

**IN THE SUPREME COURT OF OHIO**

**League of Women Voters of Ohio,**  
100 East Broad Street, Suite 1310  
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**A. Philip Randolph Institute of Ohio,**  
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**Janice Patterson,**  
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**Barbara Brothers,**  
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**John Fitzpatrick,**  
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**Stephanie White,**  
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**Renee Ruchotzke,**  
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Kent, OH 44240

**Tiffany Rumbalski,**  
3830 Westbrook Dr.  
Hilliard, OH 43026

***Relators,***

Original Action Filed Pursuant to  
Ohio Const., art. XIX

v.

**Governor Michael DeWine, in his official capacity as Member of the Ohio Redistricting Commission,**  
Riffe Center  
30th Floor  
77 S. High St.  
Columbus, OH 43215

**Secretary of State Frank LaRose, in his official capacity as Secretary of State and Member of the Ohio Redistricting Commission,**  
22 N. Fourth St.,  
16th Floor  
Columbus, OH 43215

**Senate President Matt Huffman, in his official capacity as President of the Ohio Senate and Member of the Ohio Redistricting Commission,**  
Ohio Statehouse  
1 Capitol Square  
2nd Floor  
Columbus, OH 43215

**House Speaker Robert R. Cupp, in his official capacity as Speaker of the Ohio House of Representatives and Co-Chair of the Ohio Redistricting Commission,**  
77 S. High St.  
14th Floor  
Columbus, OH 43215

**Senator Vernon Sykes, in his official capacity as Co-Chair of the Ohio Redistricting Commission,**  
Senate Building  
1 Capitol Square  
Ground Floor  
Columbus, OH 43215

**House Minority Leader Emilia S. Sykes, in her official capacity as Member of the Ohio Redistricting Commission,**

77 S. High St.  
14th Floor  
Columbus, OH 43215

**Auditor Keith Faber, in his official  
capacity as Member of the Ohio  
Redistricting Commission,**  
88 East Broad St.  
5th Floor  
Columbus OH, 43215

**Ohio Redistricting Commission,**  
Ohio Statehouse  
1 Capitol Square  
Columbus, OH 43215

***Respondents.***

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## COMPLAINT

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Robert D. Fram (PHV 25414-2021)\*  
Donald Brown (PHV 25480-2021)\*  
David Denuyl (PHV 25452-2021)\*  
Juliana Goldrosen (PHV 25193-2021)\*  
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## INTRODUCTION

1. On November 20, 2021, the Governor signed SB 258 into law, enacting a plan setting forth the map of congressional districts in Ohio for the next four years (the “Enacted Plan”). The Enacted Plan, proposed by Republicans, was passed along strict party lines, with nearly all Republicans, but no Democrat, voting in favor of the bill. Under Article XIX, Section 1(C)(3)(a) of the Ohio Constitution, a plan passed in this manner must not “unduly” favor a political party. But the Enacted Plan does just that.

2. *Allowing the most conservative margins*, the Enacted Plan will provide ten districts that will safely elect Republican candidates, two districts that will safely elect Democratic candidates, and three arguably competitive districts that will favor Republicans. *See* Ex. 1, Warshaw Rep., at 5. Under these projections, the Enacted Plan safely allocates 67% of the total congressional seats (10 of 15) to the Republican Party for the next four years, despite their predicted 55% share of the vote. *Id.*

3. But that allocation is the very minimum that the Republican Party will win—with wide margins of safety. Indeed, when the allocation is based on how the districts in the Enacted Plan are *likely* to vote, Republicans will win the congressional elections in 12 districts, or 80% of the total congressional seats in the Enacted Plan. *See id.*

4. But despite receiving an anticipated 67% to 80% of the seats, the Republican Party is projected to receive only 55% of the votes. *See id.* On those facts, it is indisputable that the Enacted Plan “unduly” favors the Republican Party in violation of Article XIX, Section 1(C)(3)(a). In political science, an advantage of 12 to 25 points is a landslide. It is an “undue” advantage under any definition of the term.

5. In 2018, Ohio voters overwhelmingly passed an amendment to the Ohio Constitution to eliminate this type of extreme partisanship. The amendment came after decades

of grassroots dissatisfaction with the gerrymandering that occurred under Ohio’s congressional redistricting process. Ohioans’ desire for reform intensified after the passage of the 2011 congressional plan, which split tightly knit communities and paired those with little in common. For example, the first elections in 2012 held under the 2011 map saw Republicans win a disproportionate number of congressional seats—12 of 16—despite decisive Democratic victories in the presidential and U.S. Senate races. Ex. 2, Rodden Aff., ¶¶ 2, 13–14, 17. And under the 2011 plan, not a single district changed hands throughout the entire decade.

6. Article XIX, Section 1(C)(3)(a)—which prevents the enactment of a congressional plan that “unduly” favors one political party or its incumbents—reflects the clear will of Ohioans to prohibit partisan gerrymandering in the drawing of a plan defining Ohio’s congressional districts. Ohio Const., art. XIX, § 1(C)(3)(a). The prohibition of partisan gerrymandering is unequivocal and unconditional; it states: the General Assembly “*shall not* pass a plan that *unduly* favors or disfavors a political party or its incumbents.” *Id.* (emphases added).

7. Section 1(C)(3)(b) also plainly states: “The general assembly *shall not unduly* split governmental units. . . .” (emphasis added). The Enacted Plan, however, unduly splits governmental units in the urban and suburban areas of southwestern and northeastern Ohio. In particular, the Enacted Plan splits counties and communities in Hamilton, Cuyahoga, and Summit—splits that are unnecessary for any purpose other than to minimize the efficacy of Democratic votes. See Ex. 2, Rodden Aff., ¶¶ 63–68, 75.

8. It is necessary and appropriate for this Court to exercise its constitutionally delegated authority to review the Enacted Plan. See Ohio Const., art. XIX, § 3(a) (the “supreme court of Ohio shall have exclusive, original jurisdiction in all cases arising under this article”).

Indeed, the U.S. Supreme Court has clearly stated that it is the province of state courts to address such anti-democratic consequences of partisan gerrymandering. *Rucho v. Common Cause*, 139 S. Ct. 2484, 2507, 204 L.Ed.2d 931 (2019) (“Provisions in state statutes and state constitutions can provide standards and guidance for state courts to apply.”).

9. Judicial intervention is necessary and appropriate here because the extreme partisan gerrymandering that has occurred in Ohio, yet again, violates “the core principle of republican government . . . that the voters should choose their representatives, not the other way around.” *Ariz. State Legislature v. Ariz. Indep. Redistricting Comm’n*, 135 S. Ct. 2652, 2677, 192 L.Ed.2d 704 (2015). Rather than reflecting voters’ actual preferences, Ohio’s newly enacted congressional map, like elections under gerrymandered systems, systematically locks in candidates from the Republican legislators’ preferred party and discourages electoral competition responsive to voters’ preferences.

10. Relators bring this action to ensure that the fair, neutral, and constitutionally mandated requirements of Article XIX govern the current congressional reapportionment process and the map that will apply in the 2022 elections.

### **JURISDICTION**

11. Article XIX, Section 3 provides this Court with “exclusive, original jurisdiction in all cases arising under this article” without limitation. Ohio Const., art. XIX, § 3(A). In particular, Section 3(B) provides:

In the event that any section of this constitution relating to congressional redistricting, any congressional district plan, or any congressional district or group of congressional districts is challenged and is determined to be invalid by an unappealed final order of a court of competent jurisdiction then, notwithstanding any other provisions of this constitution, the General Assembly shall pass a congressional district plan in accordance with the provisions of this constitution that are then valid, to be used until

the next time for redistricting under this article in accordance with the provisions of this constitution that are then valid.

*Id.* § 3(B)(1).

12. Relators seek a determination that the Enacted Plan is invalid under Article XIX, Section 1(C)(3). Accordingly, this action falls within the jurisdictional grant set forth in Section 3(B).

## **PARTIES**

### **A. Relators**

13. Relator League of Women Voters of Ohio (“LWVO”) is the Ohio chapter of the League of Women Voters of the United States—a nonpartisan, statewide non-profit founded in May 1920, shortly before the ratification of the Nineteenth Amendment in August 1920 granting women’s suffrage.

14. LWVO currently has 3,816 members across the state, the vast majority of whom are registered Ohio voters, who live and vote in all of Ohio’s congressional districts, and many of whom will have their votes diluted by the Enacted Plan. LWVO’s members make up 29 local Leagues and 4 at-large units that are dedicated to empowering citizens and ensuring an effective democracy. Ex. 3, Miller Aff., ¶ 4.

