IN THE SUPREME COURT OF OHIO

Bria Bennett, *et al.*, **Relators,** **v.** **Ohio Redistricting Commission, *et al.*,** **Respondents.**	**Case No. 2021-1198** Original Action Filed Pursuant to Ohio Constitution, Article XI, Section 9(A) *[Apportionment Case Pursuant to S. Ct. Prac. R. 14.03]*

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I. Introduction

Nearly 170 years ago, Ohioans took action against partisan manipulation of the redistricting process by inserting Article XI into the Ohio Constitution. Article XI transferred reapportionment duties from the General Assembly to a bipartisan Apportionment Board and outlined detailed requirements to govern Ohio's reapportionment process. Yet over time, it became increasingly clear that those guardrails were insufficient to prevent determined partisans from manipulating Ohio's district lines. Increasing polarization gave partisan actors motive to twist redistricting to advance partisan self-interest. Technological advancements in map-drawing provided the means to artfully slice and dice geography in pursuit of the same. And the lack of adequate safeguards in Article XI gave partisan actors the opportunity to steal the people's right to fair elections through partisan gerrymandering. This all came to a head in the 2011 redistricting plan, which—despite a state electorate that was almost evenly divided between Democrats and Republicans—granted the Republicans supermajority control of both houses of the General Assembly.

When it became clear that Article XI lacked sufficient teeth, Ohioans took action so that what happened in 2011 could not recur in 2021. In 2015, voters overwhelmingly passed a package of amendments to Article XI (the "Fair Districts Amendments"), which established the Ohio Redistricting Commission (the "Commission"), overhauled the state's redistricting procedures, and set forth clear standards for partisan fairness. Among these standards were Section 6's requirements that the Commission attempt to draw maps that (1) "correspond closely to statewide preferences" of Ohio voters in terms of their likely partisan breakdown and (2) do not primarily favor one political party or another. The Amendments' proponents—including many Respondents here—assured Ohioans that the disproportionately lopsided outcomes of 2011 would not be repeated: The Fair Districts Amendments would serve as a bulwark against unfair districting.

The General Assembly plan that the Commission adopted in September 2021 (the "2021 Plan" or the "Plan") makes a mockery of Ohioans' hard-earned victory. Constitutional deadlines were repeatedly ignored. The process was highly secretive and partisan: Map-drawing was carefully controlled by the Senate and House majority leaders, conducted behind closed doors, and excluded all other Commissioners. In the end, these partisans simply poured the old wine of the 2011 gerrymander into new bottles. They acted as if the new reforms designed to prevent precisely this outcome had never been passed, and the 2021 Plan's projected partisan breakdown is nearly identical to that of the 2011 redistricting plan. Under the 2021 Plan, Republicans are almost certain to maintain supermajorities in both houses of the General Assembly, notwithstanding Ohio's status as a "purple" state. This contravenes not only the purpose of the Fair Districts Amendments, but also their text. By failing to reflect the statewide voter preferences of Ohioans—or even attempt to do so—and deliberately favoring Republican candidates, the 2021 Plan violates Section 6.

The Plan's partisan skew is so indefensible that Commissioners recognized it even as they advanced the maps. The Plan was nevertheless adopted along with a statement that incoherently attempted to explain how the anticipated partisan seat share supposedly corresponds closely with voters' statewide preferences, reasoning that it does so because the percentage of majority-Republican seats falls somewhere between the percentage of Republican votes cast in Ohio statewide partisan elections in the last 10 years (54%) and the percentage of those races Republicans won in the same period (81%). Secretary of State LaRose privately described the rationale proffered as "asinine" and expressed that he should vote no on it. His Chief of Staff responded that it was "[p]robably not worth it" because such an action would "be cited in court against the GOP." Governor DeWine confirmed in his deposition that he did not agree with the rationale for the Plan either. And both Leader Emilia Sykes and Senator Vernon Sykes vehemently

maintained that the Plan was unconstitutional. This is a *majority* of Commissioners. But the Plan was nevertheless adopted on a party-line vote: The lure of partisan gain was too great for the Commissioners to do their job and enact constitutional districts that embody the statewide party preferences of Ohioans.

Thus, now, the matter falls to the Court in the exercise of its original jurisdiction. The voters have spoken with unmistakable clarity: They demanded fair districts. They were promised fair districts. They voted for fair districts. But the Commission did not enact fair districts. Relators request that this Court declare the 2021 Plan unconstitutional and order the Commission to adopt new maps that comply with Article XI.[1]

II. Legal Background

The Commission is responsible for redistricting the state's House and Senate districts in compliance with Article XI of the Ohio Constitution, which sets forth both procedural and substantive requirements. The provisions relevant to this suit are as follows.

Article XI, Section 1 requires "the affirmative vote of four members of the commission, including at least two members of the commission who represent each of the two largest political parties represented in the general assembly" to adopt a state legislative plan for a full ten years. Ohio Constitution, Article XI, Section 1(B)(3). It further requires the Commission to adopt a general assembly district plan not later than September 1 of a year ending in the numeral one. *Id.*, Section 1(C). Prior to approving a plan, the Commission must release maps and then hold three

[1] Under the terms of Article XI's impasse provision, because the Plan was adopted under a party-line vote, it will be in place for four years, instead of ten. In the meantime, Ohio voters (including Relators) will suffer irreparable harm, being forced to vote in highly gerrymandered districts, for at least two full election cycles. (*See* BENNETT_0120-32 (Relator Affidavits and Voter Registration Records), Supp. 61-73.) Unless this Court sends a clear message, it—and Ohio's electorate, who spoke clearly only to be ignored—can expect more of the same in 2025.

hearings on the proposed plan in meetings "open to the public" and "broadcast by electronic means of transmission using a medium readily accessible to the general public." *Id.*

Article XI, Section 3 sets forth baseline requirements that districts be made up of equal population and contiguous territory, as well as providing that "[a]ny general assembly district plan adopted by the commission shall comply with all applicable provisions of the constitutions of Ohio and the United States and of federal law." *Id.*, Section 3(A)-(B). Section 3 also enumerates each step of the process to draw House districts, specifying criteria for dividing counties, municipal corporations, and townships in drawing district lines. *Id.*, Section 3(C)-(E).

Article XI, Section 4 goes on to specify criteria for the drawing of Senate districts, requiring, for example, that "Senate districts shall be composed of three contiguous house of representatives districts." *Id.*, Section 4(A).

Article XI, Section 6 provides plan-wide standards for the Commission. Under Section 6, the Commission "shall attempt to draw a general assembly district plan that meets all of the following standards":

> (A) No general assembly district plan shall be drawn primarily to favor or disfavor a political party.
> (B) The statewide proportion of districts whose voters, based on statewide state and federal partisan general election results during the last ten years, favor each political party shall correspond closely to the statewide preferences of the voters of Ohio.
> (C) General assembly districts shall be compact.

