

IN THE SUPREME COURT OF OHIO

League of Women Voters of Ohio,
100 East Broad Street, Suite 1310
Columbus, OH 43215

A. Philip Randolph Institute of Ohio,
6805 Oak Creek Drive
Columbus, OH 43229

Bette Evanshine,
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Cincinnati, OH 45209

Janice Patterson,
401 Bounty Way, Apt. 162
Avon Lake, OH 44012

Barbara Brothers,
1310 5th Avenue, Apt. 1005
Youngstown, OH 44504

John Fitzpatrick,
3536 Homewood Avenue
Cuyahoga Falls, OH 44221

Janet Underwood,
108 E. Hudson Avenue
Dayton, OH 45405

Stephanie White,
8 Hidden Valley Drive, Apt. 18
Toledo, OH 43615

Renee Ruchotzke,
237 Highland Avenue
Kent, OH 44240

Tiffany Rumbalski,
3830 Westbrook Drive
Hilliard, OH 43026

Petitioners,

Case No. _____

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

v.

**Secretary of State Frank LaRose, in his
official capacity as Secretary of State,**
22 N. Fourth Street,
16th Floor
Columbus, OH 43215

**Senate President Matt Huffman, in his
official capacity as President of the Ohio
Senate,**
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,**
77 S. High Street
14th Floor
Columbus, OH 43215

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

Respondents.

COMPLAINT

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Forthcoming

INTRODUCTION

1. On November 20, 2021, Governor Michael DeWine 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.

2. On January 14, 2022, this Court invalidated the Enacted Plan under Article XIX of the Ohio Constitution. The Court found that the Enacted Plan violated Section 1(C)(3)(a) of that article, by unduly favoring the Republican Party. *See Adams v. DeWine*, Slip Opinion No. 2022-Ohio-89, ¶ 102. It further held that the plan violated Section 1(C)(3)(b) by unduly splitting governmental units. *Id.* The General Assembly and/or the Ohio Redistricting Commission (the “Commission”) were then directed to adopt a new plan that remedied these defects. *Id.* ¶¶ 99, 102.

3. A new congressional district plan (the “Revised Plan”) was enacted by the Commission on March 2, 2022. Unfortunately, the Revised Plan is also constitutionally deficient.

4. The Revised Plan violates the Ohio Constitution as regards two districts. Congressional District 15 submerges Democratic-leaning votes in the suburbs of Columbus into a sprawling district that stretches to the western reaches of the State, splitting numerous counties along the way. And Congressional District 1 appends Warren County to Hamilton County so as to unduly favor the Republican Party. Petitioners bring this suit to cure these two defective districts.

5. This suit is not only limited in its scope—it is carefully limited as to the elections at issue. Petitioners do not currently seek relief as regards to the 2022 election. Petitioners are mindful that the General Assembly must be given 30 days to remedy any violations of a

proposed map, Ohio Const. art. XIX, § 3(B)(1), and that the Commission must be given an additional 30 days to remedy the violations in the event that the General Assembly fails to do so, Ohio Const. art. XIX, §3(B)(2). Further, the Court needs time to consider the parties' submissions before ruling. This Complaint seeks changes in the congressional plan starting with the 2024 election cycle.

6. In light of the Revised Plan's clear constitutional violations, it is necessary and appropriate for this Court to exercise its constitutionally delegated authority to review the 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.").

7. Judicial intervention is again necessary and appropriate here because the 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.*, 135 S.Ct. 2652, 2677, 192 L.Ed.2d 704 (2015). Rather than reflecting voters' actual preferences, the Revised Plan, like the Enacted Plan already invalidated by this Court, systematically locks in candidates from the Republican legislators' preferred party and discourages electoral competition responsive to voters' preferences.

JURISDICTION

8. 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 that the task of remedying constitutional infirmities identified in an enacted plan falls, in the first instance, to the General Assembly:

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).

9. Section 3(B)(2) further provides for a transfer of the map-drawing responsibility to the Commission in the event that the General Assembly fails to enact a new plan that remedies the identified constitutional infirmities:

If a new congressional district plan is not passed in accordance with division (B)(1) of this section and filed with the secretary of state . . . the Ohio redistricting commission shall be reconstituted and reconvene and shall adopt a congressional district plan in accordance with the provisions of this constitution that are then valid.

Id. § 3(B)(2).

10. Section 3(B)(2) further provides that any “congressional district plan adopted under this division *shall remedy any legal defects in the previous plan identified by the court . . .*” *Id.* (emphasis added).

11. Petitioners seek a determination that the Revised Plan fails to remedy the legal defects in the Enacted Plan identified by this Court: in particular, because the Revised Plan fails to comply with the requirements of Article XIX, Section 1(C)(3) in accordance with this Court’s January 14 Opinion, it is invalid under Article XIX, Sections 1(C)(3) and 3(B)(2). *See Adams*, Slip Opinion No. 2022-Ohio-89, ¶ 102; Ohio Const. art. XIX, §§ 1(C)(3), 3(B)(2). Accordingly,

this action falls within the jurisdictional grant of this Court as set forth in Section 3(B) of Article XIX.

12. Petitioners further request that this Court retain jurisdiction over subsequent revisions to the congressional plan so as to require compliance with the requirements of the Ohio Constitution.

PARTIES

A. Petitioners

13. Petitioner 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. Ex. 1, Miller Aff. ¶ 4.

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 Revised 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. *Id.*

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 Revised Plan 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 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 2021–2022 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 2021–2022. As an example, LWVO’s fundraising for Women’s Equality Day was 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.* ¶ 13.

