

**In the
Supreme Court of Ohio**

LEAGUE OF WOMEN VOTERS OF OHIO, et al.,	:	
	:	
<i>Relators,</i>	:	Case No. 2021-1449
	:	
v.	:	Original Action Pursuant to
	:	Ohio Const., art. XIX
GOVERNOR MICHAEL DEWINE, et al.,	:	
	:	Apportionment Case
<i>Respondents.</i>	:	

MOTION TO DISMISS, AND TO STAY CASE, AND TO STAY DISCOVERY OF THE OHIO REDISTRICTING COMMISSION, GOVERNOR MIKE DeWINE, 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 AND SECRETARY OF STATE FRANK LaROSE IN HIS OFFICIAL CAPACITIES AS SECRETARY OF STATE AND COMMISSION MEMBER.

DAVE YOST
OHIO ATTORNEY GENERAL

FREDA J. LEVENSON (0045916)
Counsel of Record
ACLU of Ohio Foundation, Inc.
4506 Chester Avenue
Cleveland, OH 44103
614-586-1972 x125
flevenson@acluohio.org

DAVID J. CAREY (0088787)
ACLU of Ohio Foundation, Inc.
1108 City Park Avenue, Suite 203
Columbus, OH 43206
Tel: 614-586-1972 x2004
dcarey@acluohio.org

Counsel for Relators

BRIDGET C. COONTZ (0072919)*
**Counsel of Record*
JULIE M. PFEIFFER (0069762)
MICHAEL A. WALTON (0092201)
Assistant Attorneys General
Constitutional Offices Section
30 E. Broad Street, 16th Floor
Columbus, Ohio 43215
Tel: 614-466-2872 | Fax: 614-728-7592
Bridget.Coontz@OhioAGO.gov
Julie.Pfeiffer@OhioAGO.gov
Michael.Walton@OhioAGO.gov

Counsel for Respondents

JULIE A. EBENSTEIN
(PHV 25423-2021)*
American Civil Liberties Union
125 Broad Street
New York, NY 10004
Tel: 212-519-7866
jebenstein@aclu.org

ROBERT D. FRAM (PHV 25414-2021)*
DONALD BROWN (PHV 25480-2021)*
DAVID DENUYL (PHV 25452-2021)*
JULIANA GOLDROSEN
(PHV 25193-2021)*
JOSHUA GONZÁLEZ
(PHV 25424-2021)*
Salesforce Tower
415 Mission Street, Suite 5400
San Francisco, CA 94105-2533
Tel: 415-591-6000
rfram@cov.com

Counsel for Relators
** Pro Hac Vice Motion Forthcoming*

JAMES SMITH*
SARAH SUWANDA*
ALEX THOMSON (PHV 25462-2021)*
L. BRADY BENDER (PHV 25192-2021)*
One CityCenter
850 Tenth Street, NW
Washington, DC 20001-4956
Tel: 202-662-6000
jmsmith@cov.com

ANUPAM SHARMA (PHV 25418-2021)*
YALE FU (PHV 25419-2021)*
3000 El Camino Real
5 Palo Alto Square, 10th Floor
Palo Alto, CA 94306-2112
Tel: 650- 632-4700
asharma@cov.com

Counsel for Relators
** Pro Hac Vice Motion Forthcoming*

**In The
Ohio Supreme Court**

LEAGUE OF WOMEN VOTERS OF OHIO, et al.,	:
	:
<i>Relators,</i>	:
	:
	: Case No. 2021-1449
	:
v.	:
	: Original Action Pursuant to
	: Ohio Const., Art. XIX, § 3(A)
GOVERNOR MIKE DEWINE, et al.,	:
	:
<i>Respondents.</i>	: Redistricting Case
	:

MOTION TO DISMISS, AND TO STAY CASE, AND TO STAY DISCOVERY OF THE OHIO REDISTRICTING COMMISSION, GOVERNOR MIKE DeWINE, 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 AND SECRETARY OF STATE FRANK LaROSE IN HIS OFFICIAL CAPACITIES AS SECRETARY OF STATE AND COMMISSION MEMBER.

Ohio Governor Mike DeWine, 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, Secretary of State Frank LaRose in his official capacities as Secretary and Commission Member, and the Ohio Redistricting Commission (“Commission Respondents”) move pursuant to Civ. R. 12(B)(1) and 12(B)(6) to dismiss the Complaint filed against them, to stay this case, and to stay discovery.

Relators failed to state a claim for which relief can be granted and the Complaint should be dismissed. Additionally, Relators failed to allege sufficient facts to establish standing to sue the Commission Respondents. Further, Relators failed to state a claim under Ohio Const. Art. XIX Section 1(C) against the Commission Respondents. Finally, this case should be stayed pending a merits decision in *Adams v. DeWine*, Case No. 2021-1428, and discovery as to the Commission Defendants should be stayed pending the Court’s decision on this Motion.

Respectfully submitted,

DAVE YOST
OHIO ATTORNEY GENERAL

/s/ Bridget C. Coontz

BRIDGET C. COONTZ (0072919)*

MICHAEL A. WALTON (0092201)

**Counsel of Record*

JULIE M. PFEIFFER (0069762)

Assistant Attorneys General

Constitutional Offices Section

30 E. Broad Street, 16th Floor

Columbus, Ohio 43215

Tel: 614-466-2872 | Fax: 614-728-7592

Bridget.Coontz@OhioAGO.gov

Julie.Pfeiffer@OhioAGO.gov

Michael.Walton@OhioAGO.gov

*Counsel for Respondents Ohio Governor DeWine,
Ohio Secretary of State LaRose, Ohio Auditor
Faber, House Speaker Robert R. Cupp, Senate
President Matt Huffman, Senator Vernon Sykes,
House Minority Leader Emilia Sykes and Ohio
Redistricting Commission*

TABLE OF CONTENTS

Table of Authorities iv

I. Introduction..... 1

II. BACKGROUND 2

III. Law And Argument 5

 A. Relators Fail to State a Claim Because Their Requested Relief is Unconstitutional. 6

 B. If Not Dismissed, This Case Should be Stayed. 10

 C. Relators Fail to State a Claim Against the Commission Respondents and Discovery Should be Stayed. 11

IV. Conclusion 12

Certificate Of Service 13

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Adams v. DeWine</i> , Case No. 2021-1428.....	<i>passim</i>
<i>Arnold v. City of Columbus</i> , 10th Dist. Franklin No. 14AP-418, 2015-Ohio-4873	10
<i>Athens v. McClain</i> , 163 Ohio St. 3d 61, 2020-Ohio-5146.....	6
<i>Beaver Excavating Co. v. Testa</i> , 134 Ohio St. 3d 565, 2012-Ohio-5776.....	6
<i>Binder v. Cuyahoga Cty.</i> , 161 Ohio St. 3d 395, 2020-Ohio-5126, 163 N.E.3d 554 (2020)	7, 8, 9, 10
<i>State ex rel. Bush v. Spurlock</i> , 42 Ohio St.3d 77, 537 N.E.2d 641 (1989)	5
<i>City of Cleveland v. State</i> , 157 Ohio St. 3d 330, 2019-Ohio-3820.....	6
<i>City of Hudson v. City of Akron</i> , 9th Dist. Summit No. 28011, 2017-Ohio-7590.....	7, 8
<i>State ex rel. Colvin v. Brunner</i> , 120 Ohio St.3d 110 (2008)	6
<i>State ex rel. Haber Polk Kabat, L.L.P. v. Sutula</i> , 2018-Ohio-2223, 114 N.E.3d 649 (8th Dist.)	10
<i>Kovar v. Latosky</i> , 11th Dist. Lake No. 2002-L-037, 2003-Ohio-1749	10
<i>Mitchell v. Lawson Milk Co.</i> , 40 Ohio St.3d 190, 532 N.E.2d 753 (1988)	5
<i>Moore v. City of Middletown</i> , 133 Ohio St.3d 55, 2012-Ohio-3897, 975 N.E.2d 977	5
<i>O’Brien v. Univ. of Community Tenants Union, Inc.</i> , 42 Ohio St.2d 242, 327 N.E.2d 753 (1975)	5
<i>Ohio High Sch. Ath. Ass’n v. Ruehlman</i> , 157 Ohio St.3d 296, 2019-Ohio-2845, 136 N.E.3d 436	7

Cases	Page(s)
<i>Riveredge Dentistry P’ship v. City of Cleveland</i> , 8th Dist. Cuyahoga No. 110275, 2021-Ohio-3817	8, 9
<i>State ex rel. Seikbert v. Wilkinson</i> , 69 Ohio St.3d 489, 633 N.E.2d 1128 (1994)	5
<i>Smith v. Leis</i> , 106 Ohio St. 3d 309, 2005-Ohio-5125.....	6
<i>State v. Hochhausler</i> , 76 Ohio St.3d 455, 1996-Ohio-374, 668 N.E.2d 457	10
<i>State v. Smith</i> , 162 Ohio St. 3d 353, 2020-Ohio-4441.....	6
<i>Toledo City School Dist. Bd. of Edn. v. State Bd. of Edn.</i> , 146 Ohio St. 3d 356, 2016-Ohio-2806.....	6
<i>Union Local Ass’n of Classroom Teachers OEA/NEA v. State Bd. of Educ.</i> , 7th Dist. Belmont No. 06 BE 33, 2007-Ohio-5053	8
<i>Volbers-Klarich v. Middletown Mgt. Inc.</i> , 125 Ohio St.3d 494, 2010-Ohio-2057, 929 N.E.2d 434	5
Statutes	Page(s)
R.C. 124.34	8
Other Authorities	Page(s)
Civ. R. 12(B)(1)	5
Civ. R. 12(B)(6)	<i>passim</i>
Ohio Const. Art. II, Sec. 16	2, 3
Ohio Const. Art. XIX, Sec. 1	7
Ohio Const. Art. XIX, Sec. 1(A)	4, 7
Ohio Const. Art. XIX, Sec. 1(C)(3)(b)	3
Ohio Const. Art. XIX, Sec. 1(F)(1)	3
Ohio Const. Art. XIX, Sec. 1(F)(3)	7
Ohio Const. Art. XIX, Sec. 3	1, 2, 7