15. As part of its mission to empower voters and defend democracy, LWVO aims to shape public policy, educate the public about policy issues and the functioning of our democracy, and protect and expand Ohioans’ access to elections and their government. As such, LWVO and its members invest substantial volunteer time in voter education, civic engagement, and voter registration efforts. *Id.* ¶ 5.

16. The gerrymandered congressional map impairs LWVO’s mission by deterring and discouraging its members and other Ohio voters from engaging in the political process, thereby



making it more difficult for LWVO to engage voters through its education, registration, and outreach efforts. For example, LWVO and its members have struggled to engage and activate self-identified Democratic voters in districts drawn in a manner that unduly favors Republican candidates. And when LWVO hosts forums for candidates in districts that are not competitive, it is difficult to get candidates from the favored party to attend. *Id.* ¶ 6.

17. Concern about the prospect of a gerrymandered congressional map has forced LWVO in 2021 to divert staff responsibilities, member efforts, and financial resources to an advocacy campaign for fair districts. If LWVO and its members were able to rely on a nonpartisan process to produce fair maps and competitive districts, those resources would otherwise have been devoted to LWVO's traditional nonpartisan voter education services and programs. *Id.* ¶ 7.

18. Instead, LWVO has been forced to expend money and time advocating for fair districts. This advocacy by members and staff includes attending and testifying at multiple hearings across the state, mobilizing voter communications with elected officials, and organizing lobbying visits and rallies at the Statehouse in Columbus, among other efforts. Indeed, LWVO has deployed all of its staff members on redistricting-related work, hired a new staff person to work strictly on redistricting, and hired a mapping expert to run the citizen map-drawing competition and analyze the Ohio Redistricting Commission map proposals as they became available. *Id.* ¶ 8.

19. Fundraising by LWVO for its traditional programs has also suffered during 2021 due to the fair districts campaign. Financial supporters of LWVO have been forced to choose between supporting LWVO's traditional programs and funding the advocacy campaign for fair

districts in 2021. As an example, LWVO’s fundraising for Women’s Equality Day is down roughly 40 percent in 2021 compared to 2020. *Id.* ¶ 9.

20. LWVO is suing on its own behalf as well as in its capacity as representative of its members in order to seek a constitutional map. *Id.* ¶ 14.

21. Relator Ohio A. Philip Randolph Institute (“APRI”) is the Ohio chapter of the A. Philip Randolph Institute, a national organization for African-American trade unionists and community activists. Ex. 4, Washington Aff., ¶¶ 3–4.

22. APRI is a membership organization with eight chapters across Ohio. Throughout the state, APRI has hundreds of members and volunteers—all or nearly all of whom are registered Ohio voters and many of whom will have their votes diluted by the Enacted Plan. *Id.* ¶ 5.

23. While APRI supports a variety of charitable ventures unrelated to voting, much of APRI’s work is focused on voter education, registration, civic engagement, and voter outreach efforts. APRI leadership and members conduct in-person and virtual voter outreach and voter education events, including partnerships with churches to educate the public about absentee voting. *Id.* ¶¶ 4, 8.

24. The gerrymandered congressional map impairs APRI’s work by deterring and discouraging its members and other Ohio voters from engaging in the political process, thereby making it more difficult for APRI to engage voters through its education, registration, and outreach efforts. At voter outreach events throughout 2021—both in person and virtual—APRI representatives have routinely heard attendees reiterate the following concern: Because of gerrymandering, voters believe nothing will ever change and that they will never obtain a fair

district map where their votes will matter. As a result, partisan gerrymandering has made it more difficult for APRI members to engage citizens in the electoral process. *Id.* ¶ 10.

25. The prospect of another gerrymandered map has consumed APRI's time and resources throughout 2021 that would otherwise have gone to traditional voter registration and outreach efforts. Indeed, APRI would not have had to divert resources if its members could rely on Ohio's process to produce nonpartisan, fair maps. For example, APRI members have invested time and energy testifying at redistricting hearings in response to the Commission's proposed maps, at times forcing them to cancel or set aside other activities. Additionally, APRI members have been forced to educate citizens and answer countless questions about the redistricting process, what "packing" and "cracking" are, why there is an initiative for fair districts and what its goals are, why their neighborhoods have been carved up in unprecedented ways, and why a system has been designed that leads them to feel that their votes do not count. *Id.* ¶¶ 11–13.

26. Members of the public frequently contact APRI with questions about gerrymandering and similar issues, because they cannot reach their elected representatives or get answers from them. Responding to questions about redistricting also takes up a significant amount of APRI's time and resources. *Id.* ¶ 14.

27. APRI is suing on its own behalf as well as in its capacity as representative of its members in order to seek a constitutional map. *Id.* ¶ 16.

28. Relator Bette Evanshine is a United States citizen, registered to vote in the State of Ohio, and an active Ohio voter. She is a Democratic voter, has supported Democratic candidates for the U.S. House of Representatives in the past, and plans to support such candidates in the future. Relator Evanshine is an active member of the League of Women Voters

of Ohio. She lives at 3877 Paxton Ave, Cincinnati, OH 45209, which is in congressional District 1 in the Enacted Plan. Relator Evanshine's interests in electing U.S. Representatives under a fair map have been prejudiced by the Enacted Plan. The improper partisan unfairness of the Enacted Plan has resulted in an unconstitutionally large number of districts whose voters have supported Republican candidates, including congressional District 1. Relator Evanshine's vote has been diluted in congressional District 1 under the Enacted Plan.

29. Relator Janice Patterson is a United States citizen, registered to vote in the State of Ohio, and an active Ohio voter. She is a Democratic voter, has supported Democratic candidates for the U.S. House of Representatives in the past, and plans to support such candidates in the future. Relator Patterson is an active member of the League of Women Voters of Ohio. She lives at 401 Bounty Way Apt. 162, Avon Lake, OH 44012, which is in congressional District 5 in the Enacted Plan. Relator Patterson's interests in electing U.S. Representatives under a fair map have been prejudiced by the Enacted Plan. The improper partisan unfairness of the Enacted Plan has resulted in an unconstitutionally large number of districts whose voters have supported Republican candidates, including congressional District 5. Relator Patterson's vote has been diluted in congressional District 5 under the Enacted Plan.

30. Relator Barbara Brothers is a United States citizen, registered to vote in the State of Ohio, and an active Ohio voter. She is a Democratic voter, has supported Democratic candidates for the U.S. House of Representatives in the past, and plans to support such candidates in the future. Relator Brothers is an active member of the League of Women Voters of Ohio. Relator Brothers lives at 1310 5th Ave, Apt. 1005, Youngstown, OH 44504, which is in congressional District 6 in the Enacted Plan. Relator Brothers's interests in electing U.S. Representatives under a fair map have been prejudiced by the Enacted Plan. The improper

partisan unfairness of the Enacted Plan has resulted in an unconstitutionally large number of districts whose voters have supported Republican candidates, including congressional District 6. Relator Brothers's vote has been diluted in congressional District 6 under the Enacted Plan.

31. Relator John Fitzpatrick is a United States citizen, registered to vote in the State of Ohio, and an active Ohio voter. He is a Democratic voter, has supported Democratic candidates for the U.S. House of Representatives in the past, and plans to support such candidates in the future. Relator Fitzpatrick is an active member of the League of Women Voters of Ohio. Relator Fitzpatrick lives at 3536 Homewood Ave., Cuyahoga Falls, OH 44221, which is in congressional District 7 in the Enacted Plan. Relator Fitzpatrick's interests in electing U.S. Representatives under a fair map have been prejudiced by the Enacted Plan. The improper partisan unfairness of the Enacted Plan has resulted in an unconstitutionally large number of districts whose voters have supported Republican candidates, including congressional District 7. Relator Fitzpatrick's vote has been diluted in congressional District 7 under the Enacted Plan.

32. Relator Stephanie White is a United States citizen, registered to vote in the State of Ohio, and an active Ohio voter. She is a Democratic voter, has supported Democratic candidates for the U.S. House of Representatives in the past, and plans to support such candidates in the future. Relator White is an active member of the League of Women Voters of Ohio. She lives at 8 Hidden Valley Drive Apt. 18, Toledo, OH 43615, which is in congressional District 9 in the Enacted Plan. Relator White's interests in electing U.S. Representatives under a fair map have been prejudiced by the Enacted Plan. The improper partisan unfairness of the Enacted Plan has resulted in an unconstitutionally large number of districts whose voters have

supported Republican candidates, including congressional District 9. Relator White's vote has been diluted in congressional District 9 under the Enacted Plan.

