

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DISTRICT**

THE HONORABLE REVEREND	:	CASE NO. 4:22-cv-612
KENNETH L. SIMON, ET AL	:	
	:	
PLAINTIFFS,	:	RELATED CASE NOS. 2:21-CV-2267
	:	AND 4:88-CV-1104
	:	
VS.	:	CIRCUIT JUDGE JOAN L. LARSEN
	:	JUDGE SOLOMON OLIVER
GOVERNOR MIKE DEWINE, ET AL.	:	JUDGE JOHN R. ADAMS
	:	
DEFENDANTS.	:	“CLASS-ACTION ALLEGATIONS”
	:	
	:	“CLAIM OF
	:	UNCONSTITUTIONALITY”

**SIMON PLAINTIFFS’ REQUEST FOR JUDICIAL NOTICE OF DAVID NIVEN,
Ph D’s ANALYSIS OF OHIO’S SIXTH CONGRESSIONAL DISTRICT**

In accordance with the provisions of Fed. R. Evid. 201 Plaintiffs respectfully request that this Court take judicial notice of the analysis of David Niven, Professor of Political Science, University of Cincinnati. The analysis of Dr. Niven provides additional support for Plaintiffs’ claim that the 6th District is unlawfully gerrymandered.

I. LAW AND ARGUMENT

Judicial notice is governed by Fed. R. Evid. 201, which provides, in pertinent part:

Rule 201. Judicial Notice of Adjudicative Facts

(a) Scope. This rule governs judicial notice of an adjudicative fact only, not a legislative fact.

(b) Kinds of Facts That May Be Judicially Noticed. The court may judicially notice a fact that is not subject to reasonable dispute because it:

(1) is generally known within the trial court’s territorial jurisdiction; or

(2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.

(c) Taking Notice. The court:

(1) may take judicial notice on its own; or

(2) must take judicial notice if a party requests it and the court is supplied with the necessary information.

(d) Timing. The court may take judicial notice at any stage of the proceeding.

(e) Opportunity to Be Heard. On timely request, a party is entitled to be heard on the propriety of taking judicial notice and the nature of the fact to be noticed. If the court takes judicial notice before notifying a party, the party, on request, is still entitled to be heard.

Fed. R. Evid. 201. (Emphasis added.)

Federal Rule of Evidence 201 authorizes this Court to take judicial notice of such admissions because they are "not subject to reasonable dispute in that" they are "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Fed. Rule Evid. 201(b), Singh v. Ashcroft, 393 F.3d 903, 905 (9th Cir. 2004). Further, the Rule mandates that judicial notice be taken where it is "requested by a party and supplied with the necessary information," id. at 201(d), and authorizes judicial notice "at any stage of the proceeding," id. at 201(f).

Many courts have taken judicial notice of the type of information at issue in this request. See, e.g., Texas & Pac. Ry. Co. v. Pottorff, 291 U.S. 245, 254 n. 4 (1933), amended on other grounds, 291 U.S. 649 (1934) (taking judicial notice of official reports put forth by the Comptroller of the Currency); Ieradi v. Mylan Laboratories, Inc., 230 F.3d 594, 597-98 (3rd Cir. 2000) (taking judicial notice of information in a newspaper article); Blair v City of Pomona, 223 F.3d 1074 (9th Cir. 2000) (taking judicial notice of an independent commission's report on the code of silence among police officers); Heliotrope Gen., Inc. v. Ford Motor Co., 189 F.3d 971, 981 (9th Cir. 1999) (taking judicial notice of information contained in news articles); Clemmons v Bohannon, 918 F.2d 858, 865 (10th Cir. 1990).

II. CONCLUSION

It is respectfully requested that the Court take judicial notice of the analysis at Exhibit A.

/s/ Percy Squire
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served by operation of the United States District Court, Northern District of Ohio electronic filing system, on June 12, 2024.