Other Authorities	Page(s)
Ohio Const. Art. XIX, Sec. 3(B)(1).....	2, 6, 9, 10
Ohio Const. Art. XIX, Sec. 3(B)(2).....	2, 6

I. INTRODUCTION

This case should be dismissed because Relators demand an unconstitutional outcome. They ask this Court to invalidate the 2021 Congressional Plan (“Plan”) and send the Plan directly back to the Ohio Redistricting Commission, bypassing the General Assembly. Relators (“*LWV* Relators”) ask this Court to order the Ohio Redistricting Commission, not the General Assembly, to remediate any deficiencies in the Plan in the first instance. *See* Compl., *Prayer for Relief*, at 35-36. Relators’ requested relief violates the Ohio Constitution. Article XIX, Section 3 of the Constitution requires an invalidated plan to return *first* to the General Assembly and *then* to the Ohio Redistricting Commission, but only *if* the General Assembly fails to timely act. As a matter of law, this Court cannot grant relief that violates the Ohio Constitution and that the Commission Respondents have no constitutional authority to perform. Therefore, *LWV* Relators’ Complaint should be dismissed.

In the alternative, short of dismissing *LWV* Relators’ Complaint, this Court should stay this case pending resolution of *Adams v. DeWine*, Case No. 2021-1428. This case is entirely duplicative of the *Adams* case (other than the request for unconstitutional relief). Both cases present the same legal issue – whether the 2021 Congressional Plan passes constitutional muster. Thus, the merits decision in *Adams* will resolve this case too. In fact, this case is practically a carbon copy of *Adams*, right down to identical discovery demands. To conserve judicial resources and the precious little time left before crucial elections deadlines hit, and to prevent undue burden and expense on the Commission Respondents, this case should be stayed pending a merits decision in *Adams v. DeWine*.

The Commission Respondents should be dismissed from this case because *LWV* Relators have failed to state a claim against them. And, discovery should be stayed pending resolution of this Motion. Relators sue the Commission Respondents for something that they did not do –

draw and enact the 2021 Congressional Plan. And they sue the Commission Respondents for violating a constitutional provision that does not apply to them. Thus, LWV Relators lack standing to sue the Commission Respondents.

Again, Relators' Complaint is defective and must be dismissed. This is not to say that Relators cannot be heard. The Commission Respondents do not object to the *LWV* Relators filing an amicus brief in the *Adams* matter. But, they should not be parties, especially on a defective Complaint. For the reasons set forth in this Motion, as well as for the reasons set forth in the Commission Respondents' Motion to Dismiss filed in *Adams* and incorporated by reference herein, this case should be dismissed. In the alternative, it should be stayed pending the resolution of *Adams v. DeWine*.

II. BACKGROUND

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). Art. XIX, Sec. 3 of the Ohio Constitution sets out a clear remediation process for when a congressional district map is determined to be invalid. Sec. 3(B)(1) provides that if a congressional district plan is “determined to be invalid,” then 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.” Ohio Const. Art. XIX, Sec. 3(B)(1). The General Assembly must pass the congressional district plan no later than “the thirtieth day after the day on which the order is issued” and it must “remedy any legal defects in the previous plan.” *Id.*

The Ohio Constitution does not give the Ohio Redistricting Commission the authority to remedy an invalidated congressional district plan unless and until the General Assembly fails to timely act. Ohio Const. Art. XIX, Sec. 3(B)(2) states, “*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 in

accordance with Section 16 of Article II of this constitution, 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, to be used until the next time for redistricting under this article in accordance with the provisions of this constitution that are then valid.” (emphasis added). The Ohio Redistricting Commission has an additional thirty days to pass a plan that “remed[ies] any legal defects in the previous plan identified by the court.” *Id.* In other words, the Ohio Redistricting Commission’s power to draw and remediate congressional district maps is, in all respects, secondary to that of the General Assembly.

LWV Relators bring this Complaint on the heels of another group of Ohio voters who also challenge the 2021 Congressional Plan in *Adams v. DeWine*, Case No. 2021-1428. The *Adams* Relators allege that the 2021 Congressional Plan unduly favors the Republican Party and also unduly splits governmental units. *Adams* Compl., ¶¶ 131-145. The *LWV* Relators here make the identical claims. Compl. ¶¶ 113-125. Thus, both cases share the same legal issue - 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).

Like the *Adams* Relators, the *LWV* Relators do not allege that the Commission Respondents passed the 2021 Congressional Plan. They agree with the *Adams* Relators (as they must) that the General Assembly, not the Commission, passed the Plan by a simple majority as provided for by Art. XIX, Sec. 1(F)(1). Compl., ¶ 82; *see also*, *Adams* Compl., ¶¶ 24, 25, 112-113, 132, 141. As to the Commission Respondents, the *LWV* Relators only claim that the Commission did not pass a congressional plan despite urging from Senator Vernon Sykes. Compl. ¶ 66. Ultimately, their legal claims are not based on any wrongdoing by the Commission Respondents.

Nevertheless, the *Adams* Relators and now the *LWV* Relators served written interrogatories, document requests and requests for admission seeking extensive information, mostly about collateral matters such as any “proposed plans” that a member of the General Assembly proposed during the Article XIX process. Exhibit A; *see also Adams* Relators’ Mot. for Scheduling Order, Ex. 3, PDF 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.”). The *LWV* Relators and *Adams* 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.*

Not only did the *LWV* Relators file essentially the same Complaint as the *Adams* Relators, they copied and served the *Adams* Relators’ discovery requests as their own too. It is true, the Commission Respondents have been served with two sets of identical written interrogatories, requests for production of documents and requests for admissions – one from the *Adams* Relators and the same from the *LWV* Relators. *Compare* Ex. A¹ with *Adams* Relators’ Mot. for Scheduling Order, PDF 203-237. At bottom, the *LWV* Relators bring nothing new to the table. Yet, they demand separate attorneys’ fees and costs for essentially bringing the *Adams* case as their own. *Compl., Prayer for Relief*, ¶1G.

Time is of the essence and the fate of the 2021 Congressional Plan must be decided as quickly and efficiently as possible. The *LWV* Relators’ eleventh-hour—and completely

¹ Exhibit A consists of the *LWV* Relators’ discovery demands to Auditor Keith Faber. The same were issued to Governor DeWine and Secretary LaRose. No discovery requests were issued to Senator Sykes or Leader Sykes.

duplicative—lawsuit and discovery do nothing to foster efficiency. The *LWV* Relators’ Complaint can be, and should be dismissed in its entirety, as it fails to state a viable claim for relief. In the first alternative, because this case is materially the same as *Adams v. DeWine*, it should be stayed pending the outcome of that case. In the second alternative, the Commission Respondents should be dismissed as parties for all the reasons set forth in the Commission Respondents’ Motion to Dismiss and to Stay Discovery in *Adams v. DeWine*.

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, ¶ 3, 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 Fail to State a Claim Because Their Requested Relief is Unconstitutional.

“In construing our state Constitution,” the Court looks “first to the text of the document as understood in light of our history and traditions.” *State v. Smith*, 162 Ohio St. 3d 353, 2020-Ohio-4441 ¶29. The language of the Ohio Constitution “controls as written” because the People “chose its language carefully and deliberately.” *City of Cleveland v. State*, 157 Ohio St. 3d 330, 2019-Ohio-3820 ¶16. “Generally speaking, in construing the [Ohio] Constitution,” the Court applies “the same rules of construction” used “in construing statutes.” *Athens v. McClain*, 163 Ohio St. 3d 61, 2020-Ohio-5146 ¶29; *Toledo City School Dist. Bd. of Edn. v. State Bd. of Edn.*, 146 Ohio St. 3d 356, 2016-Ohio-2806 ¶16. As with statutes, the Court looks to text and structure to determine constitutional meaning. *See, e.g., Toledo City Sch.* 146 Ohio St. 3d 356 ¶16; *Smith v. Leis*, 106 Ohio St. 3d 309, 2005-Ohio-5125 ¶59; *Beaver Excavating Co. v. Testa*, 134 Ohio St. 3d 565, 2012-Ohio-5776 ¶36.

The text and structure of Article XIX's remedy section leaves no doubt that an invalidated congressional district plan must return to the General Assembly *first* to remediate any deficiencies, regardless of which entity passed the original plan. Ohio Const., Art. XIX, Sec. 3(B)(1). So, even if the Ohio Redistricting Commission had adopted a plan, which it did not, and this Court later invalidated any part of it, the hypothetical plan would still go to the General Assembly for remediation first. In fact, the Ohio Redistricting Commission cannot even be reconstituted for remediation purposes until the General Assembly has tried and failed to

remediate an invalidated plan. Ohio Const. Art. XIX, Sec. 3(B)(2). Relators' demand that this Court return the 2021 Congressional Plan directly to the Ohio Redistricting Commission violates this clear constitutional mandate. *See State ex rel. Colvin v. Brunner*, 120 Ohio St.3d 110; 2008-Ohio-5041, 896 N.E.2d 979, ¶45 (2008) (“We cannot generally add a requirement that does not exist in the Constitution or statute.”) Conversely, this Court cannot ignore a requirement that exists in the Constitution.

