

In The  
Ohio Supreme Court

REGINA C. ADAMS, et al.,

*Relators,*

v.

GOVERNOR MIKE DEWINE, et al.,

*Respondents.*

:  
:  
: Case No. 2021-1428  
:  
: Original Action Pursuant to  
: Ohio Const., Art. XIX, § 3(A)  
:  
: Redistricting Case  
:

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**MOTION TO DISMISS AND TO STAY DISCOVERY OF THE OHIO REDISTRICTING COMMISSION, GOVERNOR MIKE DeWINE IN HIS CAPACITY AS GOVERNOR AND COMMISSION MEMBER, AND SECRETARY OF STATE FRANK LaROSE, AUDITOR KEITH FABER, SENATOR VERNON SYKES, HOUSE MINORITY LEADER EMLIA SYKES, SENATE PRESIDENT MATT HUFFMAN, AND SPEAKER BOB CUPP IN THEIR OFFICIAL CAPACITIES AS COMMISSION MEMBERS.**

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Ohio Governor Mike DeWine (also in his capacity as Governor), Secretary of State Frank LaRose, Auditor Keith Faber, Senator Vernon Sykes, House Minority Leader Emilia Sykes, Senate President Matt Huffman, and Speaker Bob Cupp in their official capacities as Members of the Ohio Redistricting Commission (“Commission Members”) and the Ohio Redistricting Commission (“Commission”) move pursuant to Civ. R. 12(B)(1) and 12(B)(6) to dismiss the Complaint filed against them and to stay discovery. Relators failed to allege sufficient facts to establish standing to sue the Commission Respondents or the Governor. Further, Relators failed to state a claim under Ohio Const. Art. XIX Section 1(C) against the Commission Respondents or the Governor.

Relators named Secretary of State LaRose, Senate President Huffman, and Speaker Cupp in two capacities: as commission members and as Secretary of State, Ohio Senate President, and the Speaker of the Ohio House. Secretary LaRose, Speaker Cupp and Senate President do not

move to dismiss the Complaint insofar as it names them in their non-Commission capacities.<sup>1</sup> Rather, Relators' claims against the Commission, the Commission Members, and the Governor fail under Civ. R. 12(B)(1) and 12(B)(6).

Respectfully submitted,

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<sup>1</sup> Answers are being filed on behalf of Secretary LaRose, Speaker Cupp, and Senate President Huffman as they are named in their respective non-Commission capacities.

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## I. INTRODUCTION

Relators sue the Commission Respondents<sup>2</sup> and the Governor for something that they did not do: draw and enact the 2021 Congressional Plan. And because they did not draw and enact the 2021 Congressional Plan, the Commission Respondents and the Governor cannot “fix” the Plan as enacted. Relators admit as much. They specifically allege that the Ohio General Assembly passed the 2021 Congressional Plan and complain that the Redistricting Commission “laid dormant.” But the Commission did not violate the Constitution when it did not approve a plan. *See* Art. XIX, Sect. 1(C)(1). Unlike the process for state-level redistricting, the Constitution contemplates a process whereby the General Assembly draws and enacts the map for new congressional districts. That is what happened here when the General Assembly drew and enacted the 2021 Congressional Plan by a simple majority vote as provided for by Section 1(C)(3). Nevertheless, Relators sued the Commission Respondents and the Governor, not the General Assembly or more appropriately - the map itself.

Worse yet, Relators are suing the Commission Respondents and the Governor for violating a constitutional provision that does not apply to them. Relators allege that the “Respondents” acted in bad faith by adopting a four-year congressional map that violates Article XIX, Section 1(C)(3). But that section applies only to the *General Assembly* when it adopts a four-year congressional map by a simple majority. On its face, it has nothing to do with the Commission Respondents or the Governor and, as a matter of law, they cannot be sued for violating it.

To be sure, the Ohio Constitution permits challenges to a congressional district plan. But it cannot be challenged like this. Relators must state a claim upon which relief can be granted

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<sup>2</sup> “Commission Respondents” include the Ohio Redistricting Commission and DeWine, LaRose, Faber, V. Sykes, E. Sykes, Cupp and Huffman in their official capacities as members of the Ohio Redistricting Commission.

against *all* Respondents. Relators did not do that here. Instead, they sued the individuals and an entity that they admit *did not* draw or enact the 2021 Congressional Plan and cannot, in the first instance, remedy any of the alleged constitutional violations.