Id., Section 6. The Commission may not "violate the district standards described in Section 2, 3, 4, 5, or 7" in an effort to comply with Section 6, *id.*; that is, Section 6 operates in conjunction with other standards rather than superseding them. But the Commission cannot *ignore* Section 6's standards. *See also id.*, Section 3(B)(2) ("Any general assembly district plan adopted by the commission shall comply with all applicable provisions of the constitutions of Ohio and the United States and of federal law.").

Article XI, Section 8 sets forth an impasse procedure for when, as here, the Commission fails to adopt a plan with the approval of at least two members of each of the two major political parties. A plan adopted under Section 8 must be approved by September 15. *Id.*, Section 8(A)(3). Prior to approving a plan under Section 8, the Commission must hold a public hearing concerning the proposed plan. *Id.*, Section 8(A)(B). Although the Commission may approve a Section 8 plan by simple majority vote, that plan would remain in effect for only four years. *Id.*, Section 8(C)(1)(a). Section 8(C)(2) requires the Commission to include in its plan "a statement explaining what the commission determined to be the statewide preferences of the voters and the manner in which the" plan meets Section 6(B)'s proportionality requirement.

Finally, Article XI, Section 9 grants this Court exclusive and original jurisdiction over all claims arising under Article XI. *Id.*, Section 9(A). In the event the Court finds that a General Assembly plan violates the requirements set forth in Article XI, the appropriate remedy is an order reconstituting the Commission pursuant to Section 1 to adopt a General Assembly plan "in conformity with such provisions of this constitution as are then valid." *Id.*, Section 9(B).

III. Statement of Facts

A. Ohio's history of extreme partisan gerrymandering prompted the 2015 Fair Districts Amendments.

Ohio has a sordid history of partisan gerrymandering. Prior to 1851, the drawing of state legislative districts rested with the General Assembly itself. *State ex rel. Herbert v. Bricker*, 139 Ohio St. 499, 508, 41 N.E.2d 377 (1942). As one delegate to the Constitutional Convention of 1851 would later remark, this subjected the state "to a most humiliating experience, while power [to draw legislative districts] was left with the General Assembly; the scenes of anarchy and confusion, which had marked its exercise there, undoubtedly determined the people to deprive that body of it absolutely, so far as the election of their own members was concerned, for the future."

Id. at 509 (quotation marks and citation omitted). And so the people of Ohio introduced Article XI, which moved map-drawing power from the General Assembly to an apportionment board composed of the Governor, Secretary of State, State Auditor, and appointees of the legislative leaders of each major party. Ohio Constitution, Article XI, Section 1 (1967, repealed 2015). The Amendment's sole objective: "the prevention of gerrymandering." *Herbert*, 41 N.E.2d at 383.

This reform, on its own, proved inadequate. In the decades that followed, the Apportionment Board wielded its power time and again to entrench the incumbent party's majority. (BENNETT_0067 (*Ohio's Gerrymandering Problem*), Supp. 53.) Majority party board members drew maps in secrecy, without consulting the minority party, intent on maximizing the performance of their own candidates. (BENNETT_0002-03 (*Ohio Redistricting Transparency Report*), Supp. 40-41.)

At no time were Article XI's shortcomings more pronounced than they were during last decade's redistricting cycle. When the Apportionment Board convened in 2011, the Governor, Secretary of State, and Auditor were Republicans. (BENNETT_0024 (*Ohio Redistricting Transparency Report* App'x), Supp. 49.) As a result, Republicans made up a majority of the Apportionment Board and, as Article XI then stood, could take action without consulting Democrats. The result was maps wholly out of line with Ohio voters' preferences: In the first state house elections held under the new maps in 2012, Democratic candidates won a majority (50.2%) of the statewide vote, but a mere 39.4% of the state house seats. (EXPERT_0022 (Aff. of C. Warshaw), Supp. 370.) The same pattern occurred in election after election, such that Republicans maintained supermajorities irrespective of the statewide vote share. (*Id.*) For example, after the 2020 election, Democrats controlled only 24% of the state senate seats despite winning nearly 45% of the statewide vote. (EXPERT_0022-23; Supp. 370-71.) Using a variety of partisan bias metrics,

Dr. Christopher Warshaw has concluded that the 2011 maps resulted in "a historically extreme level of pro-Republican bias" in Ohio over the last decade. (EXPERT_0025, Supp. 372.)

While many elected officials and Republican party operatives worked together to achieve the 2011 gerrymander, the Party's perverse success in the cycle can be summarized through the work of one person: Raymond DiRossi. During the 2011 cycle, DiRossi served as a joint secretary to the Apportionment Board. (BENNETT_0024 (*Ohio Redistricting Transparency Report* App'x), Supp. at 49.) As joint secretary, DiRossi was responsible for drafting a General Assembly map. (BENNETT_0005 (*Ohio Redistricting Transparency Report*), Supp. 42.) Heeding the advice of a 2010 Republican National Committee ("RNC") presentation on redistricting, DiRossi saw to it that Republican efforts to gerrymander the state legislative maps were kept "safe" and "secret." (*See* BENNETT_0040 (*Ohio Redistricting Transparency Report* App'x), Supp. 50.) To this end, DiRossi personally booked a 91-day stay at the DoubleTree hotel across from the Statehouse in Columbus. (BENNETT_0055, Supp. 51.) This room, known as the "bunker" by Republican operatives, became a base of operations for the Republican gerrymandering effort. The bunker was a place where Republican officials and staffers could meet, safe from the public's prying eyes, to draft favorable legislative and congressional maps. (BENNETT_0014 (*Ohio Redistricting Transparency Report*), Supp. 46.) Republicans weighed candidate performance under the maps according to various partisan indices, testing each map against potential "wave" scenarios in which Democrats performed well to ensure that *no* level of Democratic success could undermine Republican domination of the General Assembly. (BENNETT_0018, Supp. 47.)

While DiRossi and the rest of the Republican caucus were busy behind closed doors carving up Ohio in Republicans' favor, the Apportionment Board set up a barebones public process that did little more than achieve the procedural minimum required by the Constitution at the time.

(BENNETT_0005-06, Supp. 42.) The maps were revealed to the public just over a week before the constitutionally-mandated deadline to approve a plan. (BENETT_0008, Supp. 44.) Five days after the maps were unveiled, the Board voted to approve them. (*Id.*) During this short window in which the maps were publicly available, there was little opportunity for the public to comment: The Board allowed for only ten minutes of remarks from any public proponent of a redistricting plan, less than five seconds for each of the 132 districts involved. (BENNETT_0006, Supp. 43.)

B. In response to the extreme partisan gerrymander of the 2011 redistricting cycle, the General Assembly and voters of Ohio passed the Fair Districts Amendments.

The partisan excesses of the 2011 redistricting cycle led to a groundswell of support for redistricting reform. Responding to this public sentiment, members of the Ohio House of Representatives introduced House Joint Resolution 12 ("HJR 12") in late 2014. (HIST_0001-08 (H.J.R. 12 (as introduced)), Supp. 1-8.)