The structure of Article XIX supports the conclusion that the balance of power between the General Assembly and the Ohio Redistricting Commission in the congressional redistricting process is dependent upon its clearly defined sequence of events. To upset the sequence of events is to upset the balance of power granted by the Constitution. Take for example Section 1. The redistricting process volleys from the General Assembly in the first round, to the Ohio Redistricting Commission in the second round, and then back to the General Assembly in the third round. It is only after all of these volleys that the General Assembly can pass a congressional district plan by a simple majority. Ohio Const. Art. XIX, Sec. 1(F)(3). The same is true for remediating an invalidated plan. An invalidated plan returns first to the General Assembly and then to the Ohio Redistricting Commission. Ohio Const. Art. XIX, Sec. 3.

To return an invalidated plan directly to the Ohio Redistricting Commission, as Relators demand, would be to strip the General Assembly of its constitutionally granted first authority to remediate the plan. Because the Relators' requested relief contravenes Article XIX, Section 3, this Court lacks legal authority to grant it and the Commission Respondents lack legal authority to perform. *See Ohio High Sch. Ath. Ass'n v. Ruehlman*, 157 Ohio St.3d 296, 2019-Ohio-2845, 136 N.E.3d 436, ¶14 (Although a court may have subject-matter jurisdiction, it may lack the legal authority to grant the requested relief); *City of Hudson v. City of Akron*, 9th Dist. Summit

No. 28011, 2017-Ohio-7590, ¶ 14 (“the trial court properly concluded that it did not have authority to grant the relief requested by Hudson and dismissed the complaint for lack of a justiciable controversy”).

Dismissal under Civ.R. 12(B)(6) is appropriate when the plaintiff requests relief that (1) the court lacks the authority to grant OR (2) the defendant lacks the authority to perform. *See Binder v. Cuyahoga Cty.*, 161 Ohio St. 3d 395, 2020-Ohio-5126, 163 N.E.3d 554, ¶ 27 (“appellees’ claims here for declaratory relief and damages ultimately fail because R.C. 124.34 does not authorize that relief”); *Hudson* at ¶ 14 (dismissing the complaint based on the court’s inability to grant the requested relief; see *also*); *Union Local Ass’n of Classroom Teachers OEA/NEA v. State Bd. of Educ.*, 7th Dist. Belmont No. 06 BE 33, 2007-Ohio-5053, ¶ 18 (“Moreover, the School District has no authority to grant any of the relief requested. * * * Thus, the granting of the Civ.R. 12(B)(6) motion for the School District was not in error.”); *Riveredge Dentistry P’ship v. City of Cleveland*, 8th Dist. Cuyahoga No. 110275, 2021-Ohio-3817, ¶ 43 (dismissal under Rule 12(B)(6) appropriate, in part, because the defendant could not provide the relief requested).

In *Binder*, the Court considered “whether R.C. 124.34 allows civil-service employees to file a civil action in common pleas court to redress an alleged reduction in pay in violation of the statute.” *Binder* at ¶ 1. Ultimately, the Court answered the question in the negative, finding that the statute provided for relief via administrative actions. *See id.* at ¶ 2. While performing its analysis, the Court was asked to determine whether R.C. 124.34 stripped common pleas courts of subject-matter jurisdiction. *Id.* at ¶ 23. The Court found that the statute did nothing to divest courts of common pleas of jurisdiction. *See id.* at ¶ 26. Rather, because the Court determined that R.C. 124.34 precluded relief via a lawsuit brought in a court of common pleas, “appellees’

complaints do not present a jurisdictional defect, *but rather a failure to state a claim for which relief can be granted.*” *Id.* at ¶ 27 (emphasis added).

Similarly, in *Riveredge*, the plaintiff brought a negligence action against the defendant based on the defendant’s operation of its sewer system. *Riveredge* at ¶ 1. Specifically, the plaintiff alleged that storm-water retention basins installed near its property line caused significant flooding in a parking lot, which damaged its property. *Id.* at ¶ 10. The plaintiff later amended its complaint to bring claims against the regional sewer district, which was involved with securing funding for the project. *Id.* at ¶ 11-13. For the alleged negligence, the plaintiff sought both monetary damages and injunctive relief. *See id.* at ¶ 13. The regional sewer district filed a Civ.R. 12(B)(6) motion to dismiss, arguing that it did not own or operate the parking lot, did not design, construct, or locate the storm-water basins, did not contract with the builder of the storm-water basins, and was not responsible for the operation of the storm-water basins. *Id.* The appellate court held that plaintiff’s claims for money damages failed as the regional sewer district was immune from suit. *Id.* at ¶ 42. As to its claim for injunctive relief, the court found that the plaintiff failed to state a claim upon which relief could be granted as the regional sewer district could not “provide [plaintiff] the equitable relief it seeks.” *Id.* at ¶ 43. Specifically, the regional sewer district had “no control over the property or the water-retention basins and, therefore, ha[d] no authority or legal obligation to remove or alter the storm-water retention basins in order to remedy the ongoing flooding issues.” *Id.*

Here, like in *Binder* and *Riveredge*, this Court lacks the authority to grant the requested relief and the Ohio Redistricting Commission lacks authority to perform. Neither can bypass the General Assembly when it comes to drawing a new congressional district plan if necessary. If relief is granted, this Court can only order the General Assembly to “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.” Ohio Const., Art. XIX, Sec. 3(B)(1). To order otherwise would not only contravene the Ohio Constitution, but also the will of the People. For these same reasons, the Ohio Redistricting Commission lacks the legal authority to draw a new congressional district plan. That constitutionally-created duty lies first with the General Assembly and the *LWW* Relators have no authority to circumvent it. *See* Ohio Const. Art. XIX, Sec. 3(B)(1).

Because *LWW* Relators seek relief that this Court cannot grant and that the Ohio Redistricting Commission cannot perform, they have failed to state a claim, and dismissal of their Complaint is proper. *See Binder*, 161 Ohio St. 3d 395, 2020-Ohio-5126, 163 N.E.3d 554 at ¶ 27.

B. If Not Dismissed, This Case Should be Stayed.

In the alternative, the Court should stay this case pending a merits decision in *Adams*. This Court has broad discretion to stay proceedings as an incident to its power to control its own docket. *State v. Hochhausler*, 76 Ohio St.3d 455, 464, 668 N.E.2d 457 (1996); *see also, State ex rel. Haber Polk Kabat, L.L.P. v. Sutula*, 2018-Ohio-2223, 114 N.E.3d 649, ¶ 8 (8th Dist.) (“A court has broad discretion to control the flow of its docket and the judicial resources entrusted to it.”). “Among the factors that courts have held warrant a stay are the efficiency and judicial economy that results from staying matters pending resolution of potentially dispositive developments.” *Kovar v. Latosky*, 11th Dist. Lake No. 2002-L-037, 2003-Ohio-1749, ¶ 15, citing *State ex rel. Zellner v. Bd. of Edn.*, 34 Ohio St.2d 199, 202, 297 N.E.2d 528 (1973).

In all material aspects, this case is a carbon copy of *Adams*. The claims are the same. *Compare, LWW* Compl., ¶¶ 113-125, *with, Adams* Compl., ¶¶ 131-145. A merits decision in *Adams* will resolve the legal issues here. If this Court upholds the 2021 Congressional Plan in

Adams, it must uphold the Plan in this case too. Consequently, the same is true if the Court invalidates all or some of the Plan. There can be only one outcome for both cases. A stay of this case will conserve the Court's resources by ruling on the dispositive issues just once in *Adams*, the original action. A stay will also prevent the undue burden and expense on the Commission Respondents in being forced to litigate the same legal issues *twice*. They already face the unnecessary burden of potentially having to respond to redundant, excessive discovery demands on arguably irrelevant, collateral matters, in a matter of days. What is more, crucial elections deadlines are bearing down and timely resolution of the challenges to the Plan is paramount. True, *LWV* Relators offer their own expert witness on the constitutionality of the 2021 Congressional Plan. Compl. ¶¶ 86-100. But the *LWV* Relators are not entitled to be active litigants just to offer expert testimony. They could have, and probably should have, offered their expert opinion as *Amicus Curiae*. In the interest of judicial economy and in letting Relators be heard, the Commission Respondents do not object to the *LWV* Relators participating in the *Adams* case as amici and offering their expert's opinion in that capacity. But they should not be parties here, especially on this Complaint. *LWV* Relators should be satisfied with that compromise. In the event that they are not, a stay of this case kills two birds with one stone – it allows this Court to resolve the shared legal issue in time for the upcoming election cycle while saving the parties from unduly burdensome and unnecessary litigation expenses.

C. Relators Fail to State a Claim Against the Commission Respondents and Discovery Should be Stayed.

If the Court declines to dismiss the Complaint for failure to state a claim, the Commission Respondents should be dismissed as parties because the *LWV* Relators fail to state a claim against them, and discovery should be stayed pending resolution of this Motion. For the same reasons set forth in the Commission Respondents' Motion to Dismiss and to Stay Discovery filed

in the *Adams* case, Relators failed to state a claim under Civ.R. 12(B)(1) and (6). Finally, for the same reasons out lined in the *Adams* Motion to Dismiss and to Stay Discovery, discovery should be stayed here.

