

IN THE SUPREME COURT OF OHIO

Regina C. Adams, et al.,

Relators,

v.

Governor Mike DeWine, et al.,

Respondents.

Case No. 2021-1428

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

**RELATORS' MOTION FOR AN ORDER ISSUING LETTERS ROGATORY FOR
ISSUANCE OF SUBPOENAS FOR OUT-OF-STATE DISCOVERY (EXPEDITED
CONSIDERATION REQUESTED)**

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T: (614) 263-7000
F: (614) 368-6961

Counsel for Relators

Relators respectfully move this court to issue an order directing the Office of the Clerk to issue letters rogatory to the Clerks of the circuit courts for Fairfax County and Prince William County, Virginia, requesting and authorizing those courts to permit Relators to take discovery of two third-party witnesses in this proceeding.

Clark Bensen and John Morgan are each political consultants based in Virginia. In 2011, both Bensen and Morgan provided advice and data to Republican members of the Ohio General Assembly and their staffers to assist in the drawing of the congressional map that was ultimately adopted by the General Assembly and signed into law by the governor. *See Ohio A. Philip Randolph Inst. v. Householder* 373 F. Supp. 3d 978, 994, 997-99 (S.D. Ohio 2019), *vacated and remanded*, 140 S. Ct. 102 (2019). Ten years later, they assisted Senate Republicans in preparing the state legislative maps submitted to and ultimately adopted (with amendments) by the Ohio Redistricting Commission in September 2021. *See* Deposition of Raymond DiRossi at 45:20-46:16, *League of Women Voters v. Ohio Redistricting Commission*, Ohio Supreme Court Case No. 2021-1193. Based on their past work on behalf of those responsible for drawing Ohio's congressional and state legislative maps, Relators believe it is highly likely that Bensen and Morgan similarly were involved in creating the latest congressional plan adopted by the General Assembly and signed into law by the governor, the plan that is now the subject of this litigation. It is therefore similarly highly likely that Bensen and Morgan will have discoverable information concerning how the congressional map was drawn, what considerations mapmakers made in drawing the map, and what steps were taken to ensure the map complied with the Ohio Constitution. Accordingly, Relators seek to serve Bensen and Morgan with deposition subpoenas and subpoenas duces tecum.

Bensen and Morgan reside in Prince William County and Fairfax County, Virginia, respectively. Neither Bensen nor Morgan have an address in the state of Ohio where service may be effected. As part of the Uniform Interstate Depositions and Discovery Act, versions of which both Ohio and Virginia have adopted, Virginia law requires this Court to issue a rogatory letter before third-party discovery may be served on a Virginia resident in this case. Proposed orders issuing letters rogatory for out-of-state discovery for both Bensen and Morgan are attached. If the Court grants this Motion and issues the two letters, Relators will take the responsibility for filing the letters with the respective Virginia courts.

The Court has moved swiftly in this matter, and Relators request similarly expedited consideration of this motion in light given the 2022 election schedule, as described in more detail in Relators' Motion for a Scheduling Order, filed in this case on November 24, 2021.

Respectfully submitted,

/s Donald J. McTigue

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Derek S. Clinger (0092075)
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Counsel for Relators

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served via email on November 29, 2021 upon the following:

Office of the Ohio Attorney General
Bridget Coontz
Section Chief, Constitutional Offices Section
Bridget.Coontz@OhioAttorneyGeneral.gov

Taft Stettinus & Hollister LLP
W. Stuart Dornette, dornette@taftlaw.com
Beth A. Bryan, bryan@taftlaw.com
Philip D. Williamson, pwilliamson@taftlaw.com

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Phillip J. Strach, phil.strach@nelsonmullins.com
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John E. Branch, III, john.branch@nelsonmullins.com
Alyssa M. Riggins, alyssa.riggins@nelsonmullins.com

/s/ Derek S. Clinger
Derek S. Clinger

EXHIBIT 1

IN THE SUPREME COURT OF OHIO

Regina C. Adams, *et al.*,

Relators,

v.

Governor Mike DeWine, *et al.*,

Respondents.