21. Petitioner 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. 2, 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 Revised 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 Revised Plan 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 and 2022—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.* ¶¶ 9–10.

25. The prospect of another gerrymandered map has consumed APRI's time and resources throughout this redistricting cycle 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 observing several of the Ohio Redistricting Commission's meetings virtually in order to report back to its members and the broader community, and look for opportunities where the public could provide input. 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.* ¶¶ 11–12.

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.* ¶ 13.

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.* ¶ 15.

28. Petitioner 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. Petitioner Evanshine is an active member of the League of Women Voters of Ohio. She lives at 3877 Paxton Avenue, Cincinnati, OH 45209, which is in

Congressional District 1 in the Revised Plan. District 1 has been drawn so as to submerge Democratic votes so as to prevent Democratic voters from electing their candidates of choice.

29. Petitioner 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. Petitioner 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 Revised Plan.

30. Petitioner 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. Petitioner Brothers is an active member of the League of Women Voters of Ohio. Petitioner Brothers lives at 1310 5th Avenue, Apt. 1005, Youngstown, OH 44504, which is in Congressional District 6 in the Revised Plan.

31. Petitioner 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. Petitioner Fitzpatrick is an active member of the League of Women Voters of Ohio. Petitioner Fitzpatrick lives at 3536 Homewood Avenue, Cuyahoga Falls, OH 44221, which is in Congressional District 13 in the Revised Plan.

32. Petitioner 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. Petitioner 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 Revised Plan.

33. Petitioner 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. Petitioner Underwood is an active member of the League of Women Voters of Ohio. She lives at 108 E. Hudson Avenue, Dayton, OH 45405, which is in Congressional District 10 in the Revised Plan.

34. Petitioner 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. Petitioner Ruchotzke is an active member of the League of Women Voters of Ohio. Petitioner Ruchotzke lives at 237 Highland Avenue, Kent, OH 44240, which is in Congressional District 14 in the Revised Plan.

35. Petitioner 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. Petitioner Rumbalski is an active member of the League of Women Voters of Ohio. Petitioner Rumbalski lives at 3830 Westbrook Drive, Hilliard, OH 43026, which is in Congressional District 15 in the Revised Plan. District 15 has been drawn so as to submerge Democratic votes, thus preventing Democratic voters from electing their candidates of choice.

36. By requiring voters to vote under a plan that unduly favors the Republican Party, the individual petitioners' right to vote has been impaired. In particular, they are either less likely to be able to elect their preferred candidate or their vote is improperly wasted by virtue of their being placed in a packed district.

B. Respondents

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

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 had initial authority for drawing Ohio's congressional districts, passed the Enacted Plan, and was responsible for remedying the plan in the first instance after the Court deemed it invalid.

40. Respondent Robert R. Cupp is the Speaker of the Ohio House of Representatives and the Co-Chair of the Commission, and is sued in his official capacity. The General Assembly had initial authority for drawing Ohio's congressional districts, passed the Enacted Plan, and was responsible for remedying the plan in the first instance after the Court deemed it invalid.

41. Under Article XIX, the Commission is charged, under certain circumstances, with enacting a congressional district plan. This includes responsibility for enacting a remedial plan following this Court's invalidation of a congressional district plan, if the General Assembly fails to enact its own plan within 30 days of the Court's decision. Such a plan passed by the

Commission must “remedy any legal defects in the previous plan identified by the court.” Ohio Const. art. XIX, § 3(B)(2).

42. Following the General Assembly’s failure to adopt a new plan within 30 days of this Court’s January 14, 2022 Opinion, the Commission adopted the Revised Plan on March 2, 2022. In so doing, it failed to remedy the legal defects in the Enacted Plan, as identified by the Court.

LEGAL BACKGROUND

43. The Census Bureau 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).

44. 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

45. 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. Ohio Const. art. XIX, § 1(A).

46. 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.*

47. 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.

48. 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).

49. 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).

50. 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).

B. Bars on Undue Partisanship and Undue Splitting

51. In the first instance, if a plan is passed by a simple majority pursuant to Section 1(C)(3), then Article XIX specifies that “a plan that unduly favors or disfavors a political party or its incumbents” shall not be passed. *Id.* § 1(C)(3)(a).

52. Section 1(C)(3)(b) further states that a plan “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).

53. For any plan passed pursuant to Section 1(C)(3), there must be 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. *See Id.* § 1(C)(3)(d). The statement must also explain the plan’s compliance with the prohibition of undue splitting as set forth in Section 1(C)(3)(b).

C. The Process for Revising an Invalidated Plan

54. If a plan is invalidated by this Court, as it has been here, Section 3(B)(1) provides:

[T]he 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). 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.*

55. If the General Assembly is unable to pass a revised plan in accordance with Section 3(B)(1), Section 3(B)(2) then provides:

[T]he Ohio redistricting commission shall be reconstituted and reconvene and shall adopt a congressional district plan in accordance with the provisions of this constitution that are then valid.

Id. § 3(B)(2).

56. Those then-valid provisions of the Ohio Constitution include Section 1(C)(3)(a)–(b). Indeed, Section 3(B)(2) nowhere provides that the anti-partisan gerrymandering provisions of Section 1(C)(3)(a)–(b) can be evaded by the mere handoff of the map-drawing process from the General Assembly to the Commission.

57. Moreover, under Section 3(B)(2), 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.*, 60 days after the order of this Court that required a revision of the Enacted Plan. *Id.*

58. Critically, Section 3(B)(2) further provides that any “congressional district plan adopted under this division shall *remedy any legal defects in the previous plan identified by the court . . .*” *Id.* (emphasis added).