IV. CONCLUSION

For these reasons, the Complaint should be dismissed or the matter stayed pending a merits decision in *Adams v. DeWine*. In alternative, the Commission Respondents should be dismissed as parties and discovery stayed pending resolution of this Motion.

Respectfully submitted,

DAVE YOST
OHIO ATTORNEY GENERAL

/s/ Bridget C. Coontz

BRIDGET C. COONTZ (0072919)*

**Counsel of Record*

MICHAEL A. WALTON (0092201)

JULIE M. PFEIFFER (0069762)

Constitutional Offices Section

30 E. Broad Street, 16th Floor

Columbus, Ohio 43215

Tel: 614-466-2872 | Fax: 614-728-7592

Bridget.Coontz@OhioAGO.gov

Julie.Pfeiffer@OhioAGO.gov

Michael.Walton@OhioAGO.gov

Counsel for Respondents Ohio Governor DeWine, Ohio Secretary of State LaRose, Ohio Auditor Faber, House Speaker Robert R. Cupp, Senate President Matt Huffman, Senator Vernon Sykes, House Minority Leader Emilia Sykes and Ohio Redistricting Commission

CERTIFICATE OF SERVICE

I hereby certify that on December 2, 2021, the foregoing *Motion To Dismiss, And To Stay Case, And To Stay Discovery Of The Ohio Redistricting Commission, Governor Mike Dewine, 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 And Secretary Of State Frank Larose In His Official Capacities As Secretary Of State And Commission Member* was filed electronically. I further certify that a copy of the foregoing has been served via electronic mail upon the following counsel for Relators.

FREDA J. LEVENSON (0045916)
Counsel of Record
ACLU of Ohio Foundation, Inc.
flevenson@acluohio.org

DAVID J. CAREY (0088787)
ACLU of Ohio Foundation, Inc.
dcarey@acluohio.org

JULIE A. EBENSTEIN
(PHV 25423-2021)*
American Civil Liberties Union
jebenstein@aclu.org

ROBERT D. FRAM (PHV 25414-2021)*
DONALD BROWN (PHV 25480-2021)*
DAVID DENUYL (PHV 25452-2021)*
JULIANA GOLDROSEN (PHV 25193-2021)*
JOSHUA GONZÁLEZ (PHV 25424-2021)*
rfram@cov.com
dwbrown@cov.com
jgoldrosen@cov.com
jgonzalez@cov.com

Counsel for Relators
** Pro Hac Vice Motion Forthcoming*

JAMES SMITH*
SARAH SUWANDA*
ALEX THOMSON (PHV 25462-2021)*
L. BRADY BENDER (PHV 25192-2021)*
jmsmith@cov.com
athomson@cov.com
bbender@cov.com

ANUPAM SHARMA (PHV 25418-2021)*
YALE FU (PHV 25419-2021)*
asharma@cov.com
yfu@cov.com
Counsel for Relators
** Pro Hac Vice Motion Forthcoming*

/s/ Bridget C. Coontz
BRIDGET C. COONTZ (0072919)*
Assistant Attorney General

Exhibit A

Discovery Requests from LWV Relators

IN THE SUPREME COURT OF OHIO

League of Women Voters of Ohio, et al.

Relators,

v.

Governor Mike DeWine, et al.

Respondents.

Case No. _____

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

**RELATORS' FIRST SET OF INTERROGATORIES, PROPOUNDED TO
RESPONDENT AUDITOR KEITH FABER**

Robert D. Fram (PHV 25414-2021)*
Donald Brown (PHV 25480-2021)*
Joshua González (PHV 25424-2021)*
David Denuyl (PHV 25452-2021)*
Juliana Goldrosen (PHV 25193-2021)*
Salesforce Tower
415 Mission Street, Suite 5400
San Francisco, CA 94105-2533
(415) 591-6000
rfram@cov.com

James Smith*
Sarah Suwanda*
Alex Thomson (PHV 25462-2021)*
L. Brady Bender (PHV 25192-2021)*
One CityCenter
850 Tenth Street, NW
Washington, DC 20001-4956
(202) 662-6000
jmsmith@cov.com

Anupam Sharma (PHV 25418-2021)*
Yale Fu (PHV 25419-2021)*
3000 El Camino Real
5 Palo Alto Square, 10th Floor
Palo Alto, CA 94306-2112
(650) 632-4700
asharma@cov.com

Dave Yost (0056290)
Bridget C. Coontz (0072919)
Counsel of Record
Julie M. Pfeiffer (006762)
Michael A. Walton (0092201)
Ohio Attorney General
Constitutional Offices Section
30 E. Broad Street, 16th Floor
Columbus, Ohio 43215
(614) 466-2872
Dave.Yost@OhioAGO.gov
Bridget.Coontz@OhioAGO.gov
Julie.Pfeiffer@OhioAGO.gov
Michael.Walton@OhioAGO.gov

*Counsel for Respondents Ohio Governor
DeWine, Ohio Secretary of State LaRose,
and Ohio Auditor Keith Faber*

Freda J. Levenson (0045916)
Counsel of Record
ACLU of Ohio Foundation, Inc.
4506 Chester Avenue
Cleveland, OH 44103
(614) 586-1972 x125
flevenson@acluohio.org

David J. Carey (0088787)
ACLU of Ohio Foundation, Inc.
1108 City Park Avenue, Suite 203
Columbus, OH 43206
(614) 586-1972 x2004
dcarey@acluohio.org

Julie A. Ebenstein (PHV 25423-
2021)*
American Civil Liberties Union
125 Broad Street
New York, NY 10004
(212) 519-7866
jebenstein@aclu.org

Counsel for Relators

* *Pro Hac Vice Motion*
Forthcoming

Pursuant to Rules 26 and 33 of the Ohio Rules of Civil Procedure, Relators hereby propound to Respondent Auditor Keith Faber the following interrogatories, to be answered in writing by December 3, 2021. Responses to the following requests shall be produced to the offices of the ACLU of Ohio Foundation, Inc., 1108 City Park Avenue, Suite 203, Columbus, OH 43206. Alternately, the responses may be produced electronically to BBender@cov.com.

DEFINITIONS AND INSTRUCTIONS

- A. Notwithstanding any definition set forth below, each word, term, or phrase used in these Interrogatories is intended to have the broadest meaning permitted under the Ohio Rules of Civil Procedure.
- B. Words or terms not specifically defined herein have the meaning commonly understood, and no definition is intended as exclusive.
- C. The following terms shall have the meanings indicated below:
 - (1) The terms “Respondent,” “you,” and “your” shall mean: Auditor Keith Faber individually, as a member of the Ohio Redistricting Commission, and in your capacity as Auditor, as well as your present and former agents, assigns, employees, partners, successors, predecessors, associates, personnel, staff, officers, representatives, attorneys, and other persons or entities acting or purporting to act on your behalf.
 - (2) The term “Commission” shall mean the Ohio Redistricting Commission.
 - (3) The term “General Assembly” shall mean the Ohio General Assembly, including but not limited to the Ohio House of Representatives, the Ohio Senate, the Ohio Senate Local Government and Elections Committee, the Ohio House Government Oversight Committee, the Ohio General Assembly Joint Committee on Redistricting, and their respective members and staff.
 - (4) The term “2021 Congressional Plan” shall mean the Congressional district plan proposed by Senator Rob McColley on November 15, 2021, and approved on November 18, 2021, or any drafts thereof.
 - (5) The term “H.B. 479” shall mean the Congressional district plan proposed by Representative Scott Oelslager on November 3, 2021, or any subsequent amendments to that plan, or any drafts of that plan or its subsequent amendments.
 - (6) The term “S.B. 258” shall mean the Congressional district plan proposed by Senator Rob McColley on November 3, 2021, or any subsequent amendments to that plan, or any drafts of that plan or its subsequent amendments.

- (7) 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 amendments to or drafts thereof.
- (8) The term “map drawer” shall mean anyone who assisted in the creation of any Proposed Plan.
- (9) The terms “Section 1(C)(3)(d) statement” or “1(C)(3)(d) statement” shall mean the statement, required under Section 1(C)(3)(d) of Article XIX of the Ohio Constitution, explaining the 2021 Congressional Plan’s “compliance with divisions (C)(3)(a) to (c) of [that] section.”
- (10) The term “Maptitude or other mapping software” means any and all digital programs that may be used to assist in drawing Congressional districts, including but not limited to Maptitude, a software program created by Caliper Corporation.
- (11) The term “describe” shall mean to set forth fully and unambiguously every fact that relates to the answer called for by the Interrogatory of which you have knowledge and to identify each individual or entity with knowledge or information that relates to your answer, and when used in reference to a factual or legal contention, to describe the full factual and legal basis for the contention, and to identify any and all persons that you believe have knowledge about each such fact or document.
- (12) The term “person” shall mean and include natural persons, governmental entities, proprietorships, corporations, partnerships, joint ventures, and each other form of organization, entity, or association.
- (13) The term “identify” shall mean, with respect to any natural person, to state his or her full name, present or last known residential address, present or last known business address, and telephone number(s).
- (14) The term “identify” shall mean, with respect to any business organization, corporation or other legal entity, to state its full name, present or last known address, principal place of business, and telephone number.
- (15) The term “identify” shall mean, with respect to any document, to state the date of the document and the type of the document (e.g., letter, memorandum, telegram, chart, photograph, sound reproduction, etc.), to identify the person(s) who prepared the document, to identify any person(s) who signed the document, to identify any person(s) to whom the document was sent, to identify the present location and custodian of the document, and to describe the contents of the document.
- (16) The term “document” is used in the broadest possible sense and shall mean, without limitation, any kind of written, printed, recorded or graphic matter, however produced

or reproduced, of any kind or description, whether sent or received or neither, including originals, copies and drafts and both sides of originals, copies and drafts, and including but not limited to papers, books, letters, correspondence, telegrams, cables, telex messages, text messages, electronic messages or electronic mail (whether or not stored or recorded on-line or off-line in archive storage), financial statements, memoranda, notes, notations, work papers, transcripts, minutes, reports and recordings of telephone conversations or other conversations, or of interviews, or of conferences or other meetings, affidavits, statements, summaries, opinions, reports, studies, analyses, evaluations, contracts, agreements, journals, statistical records, desk calendars, appointment books, diaries, expense account records, lists, tabulations, summaries, sound recordings, videotapes, word processing disks and/or memory or archive systems, computer disks and/or memory or archive systems, computer printouts, data processing input and output, magnetic tapes, magnetic disks, microfilms, all other records kept by electronic, magnetic, photographic, optical or mechanical means, and things similar to any of the foregoing, however denominated.