Case No. 2021-1428

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

**ORDER ISSUING ROGATORY LETTER FOR ISSUANCE OF SUBPOENAS FOR
DISCOVERY FROM CLARK BENSEN**

FROM: THE SUPREME COURT OF OHIO

TO: CLERK OF THE PRINCE WILLIAM COUNTY CIRCUIT COURT

Pursuant to the request of Relators in the above-captioned action, the Supreme Court of Ohio hereby grants Relators' motion for an Order Issuing Letters Rogatory for Issuance of Subpoenas for Out-of-State Discovery, and requests the Clerk of the Prince William County Circuit Court to issue subpoenas (appended hereto as Exhibits A and B) for the taking of discovery from Clark Bensen, who is a resident of Prince William County, Virginia. Mr. Bensen will be required to appear for, testify, and produce documents at a deposition. A representative of Planet Depos LLC is hereby appointed as commissioner authorized to take the deposition of Mr. Bensen for the purposes as are authorized and permitted under the Ohio Rules of Civil Procedure. Said deposition shall be attended by counsel for Relators. The deposition may also be conducted by electronic means, if all parties consent.

In advance of the deposition, Mr. Bensen will be required to produce and permit inspection and copying of any documents or electronically stored information in his possession responsive to the subpoena duces tecum appended hereto as Exhibit A.

Additionally, please take notice that Ohio law grants reciprocal privileges to citizens of the Commonwealth of Virginia for taking discovery in Ohio; such privileges are set forth in Ohio Rev. Code § 2319.09.

You are respectfully requested, and are hereby authorized, to subpoena Mr. Bensen in accordance with any applicable civil procedural rules or other laws of the Commonwealth of Virginia.

DATED:_____

Clerk of the Supreme Court of Ohio

Exhibit A

IN THE SUPREME COURT OF OHIO

Regina Adams, *et al.*,

Relators,

v.

Governor Mike DeWine, *et al.*,

Respondents.

Case No. 2021-1428

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

SUBPOENA DUCES TECUM

TO:

Clark Bensen

3112 Cave Ct., Lake Ridge, VA 22192

Name

Address

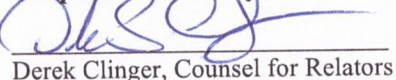
You are hereby commanded to be and appear at

McCandlish Holton PC
1111 E. Main Street, Suite 2100
Richmond, VA 23219

_____ on the 17th day of December 2021 at 10:00
a.m., and:

☒ Produce the documents, electronically stored information, or tangible things identified in Attachment A.
Alternately, the items may be produced electronically to dclinger@electionlawyergroup.com.

Subpoena Issued By:


Derek Clinger, Counsel for Relators

(0092075)
Supreme Ct. No.

(614) 263-7000
Phone No.

dclinger@electionlawgroup.com
Email Address

Return of Service: I received this subpoena on the _____ day of _____ 2021, and served the above party
by _____

Name

Signature

Date

NOTE: READ ALL INFORMATION ON THE SECOND PAGE OF THIS SUBPOENA

Rule 45. Ohio Rules of Civil Procedure, Parts C & D:

(C) Protection of persons subject to subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena.

(2)(a) A person commanded to produce under divisions (A)(1)(b), (iii), (iv), (v), or (vi) of this rule need not appear in person at the place of production or inspection unless commanded to attend and give testimony at a deposition, hearing, or trial.

(b) Subject to division (D)(2) of this rule, a person commanded to produce under divisions (A)(1)(b), (iii), (iv), (v), or (vi) of this rule may, within fourteen days after service of the subpoena or before the time specified for compliance if such time is less than fourteen days after service, serve upon the party or attorney designated in the subpoena written objections to production. If objection is made, the party serving the subpoena shall not be entitled to production except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena, upon notice to the person commanded to produce, may move at any time for an order to compel the production. An order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the production commanded.

(3) On timely motion, the court from which the subpoena was issued shall quash or modify the subpoena, or order appearance or production only under specified conditions, if the subpoena does any of the following:

(a) Fails to allow reasonable time to comply;

(b) Requires disclosure of privileged or otherwise protected matter and no exception or waiver applies;

(c) Requires disclosure of a fact known or opinion held by an expert not retained or specially employed by any party in anticipation of litigation or preparation for trial as described by Civ.R. 26(B)(5), if the fact or opinion does not describe specific events or occurrences in dispute and results from study by that expert that was not made at the request of any party;

(d) Subjects a person to undue burden.

(4) Before filing a motion pursuant to division (C)(3)(d) of this rule, a person resisting discovery under this rule shall attempt to resolve any claim of undue burden through discussions with the issuing attorney. A motion filed pursuant to division (C)(3)(d) of this rule shall be supported by an affidavit of the subpoenaed person or a certificate of that person's attorney of the efforts made to resolve any claim of undue burden.