FACTUAL BACKGROUND

A. The 2011 Plan—an Extreme Partisan Gerrymander

59. The maps that came out of Ohio’s 2011 decennial apportionment process were severely gerrymandered. 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. 3, Affidavit of Dr. Jonathan Rodden (Nov. 22, 2021), *Adams v. DeWine*, No. 2021-1428 (hereinafter “Rodden Aff. (Nov. 22, 2021)”) ¶¶ 2, 13–14, 17.

60. Under the 2011 plan, not a single district changed hands throughout the entire 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. 4, Report of Dr. Christopher Warshaw (Nov. 30, 2021), *League of Women Voters of Ohio v. Ohio Redistricting Comm.*, No. 2021-1449 (hereinafter “Warshaw Rep. (Nov. 30, 2021)”) at 5–6.

61. 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 panel’s review of extensive evidence, it found that “partisan intent predominated” during the map-drawing process. *Id.* at 1099. In reaching this conclusion, the panel 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

62. 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.

63. 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, *Ohio Voters May See Two Anti-Gerrymandering Issues on Their Ballots Next Year*, WKSU (Dec. 21, 2017), <http://bitly.ws/jLZI> (accessed Nov. 30, 2021).

64. On January 16, 2018, Senator Huffman released a redistricting reform bill, SJR 5. 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.*

65. Witnesses at hearings considering the legislation uniformly opposed Senator Huffman’s partisan bill and decried its failure to include any explicit bar on partisan gerrymandering. *See* S.J.R 5 Committee Activity, Government Reform and Oversight Committee (Jan. 2018), <http://bitly.ws/jLZe> (accessed Nov. 30, 2021).

66. Senator Huffman withdrew his original bill and re-introduced a compromise bill, which included explicit language prohibiting the passage of a plan that unduly favors or disfavors 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).

67. The bill was passed overwhelmingly in the General Assembly 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. 6, 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.*

68. 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, *Ohio Votes to Reform Congressional Redistricting; Issue 1 Could End Gerrymandering*, Cleveland.com (May 9, 2018), <http://bitly.ws/jM5Q> (accessed Nov. 30, 2021).

C. The Enactment of the 2021 Congressional District Plan

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

69. 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, *Ohio Lawmakers Miss Deadline to Draw New Congressional Districts. What's Next?*, Dayton Daily News (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, 2021. 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).

70. Even with this lead time, the Republican-controlled General Assembly failed to offer a Republican map before the constitutionally appointed deadline of September 30, 2021. *See* Gaines, <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, 134th Gen. Assembly (Ohio 2021) (as introduced).

71. With the General Assembly 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 urging Speaker Cupp (who serves as Co-Chair of the Commission) to schedule Commission meetings to work on congressional redistricting. *See* Ex. 7, V. Sykes Letter to R. Cupp (Oct. 5, 2021); Ex. 8, V. Sykes Letter to R. Cupp (Oct. 18, 2021).

72. Ultimately, the October 31 deadline came and went with no action by the Commission. Andrew Tobias, *Ohio Lawmakers to Take Up Congressional Map After Redistricting Commission Fails to Act*, Cleveland.com (Oct. 28, 2021), <https://bit.ly/3D0jTxi> (accessed Nov. 30, 2021).

73. On November 3, 2021, Ohio Republicans introduced distinct congressional redistricting maps in each chamber of the General Assembly. *See* H.B. 479, 134th Gen. Assembly (Ohio 2021) (as introduced); S.B. 258, 134th Gen. Assembly (Ohio 2021) (as

introduced). Both bills were immediately referred to their respective chambers' committees and heard in committee just minutes later.

74. That day, the Senate Local Government and Elections Committee (“the Senate Committee”) held its first hearing of SB 258, the Senate Republican-sponsored map. The Senate map was not made available to Senate Committee members or the public until the start of the hearing, and similarly, the Senate Republican staffer, Ray DiRossi, who drew the map, was not made available to testify or answer senators’ questions during the Senate Committee’s public hearing. Ex. 9, Tr. of Nov. 3, 2021 Ohio S. Comm. Local Government and Elections Hrg., at 11, 16.

2. The Adoption of the Original Enacted Plan

75. On the evening of November 15, 2021, Senator McColley introduced substitute bill SB 258 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. Ex. 10, 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.

76. On November 18, 2021, the Republican majority passed the bill. Four Republicans joined all House Democrats in voting no.

77. After its passage in the House, the Republican map went to Governor Mike DeWine for his signature. Governor DeWine signed SB 258 on November 20, 2021.

3. The Section 1(C)(3)(d) Statement

78. After its passage in the House, the Republican map went to Governor Mike DeWine for his signature. Governor DeWine signed SB 258 on November 20, 2021.

79. Pursuant to Article XIX, Section 1(C)(3)(d), the following statement was included as part of SB 258, 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), 134th Gen. Assembly (Ohio 2021) (as enrolled).

D. The Constitutional Defects of the Original Enacted Plan

80. Ten days later, on November 30, 2021, Petitioners filed an original action in this Court, alleging that the Enacted Plan unduly favored the Republican Party and unduly split governmental units in violation of Article XIX, Section 1(C)(3)(a)–(b) of the Ohio Constitution. *See* Compl. ¶¶ 113–125, *League of Women Voters of Ohio v. Ohio Redistricting Comm.*, No. 2021-1449.