- (0) The term “communication” shall mean the transmission of any verbal or nonverbal, written or non-written message, information, sign, symbol, or behavior, and shall include the process by which such transmission occurs.
- (1) The terms “relating to” and “concerning” shall mean referring to, related to, regarding, consisting of, pertaining to, reflecting, evidencing, describing, constituting, or being in any way logically or factually connected with the matter discussed, including any connection, direct or indirect, whatsoever with the requested topic, without limitation, unless otherwise specified in the Request.

D. The following rules of construction apply to all Interrogatories:

- a. The terms “all” and “any” shall each be construed as encompassing any and all;
- b. All uses of the word “each” include “every” (and vice versa);
- c. The connective terms “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the Interrogatories all responses that might otherwise be construed to be outside of its scope;
- d. The term “including” shall be construed without limitation;
- e. The use of a verb in any tense encompasses the use of the verb in all tenses;
- f. References to agents, assigns, employees, partners, successors, predecessors, associates, personnel, staff, officers, agents, representatives, attorneys, and other persons or entities acting or purporting to act on your behalf include both current and former agents, assigns, employees, partners, successors, predecessors, associates, personnel, staff, officers, agents, representatives, attorneys, and other persons or

entities acting or purporting to act on your behalf; and

- g. References to any entity include all of that entity's agents, assigns, employees, partners, successors, predecessors, associates, personnel, staff, officers, agents, representatives, attorneys, and other persons or entities acting or purporting to act on that entities' behalf.
 - h. The singular number and masculine gender shall include, and be applied as, the plural or the feminine gender or neuter, and vice-versa, as the circumstances of the particular interrogatory may make appropriate.
- E. All interrogatories should be answered based on the knowledge of Respondents and/or any of Respondent's attorneys, agents, and representatives.
 - F. Where an interrogatory calls for the answer in more than one part, each part shall be separately answered so as to be fully understandable. If you object to any part of an interrogatory, answer all parts of such interrogatory as to which you do not object, and as to each part to which you do object, set forth the basis for the objection.
 - G. If you objective to the scope or time period of an interrogatory and refuse to answer for that scope or time period, please state your objection and answer the request for the scope or time period you believe is appropriate.
 - H. If you object to any interrogatory as vague or unclear, assume a reasonable meaning, state what the assumed meaning is, and respond to the interrogatory according to the assumed meaning.
 - I. If you object to any interrogatory as overbroad, provide a response that narrows the interrogatory in a way that eliminates the purported overbreadth, state the extent to which your response has narrowed the interrogatory, and respond to the narrowed interrogatory.
 - J. If you withhold the answer to any part of any interrogatory on the claim of privilege, state the specific factual and legal basis for doing so and answer any part of the interrogatory that is not alleged to be objectionable. Such information should be supplied in sufficient detail to permit the Relators to assess the applicability of the privilege claimed.
 - K. If you are unable to respond to any of the interrogatories fully and completely, after exercising due diligence to obtain the information necessary to provide a full and complete response, so state, and answer each such interrogatory to the fullest extent possible, specifying the extent of your knowledge and your inability to answer the remainder, and setting forth whatever information or knowledge you may have concerning the unanswered portions thereof and efforts you made to obtain the requested information.
 - L. These interrogatories are continuing so as to require further and supplemental responses if Respondents receive or discover additional information between the time of original response and the time of any hearing, trial, or other presentation of evidence in this matter.

INTERROGATORIES

INTERROGATORY #1

Identify all individuals involved both formally and informally in the drawing of the 2021 Congressional Plan, including, but not limited to members of the General Assembly, their staff, consultants, and advisors (both paid and unpaid).

ANSWER:

INTERROGATORY #2

Describe the role played by any individuals identified in Interrogatory No. 1.

ANSWER:

INTERROGATORY #3

Identify and describe all instructions provided to individuals who created, or were in any way involved in the creation of, any Proposed Plan, including, but not limited to members of the General Assembly, their staff, consultants, and advisors (both paid and unpaid).

ANSWER:

INTERROGATORY #4

Identify and describe any and all factors, constraints, influences, or considerations, regardless of whether or not mentioned in Article XIX of the Ohio Constitution, that were considered, adopted, or otherwise reflected in the creation of any Proposed Plans that you, or any member of the Ohio Redistricting Commission or their representative, introduced to the Ohio Redistricting Commission, including, but not limited to, the 2021 Congressional Plan, and describe how you and the Ohio Redistricting Commission prioritized these factors, constraints, influences, and considerations.

ANSWER:

INTERROGATORY #5

Identify and describe any and all attempts that were made by you and/or the General Assembly to comply with Section 1(C)(3)(a), Section 1(C)(3)(b), or Section 1(C)(3)(c), of Article XIX of the Ohio Constitution in creating any Proposed Plan that you, or any member of the General Assembly or their representative, introduced to the General Assembly, including, but not limited to, the 2021 Congressional Plan.

ANSWER:

INTERROGATORY #6

Identify and describe any persons who received compensation for services rendered in the creation of any Ohio Congressional map that the General Assembly considered and/or adopted in 2021.

ANSWER:

INTERROGATORY #7

Identify all individuals with whom you communicated about Congressional district plans introduced or passed during 2021.

ANSWER:

INTERROGATORY #8

Identify all data and information about potential or actual Ohio Congressional districts to which the map drawer(s) had access during the process of drawing any Proposed Plan, including but not limited to data or information showing partisan performance, incumbent addresses, and racial demographics.

ANSWER:

INTERROGATORY #9

Identify all data filters, displays, or reports that the map drawer(s) viewed or otherwise reviewed or considered while drawing any Proposed Plan, including but not limited to partisan performance indices, voting age population by race, and incumbent addresses.

ANSWER:

INTERROGATORY #10

Identify and describe all dates, times, places, and attendees of any meeting at which you discussed Congressional redistricting in 2021.

ANSWER:

INTERROGATORY #11

Identify all persons who drafted or created, or were in any way involved in the drafting or creation of the Proposed Plans and, for each identified person, the date or dates on which he or she drafted it.

ANSWER:

INTERROGATORY #12

Identify all persons who submitted maps, data, information, requests, or input that you used to draft the Proposed Plans, incorporated into the Proposed Plans, or caused to be included or incorporated into part or all of the Proposed Plans.

ANSWER:

INTERROGATORY #13

Identify all persons who, prior to the public release of each Proposed Plan, evaluated, reviewed, analyzed, were shown, or commented on the Proposed Plan or on maps, data, or plans that you used to draft the Proposed Plan, incorporated into the Proposed Plan, or adopted as part or all of the Proposed Plan.

ANSWER:

INTERROGATORY #14

Identify and describe all persons who participated in the drafting of the Section 1(C)(3)(d) statement.

ANSWER:

INTERROGATORY #15

Describe your involvement in the creation of the Section 1(C)(3)(d) statement.

ANSWER:

VERIFICATION

STATE OF OHIO :
 :
COUNTY OF :
 :

SS.

I, _____, being first duly sworn, depose and say that the foregoing answers to the First Set of Interrogatories propounded by Relator are true and complete to the best of my knowledge, information, and belief.

Sworn to before me and subscribed in my presence this _____ day of _____, .

Notary Public

COMMISSION
EXPIRATION:

Respectfully submitted,

/s/ Freda J. Levenson

Freda J. Levenson* (0045916)

**Counsel of Record*

ACLU of Ohio Foundation, Inc.