(5) If a motion is made under division (C)(3)(c) or (C)(3)(d) of this rule, the court shall quash or modify the subpoena unless the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated.

(D) Duties in responding to subpoena.

(1) A person responding to a subpoena to produce documents shall, at the person's option, produce them as they are kept in the usual course of business or organized and labeled to correspond with the categories in the subpoena. A person producing documents or electronically stored information pursuant to a subpoena for them shall permit their inspection and copying by all parties present at the time and place set in the subpoena for inspection and copying.

(2) If a request does not specify the form or forms for producing electronically stored information, a person responding to a subpoena may produce the information in a form or forms in which the information is ordinarily maintained if that form is reasonably useable, or in any form that is reasonably useable. Unless ordered by the court or agreed to by the person subpoenaed, a person responding to a subpoena need not produce the same electronically stored information in more than one form.

(3) A person need not provide discovery of electronically stored information when the production imposes undue burden or expense. On motion to compel discovery or for a protective order, the person from whom electronically stored information is sought must show that the information is not reasonably accessible because of undue burden or expense. If a showing of undue burden or expense is made, the court may nonetheless order production of electronically stored information if the requesting party shows good cause. The court shall consider the factors in Civ. R. 26(B)(4) when determining if good cause exists. In ordering production of electronically stored information, the court may specify the format, extent, timing, allocation of expenses and other conditions for the discovery of the electronically stored information.

(4) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(5) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a receiving party must promptly return, sequester, or destroy the specified information and any copies within the party's possession, custody or control. A party may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim of privilege or of protection as trial preparation material. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

ATTACHMENT A

Pursuant to Rules 26 and 45 of the Ohio Rules of Civil Procedure, Relators hereby propound to Clark Bensen a subpoena duces tecum, which is to be responded to by December 17, 2021. Documents responsive to the following requests shall be produced to the offices of McCandlish Holton PC, 1111 E. Main Street, Suite 2100, Richmond, VA 23219 or electronically to Derek Clinger of McTigue & Colombo LLC at dclinger@electionlawgroup.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 “you,” and “your” shall mean Clark Bensen, in your capacity as in your capacity as a consultant to anyone who introduced a congressional redistricting plan to the General Assembly following the 2020 census, or any other capacity in which you have assisted in the drawing of congressional maps for the state of Ohio, 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, 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.
- K. 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.
- L. 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.
- M. 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.

N. Produce any password-protected documents with any applicable passwords.

DOCUMENTS TO BE PRODUCED

1. 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.
2. All documents and communications concerning any instructions you received or provided regarding the creation of any Proposed Plan.
3. All documents and communications concerning any Proposed Plan, including (as specified in the definition above) any drafts thereof.
4. Documents sufficient to establish all persons who assisted you in the creation of any Proposed Plan you helped create.
5. 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 and meetings; and any related communications, including, but not limited to, those with any member of the General Assembly (or representatives thereof).
6. 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.
7. 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 or Christopher Glassburn, consulted, involved in, or communicated with by you, any member of the Ohio General Assembly or its staff, any member of the Ohio Redistricting Commission or their staff, or the Ohio Redistricting Commission or its staff, with regard to any Proposed Plan.
8. All communications with the Ohio Legislative Service Commission or any of its staff or directors relating to the drawing of any Proposed Plan.
9. All communications relating to the drawing of 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.
10. All communications relating to the drawing of 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.

11. All communications relating to the drawing of 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.
12. All documents relating to analysis conducted by you, any member of the Ohio General Assembly or their staff, the Ohio General Assembly or its staff, or the Ohio Redistricting Commission or its staff regarding whether any of the Proposed Plans 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.
13. All documents regarding the potential, expected, or likely partisan performance or electoral outcomes of any district or districts in any Proposed Plan.
14. All documents and communications related to the Section 1(C)(3)(d) statement.

Exhibit B

IN THE SUPREME COURT OF OHIO

Regina Adams, *et al.*,

Relators,

v.

Governor Mike DeWine, *et al.*,

Respondents.