33. Relator Janet Underwood is a United States citizen, registered to vote in the State of Ohio, and an active Ohio voter. She is a Democratic voter, has supported Democratic candidates for the U.S. House of Representatives in the past, and plans to support such candidates in the future. Relator Underwood is an active member of the League of Women Voters of Ohio. She lives at 108 E. Hudson Ave., Dayton, OH 45405, which is in congressional District 10 in the Enacted Plan. Relator Underwood's interests in electing U.S. Representatives under a fair map have been prejudiced by the Enacted Plan. The improper partisan unfairness of the Enacted Plan has resulted in an unconstitutionally large number of districts whose voters have supported Republican candidates, including congressional District 10. Relator Underwood's vote has been diluted in congressional District 10 under the Enacted Plan.

34. Relator Renee Ruchotzke is a United States citizen, registered to vote in the State of Ohio, and an active Ohio voter. She is a Democratic voter, has supported Democratic candidates for the U.S. House of Representatives in the past, and plans to support such candidates in the future. Relator Ruchotzke is an active member of the League of Women Voters of Ohio. Relator Ruchotzke lives at 237 Highland Ave., Kent, OH 44240, which is in congressional District 14 in the Enacted Plan. Relator Ruchotzke's interests in electing U.S. Representatives under a fair map have been prejudiced by the Enacted Plan. The improper partisan unfairness of the Enacted Plan has resulted in an unconstitutionally large number of districts whose voters have supported Republican candidates, including congressional District 14. Relator Ruchotzke's vote has been diluted in congressional District 14 under the Enacted Plan.

35. Relator Tiffany Rumbalski is a United States citizen, registered to vote in the State of Ohio, and an active Ohio voter. She is a Democratic voter, has supported Democratic candidates for the U.S. House of Representatives in the past, and plans to support such candidates in the future. Relator Rumbalski is an active member of the League of Women Voters of Ohio. Relator Rumbalski lives at 3830 Westbrook Dr., Hilliard, OH 43026, which is in congressional District 15 in the Enacted Plan. Relator Rumbalski's interests in electing U.S. Representatives under a fair map have been prejudiced by the Enacted Plan. The improper partisan unfairness of the Enacted Plan has resulted in an unconstitutionally large number of districts whose voters have supported Republican candidates, including congressional District 15. Relator Rumbalski's vote has been diluted in congressional District 15 under the Enacted Plan.

#### **B. Respondents**

36. Respondents include each Ohio elected official and entity with responsibility for approving, implementing, and remedying Ohio's congressional plan, such that all necessary parties are before the Court.

37. Respondent Mike DeWine is the Governor of Ohio and a member of the Ohio Redistricting Commission ("the Commission") and is sued in his official capacity as a member of the Commission. Governor DeWine signed the 2021 congressional plan into law.

38. Respondent Frank LaRose is the Ohio Secretary of State and a member of the Commission, and is sued in his official capacity. He is the chief election officer in Ohio responsible for overseeing election administration. *See* R.C. 3501.04.

39. Respondent Matt Huffman is the President of the Ohio State Senate and a member of the Commission, and is sued in his official capacity. The General Assembly has primary

authority for drawing Ohio’s congressional districts, passed the Enacted Plan, and is responsible for remedying a plan in the first instance if a court deems it invalid.

40. Respondent Bob Cupp is the Speaker of the Ohio House of Representatives and a member of the Commission, and is sued in his official capacity. The General Assembly has primary authority for drawing Ohio’s congressional districts, passed the Enacted Plan, and is responsible for remedying a plan in the first instance if a court deems it invalid.

41. The Commission and its seven members—Co-Chair House Speaker Bob Cupp, Co-Chair Senator Vernon Sykes, Governor Mike DeWine, Secretary of State Frank LaRose, Auditor Keith Faber, Senate President Matt Huffman, and House Minority Leader Emilia Sykes—are each sued in their official capacity. They have secondary authority for drawing Ohio’s congressional districts, failed to adopt a congressional plan in October 2021, and are responsible for remedying an invalid plan if the General Assembly misses its deadline to do so.

## **LEGAL BACKGROUND**

42. The Census Bureau has announced that Ohio will lose one seat in the 2021 congressional redistricting—from 16 to 15 seats, reflecting its population of 11,808,848. *See* U.S. Census Bureau, *Apportionment Population and Number of Representatives By State: 2020 Census*, <https://bit.ly/2ZEyXDp>, (accessed Nov. 30, 2021).

43. Article XIX sets forth various constitutional constraints on how this congressional map shall be drawn. It further imposes detailed guidelines for redistricting that include specific rules for the reapportionment process, as well as mandates that the Commission and General Assembly prohibit undue partisan advantage.

### **A. Redistricting Process and Deadlines**

44. Article XIX states that the General Assembly must pass the congressional district plan by a three-fifths vote in each house (including the affirmative vote of at least one-half of the



members of each of the two largest political parties in that house) by September 30, 2021. Ohio Const., art. XIX, § 1(A).

45. Section 1(B) provides that if a plan is not passed by September 30, per Section 1(A), the Commission is to adopt a plan by October 31. *Id.* § 1(B). This must include the affirmative vote of four members of the Commission, including at least two members of the Commission who represent each of the two largest political parties represented in the General Assembly. *Id.*

46. Per Section 1(C)(1), if the General Assembly does not pass a plan by a three-fifths vote by September 30, and the Commission does not enact a bipartisan plan by October 31, then the General Assembly is to pass a plan by November 30. *Id.* § 1(C)(1). At that point, the General Assembly has two options.

47. First, pursuant to Article XIX, Section 1(C)(2), a ten-year plan can be enacted if supported by a super majority (three-fifths of each house of the General Assembly) that satisfies a bipartisan requirement. The bipartisan requirement mandates that at least one-third of the members of the two largest parties in each house vote in favor of the plan. *Id.* § 1(C)(2).

48. Alternatively, pursuant to Section 1(C)(3), a four-year plan can be enacted if supported only by a simple majority in each house of the General Assembly. *Id.* § 1(C)(3).

49. Prior to the passage or adoption of a congressional plan under any of the methods described above, a joint committee of the General Assembly or the Commission must hold at least two public hearings. *Id.* § 1(G).

50. The Constitution provides for further proceedings following an order of this Court identifying defects in the enacted plan. In particular, Section 3(B)(1) provides that the General

Assembly shall pass the referenced plan not later than the thirtieth day after the date of this Court's order requiring a revision of the enacted plan. *Id.* § 3(B)(1).

51. If a new congressional district plan is not passed in accordance with Section 3(B)(1) and filed with the Secretary of State, the Ohio Redistricting Commission shall reconvene and adopt a congressional district plan in accordance with the then-valid provisions of the Ohio Constitution. *Id.* § 3(B)(2). Section 3(B)(2) further provides that the Commission shall adopt the referenced plan not later than the thirtieth day after the deadline set forth for the passage of a new plan by the General Assembly, *i.e.*, sixty days after the order of this Court requiring a revision of the enacted plan.

**B. Bars on Undue Partisanship and Undue Splitting**

52. If a plan is passed by a simple majority pursuant to Section 1(C)(3), then Article XIX specifies that “the General Assembly shall not pass a plan that unduly favors or disfavors a political party or its incumbents.” *Id.* § 1(C)(3)(a).

53. Section 1(C)(3)(b) further states: “The general assembly shall not unduly split governmental units, giving preference to keeping whole, in the order named, counties, then townships and municipal corporations.” *Id.* § 1(C)(3)(b).

54. For any plan passed pursuant to Section 1(C)(3), the General Assembly must include in the plan an explanation of the plan's compliance with, *inter alia*, the prohibition of Section 1(C)(3)(a) on unduly favoring or disfavoring a political party or its incumbents. The statement must also explain the plan's compliance with the prohibition of undue splitting as set forth in Section 1(C)(3)(b).

## FACTUAL BACKGROUND

### A. The 2011 Congressional Map And Its Adjudication

55. The maps that came out of Ohio’s 2011 decennial apportionment process were severely gerrymandered. This bias persisted throughout the decade, with Republicans consistently winning 75% of the congressional seats (12 out of 16) while only earning 55% of the votes in statewide elections during that period. Ex. 1, Warshaw Rep., at 5–6.

56. The process that led to this gerrymandered result was outlined in detail by the three-judge federal panel in *Ohio A. Philip Randolph Inst. v. Householder*, 373 F. Supp. 3d 978 (S.D. Ohio 2019). Based on the court’s review of extensive evidence, it found that “partisan intent predominated” during the map-drawing process. *Id.* at 1099. In reaching this conclusion, the court specifically credited, among other things, “evidence of the timeline and logistics of the map-drawing process, the map drawers’ heavy use of partisan data, contemporaneous statements made by the map drawers about their efforts. . . .” *Id.*

### B. The 2018 Constitutional Amendments

57. As a direct response to the severe partisan manipulation of the last decade, Ohio voters enacted Article XIX, which was specifically intended to end partisan gerrymandering.