/s/ Percy Squire
Attorney for Plaintiffs (0022010)

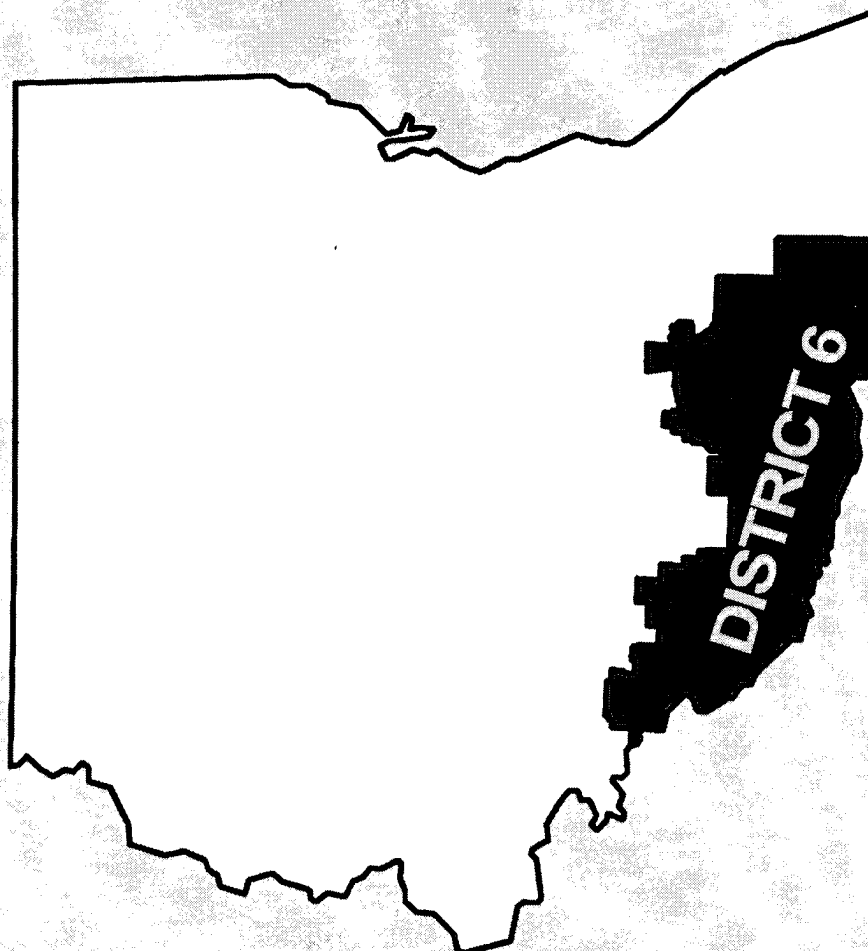
Ohio's Sixth Congressional District: A District of Strangers

STRANGERS IN THE DISTRICT 6

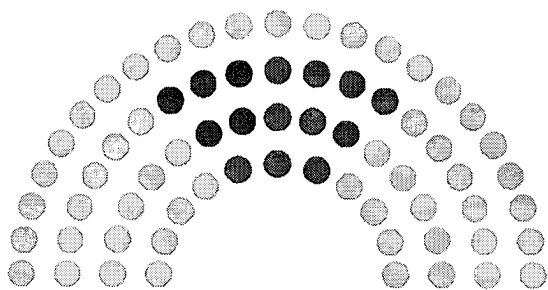
EXHIBIT

A

By David Niven, Ph.D.
For the League of Women Voters of Ohio



The Purpose of Congressional Districts



435

Ohio has 15 of the 435 seats in the US Congress.

A member of the U.S. House of Representatives can represent a community far more successfully than they can represent a District of otherwise disconnected places and people knitted together without respect to their backgrounds, values, and interests. The purpose of dividing states into Congressional Districts in the first place –rather than electing representatives in statewide at-large elections— is to unite communities and create meaningful, recognizable, coherent units within a state to foster robust representation.

In an effort to understand how members of Congress represent their Districts and the people within them, political scientist Richard Fenno spent years observing members in their Congressional Districts, in what he called “their natural habitats.”² What he saw, with remarkable consistency, was the degree to which members were affected by the nature and structure of their districts. “Members thrive where some sense of community already exists,” Fenno wrote. “They are products of it, they identify with it, they celebrate it, they even legitimate it; but they do not create it.” In short, the quality of representation voters receive is partially dependent on the qualities of their districts’ boundaries.³

In evaluating the legitimacy of a Congressional District’s boundaries and whether they are truly fair, there is then one central question. Does the geographic, cultural, and economic makeup of the District foster robust representation? The 6th U.S. House District of Ohio – which stretches three hours from Coolville to Youngstown, which encompasses four different regional economies, which slices apart predominantly African American areas of Massillon, which divides even a two-building school system into multiple Congressional Districts – miserably fails this standard.