HJR 12 reformed redistricting in Ohio in several key respects. First, it encouraged bipartisanship by, among other things, abolishing the Apportionment Board and replacing it with the Commission. (HIST_0015 (H.J.R. 12 (as enrolled)), Supp. 9.) The Commission consists of the Governor, Secretary of State, State Auditor, and appointees of the majority and minority leaders of both chambers of the General Assembly. (*Id.*) To pass a plan that remains in effect for a full ten years, the Commission must have the approval of at least two members of each major party. (HIST_0016, Supp. 10.) A plan approved by a simple majority of the Commission remains in effect for only four years. (HIST_0020-21, Supp. 14-15.) Second, HJR 12 increased transparency. The Commission must hold at least three hearings on a proposed map, and all meetings must be open to the public. (HIST_0016, Supp. 10.)

Third, HJR 12 required the maps approved by the Commission to be fair. Among other reforms, the bill included a requirement for the Commission to attempt to draw maps that reflect

voters' statewide preferences and are not drawn primarily to favor one party. (HIST_0020, Supp. 14.) It also provided that if a plan was passed on a party-line vote, the Commission must explain how the plan corresponded to statewide voter preferences. (HIST_0021, Supp. 15.) This requirement that the Commission "show its work" when passing a plan without bipartisan support reflects innate skepticism that party-line votes would result in a constitutionally proportional plan.

Finally, HJR 12 provided for robust judicial review of redistricting plans. The amended Article XI is cast in mandatory terms and contains detailed judicial review provisions, including ones delineating specific remedies for specific violations of the Article. (*See, e.g.*, HIST_0017-18, 0022-23, Supp. 11-12, 16-17.) The prior version of Article XI, by contrast, was framed in highly permissive language and lacked specific provisions addressing when and how a plan must be struck down. *See generally* Ohio Constitution, Article XI (1967, repealed 2021). It was this permissive language and lack of clear judicial standards that prompted this Court to hold, in *Wilson v. Kasich*, that the Apportionment Board's plan was entitled to significant deference. 134 Ohio St.3d 221, 2012-Ohio-5367, 981 N.E.2d 814, ¶ 21. HJR 12 changed this. Indeed, and as discussed in more detail below, several Commission members who voted for the plan acknowledged as much when they noted that this Court, rather than the Commission, would be the final arbiter of the Plan's constitutionality. (STIP_0396, 0398 (9/15/2021 Commission Hearing), Supp. 99, 101.)

The records of debates on HJR 12 are replete with statements from legislators emphasizing the goals described above. For example, Representative Mike Duffey, a Republican from Worthington, remarked during the floor debate on HJR 12 that, "right now we've got a redistricting system that does not require any balance. It does not require minority party participation. . . . [I]f the shoe was on the other foot, and the Democrats were to control two of the three statewide offices, we'd be looking at 60-39 majority the other way. And I don't think anybody really wants to see

government operate that way." (HIST_0042-43 (12/4/14 Debate on HJR 12), Supp. 20-21.) Representative Huffman (now Senate President Huffman and Commissioner) said he thought HJR 12 "represents some big compromises on the majority's part. The majority will not be able to do the kind of things that have happened in the last several years." Jim Siegel, *Ohio Legislators Come to Redistricting Agreement*, Cincinnati Enquirer (Dec. 5, 2014).

Legislators understood that what is now Section 6(B) of Article XI, which requires the Commission to attempt to draw maps that reflect statewide voting preferences, would have real teeth. Representative John Becker, a Republican from Union Township, remarked in opposition to the resolution that Section 6(B) "guarantees we will forever have a very close 50-50 split in this chamber so you're no longer ever going to see a strong partisan divide." (HIST_0047 (12/4/14 Debate on HJR 12), Supp. 22.)

HJR 12 passed the General Assembly overwhelmingly: 28-1 in the Senate and 80-8 in the House. (HIST_0095 (Bulletin), Supp. 24.) The Governor signed the bill, and it was placed on the ballot for the November 2015 election.

The run-up to the vote on the Fair Districts Amendments (placed on the ballot as "Issue 1") featured significant public discussion and grassroots activity. First, prior to placement on the ballot, the Ohio Ballot Board was required to approve proposed ballot language. (HIST_0098 (Statement in Support of Issue 1), Supp. 25.) As part of this process, proponents of the measure submitted statements explaining the measure's purpose, meaning, and consequences. (*Id.*) The official statement in support of Issue 1 was submitted by a bipartisan group of legislators that included then-Senator (and now State Auditor and Commissioner) Faber. (*Id.*) The statement described Issue 1 as creating "a fair, bipartisan, and transparent process," which would "establish fair and balanced standards for drawing state legislative districts, including that no district plan

should favor a political party." (*Id.*)

Issue 1 was endorsed by both major political parties, as well as a host of organizations from across the political spectrum (HIST_0109-15 (Endorsements), Supp. 27-33.) Many of these organizations publicly promoted voting for Issue 1 as a means to end partisan gerrymandering, increase transparency, and create accountability. (*E.g.*, HIST_0116-18 (Details of the Proposal), Supp. 34-36; BENNETT_0087 (*Ohio Voter*), Supp. 54.)

Crucial to the grassroots effort in support of Issue 1 was Fair Districts for Ohio, a coalition founded by current Commissioners (and then-state Representatives) Huffman and Vernon Sykes. (DEPO_00909 (V. Sykes Dep. at 76:17-21), Supp. 255; HIST_0120 (Fair Districts Handout), Supp. 37.) Fair Districts for Ohio circulated a flyer informing voters that the amendments would "protect[] against gerrymandering by prohibiting any district from primarily favoring one political party" and "require[] districts to closely follow the statewide preferences of voters." (*Id.*)

On November 3, 2015, voters approved Issue 1 by a vote of 71.47% to 28.53%—exhibiting overwhelming consensus in a typically divided state. (HIST_0121 (Statewide Issue History), Supp. 38.) The amendment became effective on January 1, 2021.

Voters had received a clear and consistent message—and voted accordingly. Issue 1 was intended to, and would, end partisan gerrymandering in Ohio. Issue 1 would require a balanced plan that did not advantage one political party over the other. Voters were *not* told that these reforms would present the Commission with a constitutional a la carte menu, giving the Commission the power to ignore constitutional safeguards against partisan gerrymandering if they proved too unpalatable to the majority party. As described below, however, that is precisely the kind of disregard with which the Commission treated the Constitution here.