58. In the spring of 2017, a coalition of good government groups, known as the Fair Districts = Fair Elections Coalition (“the Coalition”), began an initiative process in support of their “Fair Congressional Districts for Ohio” ballot proposal (“the Initiative”). *See* Ohio Environmental Council, Trio of Good Government Groups File Congressional Redistricting Proposal: Congressional Reform Mirrors State Reform Measure Approved by 71% of Ohio Voters in 2015, (Apr. 24, 2017), <http://bitly.ws/jLZ2>, (accessed Nov. 30, 2021). The Coalition began gathering signatures in 2017 to place this initiative on the November 2018 ballot. *Id.* In response, General Assembly Republicans began a process to place their own initiative on the

ballot, one that would preserve the redistricting power of the Legislature they controlled. *See* Karen Kasler, WKSU, *Ohio Voters May See Two Anti-Gerrymandering Issues on Their Ballots Next Year*, (Dec. 21, 2017), <http://bitly.ws/jLZI>, (accessed Nov. 30, 2021).

59. On January 16, 2018, Senator Matt Huffman released a redistricting reform bill, SJR 5, that offered little to end partisan gerrymandering in the state. Ex. 5, Rep. Huffman Sponsor Testimony for S.J.R. 5 (Jan. 17, 2018). Notably, his bill did not include any prohibition on unduly favoring or disfavoring a political party. *Id.* This bill was quickly referred to the Senate Government Oversight and Reform Committee, which heard testimony from good government organizations, community organizations, and individual citizens on January 23, 24, 30, and 31 of 2018. *See* S.J.R. 5 Committee Activity, Government Reform and Oversight Committee, (Jan. 2018), <http://bitly.ws/jLZe>, (accessed Nov. 30, 2021).

60. Witnesses uniformly opposed Senator Huffman's partisan bill and decried its inaction on partisan gerrymandering. *Id.* The bill was specifically criticized for failing to include any explicit bar on partisan gerrymandering. In response to the widespread criticism, Senator Huffman withdrew his original bill and re-introduced a compromise bill on February 5, 2018. *Id.* That revised bill included explicit language prohibiting the Legislature from unduly favoring or disfavoring a party or its incumbents. *See* The Ohio Senate, *Republicans Announce Significant Changes Made To Congressional Redistricting Plan*, (Jan. 29, 2018), <http://bitly.ws/jM4s>, (accessed Nov. 30, 2021).

61. The substituted SJR 5 drew bipartisan support, including from the community organizations and interested citizens who had opposed Senator Huffman's original bill. *See* Vann R. Newkirk II, The Atlantic, *An End to Gerrymandering in Ohio?*, (Feb. 6, 2018), <http://bitly.ws/jM4x>, (accessed Nov. 30, 2021). The chief Republican sponsor in the House,

Representative Kirk Schuring, characterized SJR 5 as “mak[ing] mapping rules . . . that are designed to prevent partisan gerrymandering” and emphasized that the “rules are solid and will ensure the drafting of fair districts.” Ex. 6, Tr. of Feb 6, 2018 Ohio H. Floor Debate, at 3.

62. The bill was passed overwhelmingly in the State Legislature on February 6, 2018. S.J.R. 5 Votes, Government Reform and Oversight Comm., (Feb. 6, 2018), <http://bitly.ws/jM53>, (accessed Nov. 30, 2021). Following passage of SJR 5, the reform initiative was approved by the Secretary of State as a ballot initiative, Issue 1, for the May 8, 2018, primary. Ex. 7, Statewide Issue 1, at 1. The ballot measure informed voters that the “proposed amendment would end the current partisan process for drawing congressional districts by a simple majority vote of the General Assembly,” and that “[i]f bipartisan support cannot be obtained, strict anti-gerrymandering criteria would apply when adopting a congressional map.” *Id.* Proponents of the measure, including Senator Matt Huffman, urged voters to support Issue 1, stating that “[a] **YES** vote will create a **fair, bipartisan, and transparent** process when drawing congressional districts that will **make politicians more accountable** to the voters.” *Id.* at 2. He added, “[v]oting **YES on Issue 1** will limit gerrymandering by requiring that congressional districts be drawn with **bipartisan approval or utilizing strict anti-gerrymandering criteria.**” *Id.*

63. On May 8, 2018 voters overwhelmingly approved the initiative by a 75-to-25% margin, and the constitutional amendments went into effect on January 1, 2021. *See* Rich Exner, Cleveland.com, *Ohio votes to reform congressional redistricting; Issue 1 could end gerrymandering*, (May 09, 2018), <http://bitly.ws/jM5Q>, (accessed Nov. 30, 2021).

### **C. The Enactment Of the 2021 Congressional Map**

#### **1. The Failure To Provide a Plan Until November 3, 2021**

64. The 2020 Census revealed that Ohio would be entitled to 15 congressional districts for the next 10 years, one fewer than the 16 districts that had previously been the case.

Jim Gaines, Dayton Daily News, *Ohio Lawmakers Miss Deadline to Draw New Congressional Districts. What's Next?*, (updated Oct. 1, 2021), <https://bit.ly/3liLofB>, (accessed Nov. 30, 2021).

Census data pertinent to the drawing of a new plan was provided on August 12, 2020. U.S. Census Bureau, *U.S. Census Bureau Delivers Data for States to Begin Redistricting Efforts*, (Aug. 12, 2021), <https://bit.ly/3nWjyYm> (accessed Nov. 30, 2021).

65. Even with this lead time, the Republican-controlled General Assembly failed to offer a Republican map before its constitutionally appointed deadline of September 30, 2021.

Jim Gaines, Dayton Daily News, *Ohio Lawmakers Miss Deadline to Draw New Congressional Districts. What's Next?*, (updated Oct. 1, 2021), <https://bit.ly/3liLofB>, (accessed Nov. 30, 2021).

It did so notwithstanding the fact that the Democratic Caucus had set forth a proposed map before that date. *See* S.B. 237 (as introduced), 134th Ohio Gen. Assembly (2021).

66. With the legislature unable to pass a plan by the September 30 deadline, the Commission was then required to pass a plan by the October 31, 2021 deadline. Similarly, the Commission missed that deadline, despite calls from several members of the Commission. For example, on October 5, 2021, Senator Vernon Sykes, Co-Chair of the Commission, sent a letter to his fellow Co-Chair, Speaker Bob Cupp, urging him to schedule Commission meetings to work on congressional redistricting. Ex. 8, V. Sykes Letter to R. Cupp (Oct. 5, 2021). Senator Sykes wrote to Speaker Cupp again on October 18, imploring him to schedule Commission meetings. Ex. 9, V. Sykes Letter to R. Cupp (Oct. 18, 2021). On October 28, 2021, just three days before the constitutionally required October 31 deadline, Speaker Cupp finally called a meeting of the Commission. Andrew Tobias, Cleveland.com, *Ohio Redistricting Commission to Hold Meeting, But Won't Approve Congressional Maps Before Adjourning*, (Oct. 28, 2021), <https://bit.ly/3roZgIW>, (accessed Nov. 30, 2021). That day, the Commission only heard

testimony from citizens who submitted congressional maps themselves; it did not consider any Commission-proposed maps. Announcement of Commission Meeting, Ohio Redistricting Commission (Oct. 28, 2021), <https://bit.ly/3reSjtY>, (accessed Nov. 30, 2021). Ultimately, the October 31 deadline came and went with no action by the Commission. Andrew Tobias, *Cleveland.com, Ohio Lawmakers to Take Up Congressional Map After Redistricting Commission Fails to Act*, (Oct. 28, 2021), <https://bit.ly/3D0jTxi>, (accessed Nov. 30, 2021).

## **2. The November 3, 2021 Plan and the Flawed Legislative Process Regarding That Plan**

67. On November 3, 2021, Ohio Republicans introduced distinct congressional redistricting maps in each chamber of the General Assembly. Representative Scott Oelslager introduced HB 479 in the House, *see* H.B. 479 (as introduced), 134th Ohio Gen. Assembly (2021), and Senate Rob McColley introduced SB 258 in the Senate, *see* S.B. 258 (as introduced), 134th Ohio Gen. Assembly (2021). Both bills were immediately referred to their respective chamber’s committees and heard in committee just minutes later.

68. In the House Government Oversight Committee (“the House Committee”), members were given the proposed Republican-sponsored map just 18 minutes before its first hearing. Ex. 10, Tr. of Nov. 3, 2021 Ohio H. Comm. Government Oversight Hrg., at 3. The map sponsor, Representative Scott Oelsalger, was unable to answer most questions about the map. *Id.* at 10–12. He also declined to commit to allowing members of the House Committee the opportunity to question the mapdrawer, Blake Springhetti, a House Republican staffer. *Id.* at 31.