1. Three Distinct Methods Confirm That the Enacted Plan Unduly Favored the Republican Party

81. To determine the degree to which the Enacted Plan favored the Republican Party, Petitioners' 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 favored the Republican Party and its incumbents. *See* Ex. 4, Warshaw Rep. (Nov. 30, 2021) at 5, 19. Dr. Warshaw also concluded that the plan unduly favored the Republican Party based on four established partisan metrics. *Id.* at 19–21.

2. The General Assembly’s Inaccurate Contention that the Enacted Plan Contained a Large Number of “Competitive” Districts

82. 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), 134th Gen. Assembly (Ohio 2021) (as enrolled).

83. This statement, however, is inaccurate. First, there were at most three, not seven, competitive districts. The four districts wrongly characterized as “competitive” were in fact Republican-leaning districts. Ex. 4, Warshaw Rep. (Nov. 30, 2021) 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.

84. The results of these various approaches are summarized in Table 7 of Dr. Warshaw’s Report on the Enacted Plan:

Data:	2020 House Results		Composite (2012-20)	PlanScore			Mean
Metric:	45-55	Historical Swing	45-55	45-55	20%+ Prob. of Each Party Win.	50%+ Prob. Flip in Dec.	
Plan	(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.

85. 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 were favored to win all of the “competitive” seats, and heavily favored in at least one of them. Indeed, the Republican candidate had a 64% chance to win District 1, an 84% chance to win District 9, and a 69% to win District 13. Ex. 4, Warshaw Rep. (Nov. 30, 2021) at 23–24. The district-by-district results are set forth in Table 8 of Dr. Warshaw’s Report on the Enacted Plan, where the districts shaded grey are the “competitive” districts and the vote percentages under the three different methods used by Dr. Warshaw 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 was 47%. *Id.* at 24.

District	Projected Democratic Vote Share				Probability Dem. Wins (PlanScore)
	House 2020	Composite (2012-2020)	PlanScore	Average 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.

3. The Enacted Plan Unduly Favored Republican Incumbents

86. The Enacted Plan also favored incumbents from the Republican Party. While it did not pair multiple Democratic incumbents in a single district, it put two of the four Democratic incumbents from the previous plan into largely new districts that would have a majority of Republican voters. It did not put any Republican incumbent into a district with a majority of Democratic voters. Ex. 4, Warshaw Rep. (Nov. 30, 2021) at 6, 25. The adverse impact on Democratic incumbents is captured by Table 9 in Dr. Warshaw’s Report on the Enacted Plan. It shows how the Enacted Plan put the Democratic incumbents in Districts 9 and 13 into largely new districts that would have a majority of Republican voters based on the 2020 congressional election results.

2020 Districts	2022 District	% Overlap	Dem. Vote Share Old District	Dem. Vote Share 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.

87. 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, sliced 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). And under the Enacted Plan, Representative Kaptur would have likely lost in 2022. *Id.*

4. The Undue Splitting To Advance Partisan Advantage in the Enacted Plan

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

89. In southwestern Ohio, the Enacted Plan split 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. 3, Rodden Aff. ¶ 64 & Table 2.

90. In District 8, the Enacted Plan combined 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.*

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

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

93. According to expert testimony submitted by Professor Jonathan Rodden in *Adams v. DeWine*, 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, conjured 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 was accomplished only through blatant, unnecessary, and undue splitting of Hamilton County and its communities.

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

95. In District 14, the Enacted Plan combined 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 were connected to the remainder of District 14 through an exceedingly narrow corridor that at one point represented the width of a solitary census block. According to Professor Rodden, not a single road connected these fragments of District 14, which was nearly split in half by the heavily Democratic and Cleveland-based District 11. *Id.* ¶ 75. Only that solitary census block prevented District 14 from being noncontiguous, and thus an even more egregious violation of Article XIX.

96. In District 13, the Enacted Plan combined 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.

97. Meanwhile, in District 7, the Enacted Plan carved 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 was 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.*

98. The upshot and intended effect of these unnecessary county splits in northeastern Ohio was 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.

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

E. The Invalidation of the Enacted Plan

100. On January 14, 2022, this Court invalidated the Enacted Plan, finding that it violated the requirements of Section 1(C)(3)(a)–(b) by unduly favoring the Republican Party and unduly splitting Hamilton, Cuyahoga, and Summit counties. *See Adams*, Slip Opinion No. 2022-Ohio-89, ¶ 5. This Court further held that under Article XIX, Section 3(B) of the Ohio Constitution, “the General Assembly and the reconstituted commission, should that be necessary, are mandated to draw a map that comports with the *directives of this opinion.*” *Id.* ¶ 99.

101. In particular, this Court ordered:

{¶ 99} By the plain language of Article XIX, Section 3(B), *both the General Assembly and the reconstituted commission, should that be necessary, are mandated to draw a map that comports with the directives of this opinion.*

{¶ 102} We hold that the General Assembly did not comply with Article XIX, Sections 1(C)(3)(a) and (b) of the Ohio Constitution in passing the congressional-district plan. We therefore declare the plan invalid and we *order the General Assembly to pass a new*

congressional-district plan . . . that complies in full with Article XIX of the Ohio Constitution and is not dictated by partisan considerations.

Id. ¶¶ 99, 102 (emphases added).

F. The Enactment of the Revised Plan

102. Pursuant to the Court’s opinion and Article XIX, Section (3)(B)(1), the General Assembly was then required to enact, within 30 days, a new congressional districting plan that remedied the defects identified by this Court. The General Assembly failed to enact any plans within that 30-day period, which expired on February 13, 2022.