C. In 2021, the Commission began its work late and behind closed doors.

Article XI, as amended in 2015, requires that the Commission vote on a state legislative map by September 1. Ohio Constitution, Article XI, Section 1(C). Despite this clear deadline, the Governor did not convene the Commission until August 6, 2021. (STIP_0001-02 (8/6/2021 Commission Hearing), Supp. 74-75.) At the August 6 meeting, the Commission's membership was announced, and public comment was not solicited. (*Id.*) The Commission members were Governor DeWine, Secretary of State LaRose, Auditor Faber, House Speaker Cupp, Senate President Huffman, House Minority Leader Emilia Sykes, and Senator Vernon Sykes. (*Id.*) Census data was released six days later on August 12. (DEPO_00478 (DiRossi Dep. at 26:1-5), Supp. 234.) However, after the first August 6 meeting, no official Commission business occurred for more than two weeks. (BENNETT_0101-02 (Senator Sykes Press Release), Supp. 55-56.) Instead, as in the 2011 redistricting process, the real work unfolded behind closed doors.

The Commission as a whole never worked together to develop a map, nor did it have the staff or software to do so. (DEPO_01717, 01720, 01831-32 (Huffman Dep. at 15:1-21, 18:7-9, 129:8-130:18), Supp. 309, 310, 326-27.) Rather, Republican legislative leaders took control. Following the August 12 release of census data, the Republican caucuses began work on their redistricting maps—maps that the Commission would later vote to present as its own and (with a few small amendments) adopt as its final plan. (DEPO_01284-85 (Springhetti Dep. at 33:23-34:9), Supp. 278-79; DEPO_00477 (DiRossi Dep. at 25:20-25), Supp. 233; DEPO_01721 (Huffman Dep. at 19:15-20), Supp. 311.) Under the direction of Speaker Cupp and President Huffman, two legislative staffers drafted General Assembly maps, one representing the House and working under Speaker Cupp and the other representing the Senate and working under President Huffman. (DEPO_00480 (DiRossi Dep. at 28:11-16), Supp. 235; DEPO_01279-80, DEPO_01285

(Springhetti Dep. at 28:24-29:8, 34:10-17), Supp. 276-77, 279.) Speaker Cupp's staffer was Blake Springhetti, the Director of Finance for the Ohio House of Representatives. (DEPO_01260 (Springhetti Dep. at 9:21-24), Supp. 275.) And President Huffman's mapmaker was a familiar character in the arena of Ohio redistricting: the Finance Director for the Ohio Senate and joint secretary to the 2011 Apportionment Board, Raymond DiRossi. (DEPO_01715 (Huffman Dep. at 13:14-17), Supp. 307; DEPO_00476 (DiRossi Dep. at 24:14-17), Supp. 232.) DiRossi, in keeping with tradition from the 2011 cycle, had spent the previous month requesting quotes from hotels for extra meeting space outside of the public office buildings, renting furniture, and booking rooms for multiple individuals (including outside legal counsel) to stay in during the map-drawing process. (Discovery Vol. 4 at 229-99, Vol. 5 at 238-40 (Huffman Production), Supp. 127-200.)

During this phase of drafting, DiRossi and Springhetti's map-drawing occurred out of public sight and without consultation from any Commissioners other than their bosses, President Huffman and Speaker Cupp. While drawing maps, DiRossi and Springhetti worked at adjacent desks. (DEPO_00482-83 (DiRossi Dep. at 30:18-31:4), Supp. 237-38; DEPO_01308 (Springhetti Dep. at 57:12-19), Supp. 285.) On occasion, President Huffman or Speaker Cupp would visit DiRossi and Springhetti to see how the process was going, sometimes looking at the mapmakers' computer screens and asking questions about the maps they were creating. (DEPO_00480-81 (DiRossi Dep. at 28:11-29:23), Supp. 235-36; DEPO_01289-90 (Springhetti Dep. at 38:16-39:14), Supp. 281-82; DEPO_01729 (Huffman Dep. at 27:9-19), Supp. 312.)

The other Commissioners confirm that they had no opportunity to provide input on the maps, no meaningful access to DiRossi or Springhetti, and that their efforts to collaborate in the process were summarily rebuffed. (RESP_0241-42 (DeWine Resp. to Bennett ROGs), Supp. 111-12; RESP_0252-53 (Faber Resp. to Bennett ROGs), Supp. 114-15; RESP_0264-65 (LaRose Resp.

to Bennett ROGs), Supp. 117-18; DEPO_01021 (Faber Dep. at 37:1-24), Supp. 261; DEPO_00025-27 (LaRose Dep. at 24:10-26:11), Supp. 206-08; DEPO_00395, 00398 (E. Sykes Dep. at 70:14-22, 83:12-21), Supp. 225, 226.) Indeed, the other Commissioners have succinctly explained that they "had no involvement in the drafting or creation of the state legislative maps enacted under the Enacted Plan." (RESP_0342 (LaRose Resp. to OOC ROGs), Supp. 124; RESP_0354 (Faber Resp. to OOC ROGs), Supp. 126; RESP_0329 (DeWine Resp. to OOC ROGs), Supp. 122.)

One vignette evocatively illustrates the degree to which Republican legislative leaders cloaked their map-drawing in secrecy. Other Commissioners did not even know where DiRossi and Springhetti were drawing their maps. Secretary LaRose's best lead on that topic came from a day he was jogging in Columbus and spied the Republican map drawers coming out of an office building. (DEPO_01021-22 (Faber Dep. at 37:25-38:10), Supp. 261-62.)

D. The Republican legislative leaders and their associates drew maps without attention to Section 6 or public input but instead with assistance from national Republican party operatives.

During the mapmaking process, DiRossi and Springhetti took direction only from President Huffman and Speaker Cupp. (DEPO_00480 (DiRossi Dep. at 28:11-16) Supp. 235; DEPO_01285 (Springhetti Dep. at 34:10-17), Supp. 279; DEPO_01716 (Huffman Dep. at 14:1-25), Supp. 308.) And those instructions disregarded the anti-gerrymandering provisions of Article XI, Section 6. (DEPO_01658, 01659 (Cupp Dep. at 98:16-23, 99:6-12), Supp. 304, 305; DEPO_0610-11 (DiRossi Dep. at 158:6-159:25), Supp. 245-46; DEPO_01285-86 (Springhetti Dep. at 34:10-35:21), Supp. 279-80.) The legislative leaders instructed the mapmakers to comply with the line-drawing requirements of the state Constitution, such as those set forth in Sections 3 and 4 of Article XI, but emphasized to the mapmakers that they need *not* worry about complying with Section 6. (DEPO_01658, 01659 (Cupp Dep. at 98:16-23, 99:6-12), Supp. 304, 305; DEPO_01733-34

(Huffman Dep. at 31:19-32:5), Supp. 313-14; DEPO_00610-11 (DiRossi Dep. at 158:6-159:25), Supp. 245-46; DEPO_01285-86 (Springhetti Dep. at 34:10-35:21), Supp. 279-80.) Thus, the mapmakers' goal was to create maps that complied only with the population and subdivision split requirements of Article XI; they did not view themselves as having any responsibility to even attempt to comply with the requirements that the maps be proportional and not favor one party or another. (DEPO_00610 (DiRossi Dep. at 158:1-15), Supp. 245.)