69. That same day, the Senate Local Government and Elections Committee (“the Senate Committee”) held its first hearing of SB 258, the other Republican-sponsored map. Like the House map, the Senate map was not made available to Senate Committee members or the

public until the start of the hearing. Ex. 11, Tr. of Nov. 3, 2021 Ohio S. Comm. Local Government and Elections Hrg., at 11. The Senate Republican sponsor, Senator Rob McColley, similarly noted that this map was drawn by a Senate Republican staffer, Ray DiRossi. *Id.* at 16. Mr. DiRossi was also not made available to testify or answer senators’ questions during the Senate Committee’s public hearing.

70. Over the next two weeks, the House Committee held two more hearings on the proposed House Republican map, HB 483, and one hearing for a map proposed by the Ohio House Democrats on November 5, 2021. During those hearings, the House Committee heard from dozens of citizens, with near unanimous opposition to the Republican-proposed bill and substantial support for the Democratic proposed map. Ex. 12, Tr. of Nov. 4, 2021 Ohio H. Comm. Government Oversight Hrg., at 2–102; Ex. 13, Tr. of Nov. 10, 2021 Ohio H. Comm. Government Oversight Hrg., at 17–57.

71. Over the same two weeks, the Senate Committee held three additional hearings on the proposed Senate Republican map and the proposed Senate Democratic map. Once again, the Senate Committee heard near universal opposition to the Republican-proposed bill from dozens of citizens. Ex. 14, Tr. of Nov. 4, 2021 Ohio S. Comm. Local Government and Elections Hrg., at 2–49; Ex. 15, Tr. of Nov. 8, 2021 Ohio S. Comm. Local Government and Elections Hrg., at 2–18; Ex. 16, Tr. of Nov. 9, 2021 Ohio S. Comm. Local Government and Elections Hrg., at 3–31.

72. On November 10 and 12, a Joint Committee on Congressional Redistricting held two public hearings. At the November 10, 2021 hearing, Senator Vernon Sykes re-introduced a revised map, explaining that it was “design[ed] to respond to the majority’s concern for equal population, emphasizing our commitment to negotiating in good faith.” Ex. 17, Tr. of Nov. 10, 2021 Ohio J. Comm. Congressional Redistricting Hrg., at 3. No responsive revisions were made



on the part of Republicans. Again, dozens of citizens showed up to express near unanimous opposition to the Republican-proposed maps. *See id.* at 17–33; Ex. 18, Tr. of Nov. 12, 2021 Ohio J. Comm. Congressional Redistricting Hrg., at 2–45.

### **3. The November 15, 2021 Republican-led Plan: The Defective Process Continues**

73. On the evening of November 15, 2021, Senator McColley introduced a substitute bill with a revised Republican map. This revised Republican map was crafted primarily by the Republican Speaker of the House and the Republican President of the Senate—seemingly without input from other members. Ex. 19, Tr. of Nov. 16, 2021 Ohio S. Comm. Local Government and Elections Hrg., at 4–5. The next morning, on November 16, 2021, the Senate Committee heard testimony from Senator McColley about the revised Republican map.

74. Despite requests from Senator Vernon Sykes to engage in compromise, the Senate Committee voted to adopt the revised Republican map on a 5–2 party-line vote. *Id.* at 6.

75. Just hours later, the full Senate voted along party lines, 24–7, to adopt the Republican map.

76. In assessing the revised Republican map, Senator Tina Maharath aptly noted that “[m]aps that are passed by a simple majority must not unduly favor a political party. It’s painfully clear that a map designed to produce 12 Republican districts out of 15, does unduly favor one party.” Ex. 20, Tr. of Nov. 16, 2021 Ohio S. Floor Debate, at 18.

77. Senator Vernon Sykes, an original proponent of the 2018 constitutional amendment stated, “fairness is a critical ingredient here that we have to comply with. Currently, we have 12 Republican-leaning districts and four Democratic-leaning districts. The people wanted a fair distribution. Senate Bill 258 offers 12 Republican-leaning districts, and three Democratic-leaning districts. It’s less fair than we have today, and the people wanted more

fairness, and you are trying to offer them less. The map is not an improvement. The map is not fair.” *Id.* at 20.

78. Following Senate passage, the House Committee took up the same Republican map. In committee, House Democrats again pleaded with their Republican colleagues to compromise. Noting that “[t]here hasn’t been any discussion or compromise with the Republicans on this issue,” Representative Richard Brown told his colleagues that Democrats “desire[d] to have a ten year map that keeps our largest counties whole, keeps our communities of interest together, makes compact districts, and reflects the voting preferences of Ohio voters.” Ex. 21, Tr. of Nov. 17, 2021 Ohio H. Comm. Government Oversight Hrg., at 3. Despite these pleas, the House Committee voted to adopt the Republican plan on a 8–5 party-line vote.

#### **4. November 18, 2021: The Vote in the House**

79. On November 18, 2021, House Republicans brought SB 258, the revised Republican map, to the floor for a vote. House Democrats uniformly expressed opposition to the map, noting that it contravened the will of the voters. Ex. 22, Tr. of Nov. 18, 2021 Ohio H. Floor Debate, at 7–9, 11–21. Representative Richard Brown explained that in 2018 “Ohioans went to the ballot, and overwhelmingly voted for [a] constitutional amendment[] that w[as] intended to reform the process of how we draw district maps for . . . congressional districts. Ohioans voices were loud and clear. They voted for fair districts that fairly represent the preferences of Ohioans,” *id.* at 7, and yet, the “Republican congressional map of Senate Bill 258 does not meet the letter of the constitution or the spirit of the reforms,” *id.*

80. Representative Brigid Kelly recalled that “[w]hen Ohioans came together to change the constitution and end political gerrymandering, they expected us to follow the rules. They voted for a process they expected to be fair, bipartisan, and transparent, but it appears that citizens have gotten none of these. This process was not created to provide a loophole for one

party to draw maps, railroad them through and say, ‘Well, we couldn’t get the other side to agree on our 13–2 map, so we really had no choice but to do this by ourselves. We had to negotiate ourselves instead of making a good faith effort to get to a 10-year bipartisan map.’” *Id.* at 16.

81. The process by which the revised Republican map was presented also defied voter expectations of transparency and public input. Representative Kelly noted that “[t]he map was released just 14 hours before its first scheduled vote and without any of the underlying data necessary to perform a thorough analysis on its impact on our communities . . . Now, if we were actually committed to a fair, transparent bipartisan process, people would’ve had time to analyze the maps. The maps wouldn’t have come out of the can at the last minute with no time for people to come in and testify on this specific map.” *Id.*

82. Ultimately, the Republican majority passed the bill. Four Republicans joined all House Democrats in voting no.

**5. The Section 1(C)(3)(d) Statement and the Governor’s November 20, 2021 Signature**

83. Pursuant to Article XIX, Section 1(C)(3)(d), the following statement was included in the bill, seeking to explain its compliance with Section 1(C)(3)(a)’s prohibition of a plan that unduly favored a political party:

The congressional district plan does not unduly favor or disfavor a political party or its incumbents. The plan contains six Republican-leaning districts, two Democratic leaning districts, and seven competitive districts. The number of competitive districts in the plan significantly exceeds the number of competitive districts contained in the congressional district plan described in the version of section 3521.01 of the Revised Code that was in effect immediately before the effective date of this section.

Two incumbents expected to seek office again, both Republican, are paired in one district in the plan described in sections 3521.01 to 3521.0115 of the Revised Code, as enacted by this act. No other incumbent, either Republican or Democratic, expected to seek

office again, is paired with another incumbent in a congressional district in this plan.

S.B. 258 § 3(A) (as enrolled), 134th Ohio Gen. Assembly (2021).

84. After its passage in the House, the Republican map went to Governor Mike DeWine for his signature. Governor DeWine signed the Republican map, which garnered no Democratic support.

#### **D. The Resulting Partisan Gerrymander**

##### **1. Three Distinct Methods Confirm That the Enacted Plan Unduly Favors the Republican Party**

85. To determine the degree to which the Enacted Plan favors the Republican Party, Relators' expert, Dr. Chris Warshaw, approached the question using three distinct methods. All three analyses came to the same conclusion: that the Enacted Plan afforded the Republican Party congressional seats in a manner that was grossly disproportionate to that party's share of the votes in Ohio, and unduly favors the Republican Party and its incumbents.