Because the Complaint names so many improper respondents, the Court should stay discovery pending resolution of this Motion to Dismiss. Not only are the Commission Respondents and the Governor not proper parties to this action because they did not enact the 2021 Congressional Plan, but Relators seek discovery of collateral information that is unnecessary—and irrelevant—to the resolution of the legal issues in this case. Simply put, Relators mostly sue the wrong parties, they are not entitled to discovery from those parties, and their claims against them must be dismissed.

## **II. BACKGROUND**

With one exception not applicable here, the Ohio Constitution is clear that “the general assembly shall be responsible for the redistricting of this state for congress[.]” Ohio Const. Art. XIX, Sec. 1(A). Not later than September 30 in years ending in the numeral one, the Ohio General Assembly shall pass a congressional redistricting plan by an “affirmative vote of three-fifths of the members of each house of the general assembly, including the affirmative vote of at least one-half of the members of each of the two largest political parties represented in that house.” *Id.* A map that passes with that support is in effect for ten years. *Id.* If the General Assembly fails to adopt a ten-year map in this manner, congressional map-making responsibilities fall to the Ohio Redistricting Commission. Ohio Const. Art. XIX, Sec. 1(B). The Commission has until October 31 of a year ending in the numeral one to adopt a plan by the affirmative vote of four of its members, including at least two members who represent the two largest political parties. *Id.* If the Commission fails to do so, congressional map-drawing responsibility returns to the General

Assembly where it must pass a congressional plan by November 30. Ohio Const. Art. XIX, Sec. 1(C)(1).

How long a congressional plan remains in effect depends on how it was passed. Specifically, if the General Assembly passes a plan that is approved by three-fifths of its members, including one-third of the affirmative votes of the two largest political parties represented in that house, then the plan remains in effect for ten years. Ohio Const. Art. XIX, Sec. 1(C)(2). If the General Assembly passes a congressional plan by a simple majority, then that plan remains in effect for two general election cycles for the United States House of Representatives, or four years. Ohio Const. Art. XIX, Sec. 1(C)(3)(e).

When the General Assembly passes a four-year “simple majority” map, it must comply with certain constitutional requirements. Relevant here, the General Assembly “shall not pass a plan that unduly favors or disfavors a political party or its incumbents.” Ohio Const. Art. XIX, Sec. 1(C)(3)(a). And, the General Assembly “shall attempt to draw districts that are compact.” Ohio Const. Art. XIX, Sec. 1(C)(3)(c).

In the event that a court holds that a congressional district plan, a district, or any group of districts is invalid, the General Assembly must go back to the drawing board. Ohio Const. Art. XIX Sec. 3(B)(1). That is, the General Assembly must pass a plan which remedies only the deficiencies identified by the court no later than thirty days after the day on which the order invalidating any or all of the plan was issued. *Id.* If the General Assembly fails to do so by the thirtieth day, the Ohio Constitution requires the Ohio Redistricting Commission to be reconstituted and adopt a plan which remedies only the deficiencies identified by the court. Ohio Const. Art. XIX Sec. 3(B)(2).

As Relators acknowledge, in the first instance, the Ohio Redistricting Commission is merely a “backstop” empowered to draw a congressional map *if* the General Assembly fails to do so by September 30. Compl. at ¶ 9. They admit that the Commission did not adopt a plan in October. *Id.* at ¶¶ 22-26. As Relators note, both chambers of the General Assembly “promptly introduced a map” in November, *id.* at ¶ 10, and ultimately passed a plan via Sub. S.B. 258, which Governor DeWine signed into law. *Id.* at ¶ 15. Relators admit that the Commission Respondents have only “secondary authority” for drawing Ohio’s congressional districts. *Id.* at ¶ 26. But they do not claim that the Commission Respondents exercised it here. *Id.* at ¶ 9. Instead, they claim that “the *General Assembly*...passed the 2021 Congressional Plan, and is responsible for remedying the plan in the first instance if the court declares it invalid.” *Id.* at ¶¶ 24-25 (emphasis added).