The Republican legislative leaders did not see ensuring Section 6 compliance as their responsibility either, however. At his deposition, President Huffman opined that Section 6 was not mandatory and that the Commission could consider or disregard the provision as it wished. (DEPO_01812, 01814-15 (Huffman Dep. at 110:17-24, 112:16-113:1), Supp. 321, 322-23.)

To create the maps, the mapmakers used Maptitude, a mapmaking software used for redistricting. (DEPO_00464 (DiRossi Dep. at 12:6-9), Supp. 229.) While drawing districts, the mapmakers were able to view a display window that showed various data for a district they were drawing. (DEPO_00484 (DiRossi Dep. at 32:2-6), Supp. 239.) In this window, mapmakers viewed partisan data while constructing the maps, including data showing each party's likely vote share in a given district as it was configured. (DEPO_00469-70 (DiRossi Dep. at 17:13-18:10), Supp. 230-31; DEPO_01295-96 (Springhetti Dep. at 44:24-45:11), Supp. 283-84.) Speaker Cupp testified that at his request, Springhetti would tell him the partisan indices for different draft districts. (DEPO_01605-06 (Cupp Dep. at 44:14-45:6), Supp. 293-94.)

While other Commissioners were frozen out of the process, partisan agents contributed to the creation of the Plan. DiRossi and Springhetti worked with two "data consultants," Clark Bensen and John Morgan. (DEPO_00497-98 (DiRossi Dep. at 45:20-46:16), Supp. 240-41.) Counsel to DiRossi and Springhetti in this matter has objected to any questions concerning

discussions between the mapmakers and the data consultants, arguing that the latter are "consulting experts" (on behalf of whom, it is unclear) and that any such discussions are therefore privileged. (DEPO_00498 (DiRossi Dep. at 46:19-25), Supp. 241.) Accordingly, little is known about what was said between the mapmakers and consultants, how the consultants were paid, or on behalf of whom the consultants worked—other than the fact that the consultants provided the map drawers with nonpublic partisan data to assist in drawing the maps. (DEPO_01588-89 (Cupp. Dep. at 28:3-11, 28:17-29:1), Supp. 289-90; DEPO_01763-64 (Huffman Dep. at 61:11-62:4), Supp. 318-19.)

What is also known is that Bensen and Morgan are both national Republican operatives; during the previous redistricting cycle, both aided Republican gerrymanders in several states. For example, Morgan played a role in drawing the Virginia House of Delegates map in 2011, which was struck down as a racial gerrymander. *Bethune-Hill v. Virginia State Bd. of Elections*, 326 F. Supp. 3d 128, 151-52 (E.D. Va. 2018). Bensen and Morgan also helped the Ohio General Assembly draw the 2011 Ohio congressional map, a map which (prior to the United States Supreme Court's ruling that partisan gerrymandering claims were non-justiciable in federal courts) was struck down by a federal three-judge panel as a partisan gerrymander. *See Ohio A. Philip Randolph Inst. v. Householder* 373 F. Supp. 3d 978, 994, 997 (S.D. Ohio 2019), *vacated and remanded*, 140 S. Ct. 102 (2019) (vacating and remanding for further consideration in light of *Rucho v. Common Cause*, 139 S. Ct. 2484 (2019)). In fact, it was Morgan who gave the now infamous 2010 RNC presentation in which he advised Republican map drawers that, when it came to the redistricting process in their states, they should "keep it secret" and "keep it safe." (BENNETT_0040 (*Ohio Redistricting Transparency Report* App'x), Supp. 50.)

As the mapmaking process proceeded outside of public view, the Commission began a show of soliciting public feedback. Beginning on August 23, the Commission held a weeklong

series of ten "public hearings" throughout the state, where the public had the opportunity to provide testimony. (*See* BENNETT_0101-02 (Senator Sykes Press Release), Supp. 55-56.) At this point, DiRossi and Springhetti had been working on their maps for at least ten days, but no mention of their work was made to the public, and it remained tightly under wraps. (*See generally* STIP_0003-159 (8/23-8/27/2021 Commission Hearings).) As a result, the public had no opportunity to provide input on any Commission maps during these hearings.

In stark contrast to legislators' promises that the Fair Districts Amendments would guarantee a transparent process where public input is valued, the initial round of Commission hearings did not allow for a meaningful exchange of ideas between members of the public and Commission members. At each hearing, Commission members (or, frequently, their surrogates) refused to answer questions or engage with speakers. (*See id.*)

E. Ignoring plans proposed by the public and Democratic Commissioners, the Commission voted to present the Republican plan as its own.

One day before the September 1—the constitutional deadline to propose a General Assembly district plan—the Commission reconvened. This time, Senator Sykes presented a map on behalf of the Senate Democratic caucus. (STIP_0161-63 (8/31/2021 Commission Hearing), Supp. 77-79.) The meeting lasted fewer than 40 minutes. (STIP_0160-68, Supp. 76-84.) There was no meaningful discussion on the Sykes map, or any other map. (*Id.*) In response to Leader Sykes's question about whether the Commission itself would present a plan, Speaker Cupp advised that a Republican map was in progress but would not be available by September 1. (STIP_0163, Supp. 79.) Speaker Cupp did not explain how the Commission could lawfully disregard the September 1 deadline, which applies even under Section 8's impasse provision. (*Id.*)

And so, apparently because the Commission knew full well that it would ultimately adopt whatever map was acceptable to the Republican caucus, it took no action to timely adopt a map.

The September 1 deadline came and went, and the Commission neither proposed nor adopted a map pursuant to Article XI. (BENNETT_0108 (Columbus Dispatch Article), Supp. 59.) Meanwhile, several citizens' groups submitted their own General Assembly maps via the Commission's public website for the Commission's consideration. (*See* Aff. of J. Rodden ¶ 4, Supp. 328.) The Commission, however, made no effort to review, incorporate, comment on, or otherwise meaningfully respond to any of these public maps, despite that many were materially compliant with all requirements of Article XI (*see id.* ¶ 37, Supp. 337).

Behind closed doors, the song remained very much the same. The Republican legislative leaders continued to refuse to provide the statewide elected officials with an opportunity to review or provide input on their draft maps. *See supra* Part III.C. Speaker Cupp and President Huffman refused to so much as explain the criteria being used to craft their plans or ensure that their plans were being drawn using a commonly shared understanding of the Section 6 partisan proportionality standard, despite requests by other Commissioners for that information. (DEPO_00052 (LaRose Dep. at 51:6-25), Supp. 210.)

Unsurprisingly, the Democratic Commissioners were also excluded from the map-drawing process and denied any meaningful opportunity to collaborate on map-drawing with the Republican side. On one occasion, Senator Sykes reached out to President Huffman to schedule a meeting to discuss the first map that the Democratic caucus had presented, hoping to provide "an opportunity for President Huffman to see a detailed view of [the Senate Democrats'] map, ask questions and provide input." (Discovery Vol. 6 at 228 (Huffman Production), Supp. 201.) President Huffman's staff suggested that he would be available a full week later—just five days before the final constitutional deadline of September 15, (*id.*,) indicating for all practical purposes that he had no interest in learning about, much less considering, the Democratic map.