4506 Chester Avenue

Cleveland, Ohio 4410

Tel: 614-586-1972 x 125

flevenson@acluohio.org

Robert D. Fram (PHV 25414-2021)*

Donald Brown (PHV 25480-2021)*

Joshua González (PHV 25424-2021)*

David Denuyl (PHV 25452-2021)*

Juliana Goldrosen (PHV 25193-2021)*

Salesforce Tower

415 Mission Street, Suite 5400

San Francisco, CA 94105-2533

(415) 591-6000

rfram@cov.com

James Smith*

Sarah Suwanda*

Alex Thomson (PHV 25462-2021)*

L. Brady Bender (PHV 25192-2021)*

One CityCenter

850 Tenth Street, NW

Washington, DC 20001-4956

(202) 662-6000

jmsmith@cov.com

Anupam Sharma (PHV 25418-2021)*

Yale Fu (PHV 25419-2021)*

3000 El Camino Real

5 Palo Alto Square, 10th Floor

Palo Alto, CA 94306-2112

(650) 632-4700

asharma@cov.com

David J. Carey (0088787)

ACLU of Ohio Foundation, Inc. 1108

City Park Avenue, Suite 203 Columbus,
OH 43206

(614) 586-1972 x2004

dcarey@acluohio.org

Julie A. Ebenstein (PHV 25423-2021)*
American Civil Liberties Union
125 Broad Street
New York, NY 10004
(212) 519-7866
jebenstein@aclu.org

Counsel for Relators

** Pro Hac Vice Motion Forthcoming*

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was sent via email this 30 day of November, 2021 to the following:

Bridget C. Coontz, bridget.coontz@ohioago.gov
Julie M. Pfeiffer, julie.pfeiffer@ohioago.gov
Michael A. Walton, michael.walton@ohioago.gov

*Counsel for Respondents Ohio Governor DeWine,
Ohio Secretary of State LaRose, and Ohio Auditor Keith Faber*

/s/ Freda J. Levenson
Freda J. Levenson (0045916)

IN THE SUPREME COURT OF OHIO

League of Women Voters of Ohio, et al.

Relators,

v.

Governor Mike DeWine, et al.

Respondents.

Case No. _____

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

**RELATORS' FIRST SET OF REQUESTS FOR ADMISSION, PROPOUNDED TO
RESPONDENT AUDITOR KEITH FABER**

Robert D. Fram (PHV 25414-2021)*
Donald Brown (PHV 25480-2021)*
Joshua González (PHV 25424-2021)*
David Denuyl (PHV 25452-2021)*
Juliana Goldrosen (PHV 25193-2021)*
Salesforce Tower
415 Mission Street, Suite 5400
San Francisco, CA 94105-2533
(415) 591-6000
rfram@cov.com

James Smith*
Sarah Suwanda*
Alex Thomson (PHV 25462-2021)*
L. Brady Bender (PHV 25192-2021)*
One CityCenter
850 Tenth Street, NW
Washington, DC 20001-4956
(202) 662-6000
jmsmith@cov.com

Anupam Sharma (PHV 25418-2021)*
Yale Fu (PHV 25419-2021)*
3000 El Camino Real
5 Palo Alto Square, 10th Floor
Palo Alto, CA 94306-2112
(650) 632-4700
asharma@cov.com

Dave Yost (0056290)
Bridget C. Coontz (0072919)
Counsel of Record
Julie M. Pfeiffer (006762)
Michael A. Walton (0092201)
Ohio Attorney General
Constitutional Offices Section
30 E. Broad Street, 16th Floor
Columbus, Ohio 43215
(614) 466-2872
Dave.Yost@OhioAGO.gov
Bridget.Coontz@OhioAGO.gov
Julie.Pfeiffer@OhioAGO.gov
Michael.Walton@OhioAGO.gov

*Counsel for Respondents Ohio Governor
DeWine, Ohio Secretary of State LaRose, and
Ohio Auditor Keith Faber*

Freda J. Levenson (0045916)
Counsel of Record
ACLU of Ohio Foundation, Inc.
4506 Chester Avenue
Cleveland, OH 44103
(614) 586-1972 x125
flevenson@acluohio.org

David J. Carey (0088787)
ACLU of Ohio Foundation, Inc.
1108 City Park Avenue, Suite 203
Columbus, OH 43206
(614) 586-1972 x2004
dcarey@acluohio.org

Julie A. Ebenstein (PHV 25423-2021)*
American Civil Liberties Union
125 Broad Street
New York, NY 10004
(212) 519-7866
jebenstein@aclu.org

Counsel for Relators
** Pro Hac Vice Motion Forthcoming*

Pursuant to Rules 26 and 36 of the Ohio Rules of Civil Procedure, Relators hereby propound to Respondent Auditor Keith Faber the following requests for admission, to be answered in writing by December 3, 2021. Responses to the following requests shall be produced to the offices of the ACLU of Ohio Foundation, Inc., 1108 City Park Avenue, Suite 203, Columbus, OH 43206. Alternately, the responses may be produced electronically to BBender@cov.com.

INSTRUCTIONS

- A. You shall either admit or specifically deny the requested matter. If you qualify your answer or deny only a part of the requested matter, you shall specify which part is true and qualify or deny the remainder. If you deny in whole or in part any request, state the reason(s) for each denial. See Ohio R. Civ. P. 36(A)(2).
- B. If you cannot admit or specifically deny any Request for Admission fully and completely after exercising due diligence to make inquiry and secure the information to do so, please so state and admit or specifically deny each such Request to the fullest extent possible; specify the portion of each Request that you claim to be unable to admit or specifically deny; and state the facts upon which you rely to support your contention that you are unable to admit or specifically deny the specified portion of the requested matter. See Ohio R. Civ. P. 36(A)(2).
- C. If you object to any portion of any Request, you shall admit or specifically deny that portion of the request to which you have no objection, and you shall specify the portion of the request being objected to and the basis for the objection. See Ohio R. Civ. P. 36(A)(2).
- D. If you claim that the attorney-client privilege or any other privilege or protection is applicable to any of the requested information, you shall set forth separately at least the following information:
 - a. The type of information withheld;
 - b. A detailed description of the subject matter of the information;
 - c. The name, address, and job title of each person who received or conveyed this information; and
 - d. The basis for the claim of privilege or protection.

Such information should be supplied in sufficient detail to permit Relators to assess the applicability of the privilege claimed.

- E. These requests are directed to you and cover all information in your possession, custody, or control.
- F. These requests are deemed continuing, and supplemental responses should be provided as additional information becomes available, in accordance with Ohio Rule of Civil Procedure 26(e).

REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION #1

Admit that you are a member of the Ohio Redistricting Commission.

ANSWER:

REQUEST FOR ADMISSION #2

Admit that the Republican members of the Ohio General Assembly did not introduce any congressional maps for consideration during September 2021.

ANSWER:

REQUEST FOR ADMISSION #3

Admit that the Ohio General Assembly did not vote any congressional district maps by the September 30, 2021 deadline set forth in Article XIX, Section 1(A) of the Ohio Constitution.

ANSWER:

REQUEST FOR ADMISSION #4

Admit that the Ohio General Assembly did not pass a congressional district map by the September 30, 2021 deadline set forth in Article XIX, Section 1(A) of the Ohio Constitution.

ANSWER:

REQUEST FOR ADMISSION #5

Admit that the Ohio Redistricting Commission did not vote on any congressional district maps prior to the October 31, 2021 deadline set forth in Article XIX, Section 1(B) of the Ohio Constitution.

ANSWER:

REQUEST FOR ADMISSION #6

Admit that the Ohio Redistricting Commission did not pass a congressional district map by the October 31, 2021 deadline set forth in Article XIX, Section 1(B) of the Ohio Constitution.

ANSWER:

REQUEST FOR ADMISSION #7

Admit that each document you have produced or will produce in response to Relators' requests for production of documents and things and Relators' interrogatories is kept in the course of regularly conducted business activity.

ANSWER:

VERIFICATION

STATE OF OHIO :
 :
COUNTY OF :
 :

SS.

I, _____, being first duly sworn, depose and say that the foregoing answers to the First Set of Requests for Admission propounded by Relator are true and complete to the best of my knowledge, information, and belief.

Sworn to before me and subscribed in my presence this ____ day of _____,
_____.

Notary Public

COMMISSION
EXPIRATION: _____

Respectfully submitted,

/s/ Freda J. Levenson

Freda J. Levenson (0045916)

Counsel of Record

ACLU of Ohio Foundation, Inc.

4506 Chester Avenue

Cleveland, Ohio 4410

Tel: 614-586-1972 x 125

flevenson@acluohio.org

Robert D. Fram (PHV 25414-2021)*

Donald Brown (PHV 25480-2021)*

Joshua González (PHV 25424-2021)*

David Denuyl (PHV 25452-2021)*

Juliana Goldrosen (PHV 25193-2021)*

Salesforce Tower

415 Mission Street, Suite 5400

San Francisco, CA 94105-2533

(415) 591-6000

rfram@cov.com

James Smith*

Sarah Suwanda*

Alex Thomson (PHV 25462-2021)*

L. Brady Bender (PHV 25192-2021)*

One CityCenter

850 Tenth Street, NW

Washington, DC 20001-4956

(202) 662-6000

jmsmith@cov.com

Anupam Sharma (PHV 25418-2021)*

Yale Fu (PHV 25419-2021)*

3000 El Camino Real

5 Palo Alto Square, 10th Floor

Palo Alto, CA 94306-2112

(650) 632-4700

asharma@cov.com

David J. Carey (0088787)

ACLU of Ohio Foundation, Inc. 1108

City Park Avenue, Suite 203

Columbus, OH 43206

(614) 586-1972 x2004

dcarey@acluohio.org

Julie A. Ebenstein (PHV 25423-2021)*
American Civil Liberties Union
125 Broad Street
New York, NY 10004
(212) 519-7866
jebenstein@aclu.org

Counsel for Relators
** Pro Hac Vice Motion Forthcoming*

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was sent via email this 30 day of November, 2021 to the following:

Bridget C. Coontz, bridget.coontz@ohioago.gov

Julie M. Pfeiffer, julie.pfeiffer@ohioago.gov

Michael A. Walton, michael.walton@ohioago.gov

Counsel for Respondents

/s/ Freda J. Levenson
Freda J. Levenson (0045916)

IN THE SUPREME COURT OF OHIO

League of Women Voters of Ohio, et al.

Relators,

v.

Governor Mike DeWine, et al.

Respondents.