In short, the quality of representation people receive is partially dependent on the qualities of their Districts’ boundaries.

¹ Grofman, Bernard. “Would Vince Lombardi Have Been Right If He Had Said: When it Comes to Redistricting, Race Isn’t Everything, It’s the Only Thing.” *Cardozo L. Rev.* 14 (1992): 1237.

² Fenno, Richard F. *Home style: House members in their districts*. Boston: Little, Brown (p, 155).

³ Fenno, 156.

Cultural Distance

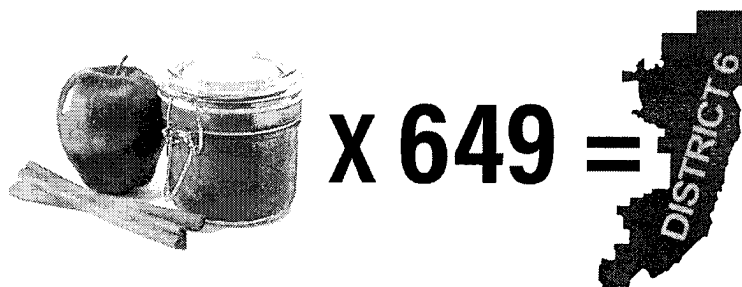


It is a 200-mile drive from the southern tip of the 6th District in Washington County to the northern edge of the District in Mahoning County. Not surprisingly, the District is culturally incoherent – even with respect to the national pastime.⁴ In the northern portion of the District, the Cleveland Guardians are the favorite team. In the central portion of the District, the Pittsburgh Pirates are most popular. In the southern reaches of the District, the Cincinnati Reds are number one.

Indeed, the existence of Distinct cultural regions within the District is one of its defining features. The varied media markets that serve the District reinforce this point, as the 6th District spans four media markets principally serving Cleveland, Youngstown, Parkersburg, WV, and Wheeling, WV.⁵

Perhaps even more notable than the disconnected people who were assembled into this District by the Ohio Redistricting Commission are the closely connected people who were divided out of it.

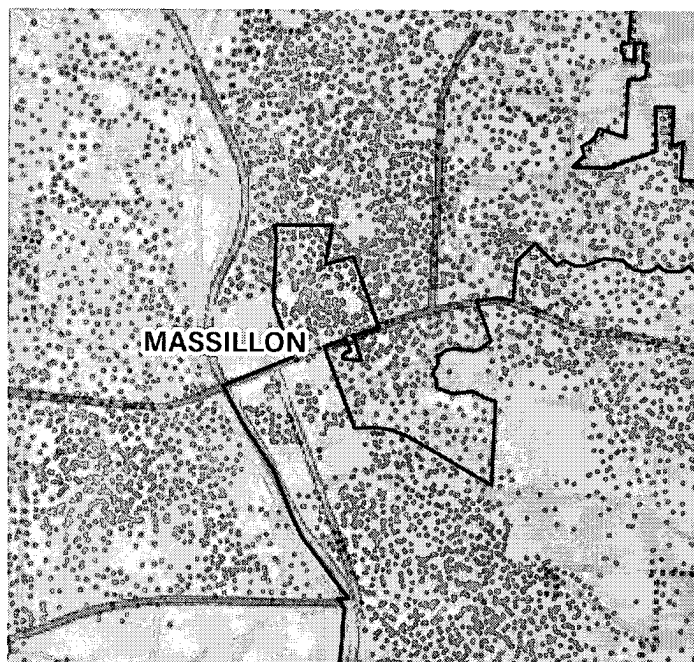
Gnadenhutten (population 1,211) is a quintessential small town in Ohio. The social highlight of the year is the Apple Butter Fest. **The population of Gnadenhutten could fit inside an Ohio Congressional District 649 times.** But rather than keeping this Distinct community intact, it was split between the 6th and 12th districts.



⁴ Ticket sales: <https://www.vividseats.com/blog/most-popular-mlb-teams-by-state-county/map>. Facebook likes: <https://www.nytimes.com/interactive/2014/04/24/upshot/facebook-baseball-map.html>

⁵ <https://www.transportation.ohio.gov/about-us/media-resources/media-resources>

Cultural Distance, continued



Dots represent concentration of minority voters. The blue area is the 6th District. The beige area is 13th.