Meanwhile, the Democratic Commissioners invited the statewide elected officials to participate in their map-drawing process. Both Secretary LaRose and Auditor Faber offered suggestions for changes to the Sykes map that was proposed on August 31. (DEPO_01064 (Faber Dep. at 80:10-24), Supp. 271.) Christopher Glassburn, the Democrats' chief map maker, sat down with both officials in front of his computer and made changes to the map based on their suggestions in real time. (DEPO_01487 (Glassburn Dep. at 131:8-14), Supp. 287.)

On September 9, Republicans finally emerged with a plan of their own. (STIP_0170-73 (9/9/2021 Commission Hearing Pt. 1), Supp. 86-89.) The plan, officially introduced by President Huffman on behalf of the Senate Republicans, was the map that DiRossi and Springhetti had been working on since the release of census data in early August. (DEPO_00501-02 (DiRossi Dep. at 49:24-50:6), Supp. 242-43.) Until this point, only a small group of staff, counsel, and consultants working for the majority legislative leaders had seen the maps. Speaker Cupp himself testified that he did not see the final plan until September 8, the day before it was introduced. (DEPO_01597 (Cupp Dep. at 37:5-8), Supp. 291.) The rest of the Commissioners were also presented with printed copies of the maps that day, though they were not provided with the data used to draw them or anything else that would have allowed them to evaluate their compliance with Article XI. (DEPO_00018, 00019, 00034, 00057 (LaRose Dep. at 17:8-21, 18:12-25, 33:13-22, 56:10-15), Supp. 203, 204, 209, 211; DEPO_00361-62 (E. Sykes Dep. at 46:3-47:13), Supp. 217-18.)

DiRossi presented the plan at the September 9 meeting. (STIP_0170-73 (9/9/2021 Commission Hearing Pt. 1), Supp. 86-89.) His presentation focused exclusively on the plan's compliance with the map-drawing criteria outlined in Sections 3 and 4 of Article XI. (*Id.*) When Leader Sykes asked about the plan's compliance with the Voting Rights Act, DiRossi replied that he had not considered "racial data or demographic data" when he drew the maps, stating that the

leadership in the General Assembly had explicitly instructed him to disregard this type of data during the process. (STIP_0174, Supp. 90.) When Senator Sykes asked DiRossi if the map complied with Section 6's proportionality requirement, DiRossi responded that the partisan analysis was still "ongoing." (STIP_0173-74, Supp. 89-90.) Yet, to the press, President Huffman and Speaker Cupp remarked that the Republican caucuses did not analyze the partisan balance of their maps prior to introducing them. (BENNETT_0106-09 (Columbus Dispatch Article), Supp. 57-60.) And, as mentioned, behind the scenes, DiRossi and Springhetti, who had been instructed by President Huffman and Speaker Cupp not to concern themselves with Section 6, had drawn the plans with partisan data in mind and considered the anticipated partisan performance of particular districts with the legislative leaders themselves. (DEPO_01588-89 (Cupp Dep. at 28:17-29:22), Supp. 289-90; DEPO_01816-17 (Huffman Dep. at 114:21-115:1), Supp. 324-25.)

It is perhaps not surprising that the plan drawn by partisan staffers while considering partisan data and collaborating with partisan consultants resulted in a map that was so partisan that even Speaker Cupp admitted he was "surprised" and "concerned" when he realized just how much the plan favored Republicans. (DEPO_01606-07 (Cupp Dep. at 46:12-47:5), Supp. 294-95.) Indeed, the map constituted an even more extreme Republican partisan gerrymander than the hyper-partisan maps created in the bunker in 2011. Of the 132 total General Assembly districts, only 31% would lean Democratic: 32 of 99 in the House and 9 of 33 in the Senate. (Aff. of J. Rodden at Tables 2 & 3, Supp. 340-43 (listing separate totals by chamber).) In comparison, Democrats currently hold 32% of General Assembly seats under the 2011 Plan. (*Id.* ¶ 19, Supp. 334.) The proposed plan would solidify a Republican supermajority in the General Assembly.

A few hours after the maps were publicly unveiled for the first time, at the second hearing of the day, the Commission voted along party lines to propose President Huffman's maps as the

Commission's plan. (STIP_0204-05 (9/9/2021 Commission Hearing Pt. 2), Supp. 92-93.) No other maps were considered or discussed, nor did the Commission seek to present a map of its own.

F. During the final six days of proceedings, the Commission did not attempt to comply with Section 6; rather, Republican Commissioners tried to get Democratic Commissioners to agree to the most-Republican leaning map possible.

After the Republican Commissioners voted to propose the legislative Republicans' maps on September 9, only six days remained until September 15—the final deadline to adopt General Assembly maps under the state Constitution's impasse provision. Ohio Constitution, Article XI, Section 8(A)(3). Beginning on Sunday, September 12, with just three days until the deadline, Ohio residents responded to the proposed maps at public hearings before the Commissioners across the state. (*See generally* STIP_0228-391 (9/12-9/14/2021 Commission Hearings).)

The record provides little indication that this testimony was considered or incorporated into the plan, however. Rather, the real work again occurred behind the scenes, by way of staff meetings and meetings among three or fewer Commissioners. This was part of a conscious effort to avoid the Open Meetings Act's requirements. (DEPO_01008, 01025 (Faber Dep. at 24:10-12, 41:15-20), Supp. 257, 263; *see* DEPO_00020 (LaRose Dep. at 19:11-21), Supp. 205.)

In the final days leading up to the September 15 deadline, President Huffman and Speaker Cupp used the map they had drawn as a starting point for their backroom efforts to woo the Democratic commissioners with piecemeal scraps. (*See* DEPO_01616-17 (Cupp Dep. at 56:21-57:18), Supp. 296-97.) President Huffman testified that he and DiRossi analyzed the partisan breakdown of the September 9 map for negotiations to achieve a ten-year map. (DEPO_01816-17 (Huffman Dep. at 114:21-115:1), Supp. 324-25.) Speaker Cupp further explained that their approach to negotiating was to incrementally lower the Republican seat count until they reached a partisan breakdown that the Democrats were willing to accept. (DEPO_01623-24 (Cupp Dep. at 63:15-64:16), Supp. 298-99.)

The Republican statewide officials, too, were focused on brokering a deal among all seven Commissioners—whatever that deal was. Auditor Faber, for example, explained that his focus was not on achieving partisan proportionality, but rather "figuring out how we could get agreement." (DEPO_01017-18 (Faber Dep. at 33:21-34:8), Supp. 258-59.) In contrast to the Republican Commissioners, who tried to cut a deal cementing Republican supermajorities that Democrats would still tolerate, Leader Sykes and Senator Sykes saw their charge as drawing a map that complied with the "representational fairness proportion" requirement of the Constitution. (DEPO_00884-85, 00891 (V. Sykes Dep. at 51:4-52:3, 58:7-17), Supp. 250-51, 254; DEPO_00398-99, 00374-75 (E. Sykes Dep. at 83:22-84:3, 59:13-60:5), Supp. 226-27, 222-23.) Unsurprisingly, these two very different approaches led to impasse.