Case No. _____

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

**RELATORS' FIRST SET OF REQUESTS FOR PRODUCTION, PROPOUNDED TO
RESPONDENT AUDITOR KEITH FABER**

Robert D. Fram (PHV 25414-2021)*
Donald Brown (PHV 25480-2021)*
Joshua González (PHV 25424-2021)*
David Denuyl (PHV 25452-2021)*
Juliana Goldrosen (PHV 25193-2021)*
Salesforce Tower
415 Mission Street, Suite 5400
San Francisco, CA 94105-2533
(415) 591-6000
rfram@cov.com

James Smith*
Sarah Suwanda*
Alex Thomson (PHV 25462-2021)*
L. Brady Bender (PHV 25192-2021)*
One CityCenter
850 Tenth Street, NW
Washington, DC 20001-4956
(202) 662-6000
jmsmith@cov.com

Anupam Sharma (PHV 25418-2021)*
Yale Fu (PHV 25419-2021)*
3000 El Camino Real
5 Palo Alto Square, 10th Floor
Palo Alto, CA 94306-2112
(650) 632-4700
asharma@cov.com

Dave Yost (0056290)
Bridget C. Coontz (0072919)
Counsel of Record
Julie M. Pfeiffer (006762)
Michael A. Walton (0092201)
Ohio Attorney General
Constitutional Offices Section
30 E. Broad Street, 16th Floor
Columbus, Ohio 43215
(614) 466-2872
Dave.Yost@OhioAGO.gov
Bridget.Coontz@OhioAGO.gov
Julie.Pfeiffer@OhioAGO.gov
Michael.Walton@OhioAGO.gov

*Counsel for Respondents Ohio Governor
DeWine, Ohio Secretary of State LaRose,
and Ohio Auditor Keith Faber*

Freda J. Levenson (0045916)
Counsel of Record
ACLU of Ohio Foundation, Inc.
4506 Chester Avenue
Cleveland, OH 44103
(614) 586-1972 x125
flevenson@acluohio.org

David J. Carey (0088787)
ACLU of Ohio Foundation, Inc.
1108 City Park Avenue, Suite 203
Columbus, OH 43206
(614) 586-1972 x2004
dcarey@acluohio.org

Julie A. Ebenstein (PHV 25423-
2021)*
American Civil Liberties Union
125 Broad Street
New York, NY 10004
(212) 519-7866
jebenstein@aclu.org

Counsel for Relators

* *Pro Hac Vice Motion*
Forthcoming

Pursuant to Rule 34 of the Ohio Rules of Civil Procedure, Relators hereby propound to Respondent Auditor Keith Faber the following requests for production of documents, to be responded to by December 3, 2021. Documents responsive to the following requests shall be produced to the offices of the ACLU of Ohio Foundation, Inc., 1108 City Park Avenue, Suite 203, Columbus, OH 43206. Alternately, the documents may be produced electronically to BBender@cov.com.

DEFINITIONS AND INSTRUCTIONS

- A. Notwithstanding any definition set forth below, each word, term, or phrase used in these requests is intended to have the broadest meaning permitted under the Ohio Rules of Civil Procedure.
- B. Words or terms not specifically defined herein have the meaning commonly understood, and no definition is intended as exclusive.
- C. The following terms shall have the meanings indicated below:
 - (1) The terms “Respondent,” “you,” and “your” shall mean: Auditor Keith Faber individually, as a member of the Ohio Redistricting Commission, and in your capacity as Auditor, as well as your present and former agents, assigns, employees, partners, successors, predecessors, associates, personnel, staff, officers, representatives, attorneys, and other persons or entities acting or purporting to act on your behalf.
 - (2) The term “Commission” shall mean the Ohio Redistricting Commission.
 - (3) The term “General Assembly” shall mean the Ohio General Assembly, including but not limited to the Ohio House of Representatives, the Ohio Senate, the Ohio Senate Local Government and Elections Committee, the Ohio House Government Oversight Committee, the Ohio General Assembly Joint Committee on Redistricting, and their respective members and staff.
 - (4) The term “2021 Congressional Plan” shall mean the Congressional district plan proposed by Senator Rob McColley on November 15, 2021, and approved by the General Assembly on November 18, 2021, or any drafts thereof.
 - (5) The term “H.B. 479” shall mean the Congressional district plan proposed by Representative Scott Oelslager on November 3, 2021, or any subsequent amendments to that plan, or any drafts of that plan or its subsequent amendments.
 - (6) The term “S.B. 258” shall mean the Congressional district plan proposed by Senator Rob McColley on November 3, 2021, or any subsequent amendments to that plan, or

any drafts of that plan or its subsequent amendments.

- (7) 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 amendments to or drafts thereof.
- (8) The term “map drawer” shall mean anyone who assisted in the creation of any Proposed Plan, regardless of whether or not they were compensated for their services.
- (9) The terms “Section 1(C)(3)(d) statement” or “1(C)(3)(d) statement” shall mean the statement, required under Section 1(C)(3)(d) of Article XIX of the Ohio Constitution, explaining the 2021 Congressional Plan’s “compliance with divisions (C)(3)(a) to (c) of [that] section.”
- (10) The term “Maptitude or other mapping software” means any and all digital programs that may be used to assist in drawing Congressional districts, including but not limited to Maptitude, a software program created by Caliper Corporation.
- (11) The term “person” shall mean and include natural persons, governmental entities, proprietorships, corporations, partnerships, joint ventures, and each other form of organization, entity, or association.
- (12) The term “document” is used in the broadest possible sense and shall mean, without limitation, any kind of written, printed, recorded or graphic matter, however produced or reproduced, of any kind or description, whether sent or received or neither, including originals, copies and drafts and both sides of originals, copies and drafts, and including but not limited to papers, books, letters, correspondence, telegrams, cables, telex messages, text message, electronic messages or electronic mail (whether or not stored or recorded on-line or off-line in archive storage), financial statements, memoranda, notes, notations, work papers, transcripts, minutes, reports and recordings of telephone conversations or other conversations, or of interviews, or of conferences or other meetings, affidavits, statements, summaries, opinions, reports, studies, analyses, evaluations, contracts, agreements, journals, statistical records, desk calendars, appointment books, diaries, expense account records, lists, tabulations, summaries, sound recordings, videotapes, word processing disks and/or memory or archive systems, computer disks and/or memory or archive systems, computer printouts, data processing input and output, magnetic tapes, magnetic disks, microfilms, all other records kept by electronic, magnetic, photographic, optical or mechanical means, and things similar to any of the foregoing, however denominated.
- (13) The term “communication” shall mean the transmission of any verbal or nonverbal, written or non-written message, information, sign, symbol, or behavior, and shall include the process by which such transmission occurs.
- (14) The terms “relating to” and “concerning” shall mean referring to, related to,

regarding, consisting of, pertaining to, reflecting, evidencing, describing, constituting, or being in any way logically or factually connected with the matter discussed, including any connection, direct or indirect, whatsoever with the requested topic, without limitation, unless otherwise specified in the Request.

D. The following rules of construction apply to all requests for production:

- a. The terms “all” and “any” shall each be construed as encompassing any and all;
- b. All uses of the word “each” include “every” (and vice versa);
- c. The connective terms “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the requests all responses that might otherwise be construed to be outside of its scope;
- d. The term “including” shall be construed without limitation;
- e. The use of a verb in any tense encompasses the use of the verb in all tenses;
- f. References to agents, assigns, employees, partners, successors, predecessors, associates, personnel, staff, officers, agents, representatives, attorneys, and other persons or entities acting or purporting to act on your behalf include both current and former agents, assigns, employees, partners, successors, predecessors, associates, personnel, staff, officers, agents, representatives, attorneys, and other persons or entities acting or purporting to act on your behalf; and
- g. References to any entity include all of that entity’s agents, assigns, employees, partners, successors, predecessors, associates, personnel, staff, officers, agents, representatives, attorneys, and other persons or entities acting or purporting to act on that entities’ behalf.
- h. The singular number and masculine gender shall include, and be applied as, the plural or the feminine gender or neuter, and vice-versa, as the circumstances of the particular request may make appropriate.

E. Each request for documents shall be construed according to its most inclusive meaning so that if information or a document is responsive to any reasonable interpretation of the request, the information or document is responsive.

F. If you deem any request for documents to call for the production of privileged or otherwise nondisclosable materials and you assert such claim, furnish a list at the time of production identifying each document so withheld together with the following information:

- (1) the reason for withholding each such document or material, stated with sufficient particularity so as to permit the Court to adjudicate the validity of the claimed privilege;

- (2) a statement of the facts constituting the basis for any claim of privilege or other ground of non-disclosure; and
 - (3) a brief description of each such document or other material, including:
 - (a) the date of the document;
 - (b) the name of its author(s) or preparer(s) and an identification by employment and title of each such person(s);
 - (c) the name of each person to whom the document or other material was sent or who has had access to, or custody of, the document or other material, together with an identification of each such person(s);
 - (d) the paragraph of this request to which the document or other material is responsive; and
 - (e) in the case of any document or other material that relates in any way to a meeting or conversation, identification of such meeting or conversation and the persons attending or participating in such meeting or conversation.
- G. With respect to each document request, Relators request that Respondents identify and produce all documents that are known to Respondents or that Respondents can locate or discover that are in Respondents' possession, custody or control, from whatever source derived, which, directly or indirectly, relate, refer or pertain to the subject matter of the request made, including, without limitation, all such documents in the files (whether they be denominated personal, business or any other files) in the possession, custody or control of Respondents or, as applicable, of Respondents' employees, agents, representatives or other persons acting on Respondents' behalf or under Respondents' control.
- H. Relators request that, if Respondents are unable to respond to any of the requests fully and completely, after exercising due diligence to obtain the information necessary to provide a full and complete response, so state, and answer each such request to the fullest extent possible, specifying the extent of Respondents' knowledge and Respondents' inability to answer the remainder, and setting forth whatever information or knowledge Respondents may have concerning the unanswered portions thereof and efforts Respondents made to obtain the requested information. If Respondents have no information responsive to a request, then Respondents shall so state.
- I. Relators request that Respondents produce all responsive documents and other materials in an orderly manner (and with appropriate markings or other identification) so that Relators will be able to identify the source of the document or other material, the file in which the document or other material was maintained, the person to whom such file belongs, and the specific request to which the document or other material is responsive.
- J. These requests shall be deemed to be continuing so as to require further and supplemental

production if Respondents receive or discover additional documents or other material between the time of original production and the time of any hearing, trial, or other presentation of evidence in this matter.