Massillon (Stark County) has a large, politically-cohesive African American population. Rather than keeping this clear community of interest united in one Congressional District, the Ohio Redistricting Commission sliced Massillon into two pieces, specifically cutting off areas with large concentrations of minority voters from each other. Across Stark County, just under two-thirds of voters were placed into the 13th District. Just over one-third were placed into the 6th.⁶

Minority voters drawn into the 6th District were thus deprived not only of a united community but also deprived of a place in

their county's primary Congressional District. Research on such castaway voters finds this status actively inhibits political information flows, mobilization, and ultimately, representation.⁷ That is to say, voters left out of their county's largest Congressional District are likely to see more information about the race in the District that they do not live in than about the District they actually inhabit. More to the point, data on a national level finds minority communities to be more than twice as likely as predominantly white neighborhoods to be castaway from their county's largest Congressional District, as done in Massillon by the Ohio Redistricting Commission.

The political consequences of landing on the other side of those lines are powerful. The difference in policy values between the representative of the 13th and the most recent occupant of the 6th represents a gap of 79 points on a 100 point ideological scale.⁸ In practical terms, this means voters on the 13th side of the line have had a representative pressing for maintenance and expansion of government services, while voters on the 6th side of the line have had a representative who voted to repeal the Affordable Care Act and Medicaid. Voters in the 6th have had a representative consistently voting to limit government regulation – especially with regard to environmental protections – while voters in the 13th have had a representative doing precisely the opposite.

⁶ Calculated from the Ohio voter file:
Stark County Voters by Congressional District

⁷ Niven, David, and Michael E. Solimine. "Representing People and Places: Castaway Voters and the Racial Disparity in Redistricting." *Election Law Journal: Rules, Politics, and Policy* 21, no. 2 (2022): 171-186.

⁸ <https://heritageaction.com/scorecard>

Cultural Distance, continued

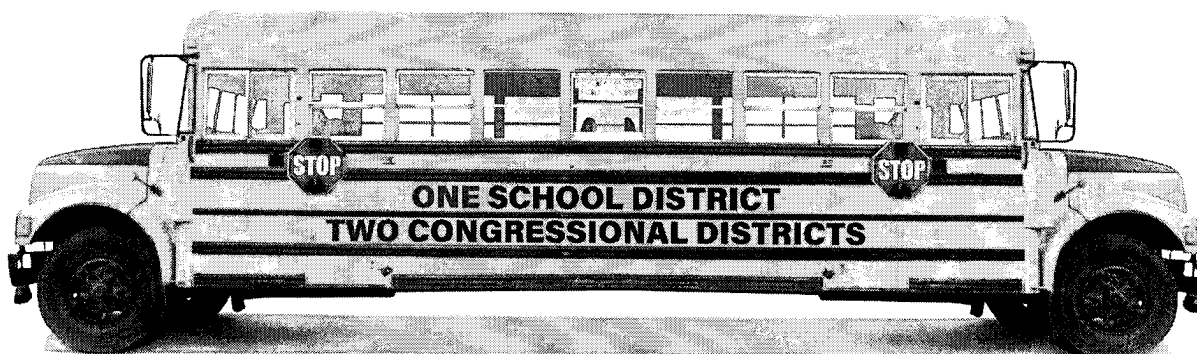
Percentage of Stark County Voters in each Congressional District

DISTRICT	NUMBER OF VOTERS	PERCENTAGE
6th	84,704	34.2
13th	163,189	65.8
TOTAL	247,893	100

This tendency to divide people with a common interest is further underscored in the division of school districts between the 6th and another Congressional District. The entire Strasburg Franklin Local School District in Tuscarawas County is so small that it has only two schools, one elementary school and one combined middle and high school. Though it has only two schools, it also has two members of Congress (6th, 12th District).

Research demonstrates that entities split between Congressional Districts receive less attention from their elected representatives.

Cultural Distance, continued



Research demonstrates that entities split between Congressional Districts receive less attention from their elected representatives. Were such a school district to invite a member of Congress to speak to their students, or ask for a meeting to discuss federal education policy, they would immediately encounter the problem that even their tiny school district could not claim to fully be constituents of the member.