Case No. 2021-1428

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

SUBPOENA TO TESTIFY AT DEPOSITION

TO:

Clark Bensen

3112 Cave Ct., Lake Ridge, VA 22192

Name

Address


You are hereby commanded to be and appear at

McCandlish Holton PC
1111 E. Main Street, Suite 2100
Richmond, VA 23219

_____ on the 20th day of December 2021 at 10:00
a.m., and:

☒ Attend and give testimony at a deposition. Alternately, a deposition may be conducted remotely.

Subpoena Issued By:

 (0092075) (614) 263-7000 dclinger@electionlawgroup.com
Derek Clinger, Counsel for Relators Supreme Ct. No. Phone No. Email Address

Return of Service: I received this subpoena on the _____ day of _____ 2021, and served the above party
by _____

Name

Signature

Date

NOTE: READ ALL INFORMATION ON THE SECOND PAGE OF THIS SUBPOENA

Rule 45. Ohio Rules of Civil Procedure, Parts C & D:

(C) Protection of persons subject to subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena.

(2)(a) A person commanded to produce under divisions (A)(1)(b), (iii), (iv), (v), or (vi) of this rule need not appear in person at the place of production or inspection unless commanded to attend and give testimony at a deposition, hearing, or trial.

(b) Subject to division (D)(2) of this rule, a person commanded to produce under divisions (A)(1)(b), (iii), (iv), (v), or (vi) of this rule may, within fourteen days after service of the subpoena or before the time specified for compliance if such time is less than fourteen days after service, serve upon the party or attorney designated in the subpoena written objections to production. If objection is made, the party serving the subpoena shall not be entitled to production except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena, upon notice to the person commanded to produce, may move at any time for an order to compel the production. An order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the production commanded.

(3) On timely motion, the court from which the subpoena was issued shall quash or modify the subpoena, or order appearance or production only under specified conditions, if the subpoena does any of the following:

(a) Fails to allow reasonable time to comply;

(b) Requires disclosure of privileged or otherwise protected matter and no exception or waiver applies;

(c) Requires disclosure of a fact known or opinion held by an expert not retained or specially employed by any party in anticipation of litigation or preparation for trial as described by Civ.R. 26(B)(5), if the fact or opinion does not describe specific events or occurrences in dispute and results from study by that expert that was not made at the request of any party;

(d) Subjects a person to undue burden.

(4) Before filing a motion pursuant to division (C)(3)(d) of this rule, a person resisting discovery under this rule shall attempt to resolve any claim of undue burden through discussions with the issuing attorney. A motion filed pursuant to division (C)(3)(d) of this rule shall be supported by an affidavit of the subpoenaed person or a certificate of that person's attorney of the efforts made to resolve any claim of undue burden.

(5) If a motion is made under division (C)(3)(c) or (C)(3)(d) of this rule, the court shall quash or modify the subpoena unless the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated.

(D) Duties in responding to subpoena.

(1) A person responding to a subpoena to produce documents shall, at the person's option, produce them as they are kept in the usual course of business or organized and labeled to correspond with the categories in the subpoena. A person producing documents or electronically stored information pursuant to a subpoena for them shall permit their inspection and copying by all parties present at the time and place set in the subpoena for inspection and copying.

(2) If a request does not specify the form or forms for producing electronically stored information, a person responding to a subpoena may produce the information in a form or forms in which the information is ordinarily maintained if that form is reasonably useable, or in any form that is reasonably useable. Unless ordered by the court or agreed to by the person subpoenaed, a person responding to a subpoena need not produce the same electronically stored information in more than one form.

(3) A person need not provide discovery of electronically stored information when the production imposes undue burden or expense. On motion to compel discovery or for a protective order, the person from whom electronically stored information is sought must show that the information is not reasonably accessible because of undue burden or expense. If a showing of undue burden or expense is made, the court may nonetheless order production of electronically stored information if the requesting party shows good cause. The court shall consider the factors in Civ. R. 26(B)(4) when determining if good cause exists. In ordering production of electronically stored information, the court may specify the format, extent, timing, allocation of expenses and other conditions for the discovery of the electronically stored information.

(4) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(5) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a receiving party must promptly return, sequester, or destroy the specified information and any copies within the party's possession, custody or control. A party may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim of privilege or of protection as trial preparation material. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

EXHIBIT 2

IN THE SUPREME COURT OF OHIO

Regina C. Adams, *et al.*,

Relators,

v.

Governor Mike DeWine, *et al.*,

Respondents.