The Democratic caucuses proposed a new map on September 13, which corrected at least one technical constitutional violation in their previously proposed map and maintained a seat share that was close to the target 54 Republican to 46 Democratic ratio. (STIP_0268 (9/13/2021 Commission Hearing), Supp. 95.) Even after proposing their September 13 amendment, Leader Sykes and Senator Sykes continued to invite Auditor Faber and Secretary LaRose to meet with their map drawers on multiple occasions, during which the Republican statewide elected officials asked questions about the Democrats' maps, provided input, and suggested amendments. (DEPO_01020 (Faber Dep. at 36:3-16), Supp. 260.) Ultimately, the Democratic caucuses proposed a revised map on September 15 (the "Democratic Caucus Plan") that incorporated LaRose's and Faber's input but kept the same overall seat share, as the caucuses believed that lowering the number of Democratic-leaning seats would require them to abdicate their constitutional duty to draw proportional maps. (DEPO_00889-91 (V. Sykes Dep. at 56:25-58:24), Supp. 252-54.) Save for perhaps a few immaterial technical issues, discussed *infra* at note 3, the maps complied with

all of Article XI's requirements.

As the constitutional deadline approached, Commissioners began to recognize that they may not reach bipartisan agreement. Leader Sykes expressed that she and Speaker Cupp were unlikely to agree on a map. (DEPO_00371-73 (E. Sykes Dep. at 56:19-58:1), Supp. 219-21; DEPO_01028 (Faber Dep. at 44:3-9), Supp. 264.) And although Auditor Faber, for example, was aware that Speaker Cupp was less focused on arriving at a consensus map than other Commissioners, (DEPO_01029, 01054 (Faber Dep. at 45:1-6, 70:8-9), Supp. 265, 270,) Auditor Faber never entertained the notion of breaking ranks with the Republican legislative leaders. To him, the only realistic compromise was one between the two sets of legislative leaders, which essentially meant that the two individuals seeking to maintain their Republican legislative supermajorities could dictate the outcome of all negotiations. (DEPO_01069-70 (Faber Dep. at 85:18-86:19), Supp. 272-73; DEPO_00882 (V. Sykes Dep. at 49:10-22), Supp. 249.)

On September 15, negotiations broke down. Commissioners convened an official meeting but quickly recessed to meet in small groups, again to avoid the requirements of the Open Meetings Act. (DEPO_01050-51 (Faber Dep. at 66:21-67:17), Supp. 268-69.) Although Secretary LaRose was inclined to work through the deadline if bipartisan agreement was possible, other Commissioners, including Auditor Faber, were ready to "land the planes." (*Id.*)

G. The Commission passed a hyper-partisan plan: A majority of Commissioners disagreed with the post hoc effort to rationalize the Plan's compliance with the Constitution's proportionality requirement.

Finally, President Huffman offered his "last, best, final map[s]" on the evening of September 15. (DEPO_01030-31 (Faber Dep. at 46:22-47:1), Supp. 266-67.) They made few changes from the original September 9 versions, modestly increasing the number of anticipated Democratic seats. (Aff. of J. Rodden at Tables 2 & 3, Supp. 340-43 (showing changes in each chamber).) As explained above, these changes were not made based on any analysis of what was

necessary to comply with Section 6; they were made to try to swing Democratic Commissioner support to lock in the best Republican plan possible for ten years. The final plan presented was still likely to result in supermajorities for Republicans in both houses of the General Assembly. It also closely resembled the partisan breakdown under the gerrymandered 2011 plan. (*Id.* ¶ 19, Supp. 334.)

The maps were met with unease. Several of the Republican members of the Commission expressed grave reservations about the plan, including doubts about the plan's constitutionality. Secretary LaRose was among them. At a Commission hearing just two days earlier, he had described the Democratic Caucus Plan as "a good faith proposal." (STIP_0275 (9/13/2021 Commission Hearing), Supp. 96.) He described the plan presented by President Huffman on the evening of September 15, by contrast, as "asinine" in a text to his Chief of Staff. (DEPO_00158 (LaRose Dep. Ex. 2), Supp. 212.) He voted in favor of it, but in doing so, stated, "I'm casting my yes vote with great unease," and expressed his view that certain other Commissioners had not "worked in good faith, in a bipartisan way, to try to get a compromise." (STIP_0398 (9/15/2021 Commission Hearing), Supp. 101.) Governor DeWine also expressed clear reservations, stating that the Commission "could have produced a more clearly constitutional bill" but "[t]hat's not the bill that we have in front of us." (*Id.*) Governor DeWine stated that in voting for the bill, he was "not judging the bill one way or another. That's up . . . to a court to do." (*Id.*) Auditor Faber was less critical, but still stopped short of a full-throated endorsement, stating, "[T]his map isn't that bad. It's not that good either." (STIP_0400, Supp. 103.) The two Democratic Commissioners expressed their views that the plan before them was plainly unconstitutional. (STIP_0395-98, Supp. 98-101.)

At that point, Auditor Faber asked whether the Commission had a constitutionally required

statement explaining how the proposed plan complied with Section 6(B) of the Constitution, as required by Article XI, Section 8(C)(2). (STIP_0399, Supp. 102.) President Huffman explained that while the statement had been prepared (in the last few hours), there was no requirement to share it before the vote was cast, though he did ultimately distribute it. (*Id.*) This was the first time that most of the Commissioners saw the statement. (*See* STIP_0402, Supp. 105; RESP_0276 (Huffman Resp. to Bennett ROGs), Supp. 120.)

Minutes later, the Commission took a vote on the maps. (STIP_0401 (9/15/2021 Commission Hearing), Supp. 104.) Despite the handwringing, it adopted the state legislative maps proposed by President Huffman (the "2021 Plan"), by a 5-2 party-line vote after midnight on September 16, missing the final constitutional deadline set by Article XI, Section 8. (*Id.*)

Only after adopting the Plan did the Commissioners turn to discussing the 8(C)(2) statement, required when a plan is not bipartisan, which "explain[s] what the commission determined to be the statewide preferences of the voters of Ohio and the manner in which the statewide proportion of districts in the plan . . . favor each political party corresponds closely to those preferences." Ohio Constitution, Article XI, Section 8(C)(2). The statement advanced an argument that the amended map adequately corresponded to statewide voter preferences because the proportion of safe Republican seats was more than the average proportion of voters favoring statewide Republican candidates over the last decade (54%), but less than the percentage of elections won by Republicans in the last decade (81%). (STIP_0418-19 (8(C)(2) Statement), Supp. 106-07.) Since the adopted plan contained 85 majority-Republican districts and 47 majority-Democratic districts, the proportion of Republican seats (64.4%) was "between" the two metrics and thus "closely" corresponded to overall statewide preferences. (*Id.*)