School District	Total School Buildings	Congressional Districts
Canton: Stark County	3	6, 13
Claymont: Tuscarawas County	5	6, 12
Dover: Tuscarawas County	5	6, 12
Fairless: Stark County	5	6, 13
Indian Valley: Tuscarawas County	4	6, 12
Lake: Stark County	3	6, 13
Massillon: Stark County	7	6, 13
New Philadelphia: Tuscarawas County	9	6, 12
Osnaburg: Stark County	3	6, 13
Perry: Lake County	8	6, 13
Plain: Stark County	9	6, 13
Strasburg Franklin: Tuscarawas County	2	6, 12

Economic Distance

One of the most universally recognized duties of a member of Congress is to represent the economic interests of their constituents. The makeup of the 6th District makes this task surpassingly difficult. As recognized by the state of Ohio in their analysis of production and trade, the 6th District encompasses four different economic regions.⁹

In Belmont and Monroe County, there are more jobs in mining and fossil fuel extraction than in manufacturing.¹⁰ In Stark County, there are 79 times more jobs in manufacturing than in mining and fossil fuel extraction. As the manufacturing industry's trade group notes, they are directly engaged in efforts to "reduce energy use and decrease emissions," efforts that are in direct conflict with the interests of the fossil fuel industry. **In practical terms, this means that the 6th District's economy is adversarial to itself.**¹¹

As illustrated in the table below, the counties of the 6th District include several where manufacturing is the top employer category or the most overrepresented category relative to the state of Ohio's overall economy. The District also encompasses several counties where manufacturing is the most underrepresented employment category.

	Top Employer Category	Overrepresented	Underrepresented
Belmont	Health Care and Social Assistance	Mining/Oil and Gas	Manufacturing
Carroll	Manufacturing	Construction	Finance and Insurance
Columbiana	Manufacturing	Manufacturing	Transportation and Warehousing
Harrison	Health Care and Social Assistance	Transportation and Warehousing	Manufacturing
Jefferson	Health Care and Social Assistance	Educational Services	Manufacturing
Mahoning	Health Care and Social Assistance	Accommodation and Food Services	Professional, Scientific and Technical
Monroe	Construction	Construction	Manufacturing
Noble	Public Administration	Public Administration	Manufacturing
Stark	Health Care and Social Assistance	Manufacturing	Professional, Scientific and Technical
Tuscarawas	Manufacturing	Manufacturing	Professional, Scientific and Technical
Washington	Health Care and Social Assistance	Health Care and Social Assistance	Transportation and Warehousing

State of Ohio Department of Job and Family Services Data. Top Employer reflects industry employing the most people within the county. Overrepresented is the industry most overrepresented relative to statewide industry employment. Underrepresented is the industry most underrepresented relative to statewide industry employment.
Data available from: https://ohiolmi.com/Home/CountyProfiles/Employment_Percent_by_Industry

⁹ https://www.brown.senate.gov/imo/media/doc/OhioDeptDevelopment_ExportSeminar.pdf

¹⁰ https://ohiolmi.com/Home/CountyProfiles/Employment_Percent_by_Industry

¹¹ <https://www.manufacturingusa.com/key-initiatives/clean-energy-manufacturing>

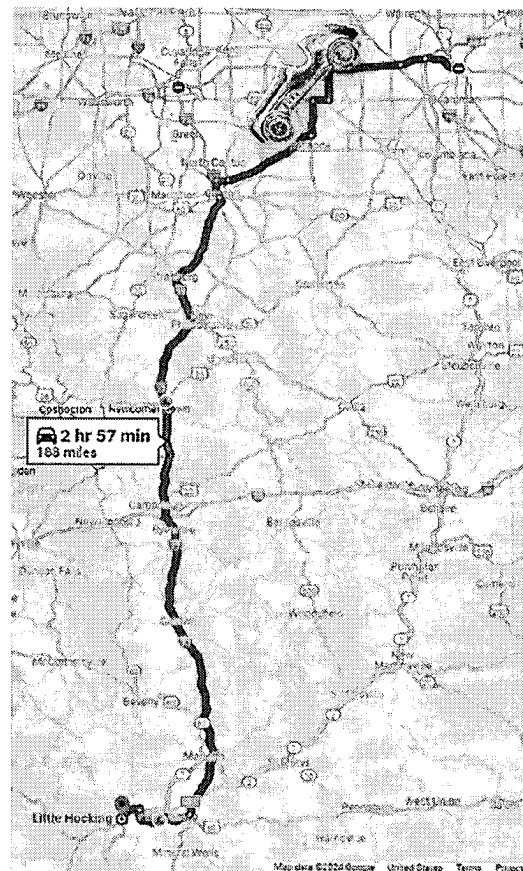
Geographic Distance

The geographic span of the 6th District represents its own challenge to representation. Daryl Revoldt, a North Canton councilman and former District director for Congressman Ralph Regula, said that the size of the District means that people in his city would seldom see their member of Congress.¹²

“The challenge is how does that guy on the weekend when he’s home get from point A to point B. If you’re three hours away by car, how often are you going to get to Canton with a meeting with officials or get to a chamber breakfast.”