Case No. 2021-1428

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

**ORDER ISSUING ROGATORY LETTER FOR ISSUANCE OF SUBPOENAS FOR
DISCOVERY FROM JOHN MORGAN**

FROM: THE SUPREME COURT OF OHIO

TO: CLERK OF THE FAIRFAX COUNTY CIRCUIT COURT

Pursuant to the request of Relators in the above-captioned action, the Supreme Court of Ohio hereby grants Relators' motion for an Order Issuing Letters Rogatory for Issuance of Subpoenas for Out-of-State Discovery, and requests the Clerk of the Fairfax County Circuit Court issue subpoenas (appended hereto as Exhibits A and B) for the taking of discovery from John Morgan, who is a resident of Fairfax County, Virginia. Mr. Morgan will be required to appear for, testify, and produce documents at a deposition. A representative of Planet Depos LLC is hereby appointed as commissioner authorized to take the deposition of Mr. Morgan for the purposes as are authorized and permitted under the Ohio Rules of Civil Procedure. Said deposition shall be attended by counsel for Relators. The deposition may also be conducted by electronic means, if all parties consent.

In advance of the deposition, Mr. Morgan will be required to produce and permit inspection and copying of any documents or electronically stored information in his possession responsive to the subpoena duces tecum appended hereto as Exhibit A.

Additionally, please take notice that Ohio law grants reciprocal privileges to citizens of the Commonwealth of Virginia for taking discovery in Ohio; such privileges are set forth in Ohio Rev. Code § 2319.09.

You are respectfully requested, and are hereby authorized, to subpoena Mr. Morgan in accordance with any applicable civil procedural rules or other laws of the Commonwealth of Virginia.

DATED:_____

Clerk of the Supreme Court of Ohio

Exhibit A

IN THE SUPREME COURT OF OHIO

Regina Adams, *et al.*,

Relators,

v.

Governor Mike DeWine, *et al.*,

Respondents.

Case No. 2021-1428

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

SUBPOENA DUCES TECUM

TO:

John Morgan 7323 Inzer St. Springfield, VA 22151

Name

Address

You are hereby commanded to be and appear at

McCandlish Holton PC
1111 E. Main Street, Suite 2100
Richmond, VA 23219

on the 17th day of December 2021 at 10:00
a.m., and:

☒ Produce the documents, electronically stored information, or tangible things identified in Attachment A.
Alternately, the items may be produced electronically to dclinger@electionlawyergroup.com.

Subpoena Issued By:

Derek Clinger, Counsel for Relators (0092075) (614) 263-7000 dclinger@electionlawyergroup.com
Supreme Ct. No. Phone No. Email Address

Return of Service: I received this subpoena on the _____ day of _____ 2021, and served the above party
by _____

Name

Signature

Date

NOTE: READ ALL INFORMATION ON THE SECOND PAGE OF THIS SUBPOENA

Rule 45. Ohio Rules of Civil Procedure, Parts C & D:

(C) Protection of persons subject to subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena.

(2)(a) A person commanded to produce under divisions (A)(1)(b), (iii), (iv), (v), or (vi) of this rule need not appear in person at the place of production or inspection unless commanded to attend and give testimony at a deposition, hearing, or trial.

(b) Subject to division (D)(2) of this rule, a person commanded to produce under divisions (A)(1)(b), (iii), (iv), (v), or (vi) of this rule may, within fourteen days after service of the subpoena or before the time specified for compliance if such time is less than fourteen days after service, serve upon the party or attorney designated in the subpoena written objections to production. If objection is made, the party serving the subpoena shall not be entitled to production except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena, upon notice to the person commanded to produce, may move at any time for an order to compel the production. An order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the production commanded.

(3) On timely motion, the court from which the subpoena was issued shall quash or modify the subpoena, or order appearance or production only under specified conditions, if the subpoena does any of the following:

(a) Fails to allow reasonable time to comply;

(b) Requires disclosure of privileged or otherwise protected matter and no exception or waiver applies;

(c) Requires disclosure of a fact known or opinion held by an expert not retained or specially employed by any party in anticipation of litigation or preparation for trial as described by Civ.R. 26(B)(5), if the fact or opinion does not describe specific events or occurrences in dispute and results from study by that expert that was not made at the request of any party;

(d) Subjects a person to undue burden.

