. Abate  
Casey L. Hinkle  
William R. Adams  
KAPLAN JOHNSON ABATE & BIRD LLP  
710 W. Main St., 4<sup>th</sup> Floor  
Louisville, KY 40202  
Phone: (502) 416-1630  
[mabate@kaplanjohnsonlaw.com](mailto:mabate@kaplanjohnsonlaw.com)  
[chinkle@kaplanjohnsonlaw.com](mailto:chinkle@kaplanjohnsonlaw.com)  
[radams@kaplanjohnsonlaw.com](mailto:radams@kaplanjohnsonlaw.com)

*Counsel for Plaintiffs*