Beyond the challenge of traversing the District is the simple but fundamental challenge of even recognizing the District. How would the residents of 2151 Carlyle Street Northwest in Massillon be expected to describe the boundaries of the District they live in – or even know what District they live in – when their neighbors on all sides reside in the 6th District, but they were drawn into their own island in the 13th.

As political scientist Bernard Grofman argues, “permitting the construction of Districts whose boundaries are simply not definable in commonsense terms, vitiates the principle that principle that representatives are to be elected from geographically defined Districts and vitiates the advantages of such Districts as the basis of electoral choice.”¹³ **In other words, such inexplicable boundaries are drawn in service of confusion not representation.**



“The challenge is how does that guy on the weekend when he’s home get from point A to point B. If you’re three hours away by car, how often are you going to get to Canton with a meeting with officials or get to a chamber breakfast.”

¹² <https://www.cantonrep.com/story/news/2021/11/05/stark-county-leaders-dislike-gop-proposed-congressional-districts/6281064001/>

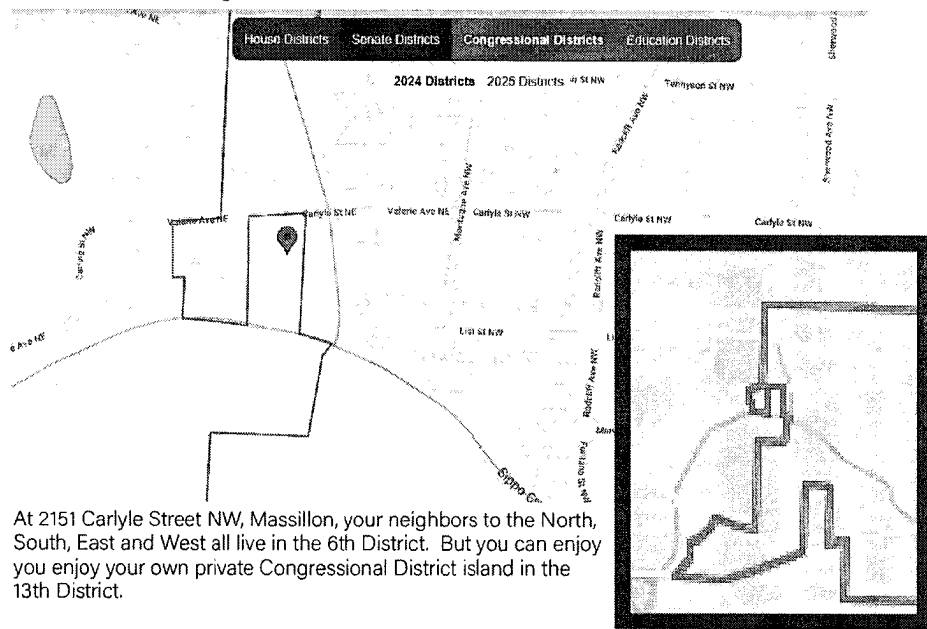
¹³ Grofman, 73.

Geographic Distance, continued

Members of Congress maintain local District offices to offer constituents a point of contact for office services as well as an outlet to express their opinions. Access to these local District offices offers perhaps the single best illustration of the 6th District’s geographic inhibition of representation.

When Districts are gerrymandered, a significant portion of the population will find themselves living closer to the wrong Congressional District than to the office of their own Congress Member.¹⁴ This directly inhibits representation as members generally have a policy of turning away non-constituents and the added distance to the correct office has been shown to discourage constituents from visiting the office at all.¹⁵ Indeed, constituents whose closest local Congressional District office was in the wrong District were found to be 38% less likely to make use of their member’s local office.

2151 Carlyle Street Island



Astonishingly, for constituents in the western edge of the 6th District in Navarre, it is not simply the case that the closest local Congressional District office is in their wrong District, but rather the closest SEVEN local Congressional District offices are in wrong Districts. This is a perfect illustration of the power of gerrymandering to mute the voice of a constituent.