103. Following the General Assembly’s failure to pass a new plan within 30 days, responsibility for enacting a new plan passed to the Ohio Redistricting Commission under Article XIX, Section (3)(B)(2). Under Section 3(B)(2), the Commission was required to enact a plan that remedied any legal defects in the prior plan identified by this Court. Those defects in the Enacted Plan, identified by the Court in its January 14, 2022 Opinion, centered on the failure to comply with the requirements in Section 1(C)(3)(a)–(b).

1. The General Assembly Failed to Pass a New Plan in Accordance with the Court’s January 14 Opinion

104. On January 26, 2022, the original sponsor of the invalidated plan, Senator Rob McColley, introduced SB 286 legislation to “[d]eclare intent to revise congressional district boundaries.” S.B. 286 Status, 134th. Gen. Assembly (Ohio 2022) (as introduced), <https://bit.ly/35P3nFA> (accessed Mar. 10, 2022). The legislation did not include a plan for congressional district boundaries.

105. The next day, on January 27, Senate President Huffman announced that the General Assembly would start drawing congressional districting maps during the week of February 7. Andy Chow, *Movement on New Ohio Congressional District Map Not Expected for*

Another Week, The Statehouse News Bureau (Jan. 27, 2022), <https://bit.ly/3MIS2O1> (accessed Mar. 10, 2022).

106. On February 7, 2022, the Senate Government Budget Committee (the “Senate Committee”) noticed hearings on SB 286 scheduled to take place on February 8 and 9, 2022 before the Senate Committee. Gen. Gov’t Budget Comm., 134th Gen. Assembly (Ohio 2022), <https://bit.ly/36R2Ovp> (accessed Mar. 10, 2022). The House Government Oversight Committee also scheduled a hearing for February 8, 2022 to discuss congressional districting. Jim Gaines, *New U.S. House Map Stumbles Again in Wake of Latest Supreme Court Ruling*, Dayton Daily News (Feb. 8, 2022), <https://bit.ly/3KhisjJ> (accessed Mar. 10, 2022).

107. Later that same day, the Ohio Supreme Court issued its ruling in a parallel case, *League of Women Voters of Ohio v. Ohio Redistricting Commission*, invalidating the Commission’s first revised plan for state *legislative* districting plans. 2022-Ohio-342, ¶ 67.

108. The next morning, following the Court’s order in the legislative case, the Senate Committee abruptly canceled the SB 286 hearings scheduled for February 8 and 9. Josh Rultenberg (@JoshRultNews), Twitter (Feb. 8, 2022, 9:18 AM), <https://bit.ly/3CfjWGL>. Senator Rob McColley was set to unveil his Republican congressional districting plan at the now-canceled hearings. Jim Gaines, *New U.S. House Map Stumbles Again in Wake of Latest Supreme Court Ruling*, Dayton Daily News (Feb. 8, 2022), <https://bit.ly/3KhisjJ> (accessed Mar. 10, 2022). Nonetheless, the Ohio House and Senate Democrats released their congressional districting plan a couple hours later. Josh Rultenberg (@JoshRultNews), Twitter (Feb. 8, 2022, 11:20 AM), <https://bit.ly/34jhSBi>.

109. That same day, Speaker Cupp, Co-Chair of the Commission, acknowledged that the General Assembly would not pass a map by the Article XIX, Section 3(B)(1) deadline of

February 13, 2022. Josh Rultenberg, *Congressional Redistricting Headed for Ohio Redistricting Commission*, Spectrum News 1 (Feb. 8, 2022), <https://bit.ly/3hEZJ3L> (accessed Mar. 10, 2022).

110. On February 13, 2022, the deadline came and went without any further action by the General Assembly. J.D. Davidson, *Ohio Lawmakers Miss Deadline for New Congressional District Map*, The Center Square (Feb. 14, 2022), <https://bit.ly/3sB0AJ1> (accessed Mar. 10, 2022).

2. The Commission Takes Up the Task of Enacting a Revised Plan

111. On February 22, 2022, the Commission convened to discuss congressional districting plans. At that hearing, Speaker Cupp, Co-Chair of the Commission, explained that the responsibility for passing a congressional districting plan fell to the Commission now that the General Assembly had failed to pass a plan by its constitutionally mandated deadline. Ex. 11, Tr. of Feb. 22, 2022 Ohio Redistricting Comm. Hrg., at 1–2; *see also* Ohio Const. art. XIX, § 3(B)(2).

112. The Commission met again on February 23 and 24, 2022, to hear testimony from sponsors of proposed congressional plans. The Ohio Redistricting Comm., *Announcement of Commission Meeting* (Feb. 23, 2022), <https://bit.ly/3psSnVm> (accessed Mar. 10, 2022).

113. One week later, on March 1, 2022, the Commission convened again. At this hearing, Speaker Cupp and Senate President Huffman introduced a Republican-drawn congressional districting plan. Senate President Huffman invited Democratic amendments to his plan. Ex. 12, Tr. of Mar. 1, 2022 Ohio Redistricting Comm. Hrg., at 9.

114. On March 2, 2022, Democrats introduced amendments to the Republican-sponsored plan, which were promptly rejected by the Republican Commissioners. Ex. 13, Tr. of Mar. 2, 2022 Ohio Redistricting Comm. Hrg., at 6, 14. The Commission then took up the Republican-sponsored plan, Ex. 14, Strigari Mar. 2, 2022, Map; Ex. 15, Strigari Mar. 2, 2022,

Map Statistics, which was passed by a majority of the Commission on a 5–2 party line vote. Ex. 13, Tr. of Mar. 2, 2022 Ohio Redistricting Comm. Hrg., at 14–15. In expressing his support for the Revised Plan, Senate President Huffman stated that, in his view, the anti-partisan gerrymandering provisions of Article XIX, Section 1(C)(3) were inapplicable to the Revised Plan, *see id.* at 8–10—notwithstanding the clear mandate of this Court’s January 14, 2022 Opinion to the contrary, *Adams*, Slip Opinion No. 2022-Ohio-89, ¶ 102.