Relators themselves establish that the Commission Respondents and the Governor did not pass the 2021 Congressional Plan. They admit that Governor DeWine’s involvement in the 2021 Congressional Plan was limited to signing it into law. *Id.* at ¶ 22. They claim that Secretary of State LaRose did even less. He is sued simply because he is the chief election officer responsible for election administration in Ohio. *Id.* at ¶ 23. Likewise, Speaker Cupp and Senate President Huffman are identified by and named because of their respective positions within the General Assembly. *Id.* at ¶¶ 24-25. Relators assert that the *General Assembly* has primary authority for drawing Ohio’s Congressional Districts and remedying a plan if a Court deems it invalid. *Id.*

Relators do not allege that Auditor Faber, Senator Sykes, and House Minority Leader Sykes did *anything* in passing the 2021 Congressional Plan. *Id.* at ¶ 26. Instead, like the other Commission Respondents, they are sued merely because they are on the Commission and have “secondary” responsibility for remedying an invalid plan if the General Assembly fails to do so. *Id.*

Relators are suing the Commission Respondents and the Governor for a plan drawn and enacted by the General Assembly. They do not claim that any of the Commission Respondents exercised their “secondary” authority *at all*, much less in a way that violates the Ohio Constitution. They have failed to state any claim upon which relief can be granted against the Commission Respondents and Governor.

Similarly, Relators’ alleged harms relate solely to the manner in which the 2021 Congressional Plan was drawn and enacted. And though each of the Respondents are named in their respective capacities as Commission members, Relators do not claim that any of the Respondents, as Commission members, drew or passed the 2021 Congressional Plan. They also do not claim that the Commission Respondents have primary responsibility for remedying the deficiencies alleged in the Complaint. Said differently, Relators claim to be ‘harmed’ but they are not suing, or seeking relief from, the individuals or entity that ‘harmed’ them. Relators must sue those who have harmed them and who are capable of redressing their alleged injuries. This basic jurisdictional prerequisite—standing—cannot be overlooked.

For these reasons, Relators have failed to state a claim upon which relief can be granted and they lack standing to sue any of the Commission Respondents or the Governor. The Court should dismiss as respondents the Governor, the Commission, and all of the Commission members, as members.

### **III. LAW AND ARGUMENT**

Civ. R. 12(B)(1) provides for dismissal of an action for lack of subject matter jurisdiction. A civil complaint must establish that the claims set forth are within the subject matter jurisdiction of the court. *State ex rel. Bush v. Spurlock*, 42 Ohio St.3d 77, 80, 537 N.E.2d 641 (1989); Civ.R. 12(B)(1). When reviewing a complaint under Civ. R. 12(B)(1), courts ask “whether any cause of

action cognizable by the forum has been raised in the complaint.” *Id.* at 80, citing *Avco Financial Services Loan, Inc. v. Hale*, 36 Ohio App. 3d 65, 67 (10th Dist. 1987).

A motion to dismiss for failure to state a claim upon which a court may grant relief challenges the sufficiency of the complaint itself. *Volbers-Klarich v. Middletown Mgt. Inc.*, 125 Ohio St.3d 494, 2010-Ohio-2057, 929 N.E.2d 434, ¶ 11-12. A court should consider and accept all factual allegations of the complaint as true and afford all reasonable inferences in the non-moving party’s favor. *Id.* This does not allow, however, unsupported conclusions to be admitted or to be deemed sufficient. *State ex rel. Seikbert v. Wilkinson*, 69 Ohio St.3d 489, 490, 633 N.E.2d 1128 (1994). Dismissal under Civ. R. 12(B)(6) is warranted if “it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” *O’Brien v. Univ. of Community Tenants Union, Inc.*, 42 Ohio St.2d 242, 245, 327 N.E.2d 753 (1975) (citation omitted). In reviewing a motion to dismiss under Civ. R. 12(B)(1) and 12(B)(6), the Court must accept as true all material allegations in the complaint and construe all reasonable inferences in the non-moving party’s favor. *Moore v. City of Middletown*, 133 Ohio St.3d 55, 56, 2012-Ohio-3897, 975 N.E.2d 977, ¶ 4, citing *Warth v. Sedlin*, 422 U.S. 490, 501, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975); *Mitchell v. Lawson Milk Co.*, 40 Ohio St.3d 190, 192, 532 N.E.2d 753 (1988).