¹⁴ Niven, David, Benjamin Plener Cover, and Michael Solimine. "Are Individuals Harmed by Gerrymandering? Examining Access to Congressional District Offices." *Social Science Quarterly* 102, no. 1 (2021): 29-46.

¹⁵ Niven, Cover, and Solimine.

"A District of Strangers"

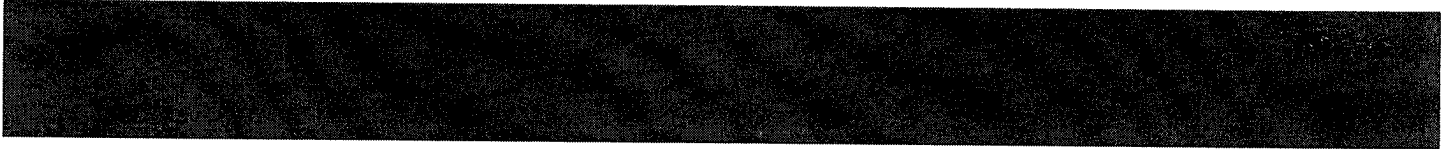
Analysts warn that Districts drawn without care to unite people of common interest produce instead "a District of strangers."¹⁸

- ▶ The state of Ohio's economic development office considers the 6th District four different economies.
- ▶ Baseball fans across the 6th District head in three different directions when they want to go to a ball game.
- ▶ The National Weather Service considers the counties in the 6th District to be in three distinct areas, each served by a different weather service location.
- ▶ The 6th is a District built on adversarial economic interests. Northern counties feature manufacturing in pursuit of energy efficiency and renewable resources. Southern counties feature energy extraction in pursuit of delivering fossil fuels.
- ▶ The map divides a dozen school districts between the 6th and its bordering Districts.
- ▶ The map divides tiny Gnadenhutzen (population 1,211), best known for its Apple Butter Fest.
- ▶ The map divides majority-minority voting precincts in Massillon.
- ▶ The map imposes incoherent lines on voters – including the residents of 2151 Carlyle Street NW, Massillon – who were drawn into the 13th District even as their neighbors on all four sides are in the 6th.
- ▶ A 6th District constituent in Navarre who wishes to share an opinion or ask for help filing for a federal benefit will have to travel to the 8th closest local Congressional District office to find one that actually serves them.

**This is a District drawn to make representation difficult.
This is a District of strangers.**

**STRANGERS
IN THE DISTRICT 6**

¹⁸ Winburn, Jonathan, and Michael W. Wagner. "Carving voters out: Redistricting's influence on political information, turnout, and voting behavior." *Political Research Quarterly* 63, no. 2 (2010): 373-386.



About David Niven

David Niven (Ph.D.) is a political science professor at the University of Cincinnati, where he conducts research relating to democracy, elections, and representation. David's peer-reviewed work on gerrymandering has appeared in leading academic journals including Social Science Quarterly and Election Law Journal. David testified as an expert in *Ohio A. Philip Randolph Institute v. Larry Householder*, 373 F. Supp. 3d 978 (S.D. Ohio 2019) and is a fellow at the Southern Poverty Law Center's race and redistricting program.

About the League of Women Voters of Ohio

The League of Women Voters of Ohio (LWVO) is a nonpartisan, grassroots nonprofit dedicated to empowering everyone to fully participate in our democracy. Founded in 1920, LWVO was formed at a Ohio Women's Suffrage Association Convention, with the mission of helping soon to be enfranchised women exercise their right to vote. Today, the League has expanded our vision of a more inclusive democracy, where all Americans, regardless of gender, sex, race, ability, or party can see themselves represented in our government.

With active League members in every Ohio Congressional District, we engage in advocacy, education, litigation, and organizing to protect every Ohioan's freedom to have their voices heard in the ballot box and beyond. LWVO has actively worked to educate Ohioans about redistricting and to advocate for fair, impartial representation for over five decades.

Acknowledgements:

The League of Women Voters of Ohio would like to thank Dr. David Niven (report author) and Cyndi Bellerose (graphic designer). We thank Catherine Turcer, Collin Marozzi, Jeniece Brock, Celina Coming, Matt Smith, and Jocelyn Travis for their feedback. Finally, we thank all of our members, supporters, volunteers, and staff across the Buckeye State who carry out our mission every day.

League of Women Voters of Ohio

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