(4) Before filing a motion pursuant to division (C)(3)(d) of this rule, a person resisting discovery under this rule shall attempt to resolve any claim of undue burden through discussions with the issuing attorney. A motion filed pursuant to division (C)(3)(d) of this rule shall be supported by an affidavit of the subpoenaed person or a certificate of that person's attorney of the efforts made to resolve any claim of undue burden.

(5) If a motion is made under division (C)(3)(c) or (C)(3)(d) of this rule, the court shall quash or modify the subpoena unless the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated.

(D) Duties in responding to subpoena.

(1) A person responding to a subpoena to produce documents shall, at the person's option, produce them as they are kept in the usual course of business or organized and labeled to correspond with the categories in the subpoena. A person producing documents or electronically stored information pursuant to a subpoena for them shall permit their inspection and copying by all parties present at the time and place set in the subpoena for inspection and copying.

(2) If a request does not specify the form or forms for producing electronically stored information, a person responding to a subpoena may produce the information in a form or forms in which the information is ordinarily maintained if that form is reasonably useable, or in any form that is reasonably useable. Unless ordered by the court or agreed to by the person subpoenaed, a person responding to a subpoena need not produce the same electronically stored information in more than one form.

(3) A person need not provide discovery of electronically stored information when the production imposes undue burden or expense. On motion to compel discovery or for a protective order, the person from whom electronically stored information is sought must show that the information is not reasonably accessible because of undue burden or expense. If a showing of undue burden or expense is made, the court may nonetheless order production of electronically stored information if the requesting party shows good cause. The court shall consider the factors in Civ. R. 26(B)(4) when determining if good cause exists. In ordering production of electronically stored information, the court may specify the format, extent, timing, allocation of expenses and other conditions for the discovery of the electronically stored information.

(4) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(5) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a receiving party must promptly return, sequester, or destroy the specified information and any copies within the party's possession, custody or control. A party may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim of privilege or of protection as trial preparation material. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

ATTACHMENT A

Pursuant to Rules 26 and 45 of the Ohio Rules of Civil Procedure, Relators hereby propound to John Morgan a subpoena duces tecum, which is to be responded to by December 17, 2021. Documents responsive to the following requests shall be produced to the offices of McCandlish Holton PC, 1111 E. Main Street, Suite 2100, Richmond, VA 23219 or electronically to Derek Clinger of McTigue & Colombo LLC at dclinger@electionlawgroup.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 “you,” and “your” shall mean John Morgan, in your capacity as a consultant to anyone who introduced a congressional redistricting plan to the General Assembly following the 2020 census, or any other capacity in which you have assisted in the drawing of congressional maps for the state of Ohio, 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, 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.
- K. 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.
- L. 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.
- M. 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.

N. Produce any password-protected documents with any applicable passwords.

DOCUMENTS TO BE PRODUCED

1. 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.
2. All documents and communications concerning any instructions you received or provided regarding the creation of any Proposed Plan.
3. All documents and communications concerning any Proposed Plan, including (as specified in the definition above) any drafts thereof.
4. Documents sufficient to establish all persons who assisted you in the creation of any Proposed Plan you helped create.
5. 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 and meetings; and any related communications, including, but not limited to, those with any member of the General Assembly (or representatives thereof).
6. 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.
7. 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, Christopher Glassburn or Clark Bensen, consulted, involved in, or communicated with by you, any member of the Ohio General Assembly or its staff, any member of the Ohio Redistricting Commission or their staff, or the Ohio Redistricting Commission or its staff, with regard to any Proposed Plan.
8. All communications with the Ohio Legislative Service Commission or any of its staff or directors relating to the drawing of any Proposed Plan.
9. All communications relating to the drawing of 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.
10. All communications relating to the drawing of 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.

11. All communications relating to the drawing of 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.
12. All documents relating to analysis conducted by you, any member of the Ohio General Assembly or their staff, the Ohio General Assembly or its staff, or the Ohio Redistricting Commission or its staff regarding whether any of the Proposed Plans 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.
13. All documents regarding the potential, expected, or likely partisan performance or electoral outcomes of any district or districts in any Proposed Plan.
14. All documents and communications related to the Section 1(C)(3)(d) statement.

Exhibit B

IN THE SUPREME COURT OF OHIO

Regina Adams, *et al.*,

Relators,

v.

Governor Mike DeWine, *et al.*,

Respondents.