G. The Constitutional Defects in the Revised Plan

115. On March 2, 2022, the Commission enacted the Revised Plan, which failed to meet the requirements of Section 1(C)(3)(a)–(b) as identified by this Court. The Revised Plan, proposed by Republicans, was once again passed along strict party lines, with all Republican Commissioners, and no Democratic Commissioners, voting in favor of the plan. Like the Enacted Plan, the Revised Plan continues to unduly favor the Republican Party that drew and enacted it, and to unduly split governmental units to strategically achieve that objective.

116. The Revised Plan achieves this partisan result through specific mechanisms prohibited by Article XIX: it creates (i) non-compact districts that were drawn in a particular manner, including through (ii) unnecessary splits of counties and metropolitan areas, so as to enhance the strength of the Republican Party, as explained in detail in the attached expert affidavits of Dr. Christopher Warshaw and Dr. Kosuke Imai. *See* Ex. 16, Affidavit of Dr. Christopher Warshaw (Mar. 6, 2022), *League of Women Voters of Ohio v. Ohio Redistricting Comm.*, No. 2021-1449 (hereinafter “Warshaw Aff. (Mar. 6, 2022)”) at 13–15; Ex. 17, Report of Dr. Kosuke Imai (Mar. 6, 2022), *League of Women Voters of Ohio v. Ohio Redistricting Comm.*, No. 2021-1449 (hereinafter “Imai Rep. (Mar. 6, 2022)”) ¶¶ 12–22. These constitutional defects are egregiously manifest in two districts: Congressional District 1 and Congressional District 15.

1. Congressional District 15

117. The Revised Plan submerges Democratic voters on the outskirts of Columbus in Franklin County into District 15, which is fabricated out of territory stretching to the west. Ex. 17, Imai Rep. (Mar. 6, 2022) ¶ 19. By doing so, the Revised Plan dilutes the votes of Democratic voters and creates an additional safe Republican district.

118. As explained by Dr. Warshaw, District 15 in the Revised Plan is amongst the least compact districts in the nation—whether measured over the past 200 years or just by reference to the 2020 election cycle. See Ex. 16, Warshaw Aff. (Mar. 6, 2022) at 14–15.

119. Similarly, District 15 has a significantly lower compactness score than corresponding districts in Dr. Imai’s simulated plans. Ex. 17, Imai Rep. (Mar. 6, 2022) ¶ 22 & Figure 5.

120. Beyond its non-compact shape, District 15 by itself also unnecessarily and unduly splits a total of five counties. *Id.* As determined by Dr. Jonathan Rodden, the Revised Plan “is drawn to pack the most Democratic part of Columbus in one district [District 3],” and then “extract[s] Democratic-leaning parts of Columbus (including downtown Columbus) and its suburbs . . . combining them with some of the most rural, Republican communities of West-Central Ohio, circumnavigating Springfield along the way, and splitting 4 [additional] counties to create a single, highly non-compact District 15.” Ex. 18, Affidavit of Dr. Jonathan Rodden (Mar. 4, 2022), *Adams v. DeWine*, No. 2021-1428 (hereinafter “Rodden Aff. (Mar. 4, 2022)”) ¶ 39.

2. Congressional District 1

121. Thanks to the Revised Plan’s “unusual pairing of Hamilton and Warren counties” in District 1, Democratic areas in Hamilton County “are cracked to yield two Republican-leaning districts and one highly competitive district, despite a significant concentration of Democratic

voters in and around Cincinnati.” Ex. 17, Imai Rep. (Mar. 6, 2022) ¶¶ 15–16. According to Dr. Imai, “voters in Cincinnati would normally be expected to belong to a strongly Democratic-leaning district under the simulated plans,” but the Revised Plan instead “makes these voters part of a much less Democratic-leaning district.” *Id.* ¶ 16.

122. This partisan aim is achieved in part through a non-compact shape, as District 1 under the Revised Plan receives low compactness scores—with a Reock score of 0.31 and a Polsby-Popper score of 0.25. Ex. 16, Warshaw Aff. (Mar. 6, 2022) at 15. These compactness scores are “well below the average” compared to congressional districts nationwide, both currently and historically. *Id.*

123. In addition, District 1 unnecessarily splits communities in and around metropolitan Cincinnati, again in pursuit of partisan aims. According to Dr. Rodden, the boundary of District 1 “split[s] the Black community of Cincinnati from that of the Northern suburbs, combining the city of Cincinnati with exurban and rural white areas to the Northeast, traveling via a narrow corridor to Warren County.” Ex. 18, Rodden Aff. (Mar. 4, 2022) ¶ 36. By “needlessly split[ting] the Black community in two,” District 1 “prevents the emergence of a clear Democratic district.” *Id.* ¶ 37.

3. Statistical Analysis

124. The partisan bias of the Revised Plan is further confirmed by the statistical analysis set forth in the attached expert affidavits.

125. Established partisan bias metrics confirm that the Revised Plan unduly favors the Republican Party and offers no material improvement over the Enacted Plan. This evidence of undue partisan advantage under the Revised Plan is consistent across multiple methods of predicting future congressional elections in Ohio. *See* Ex. 16, Warshaw Aff. (Mar. 6, 2022) at 7–10.