86. First, Dr. Warshaw analyzed the results of the 2020 congressional election as if it had been conducted using the Enacted Plan. In the 2020 congressional election, Democrats received 43% of the two-party vote (Republicans received 57%), but only won 25% (4) of the seats (Republicans won 75%). This vote-share to seat-share allocation was considered to be one of the most extreme partisan gerrymanders of a congressional map in modern history. *See Householder*, 373 F. Supp. at 1105. Based on the 2020 congressional election results, however, the Enacted Plan is even more extreme in its partisan advantage than the 2011 map. Under the Enacted Plan, Democrats would only win 13% (2) of the seats using the precinct-level results of the 2020 congressional election; the Republicans, however, would win 87% of the seats. Ex. 1, Warshaw Rep., at 5, 19.

87. Second, Dr. Warshaw analyzed the Enacted Plan using a composite of previous statewide election results between 2012–2020. Based on all available statewide elections in Ohio between 2012–2020, he found that the Enacted Plan would lead to a much higher Republican share of the seats than their share of the statewide vote. Across all statewide elections during this period (which includes the 2012 presidential election and the Democratic wave year of 2018), the Democrats’ statewide two- party vote share averaged about 45% of the vote. But under the Enacted Plan Democrats would likely win only 26% of the seats. *Id.* at 6, 20.

88. Third, Dr. Warshaw reached the same conclusion using the open source predictive model available on the PlanScore website.<sup>1</sup> It indicates that the Enacted Plan favors Republican candidates in 97% of election scenarios. Even though Republicans have only received about 56% of the statewide vote in recent elections (with Democrats receiving 44%), PlanScore analysis indicates that Republicans are expected to win 79% of the seats in Ohio’s congressional delegation (and Democrats winning only 21% of the seats) under the Enacted Plan. *See* Ex. 1, Warshaw Rep., at 6.

## **2. Four Established Partisan Metrics Confirm that the Enacted Plan Unduly Favors the Republican Party**

89. There are several methods that seek to measure the strength of one party’s advantage in translating its vote share into its share of seats. These methods seek to determine if one party has an asymmetrical advantage in the electoral process. Where one party has a significant asymmetrical advantage, that is yet another way of confirming that the Enacted Plan

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<sup>1</sup> PlanScore uses a statistical model to estimate district-level vote shares for a new map based on the relationship between presidential election results and legislative results between 2012–2020.

“unduly” favors that party. Accordingly, Dr. Warshaw analyzed the Enacted Plan under four of these methods, and concluded that the Enacted Plan in fact unduly favors the Republican Party.

90. **The Efficiency Gap.** The efficiency gap measures the degree to which a party “wastes” votes. Wasted votes consist of all the votes won by the losing party in a district, and all of the votes over 50% + 1 by the winning party. Of course, all parties waste some votes. But where one party wastes far more than another, it indicates an asymmetrical advantage. Here Dr. Warshaw concluded that the Republicans were asymmetrically *advantaged* and that the Democrats were reciprocally *disadvantaged*. Ex. 1, Warshaw Rep., at 19–21. This was the case using the 2020 congressional election results as the baseline dataset, using a composite of election results from 2012–2020, or using the PlanScore method of analysis. *Id.*

91. **The Declination Method.** The declination metric measures asymmetry in the vote distribution as an indicator of partisan bias in a districting plan. If all the districts in a plan are lined up on a histogram, from the least favorable to most favorable as to one party, the mid-point of the curve formed by each district’s total of one party’s seats should be about as far from the 50 percent threshold for victory on average as the other party’s. Where that is not the case, then one party has an asymmetrical advantage. Here, Dr. Warshaw concluded that there is a clear asymmetrical advantage in favor of the Republican Party. Ex. 1, Warshaw Rep., at 19–21. And this was the case using the 2020 congressional election results as the baseline dataset, a composite of election results from 2012–2020, or the PlanScore method. *Id.*

92. **The Mean-Median Gap.** The mean-median gap measures the difference between a party’s vote share in the median district and its average vote share across all districts. Comparing a dataset’s mean and median is a common statistical analysis used by

political scientists to assess skews in the data and detect asymmetries. In the context of partisan gerrymandering, if a party wins more votes in the median district than in the average district, it has an advantage in its translation of votes to seats. Here, Dr. Warshaw concluded that the Republican Party has a clear advantage in this regard. Ex. 1, Warshaw Rep., at 19–20. And this was the case using the 2020 congressional election results as the baseline dataset or a composite of election results from 2012–2020. *Id.*<sup>2</sup>

93. **The Vote-Seat Curve.** The vote-seat curve seeks to measure whether two opposing parties are equally likely to command the same number of seats given a certain share of votes. Thus, if one party has a disproportionate number of seats given its vote share, in an unbiased system, the opposing party would have the same (disproportionate) advantage if it were to have that same vote share. For example, if one party receives a vote share of 57% and a seat share of 64%, then in an unbiased system, the opposing party would also enjoy 64% of the seats if it were to attain 57% of the votes. Here, Dr. Warshaw concluded that the system is in fact biased, in favor of the Republican Party, with Republicans receiving 10–13% more seats than they should under the symmetry standard. Ex. 1, Warshaw Rep., at 19–20. And this was the case using the 2020 congressional election results as the baseline dataset or a composite of election results from 2012–2020. *Id.*<sup>3</sup>

94. Dr. Warshaw concluded that all four established partisanship metrics consistently demonstrate that the Enacted Plan advantages the Republicans and disadvantages the Democrats, regardless of what method of analysis and baseline dataset is used.

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<sup>2</sup> PlanScore does not apply the mean-median method.

<sup>3</sup> PlanScore does not apply the vote-seat curve method.

**3. The General Assembly’s Contention that the Enacted Plan Contains a Large Number of “Competitive” Districts is Inaccurate**

95. Pursuant to Section 1(C)(3)(d), the General Assembly sought to justify the Enacted Plan with the following statement:

[T]he plan contains six Republican-leaning districts, two Democratic-leaning districts, and seven competitive districts. The number of competitive districts in the plan significantly exceeds the number of competitive districts contained in Ohio’s current plan.

S.B. 258 § 3(A) (as enrolled), 134th Ohio Gen. Assembly (2021).

96. This statement, however, is inaccurate. First, there are at most three, not seven, competitive districts. The four districts wrongly characterized as “competitive” are in fact Republican-leaning districts. Ex. 1, Warshaw Rep., at 21–24. This is true when the competitiveness of districts is measured under three different election methods (the 2020 Congressional set, the Composite Index, or the PlanScore approach). And it is true whether one evaluates “competitiveness” as did the General Assembly: (1) using a rule that any district within a 45%–55% vote range is “competitive,” or (2) looking to whether a district is likely to switch parties at least once per decade based on the maximal swing in the two-party vote. *Id.* at 22–23.

97. The results of these various approaches are summarized in Table 7 of Dr. Warshaw’s Report:

| <b>Data:</b>   | 2020 House Results |                     | Composite<br>(2012-20) | PlanScore |                                  |                            | <b>Mean</b> |
|----------------|--------------------|---------------------|------------------------|-----------|----------------------------------|----------------------------|-------------|
| <b>Metric:</b> | 45-55              | Historical<br>Swing | 45-55                  | 45-55     | 20%+ Prob. of<br>Each Party Win. | 50%+ Prob.<br>Flip in Dec. |             |
| <b>Plan</b>    | (1)                | (2)                 | (3)                    | (4)       | (5)                              | (6)                        | (7)         |
| 2012-20 Plan   | 2                  | 1                   | 1                      | 3         | 2                                | 5                          | 2           |
| Enacted Plan   | 3                  | 3                   | 3                      | 4         | 2                                | 4                          | 3           |

Table 7: Number of competitive districts using various data sources and metrics.