**A. Relators lack standing to sue the Commission Respondents and Governor.**

Relators can only sue the individuals or entities that have harmed them. They do not allege that the Commission Respondents or the Governor have done so here. Thus, they lack standing to sue the Commission Respondents and Governor, and their claims against them must be dismissed. “Standing is a ‘jurisdictional’ requirement that must be met for a party to maintain a lawsuit.” *O’Neal v. State*, 2021-Ohio-3663, ¶ 9, quoting *Ohioans for Concealed Carry, Inc. v. Columbus*,

164 Ohio St.3d 291, 2020-Ohio-6724, 172 N.E.3d 935, ¶ 32, quoting *State ex rel. Dallman v. Franklin County Court of Common Pleas*, 35 Ohio St.3d 176, 179, 298 N.E.2d 515 (1973).

“A matter is justiciable only if the complaining party has standing to sue.” *ProgressOhio.org, Inc. v. JobsOhio*, 139 Ohio St. 3d 520, 2014-Ohio-2382, 13 N.E.3d 1101, ¶ 11, citing *Fed. Home Loan Mtge. Corp. v. Schwartzwald*, 134 Ohio St.3d 13, 2012-Ohio-5017, 979 N.E.2d 1214, ¶ 41 (“It is fundamental that a party commencing litigation must have standing to sue in order to present a justiciable controversy”). “Standing does not depend on the merits of the plaintiff’s claim,” instead it “depends on whether the plaintiffs have alleged such a personal stake in the outcome of the controversy that they are entitled to have a court hear their case.” *Id.* at ¶ 7 (additional citation omitted). Plaintiffs bear the burden to demonstrate standing at the time they file suit. *Fed. Home Loan Mtge. Corp.* at ¶ 27. “Traditional standing principles require litigants to show, at a minimum, that they have suffered ‘(1) an injury that is (2) fairly traceable to the defendant’s allegedly unlawful conduct, and (3) likely to be redressed by the requested relief.’” *ProgressOhio* at ¶ 7, citing *Moore*, 133 Ohio St.3d 55, 2012-Ohio-3897, 975 N.E.2d 977, ¶ 22.

Relators claim that they are harmed by the 2021 Congressional Plan, and they are repeatedly clear who drew and enacted it – the General Assembly. Compl. at ¶¶ 24, 25, 112-113, 132, 141. They do not allege that the Commission Respondents or the Governor are responsible for drawing or enacting it. *See generally*, Compl. In fact, they do not claim that there is any connection at all between the alleged harm and the Commission Respondents or the Governor. Construed in a light most favorable to the Relators, their Complaint lacks a fundamental piece of standing – causation. *ProgressOhio* at ¶ 17.

Because neither the Commission Respondents nor the Governor caused Relators’ harm, they also cannot remedy it. Relators’ standing faces yet another hurdle: redressability. Once again, “under

traditional standing principles, a plaintiff must show, at a minimum, not only that he or she has suffered an injury that is fairly traceable to the defendant’s allegedly unlawful conduct, but also that the requested relief is likely to redress that injury. *State ex rel. Walgate v. Kasich*, 147 Ohio St. 3d 1, 2016-Ohio-1176, 59 N.E.3d 1240, ¶ 48, citing *ProgressOhio.org* at ¶ 7. Relators blame the General Assembly for drawing the map. Compl. at ¶¶ 24, 25, 112-113, 132, 141. And, if this Court agrees with them *at all*, it is the General Assembly—not the Commission Respondents—that is required to remedy defects in the first instance. Ohio Const. Art. XIX Sec. 3(B)(1).

Nonetheless, Relators ask this Court to issue a declaration that the 2021 Congressional Plan adopted by “Respondents” is invalid for failing to comply with the Ohio Constitution. Compl., *Prayer for Relief*, ¶ A. They want a permanent injunction “barring Respondents from calling, holding, supervising, administering, or supervising any elections under the 2021 Congressional Plan[]” and ask this Court to “direct Respondents as to the characteristics of the plan to be adopted.” *Id.* ¶¶ B-C. Ultimately, Relators demand attorneys’ fees and costs from the Commission Respondents and the Governor despite the fact that they did not do anything. *Id.* ¶ E. They did not draw or enact the 2021 Congressional Plan. *See generally* Compl.