126. With regard to partisan bias, the Revised Plan is also a statistical outlier when compared to 5,000 simulated plans. *See* Ex. 17, Imai Rep. (Mar. 6, 2022) ¶¶ 7–11. It achieves partisan ends “by turning Democratic-leaning districts into toss-up districts while making slightly Republican-leaning districts into safe Republican districts.” *Id.* ¶ 11. In particular, under the Revised Plan, three nominally Democratic-leaning districts have “unusually narrow” vote share margins when compared to 5,000 simulated plans, while Republican-leaning districts are “much safer” than corresponding districts in the simulations. *Id.* ¶ 3.

127. Thus, the Commission failed to remedy the legal defects in the previous plan identified by the Supreme Court of Ohio. In particular, it failed to remedy the violations of Section 1(C)(3)(a) and (b), which were specifically identified as requiring remediation by this Court. *Adams*, Slip Opinion No. 2022-Ohio-89, ¶ 102; *see also id.* ¶ 99 (stating that both the General Assembly and the *Commission* were required to remedy those defects).

4. The Commission Did Not Consider An Alternative Plan That Was Constitutionally Compliant

128. On February 22, 2022, Petitioners submitted to the Commission an Example Congressional District Plan (the “Example Plan”) crafted by Dr. Imai that is *more compliant* with Article XIX of the Ohio Constitution than the Revised Plan. Ex. 19, League of Women Voters’ Feb. 22, 2022, Map; Ex. 17, Imai Rep. (Mar. 6, 2022) ¶¶ 3, 23–26.

129. Under the Example Plan, District 1 is wholly and compactly contained in Hamilton County without spilling into Warren County, in contrast to the Revised Plan. *See* Ex. 19, League of Women Voters’ Feb. 22, 2022, Map.

130. Under the Revised Plan, the portion of Franklin County that is not included in District 3 is submerged into District 15. Under the Example Plan, Franklin County is also split into two districts, but the Example Plan’s District 3 contains the southern part of Franklin

County, while the northern part of the county is included in a district identified as “District 12.” District 12 of the Example Plan is much more compact than District 15 in the Revised Plan. *See* Ex. 17, Imai Rep. (Mar. 6, 2022) ¶ 25.

131. Dr. Imai further demonstrated that the total number of counties split under the Revised Plan is much greater than that under any of the simulated plans, and also greater than the total number of counties split under the Example Plan. *See* Ex. 17, Imai Rep. (Mar. 6, 2022) ¶ 26 & App’x ¶ 2. In addition, the Example Plan is “much more compact” than the Revised Plan, and also more compact than any simulated plans; by contrast, the Revised Plan is less compact than the “vast majority (roughly 93%) of the simulated plans.” *Id.* ¶ 26 & App’x ¶ 1.

FIRST CAUSE OF ACTION

Violation of Article XIX, Section 1(C)(3)(a) and Section 3(B)(2) of the Ohio Constitution

132. Petitioners restate and incorporate by reference the allegations of paragraphs 1 through 131 above as though fully set forth in this Paragraph.

133. When the Commission adopts a remedial plan pursuant to Section 3(B)(2), it “shall remedy any legal defects in the previous plan identified by the court.”

134. This Court, in its January 14, 2022 Opinion, held that the Enacted Plan violated Section 1(C)(3)(a) and mandated that the General Assembly and the Commission draw a map that remedied this defect.

135. Section 1(C)(3)(a) directs that the “general assembly shall not pass a plan that unduly favors or disfavors a political party or its incumbents.”

136. The Revised Plan contravenes Section 1(C)(3)(a) because it unduly favors the Republican Party and its incumbents through manifestly non-compact districts that were created to prevent the emergence of more compact Democratic-leaning districts.

137. In failing to comply with the requirements of Section 1(C)(3)(a), the Revised Plan fails to remedy the defects in the Enacted Plan expressly identified in the Court’s January 14, 2022 Opinion, in contravention of Article XIX, Section 3(B)(2).

138. Respondents’ failure to abide by Article XIX was in bad faith. This is reflected by the process, set forth above.

139. Petitioners 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) and Section 3(B)(2) of the Ohio Constitution

140. Petitioners restate and incorporate by reference the allegations of paragraphs 1 through 139 above as though fully set forth in this Paragraph.

141. When the Commission adopts a plan pursuant to Section 3(B)(2), it “shall remedy any legal defects in the previous plan identified by the court.”

142. This Court, in its January 14 Opinion, held that the Enacted Plan violated Section 1(C)(3)(b) and mandated that the General Assembly and the Commission draw a map that remedied this defect pursuant to Section 3(B)(2).

143. 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.”

144. The Revised Plan unduly splits governmental units. In particular, the total number of counties split under the Revised Plan is much greater than that under any of the simulated plans and is also greater than the total number of counties split under the Example Plan. This large number of splits is 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—as evidenced by the splitting by District 15 of no fewer than five counties and the splitting by District 1 of the Black community in the Cincinnati area.

145. In failing to comply with the requirements of Section 1(C)(3)(b), the Revised Plan fails to remedy the defects in the Enacted Plan expressly identified in the Court’s January 14, 2022 Opinion, in contravention of Article XIX, Section 3(B)(2).