98. Second, the mere fact that a district is considered to be “competitive” under either definition does not mean that there is a 50/50 chance of either party winning that district’s congressional seat. In fact, the Republicans are favored to win all of the “competitive” seats, and heavily favored in at least one of them. Indeed, the Republican candidate has a 64% chance to win District 1, an 84% chance to win District 9, and a 69% to win District 13. Ex. 1, Warsaw Rep., at 23–24. The district-by-district results are set forth in Table 8 of Dr. Warsaw’s Report, where the districts shaded grey are the “competitive” districts and the vote percentages under the three different methods used by Dr. Warsaw represent the Democratic Party vote share. As Table 8 makes clear, if one averages all three methods, the Democratic vote share in each of the three so-called “competitive” districts is 47%. *Id.* at 24.

| District | Projected Democratic Vote Share |                          |           |                       | Probability<br>Dem. Wins<br>(PlanScore) |
|----------|---------------------------------|--------------------------|-----------|-----------------------|---|
|          | House 2020                      | Composite<br>(2012-2020) | PlanScore | Average<br>Dem. Share |   |
| 1        | 0.48                            | 0.46                     | 0.48      | 0.47                  | 36%                                     |
| 2        | 0.29                            | 0.33                     | 0.30      | 0.30                  | 1%                                      |
| 3        | 0.70                            | 0.66                     | 0.70      | 0.69                  | 99%                                     |
| 4        | 0.30                            | 0.31                     | 0.31      | 0.31                  | 1%                                      |
| 5        | 0.35                            | 0.38                     | 0.35      | 0.36                  | 1%                                      |
| 6        | 0.38                            | 0.44                     | 0.36      | 0.40                  | 1%                                      |
| 7        | 0.37                            | 0.40                     | 0.38      | 0.39                  | 1%                                      |
| 8        | 0.36                            | 0.36                     | 0.36      | 0.36                  | 1%                                      |
| 9        | 0.46                            | 0.49                     | 0.45      | 0.47                  | 16%                                     |
| 10       | 0.42                            | 0.45                     | 0.46      | 0.44                  | 18%                                     |
| 11       | 0.79                            | 0.77                     | 0.76      | 0.77                  | 99%                                     |
| 12       | 0.30                            | 0.36                     | 0.32      | 0.33                  | 1%                                      |
| 13       | 0.47                            | 0.48                     | 0.48      | 0.47                  | 31%                                     |
| 14       | 0.40                            | 0.44                     | 0.42      | 0.42                  | 4%                                      |
| 15       | 0.43                            | 0.43                     | 0.44      | 0.44                  | 13%                                     |

Table 8: Democratic Vote Share Projections for Each District on Enacted Plan using a Variety of Methods. Competitive districts in grey.

#### 4. The Enacted Plan Unduly Favors Republican Incumbents

99. The Enacted Plan also favors incumbents from the Republican Party. While it does not pair multiple Democratic incumbents in a single district, it puts two of the four Democratic incumbents from the previous plan into largely new districts that will now have a majority of Republican voters. It does not put any Republican incumbent into a district with a majority of Democratic voters. Ex. 1, Warshaw Rep., at 6, 25. The adverse impact on Democratic incumbents is captured by Table 9 in Dr. Warshaw’s Report. It shows how the Enacted Plan puts the Democratic incumbents in Districts 9 and 13 into largely new districts that will now have a majority of Republican voters based on the 2020 congressional election results.

| 2020 Districts | 2022 District | % Overlap | Dem. Vote Share<br>Old District | Dem. Vote Share<br>New District |
|----------------|---------------|-----------|---------------------------------|---------------------------------|
| 1              | 1             | 0.81      | 0.46                            | 0.48                            |
| 2              | 2             | 0.68      | 0.39                            | 0.29                            |
| 3              | 3             | 0.71      | 0.71                            | 0.70                            |
| 4              | 4             | 0.53      | 0.30                            | 0.30                            |
| 5              | 9             | 0.56      | 0.32                            | 0.46                            |
| 6              | 6             | 0.61      | 0.26                            | 0.38                            |
| 7              | 7             | 0.41      | 0.30                            | 0.37                            |
| 8              | 8             | 0.80      | 0.31                            | 0.36                            |
| 9              | 9             | 0.44      | 0.63                            | 0.46                            |
| 10             | 10            | 0.97      | 0.42                            | 0.42                            |
| 11             | 11            | 0.79      | 0.80                            | 0.79                            |
| 12             | 4             | 0.41      | 0.43                            | 0.30                            |
| 13             | 6             | 0.54      | 0.54                            | 0.38                            |
| 14             | 14            | 0.73      | 0.40                            | 0.40                            |
| 15             | 15            | 0.43      | 0.37                            | 0.43                            |
| 16             | 13            | 0.48      | 0.37                            | 0.47                            |

Table 9: Evaluation of how incumbent in each of the old districts would perform on the enacted plan based on re-aggregating the 2020 House results to new districts. Districts won by Democrats in 2020 in blue.

100. The bias against Democratic incumbents is especially clear in the case of Representative Marcy Kaptur. In 2020, she comfortably won reelection with 63% of two-party voters. The Enacted Plan, however, slices her old district into five districts. Under the Enacted Plan, she would only have won about 46% of the vote share in the 2020 House election (compared to the 63% she actually won). In her now redrawn district, Representative Kaptur will likely lose in 2022. Ex. 1, Warshaw Rep., at 6, 25.

**E. The Undue Splitting To Advance Partisan Advantage**

101. The Enacted Plan achieves this extreme partisan gerrymander by strategically splitting counties and communities in metropolitan areas of the state, specifically in southwestern and northeastern Ohio. The splits are not required by any provision of Article XIX, by any other redistricting criterion in the Ohio Constitution, or other provision of law, but instead have the effect of conferring a Republican partisan advantage.

102. In southwestern Ohio, the Enacted Plan splits Hamilton County into three distinct districts, each of which pairs a different segment of the Cincinnati area's heavily Democratic population with a sufficient number of exurban and rural Republicans to ensure a partisan advantage for Republicans in all three districts. Ex. 2, Rodden Aff., ¶ 64 & Table 2.

103. In District 8, the Enacted Plan combines the entire urban, Black population of north-central Hamilton County with rural Republican areas far to the north, with a northern boundary line that is some 85 miles away. *Id.*

104. In District 1, the Enacted Plan combines Cincinnati itself not with its immediate suburbs, but rather with rural Warren County, which it connects via an exceedingly narrow corridor crossing the Hamilton County boundary. *Id.*

105. In District 2, the Enacted Plan combines the eastern suburbs of Cincinnati with a large number of rural and heavily Republican counties running all the way across southern Ohio. *Id.*

106. According to expert testimony submitted by Professor Jonathan Rodden in *Adams, et al. v. DeWine, et al.*, No. 2021-1428, any map that properly aims “to minimize splits and keep Cincinnati-area communities together would produce a majority-Democratic district.” *Id.* ¶ 63. The Enacted Plan, by contrast, conjures from Hamilton County, which is Democratic, *id.* ¶¶ 63–64, no fewer than three Republican districts, two of which are safe Republican seats (Districts 2 and 8) and one of which leans Republican (District 1), *id.* Table 2. This partisan objective is accomplished only through blatant, unnecessary, and undue splitting of Hamilton County and its communities.

107. A similar pattern appears at the opposite corner of the state, in northeastern Ohio, where the Enacted Plan strategically but unnecessarily splits Cuyahoga and Summit counties for partisan aims. *Id.* ¶¶ 74–75.

108. In District 14, the Enacted Plan combines parts of Cuyahoga County immediately to the south and east of heavily Democratic Cleveland with counties to the east and south. Strikingly, the cities south of Cleveland are connected to the remainder of District 14 through an exceedingly narrow corridor that at one point is the width of a solitary census block. According to Professor Rodden, not a single road connects these fragments of District 14, which is nearly split in half by the heavily Democratic and Cleveland-based District 11. *Id.* ¶ 75. Only that solitary census block prevents District 14 from being noncontiguous, and thus an even more egregious violation of Article XIX.

109. In District 13, the Enacted Plan combines the city of Akron not with its own suburbs in Summit County, but rather with rural Medina County and with the most Republican of Cleveland’s outer exurbs in Cuyahoga County. *Id.* ¶ 74.

110. Meanwhile, in District 7, the Enacted Plan carves out the eastern suburbs of Akron, combining those relatively urban, Democratic-leaning precincts with rural areas and counties far to the southwest, whose border is over 70 miles away. *Id.* This combination is possible only through the creation of what Professor Rodden describes as “a long, narrow north-south corridor that is, in one spot, less than one mile wide.” *Id.*

111. The upshot and intended effect of these unnecessary county splits in northeastern Ohio is to carve the Democratic urban and suburban areas of Cuyahoga and Summit counties into two safe Republican districts (7 and 14), one toss-up district (13), and a single safe Democratic district (11). *Id.* Table 2.

112. In both southwestern and northeastern Ohio, there is no plausible justification other than sheer partisanship for these undue and therefore unconstitutional splits.

## **FIRST CAUSE OF ACTION**

### **Violation of Article XIX, Section 1(C)(3)(a) of the Ohio Constitution**

113. Relators restate and incorporate by reference the allegations of paragraphs 1 through 112 above as though fully set forth in this Paragraph.

114. The Enacted Plan passed without a single Democratic vote. Thus, it is subject to the requirements of Article XIX Section 1(C)(3).

115. Section 1(C)(3) prohibits the General Assembly from passing a plan by majority vote “that unduly favors or disfavors a political party or its incumbents.”