Relators cannot simply cut a wide swath, name everyone mentioned in the Ohio Constitution when it comes to Congressional map drawing, and hope for the best. They can only sue those who have caused them harm and who can redress the injury claimed. Here, the Commission Respondents and the Governor are not the proper parties. They cannot hold, administer or supervise elections, and Relators do not claim otherwise. They also cannot skip over the General Assembly and draw a Congressional Map if the 2021 Congressional Plan is found to be deficient. “‘Standing’ is defined at its most basic as ‘[a] party’s right to make a legal claim or seek judicial enforcement of a duty or right.’” *Clifton v. Blanchester*, 126 Ohio St.3d 1597, 2010



Ohio 4928, 935 N.E.2d 44., ¶ 15, quoting, *Ohio Pyro, Inc. v. Ohio Dept. of Commerce*, 115 Ohio St.3d 375, 2007 Ohio 5024, 875 N.E.2d 550, ¶ 27. Relators cannot sue the Commission Respondents to enforce duties that they do not have and cannot fulfill. The Commission Respondents and Governor cannot redress the injury asserted, and the claims against them must be dismissed.

Relators seem to understand their standing hurdles. So, they claim to be suing the Commission Respondents as “necessary parties,” Compl. at ¶ 21 who are responsible for “remedying an invalid plan *if* the General Assembly misses its deadline to do so.” *Id.* at ¶ 26 (emphasis added). But here, the Ohio Constitution gives this Court exclusive jurisdiction over challenges to a congressional map, regardless as to who is named. Ohio Const. Art. XIX, Sec. 3(A). It further imposes a mandatory duty (again, irrespective as to who is named), first on the General Assembly and then on the Ohio Redistricting Commission to remedy any or all of a congressional plan deemed to be invalid. Ohio Const. Art. XIX, Sec. 3(B). Simply put, Relators’ pleading preferences do not control what will happen if this Court determines that any portion of the 2021 Congressional Plan is invalid. The Ohio Constitution does. This Court does not “need” jurisdiction over the Ohio Redistricting Commission for it to carry out its constitutional duties. Relators cannot salvage their standing with a claim to the contrary.

**B. Relators fail to state a claim against the Commission Respondents and Governor.**

Even if the Complaint triggers the Court’s jurisdiction as to these parties, and it does not, it then fails to state a claim against them. Relators sue the Commission Respondents and the Governor for violating a constitutional provision that does not apply to them. Specifically, Relators bring two claims, one under Ohio Const. Art. XIX, Section 1(C)(3)(a) and one under Ohio Const. Art. XIX, Section 1(C)(3)(b). *Id.* at ¶¶ 131-145. Ohio Const. Art. XIX, Section 1(C)(3)

lays out the process by which the *General Assembly* must draw a Congressional Map if the Redistricting Commission fails to do so by October 31. It reflects what must happen in the third of the three step-process for congressional map drawing and it applies only to the General Assembly. *Id.* Once congressional redistricting is in this “third step,” there are two possibilities: a ten-year map or a four-year map. A plan passed by three-fifths of the General Assembly’s members of each house, including one-third of the affirmative votes of the two largest political parties represented in that house, remains in effect for ten years. Ohio Const. Art. XIX, Sec. 1(C)(2). A congressional plan approved only by a simple majority of the members of each house, remains in effect for two general election cycles for the United States House of Representatives, or 4 years. Ohio Const. Art. XIX, Sec. 1(C)(3)(e).

The Ohio Constitution places certain requirements on the *General Assembly* when passing a four-year map by a simple majority. *See* Ohio Const. Art. XIX, Sec. 1(C)(3). If the *General Assembly* passes a four-year congressional district plan, it “shall not pass a plan that unduly favors or disfavors a political party or its incumbents.” Ohio Const. Art. XIX, Sec. 1(C)(3)(a). It also “shall attempt to draw districts that are compact.” Ohio Const. Art. XIX, Sec. 1(C)(3)(c). On their face, neither of these provisions apply to the Commission Respondents or to the Governor. Nonetheless, Relators wrongly conclude that “Respondents” acted in bad faith by adopting a plan that violates both of them. Compl., ¶¶ 131-145.