146. Respondents’ failure to abide by Article XIX was in bad faith. This is reflected by the process, set forth above.

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

PRAYER FOR RELIEF

Accordingly, Petitioners respectfully request that this Court:

- A. Declare that the Revised Plan that Respondents adopted is invalid for failure to comply with Article XIX of the Ohio Constitution;
- B. Order the General Assembly and/or Commission to enact a plan in time for the 2024 congressional election cycle that remedies the defects identified in two specific districts: (1) the improper non-compact configuration of Congressional District 1 that unduly favors the Republican Party; and (2) the improper non-compact configuration of Congressional District 15 that unduly favors the Republican Party;
- C. Issue a permanent injunction and judgment barring Respondents from calling, holding, supervising, administering, or certifying any future elections commencing with the 2024 election cycle under the Revised Plan, as Petitioners

have no adequate remedy at law and will be irreparably harmed by the violation of their constitutional 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 General Assembly or 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 for the purpose of determining the validity of any new redistricting plans adopted by the General Assembly or the Commission pursuant to the Ohio Constitution; and
- F. Grant such other or further relief the Court deems appropriate, including, but not limited to, an award of Petitioners' attorneys' fees and reasonable costs.

Respectfully submitted,

/s/ Freda J. Levenson
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**Applications for Admission Pro Hac Vice*
Forthcoming



Levenson Verification.pdf

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E-Signature Summary

E-Signature 1: Freda Levenson (FJL)

March 22, 2022 13:49:01 -8:00 [917A51FA9102] [74.64.96.68]
 flevenson@acluohio.org (Principal) (Personally Known)

E-Signature Notary: Theresa M Sabo (TMS)

March 22, 2022 13:49:01 -8:00 [E09456BE1983] [65.60.141.105]
 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.,

v.

SECRETARY OF STATE FRANK LAROSE ET AL.

Case No. _____

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

VERIFICATION OF FREDA J. LEVENSON

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 Petitioners in this action.
2. Exhibit 1 to the Complaint is a true and correct copy of the affidavit of Jen Miller.
3. Exhibit 2 to the Complaint is a true and correct copy of the affidavit of Andre Washington.
4. Exhibit 3 to the Complaint is a true and correct copy of the expert affidavit of Dr. Jonathan Rodden dated November 22, 2021 that was submitted by the petitioners in *Adams, et al., v. DeWine, et. al.*, No. 2021-1428.
5. Exhibit 4 to the Complaint is a true and correct copy of the expert report of Dr. Christopher Warshaw dated November 30, 2021 that was submitted by the petitioners in *League of Women Voters, et al., v. Ohio Redistricting Commission, et. al.*, No. 2021-1449.
6. Exhibit 5 to the Complaint is a true and correct copy of then-Rep. Matt Huffman's Sponsor Testimony for S.J.R. 5 on January 17, 2018.
7. Exhibit 6 to the Complaint is a true and correct copy of the 2018 Issue 1 ballot measure certified by then-Secretary of State Jon Husted.
8. Exhibit 7 to the Complaint is a true and correct copy of Senator Vernon Sykes's October 5, 2021 letter to Speaker Robert Cupp.

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9. Exhibit 8 to the Complaint is a true and correct copy of Senator Vernon Sykes's October 18, 2021 letter to Speaker Robert Cupp.
10. Exhibit 9 to the Complaint is a true and correct transcription of the Senate Local Government and Elections Committee's November 3, 2021 hearing.
11. Exhibit 10 to the Complaint is a true and correct transcription of the Senate Local Government and Elections Committee's November 16, 2021 hearing.
12. Exhibit 11 to the Complaint is a true and correct transcription of the Ohio Redistricting Commission's February 22, 2022 hearing.
13. Exhibit 12 to the Complaint is a true and correct transcription of the Ohio Redistricting Commission's March 1, 2022 hearing.
14. Exhibit 13 to the Complaint is a true and correct transcription of the Ohio Redistricting Commission's March 2, 2022 hearing.
15. Exhibit 14 to the Complaint is a true and correct copy of the congressional-district plan ("Strigari map") adopted by the Ohio Redistricting Commission on March 2, 2022 (referred to in the Complaint as the "Revised Plan").
16. Exhibit 15 to the Complaint is a true and correct copy of the table of statistics for the congressional-district plan ("Strigari map" or the "Revised Plan") adopted by the Ohio Redistricting Commission.
17. Exhibit 16 to the Complaint is a true and correct copy of the expert affidavit of Dr. Christopher Warshaw dated March 6, 2022 that was submitted by the petitioners in *League of Women Voters, et al., v. Ohio Redistricting Commission, et. al.*, No. 2021-1449.
18. Exhibit 17 to the Complaint is a true and correct copy of the expert report of Dr. Kosuke Imai dated March 6, 2022 that was submitted by the petitioners in *League of Women Voters, et al., v. Ohio Redistricting Commission, et. al.*, No. 2021-1449.
19. Exhibit 18 to the Complaint is a true and correct copy of the expert affidavit of Dr. Jonathan Rodden dated March 4, 2022 that was submitted by the petitioners in *Adams, et al., v. DeWine, et. al.*, No. 2021-1428.
20. Exhibit 19 to the Complaint is a true and correct copy of the map proposed to the Ohio Redistricting Commission by Petitioners on February 22, 2022.
21. I have read the Complaint filed in this action and affirm that the factual allegations contained therein are true.

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Freda Levenson

Signed on 2022/03/22 13:49:01 -8:00

Freda J. Levenson

Signed at Columbus, Franklin, Ohio
City County State

Sworn to and subscribed before me this 03/22/2022 day of March, 2022

Theresa M Sabo
Signed on 2022/03/22 13:49:01 -8:00

Notary Public



Notarial act performed by audio-visual communication

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CERTIFICATE OF SERVICE

I, Freda J. Levenson, hereby certify that on this 22nd day of March 2022, I caused a true and correct copy of the foregoing to be served by email upon the counsel listed below:

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Matt Huffman*

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