116. The Enacted Plan contravenes Section 1(C)(3) because it unduly favors the Republican Party and its incumbents. The map creates at least ten districts that favor the

Republican Party while only affording two districts that favor the Democratic party (*i.e.*, 67% of the seats will go the Republican Party and its incumbents.). Indeed, the Republican Party is likely to fare far better than that minimum result, and will likely prevail in twelve districts, capturing 80% of the congressional districts.

117. By contrast, in the elections conducted under the Enacted Plan, the Republicans are only likely to garner 55% of the votes. The Republican Party therefore will obtain between 12% and 25% more congressional seats than their vote share would otherwise indicate. This disparity turns election results into a landslide in favor of the Republican Party, demonstrating that the Enacted Plan unduly favors the Republican Party and its incumbents.

118. Respondents' failure to abide by Article XIX was in bad faith. This is reflected by the process, set forth above, as well as by the clear inaccuracy of the terms of their statement pursuant to Section 1(C)(3)(d).

119. Relators have no adequate remedy at law and will be irreparably harmed by the continued violation of their constitutional rights.

## **SECOND CAUSE OF ACTION**

### **Violation of Article XIX, Section 1(C)(3)(b) of the Ohio Constitution**

120. Relators restate and incorporate by reference the allegations of paragraphs 1 through 112 above as though fully set forth in this Paragraph.

121. The Enacted Plan passed without a single Democratic vote. Thus, it is subject to the requirements of Article XIX Section 1(C)(3).

122. Section 1(C)(3)(b) directs that that the "general assembly shall not unduly split governmental units, giving preference to keeping whole, in the order named, counties, then townships and municipal corporations."

123. The Enacted Plan unduly splits governmental units. In particular, the Enacted Plan divides counties and communities in the southwestern and northeastern parts of the state in the service of improper partisan objectives.

124. Because these splits are unnecessary, in that no redistricting criterion in the Ohio Constitution or other relevant provision of law requires such splits, and because their intended effect is to provide Republicans with an improper electoral advantage, those splits are undue and inconsistent with Section 1(C)(3)(b). Respondents' failure to abide by Article XIX was in bad faith. This is reflected by the process, set forth above, as well as by the inaccuracy of the terms of their statement pursuant to Section 1(C)(3)(d).

125. Relators have no adequate remedy at law and will be irreparably harmed by the continued violation of their constitutional rights.

#### **PRAYER FOR RELIEF**

Accordingly, Relators respectfully request that this Court:

- A. Declare that the maps that Respondents adopted are invalid for failure to comply with Article XIX of the Ohio Constitution;
- B. Order the Commission to adopt a new congressional district plan or, at a minimum, to amend the maps that Respondents adopted to correct the violations, as contemplated in Article XIX;
- C. Issue a permanent injunction and judgment barring Respondents from calling, holding, supervising, administering, or certifying any elections under the maps that Respondents adopted, as Relators have no adequate remedy at law and will be irreparably harmed by the continued violation of their constitutional and statutory rights;

- D. Hold hearings, consider briefing and evidence, and otherwise take actions necessary to adopt redistricting plans for the State of Ohio or to direct the Commission as to plans to be adopted;
- E. Retain jurisdiction of this action to render any and all further orders that the Court may from time to time deem appropriate, including, but not limited to, adjusting the schedule for the holding of the 2022 primary and/or the candidate filing deadline;
- F. Retain jurisdiction for the purpose of determining the validity of any new redistricting plans adopted by the Commission pursuant to the Ohio Constitution pursuant to this Court's ruling regarding the plan enacted on November 20, 2021; and
- G. Grant such other or further relief the Court deems appropriate, including, but not limited to, an award of Relators' attorneys' fees and reasonable costs.



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Respectfully submitted,

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## Levenson Verification.pdf

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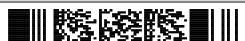
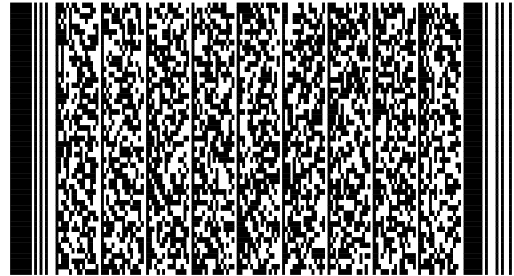
### E-Signature Summary

**E-Signature 1: Freda J. Levenson (FJL)**

November 30, 2021 11:32:17 -8:00 [25AD8081E1B6] [174.100.161.81]  
flevenson@acluohio.org (Principal) (Personally Known)

**E-Signature Notary: Theresa M Sabo (TMS)**

November 30, 2021 11:32:17 -8:00 [87378A3E4473] [74.142.214.254]  
tess.sabo@gmail.com  
I, Theresa M Sabo, did witness the participants named above electronically sign this document.



IN THE SUPREME COURT OF OHIO

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

*Relators,*

v.

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

*Respondents.*

Case No. \_\_\_\_\_

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

VERIFICATION OF FRED A J. LEVENSON

Franklin County

/ss

State of Ohio

I, Freda J. Levenson, having been duly sworn and cautioned according to law, hereby state that I am over the age of eighteen years and am competent to testify as to the facts set forth below based on my personal knowledge and having personally examined all records referenced in this affidavit, and further state as follows:

1. I am an attorney licensed to practice in the State of Ohio, and serve as legal counsel to the Relators in this action.
2. Exhibit 1 to the Complaint is a true and correct copy of the expert report of Dr. Chris Warshaw.
3. Exhibit 2 to the Complaint is a true and correct copy of the expert affidavit of Dr. Jonathan Rodden that was submitted by relators in *Adams, et al. v. DeWine, et al.*, No. 2021-1428.
4. Exhibit 3 to the Complaint is a true and correct copy of the affidavit of Jen Miller.
5. Exhibit 4 to the Complaint is a true and correct copy of the affidavit of Andre Washington.
6. Exhibit 5 to the Complaint is a true and correct transcription of then-Rep. Matt Huffman's Sponsor Testimony for SJR 5 on January 17, 2018.



7. Exhibit 6 to the Complaint is a true and correct transcription of the House's February 6, 2018 floor debate.
8. Exhibit 7 to the Complaint is a true and correct copy of the 2018 Issue 1 ballot measure certified by then-Secretary of State Jon Husted.
9. Exhibit 8 to the Complaint is a true and correct copy of Senator Vernon Sykes's October 5, 2021 letter to Speaker Robert Cupp.
10. Exhibit 9 to the Complaint is a true and correct copy of Senator Vernon Sykes's October 18, 2021 letter to Speaker Robert Cupp.
11. Exhibit 10 to the Complaint is a true and correct transcription of the House Government Oversight Committee's November 3, 2021 hearing.
12. Exhibit 11 to the Complaint is a true and correct transcription of the Senate Local Government and Elections Committee's November 3, 2021 hearing.
13. Exhibit 12 to the Complaint is a true and correct transcription of the House Government Oversight Committee's November 4, 2021 hearing.
14. Exhibit 13 to the Complaint is a true and correct transcription of the House Government Oversight Committee's November 10, 2021 hearing.
15. Exhibit 14 to the Complaint is a true and correct transcription of the Senate Local Government and Elections Committee's November 4, 2021 hearing.
16. Exhibit 15 to the Complaint is a true and correct transcription of the Senate Local Government and Elections Committee's November 8, 2021 hearing.
17. Exhibit 16 to the Complaint is a true and correct transcription of the Senate Local Government and Elections Committee's November 9, 2021 hearing.
18. Exhibit 17 to the Complaint is a true and correct transcription of the Joint Committee on Congressional Redistricting's November 10, 2021 hearing.
19. Exhibit 18 to the Complaint is a true and correct transcription of the Joint Committee on Congressional Redistricting's November 12, 2021 hearing.
20. Exhibit 19 to the Complaint is a true and correct transcription of the Senate Local Government and Elections Committee's November 16, 2021 hearing.
21. Exhibit 20 to the Complaint is a true and correct transcription of the Senate's November 16, 2021 floor debate.



22. Exhibit 21 to the Complaint is a true and correct transcription of the House Government Oversight Committee's November 17, 2021 hearing.
23. Exhibit 22 to the Complaint is a true and correct transcription of the House's November 18, 2021 floor debate.
24. I have read the Complaint filed in this action and affirm that the factual allegations contained therein are true.

Freda J. Levenson

Signed on 2021/11/30 11:32:17 -8:00

Freda J. Levenson

Columbus, Franklin, Ohio

Signed at \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_.  
City County State

11/30/2021

Sworn to and subscribed before me this \_\_\_\_\_ day of November, 2021

Theresa M Sabo

Notary Public



Notarial act performed by audio-visual communication