As a matter of fact, the Commission Respondents and the Governor did not adopt the 2021 Congressional Plan. Compl. at ¶¶ 24, 25, 112-113, 132, 141. As a matter of law, they cannot violate Ohio Const. Art. XIX, Sec. 1(C)(3) when it does not apply to them. Relators fail to state a claim upon which relief can be granted against the Commission Respondents and Governor and they must be dismissed from this suit.

**C. Discovery Should be Stayed as to the Commission Respondents and Governor.**

Fact discovery should be stayed as to the Commission Respondents and Governor for two reasons. First, without a stay, the Commission Respondents and Governor will incur unnecessary burden and expense because this Motion ultimately will dispose of them as parties. Next, Relators seek information from the Commission Respondents and the Governor that is entirely unnecessary to resolve their sole challenge: whether the 2021 Congressional Plan unduly favors a political party or unduly splits governmental units. *See* Compl. ¶¶ 134-139, 142-145. Fact discovery is not necessary to answer either question.

A stay of discovery is proper pending resolution of a motion to dismiss when the motion would dispose of parties or the entire case. *White v. Cent. Ohio Gaming Ventures, LLC.*, 10th Dist. Franklin No. 18AP-780, 2019-Ohio-1078, ¶ 15, citing *Thomson v. Ohio Dep't of Rehab. & Corr.*, 10th Dist. Franklin No. 09AP-782, 2010-Ohio-416, ¶ 32; *Watley v. Wilkinson*, 10th Dist. Franklin No. 03AP-1039, 2004-Ohio-5062, ¶ 18. In *White*, the plaintiff appealed the trial court's stay of discovery pending its decision on the defendant's motion for judgment on the pleadings. *Id.* The appellate court affirmed the trial court's stay as a reasonable exercise of discretion because the defendant's "motion for judgment on the pleadings was a dispositive motion, and staying discovery in this context relieves the parties of incurring unnecessary expenses if the dispositive motion is granted." *Id.*; *see also Grover v. Bartsch*, 170 Ohio App. 3d 188, 2006-Ohio-6115, 866 N.E.2d 547, ¶ 10 (2d Dist.) (Trial court was within its discretion when it granted a stay of discovery pending a dispositive motion to dismiss.); *Watley* at ¶ 18, citing *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S.Ct. 2727 (1982) ("The United States Supreme Court has ruled that it is appropriate to stay discovery until the underlying action is determined. The purpose of this is to avoid subjecting parties to the burden and expense of discovery."); *Thomson* at ¶ 33 (Stay of discovery pending a motion to dismiss was not an abuse of discretion.).

Staying discovery is also appropriate when preliminary legal issues predominate, especially when the requested discovery will not aid in the resolution of the predominate legal issues. *State ex rel. Ohio Democratic Party v. Blackwell*, 111 Ohio St.3d 246, 2006-Ohio-5202, 855 N.E.2d 1188, ¶ 4 (Supreme Court stayed discovery pending resolution of jurisdictional issues); *State ex rel. Dann v. Taft*, 109 Ohio St.3d 364, 2006-Ohio-1825, 848 N.E.2d 472, ¶¶ 17-19 (Supreme Court stayed discovery pending resolution of legal issues involving executive privilege); *Moss v. Moyer*, 104 Ohio St.3d 1436, 1437, 2004-Ohio-7079, 819 N.E.2d 1121 (Discovery stayed pending preliminary determination of whether petitioner failed to state a fraud claim). In *State ex rel. Denton v. Bedinghaus*, 98 Ohio St.3d 298, 2003-Ohio-861, 784 N.E.2d 99, ¶ 32, this Court upheld a lower court’s denial of a motion for additional discovery to respond to a motion for summary judgment because the additional discovery sought “was unnecessary to resolve the pertinent issues raised.” *See also State ex rel. Ebbing v. Ricketts*, 133 Ohio St.3d 339, 2012-Ohio-4699, 978 N.E.2d 188, ¶¶ 20-21 (same result); *State ex rel. Sawyer v. Cuyahoga Cnty Dep’t of Children & Family Servs.*, 110 Ohio St.3d 343, 2006-Ohio-4574, 853 N.E.2d 657, ¶ 10 (same result).