- . All documents are to be produced in electronic form. Documents produced electronically should be produced in native format with all metadata intact. For any election or voter data file, please produce in CSV format if available. If this is not available, please produce in PDF format. For other documents, to the extent documents can be accurately represented in black and white, they should be produced in single-page Tagged Image File Format (“TIFF”), together with any related field-delimited load files (e.g., Concordance DAT, CSV, OPT, LOG). Each TIFF document shall be produced with an image load file in standard Opticon (*.log) format that reflects the parent / child relationship and also includes the beginning Bates number; ending Bates number; beginning Attachment Bates number; ending Attaching Bates number; custodian; date sent (for email messages); date modified (for email and non-email messages) where information is available; author (for email and non-email messages); and subject (for email messages). The TIFF images shall also be accompanied by extracted text or, for those files that do not have extracted text upon being processed (such as hard copy documents), optical character recognition (“OCR”) text data; such extracted text or OCR text data shall be provided in document level form and named after the TIFF image. Documents that contain redactions shall be OCR’d after the redaction is applied to the image, and the OCR will be produced in place of extracted text at the document level. Notwithstanding the foregoing, the parties may negotiate a separate production format (including native format) for any documents not reasonably producible or readable as standard image files, such as audio files or large spreadsheets.
- A. For documents produced in TIFF format that originated in electronic form, metadata shall be included with the data load files described above and shall include (at a minimum) the following information: file name (including extension); original file path; page count; creation date and time; last saved date and time; last modified date and time; author; custodian of the document (that is, the custodian from whom the document was collected or, if collected from a shared drive or server, the name of the shared drive or server); and MD5 hash value. In addition, for email documents, the data load files shall also include the following metadata: sent date; sent time; received date; received time; “to” name(s) and address(es); “from” name and address; “cc” name(s) and address(es); “bcc” name(s) and address(es); subject; names of attachment(s); and attachment(s) count. All images and load files must be named or put in folders in such a manner that all records can be imported without modification of any path or file name information.
- B. If a responsive Communication, Document, or tangible thing has been prepared in copies that are not identical, or if additional copies have been made that are no longer identical, or if original identical copies are no longer identical by reason of subsequent notations on the front or back of pages thereto, each non-identical copy is a separate Communication, Document, or tangible thing and shall be produced.
- C. Produce any password-protected documents with any applicable passwords.

REQUEST FOR PRODUCTION OF DOCUMENTS

1. All documents and communications concerning the Ohio Redistricting Commission's decision not to propose or vote on any Congressional maps in 2021.

ANSWER:

2. All documents and communications concerning the Ohio Redistricting Commission's decision to hold only one hearing during the Congressional redistricting process, on October 28, 2021.

ANSWER:

3. All documents and communications concerning the drawing of Congressional districts following the 2020 census, including but not limited to communications between and/or among your employees, staff, officers, agents, or representatives.

ANSWER:

4. All documents and communications concerning any factors you considered in the creation, consideration, and/or passage of any Proposed Plan.

ANSWER:

5. All documents and communications concerning any instructions you received or provided regarding the creation of any Proposed Plan.

ANSWER:

6. All documents and communications concerning any Proposed Plan, including (as specified in the definition above) any drafts thereof.

ANSWER:

7. Documents sufficient to establish all persons who assisted you in the creation of any Proposed Plan.

ANSWER:

8. All documents relating to meetings—both formal and informal—of any General Assembly members related to the drawing of Congressional maps, including, without limitation, testimony, meeting minutes, data sets, maps, notes, and plans submitted to, created by, or otherwise considered by you, any member of the General Assembly or their staff; minutes, agendas, or presentations from General Assembly hearings or meetings; and any related communications, including, but not limited to, those with any member of the General Assembly (or representatives thereof).

ANSWER:

9. All documents relating to information that was used to draw Congressional district maps for Ohio, including, without limitation, and produced in native format: shapefiles; all files or data sets used in Maptitude or other mapping software; and files pertaining to precinct names, precinct lines, partisan indexes or other partisan data, racial data, election results, population shifts, voter registration, voter affiliation, or changing census block lines for the 2018 election, 2020 election, and current redistricting cycle.

ANSWER:

10. All documents including, without limitation, requests for proposals, proposals, contracts, communications, and timesheets or invoices, relating to consultants, firms, vendors, or other third parties, including, without limitation, John Morgan, Christopher Glassburn, Clark Bensen, relating to consultants, firms, vendors, or other third parties consulted, involved in, or communicated with by you, any member of the General Assembly or its staff, any member of the Ohio Redistricting Commission or their staff, or the Ohio Redistricting Commission or its staff, relating to any Proposed Plan.

ANSWER:

11. All communications with the Ohio Legislative Service Commission or any of its staff or directors relating to drawing any Proposed Plan.

ANSWER:

12. All communications relating to drawing any Proposed Plan, with (1) any current or former member of Ohio's General Assembly and (2) any current or former staff of any current or former member of Ohio's General Assembly.

ANSWER:

13. All communications relating to drawing any Proposed Plan with (1) any current or former U.S Representative or U.S. Senator including, without limitation, United States House of Representatives Republican Leadership and House Minority Leader Kevin McCarthy and (2) any current or former staff of any current or former U.S. Representative or U.S. Senator.

ANSWER:

14. All communications relating to drawing any Proposed Plan with the Republican National Committee, the Ohio Republican Party, including, without limitation, Robert Paduchik, the National Republican Redistricting Trust, the National Republican Congressional Committee, including, without limitation, National Republican Congressional Committee Chair Tom Emmer, or any political action committee.

ANSWER:

15. All documents relating to analysis conducted by you, any other member of the Ohio General Assembly or their staff, the Ohio General Assembly or its staff, the Ohio Redistricting Commission or its staff, or a member of the Ohio Redistricting Commission or their staff; regarding whether any Proposed Plan complied with the Ohio Constitution, including but not limited to Article XIX, Section 1(C)(3)(a) and Section 1(C)(3)(b) of the Ohio Constitution.

ANSWER:

16. All documents and communications regarding the potential, expected, or likely partisan performance or electoral outcomes of any district or districts in the 2021 Congressional Plan.

ANSWER:

17. All documents and communications related to the Section 1(C)(3)(d) statement.

ANSWER:

18. All documents and communications discussed in, relied on, or relating to any of your responses to an interrogatory served on you by a party in this suit.

ANSWER:

Respectfully submitted,

/s/ Freda J. Levenson

Freda J. Levenson* (0045916)

**Counsel of Record*

ACLU of Ohio Foundation, Inc.

4506 Chester Avenue

Cleveland, Ohio 4410

Tel: 614-586-1972 x 125

flevenson@acluohio.org

Robert D. Fram (PHV 25414-2021)*

Donald Brown (PHV 25480-2021)*

Joshua González (PHV 25424-2021)*

David Denuyl (PHV 25452-2021)*

Juliana Goldrosen (PHV 25193-2021)*

Salesforce Tower

415 Mission Street, Suite 5400

San Francisco, CA 94105-2533

(415) 591-6000

rfram@cov.com

James Smith*

Sarah Suwanda*

Alex Thomson (PHV 25462-2021)*

L. Brady Bender (PHV 25192-2021)*

One CityCenter

850 Tenth Street, NW

Washington, DC 20001-4956

(202) 662-6000

jmsmith@cov.com

Anupam Sharma (PHV 25418-2021)*

Yale Fu (PHV 25419-2021)*

3000 El Camino Real

5 Palo Alto Square, 10th Floor

Palo Alto, CA 94306-2112

(650) 632-4700

asharma@cov.com

David J. Carey (0088787)

ACLU of Ohio Foundation, Inc. 1108

City Park Avenue, Suite 203 Columbus,
OH 43206

(614) 586-1972 x2004

dcarey@acluohio.org

Julie A. Ebenstein (PHV 25423-2021)*
American Civil Liberties Union
125 Broad Street
New York, NY 10004
(212) 519-7866
jebenstein@aclu.org

Counsel for Relators

** Pro Hac Vice Motion Forthcoming*

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was sent via email this 30 day of November, 2021 to the following:

Bridget C. Coontz, bridget.coontz@ohioago.gov
Julie M. Pfeiffer, julie.pfeiffer@ohioago.gov
Michael A. Walton, michael.walton@ohioago.gov

*Counsel for Respondents Ohio Governor DeWine,
Ohio Secretary of State LaRose, and Ohio Auditor Keith Faber*

/s/ Freda J. Levenson
Freda J. Levenson (0045916)