Case No. 2021-1428

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

SUBPOENA TO TESTIFY AT DEPOSITION

TO:

John Morgan

7323 Inzer St. Springfield, VA 22151

Name

Address

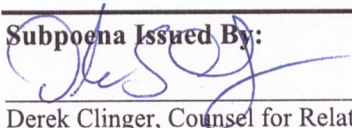
You are hereby commanded to be and appear at

McCandlish Holton PC
1111 E. Main Street, Suite 2100
Richmond, VA 23219

_____ on the 20th day of December 2021 at 10:00
a.m., and:

☒ Attend and give testimony at a deposition. Alternately, a deposition may be conducted remotely.

Subpoena Issued By:


Derek Clinger, Counsel for Relators

(0092075)
Supreme Ct. No.

(614) 263-7000
Phone No.

dclinger@electionlawgroup.com
Email Address

Return of Service: I received this subpoena on the _____ day of _____ 2021, and served the above party
by _____

Name

Signature

Date

NOTE: READ ALL INFORMATION ON THE SECOND PAGE OF THIS SUBPOENA

Rule 45. Ohio Rules of Civil Procedure, Parts C & D:

(C) Protection of persons subject to subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena.

(2)(a) A person commanded to produce under divisions (A)(1)(b), (iii), (iv), (v), or (vi) of this rule need not appear in person at the place of production or inspection unless commanded to attend and give testimony at a deposition, hearing, or trial.

(b) Subject to division (D)(2) of this rule, a person commanded to produce under divisions (A)(1)(b), (iii), (iv), (v), or (vi) of this rule may, within fourteen days after service of the subpoena or before the time specified for compliance if such time is less than fourteen days after service, serve upon the party or attorney designated in the subpoena written objections to production. If objection is made, the party serving the subpoena shall not be entitled to production except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena, upon notice to the person commanded to produce, may move at any time for an order to compel the production. An order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the production commanded.

(3) On timely motion, the court from which the subpoena was issued shall quash or modify the subpoena, or order appearance or production only under specified conditions, if the subpoena does any of the following:

(a) Fails to allow reasonable time to comply;

(b) Requires disclosure of privileged or otherwise protected matter and no exception or waiver applies;

(c) Requires disclosure of a fact known or opinion held by an expert not retained or specially employed by any party in anticipation of litigation or preparation for trial as described by Civ.R. 26(B)(5), if the fact or opinion does not describe specific events or occurrences in dispute and results from study by that expert that was not made at the request of any party;

(d) Subjects a person to undue burden.

(4) Before filing a motion pursuant to division (C)(3)(d) of this rule, a person resisting discovery under this rule shall attempt to resolve any claim of undue burden through discussions with the issuing attorney. A motion filed pursuant to division (C)(3)(d) of this rule shall be supported by an affidavit of the subpoenaed person or a certificate of that person's attorney of the efforts made to resolve any claim of undue burden.

(5) If a motion is made under division (C)(3)(c) or (C)(3)(d) of this rule, the court shall quash or modify the subpoena unless the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated.

(D) Duties in responding to subpoena.

(1) A person responding to a subpoena to produce documents shall, at the person's option, produce them as they are kept in the usual course of business or organized and labeled to correspond with the categories in the subpoena. A person producing documents or electronically stored information pursuant to a subpoena for them shall permit their inspection and copying by all parties present at the time and place set in the subpoena for inspection and copying.

(2) If a request does not specify the form or forms for producing electronically stored information, a person responding to a subpoena may produce the information in a form or forms in which the information is ordinarily maintained if that form is reasonably useable, or in any form that is reasonably useable. Unless ordered by the court or agreed to by the person subpoenaed, a person responding to a subpoena need not produce the same electronically stored information in more than one form.

(3) A person need not provide discovery of electronically stored information when the production imposes undue burden or expense. On motion to compel discovery or for a protective order, the person from whom electronically stored information is sought must show that the information is not reasonably accessible because of undue burden or expense. If a showing of undue burden or expense is made, the court may nonetheless order production of electronically stored information if the requesting party shows good cause. The court shall consider the factors in Civ. R. 26(B)(4) when determining if good cause exists. In ordering production of electronically stored information, the court may specify the format, extent, timing, allocation of expenses and other conditions for the discovery of the electronically stored information.

(4) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(5) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a receiving party must promptly return, sequester, or destroy the specified information and any copies within the party's possession, custody or control. A party may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim of privilege or of protection as trial preparation material. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.