The issue here is narrow: whether the 2021 Congressional Map, which was passed via a bill, complies with Ohio Const. Art. XIX, Sec. 1(C)(3)(a) and Sec. 1(C)(3)(b). The General Assembly speaks through its vote and “[t]he intention of the legislature is to be collected from the words they employ.” *State ex rel. Clay v. Cuy. Cty. Med. Exam’rs Ofc.*, 152 Ohio St.3d 163, 166, 2017-Ohio-8714, 94 N.E.3d 498, ¶ 14, quoting *United States v. Wiltberger*, 18 U.S. 76, 95-96, 5 L.Ed. 37 (1820). Fact discovery into what third parties who were not responsible for passing a bill does not shed any light on whether what the General Assembly passed in that bill was constitutional.

A stay of discovery as to the Commission Respondents and Governor is appropriate because the information that Relators seek is unnecessary to the resolution of the legal issues in this case. The written interrogatories, document requests and requests for admission served thus far seek extensive information, mostly about collateral matters such as any “proposed plans” that a member of the General Assembly proposed during the Article XIX process. *See* Relators’ Mot. for Scheduling Order, Ex. 3 at 29 (“The term “Proposed Plans” shall mean all Congressional redistricting plans introduced by a member of the General Assembly during 2021, including but not limited to the 2021 Congressional Plan, H.B. 479, and S.B. 258, as well as any subsequent amendment to or drafts thereof.”). Relators also demand other information that is wholly unrelated to the General Assembly’s passage of the 2021 Congressional Plan such as the Commission’s lack of action in passing a map and its hearing schedule during the Article XIX process. *Id.* at 33. None of this information bears on the legal claims against the 2021 Congressional Plan. Indeed, it is hard to imagine what relevant information the Commission Respondents and Governor would possess that directly bears on whether the General Assembly’s 2021 Congressional Plan violates Art. XIX, Sect. 1 (C)(3)(a) and (b) of the Ohio Constitution as Relators allege.

The Commission Respondents and Governor had no role in passing the 2021 Congressional Plan. They did not commit the alleged harm, and the Realtors have failed to state a claim against them. Nonetheless, Relators have served each of them with approximately 15 written interrogatories, 9 requests for admission, and 18 requests for production of documents. Relators anticipate that the discovery will inevitably lead to disputes and have asked that any such disputes be addressed to this Court by motion. *See* Motion for Scheduling Order, PDF p. 10. Given the over-breadth of the discovery requested, disputes are likely. But, the point is that there is no reason to have discovery disputes when the discovery itself is entirely unnecessary.

Nothing is gained by forcing the Commission Respondents and the Governor to engage in discovery on collateral matters about acts that they did not commit. As set forth in Secretary LaRose's Response to Relators' scheduling motion, there is simply no time for it. *See generally* Sec. LaRose's Response. A stay of discovery pending resolution of this Motion will protect the Commission Respondents and Governor from incurring unnecessary and burdensome expense. For all of these reasons, discovery as to the Commission Respondents and Governor should be stayed pending resolution of this Motion to Dismiss.

#### IV. CONCLUSION

The 2021 Congressional District Map can be challenged, but not like this. Neither the Commission Respondents nor the Governor can be sued for passing a Congressional District Plan that they did not pass and for violating a constitutional provision that does not apply to them. Relators claims against the Commission Respondents and the Governor, as they are sued in that capacity, must be dismissed pursuant to Civ. R. 12(B)(1) and 12(B)(6).

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that on November 29, 2021, the foregoing *Motion To Dismiss And To Stay Discovery Of The Ohio Redistricting Commission, Governor Mike DeWine In His Capacity As Governor And Commission Member, And Secretary Of State Frank LaRose, Auditor Keith Faber, Senator Vernon Sykes, House Minority Leader Emlia Sykes, Senate President Matt Huffman, And Speaker Bob Cupp In Their Official Capacities As Commission Members* was filed electronically.

I further certify that a copy of the foregoing has been served via the electronic mail upon the following counsel for Relators.

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