The auspices of this statement are as fascinating as they are opaque: No Commissioner can

say where it came from or who wrote it. Speaker Cupp testified that he had no role in drafting the statement, did not know who drafted it, and could not recall who handed him a draft, which Cupp claimed had unspecified "blanks." (DEPO_01631 (Cupp Dep. at 71:17-72:5), Supp. 302.) President Huffman, for his part, did not realize the statement was even required until the afternoon of September 15, which was the first time he saw a draft. (DEPO_01755-56, 01773 (Huffman Dep. at 53:25-54:2, 71:5-18), Supp. 316-17, 320.) He, too, could not recall who drafted it. (DEPO_01744 (Huffman Dep. at 42:15-25), Supp. 315.) None of the other Commissioners, including Secretary LaRose, Auditor Faber, Governor DeWine, Senator Sykes, or Leader Sykes even saw the statement until late the night of September 15. (RESP_0276 (Huffman Resp. to Bennett ROGs), Supp. 120.)

At least in private, Secretary LaRose was perhaps the most unsparing in his criticism. Late on the evening of September 15, after being handed the statement, Secretary LaRose texted his Chief of Staff, Merle Madrid, displeased that he was being asked to sign off on a rationale he considered "asinine" (the same adjective he used to describe the 2021 Plan itself) and opining that he "should vote no." (DEPO_00158 (LaRose Dep. Ex. 2), Supp. 212.) He backed down only after his Chief of Staff convinced him that voting his conscience was "probably not worth it" because that vote would "be used in the court against the GOP." (*Id.*) Similarly, Governor DeWine testified that he did *not* agree with the statement's use of the 81% metric to gauge statewide voter preferences, stating (in slightly less colorful terms) that it "would not have been a rationale for [him]." (DEPO_00240, 00242 (DeWine Dep. at 81:1-11, 83:4-10), Supp. 214-15.)

The dissenting Commission members similarly disagreed with the statement's rationale, describing the measure of proportionality put forward by the majority as "absurd." (STIP_0424 (8(C)(2) Minority Report), Supp. 109.) In sum: The 2021 Plan is supported by a statement,

supposedly encapsulating the Commission's explanation of why the 2021 Plan complies with Section 6(B), that a majority of Commissioners had no role in drafting, did not see until moments before approving the Plan, did not discuss until after approving the Plan, and which asserts a rationale with which they disagree.

Expert analysis confirms that the majority of Commissioners were correct to find the Section 8(C)(2) statement "asinine" and "absurd." As explained by Dr. Jonathan Rodden,[2] the 2021 Plan does not achieve partisan proportionality under any sound statistical method or definition. In his more than 20 years as a political scientist, Dr. Rodden has never encountered the notion that partisan proportionality can be achieved by corresponding the number of seats a party receives to the percentage of elections it has won. (Aff. of J. Rodden ¶ 28, Supp. 336.) Instead, political science literature on partisan proportionality has always examined the relationship between vote share and seat share. (*Id.* ¶ 24, 28, Supp. 335-36.) Simply put: "the only reasonable way to implement this notion of 'statewide preferences,' as ascertained from past elections to anticipated future seat shares, is via the proportion of votes received by the candidates of the two parties." (*Id.* ¶ 13, Supp. 331.)

H. The 2021 Plan does not match the statewide preferences of Ohio voters.

It is undisputed that the 2021 Plan "contains 85 districts (64.4%) favoring Republican candidates and 47 districts (35.6%) favoring Democratic candidates out of a total of 132 districts." (STIP_0418 (8(C)(2) Statement), Supp. 106; *see also* Aff. of J. Rodden at Tables 2 & 3, Supp. 340-43 (listing separate totals by chamber).)

As detailed above, the political science literature describes "statewide preferences," as that

[2] Dr. Rodden is a tenured political science professor at Stanford who has testified and been found credible in numerous election and redistricting cases, including *Romo v. Detzner,* No. 2012-CA-000412 (Fla. Cir. Ct. 2012), and *Bethune-Hill v. Virginia State Board of Elections*, No. 3:14-cv-00852-REP-AWA-BMK (E.D. Va. 2014).

term is used in 6(B), as "the proportion of votes received by the candidates for the two parties." (Aff. of J. Rodden ¶ 13, 28, Supp. 331, 336.) This figure can be ascertained by calculating the total number of votes received by candidates of each of the two major parties in every statewide partisan election from the last ten years and then expressing each party's votes as a percentage of the two-party sum. (*Id.* ¶ 15-17, Supp. 331-33.) This calculation is reproduced in Dr. Rodden's report and produces a statewide partisan balance of 45.9% for Democrats and 54.1% for Republicans. (*Id.* ¶ 17, Supp. 333.) This is the same figure reached by DiRossi in his analysis, compiled some time prior to the release of the census data. (DEPO_0535, 00715 (DiRossi Dep. at 83:1-25 & Ex. 1), Supp. 244, 247.) Translating this partisan breakdown into seats, a map that closely corresponds to the statewide preferences of voters would result in around 54 Republicans and 45 Democrats elected to the House and 18 Republicans and 15 Democrats in the Senate. (Aff. of J. Rodden ¶ 17, Supp. 333.)

To put it gently, the 2021 Plan does not achieve the statewide balance described above. To calculate the likely seat breakdown of a map for purposes of Section 6(B), Dr. Rodden took precinct-level results for elections from the 2016 through 2020 (precinct-level results for earlier elections were not available), aggregated those precinct results to each district in a given plan, and calculated the average share of votes each party receives in partisan elections in each district over that timeframe. (*Id.* ¶ 18, Supp. 333-34.) Any district in which the average vote share for Republicans is greater than 50% is likely to favor Republicans. (*Id.*) Any district in which the average Democratic vote share is greater than 50% is likely to favor Democrats. (*Id.*)

Dr. Rodden's analysis also takes account of so-called "toss-up" districts, in which the average vote share for each part falls between 48 and 52%. (*Id.* ¶ 20, Supp. 334.) Based on this analysis, Dr. Rodden concludes that "all of the majority-Republican House seats are greater than

52% Republican" while only 32 of the 37 Democratic seats "are greater than 52% Democratic." (*Id.* ¶ 21, Supp. 334.) In the Senate, there are three swing districts, two of which tilt Republican and one of which tilts Democratic. (*Id.*)

Applying the analysis above, and excluding toss-up districts, the 2021 Plan is likely to result in a 62-32 split in favor of Republicans in the House and a 21-9 split in favor of Republicans in the Senate. (*Id.*) Including toss-up districts, the breakdown is similar: 62-37 in the House and 23-10 in the Senate. (*Id.* ¶ 18, Supp. 333-34.) Accordingly, the 2021 Plan creates a likely ceiling for Democratic representation in the House of 37 seats and in the Senate of 10 seats. Reviewing these results, several things are immediately apparent: First, and most strikingly given that the Fair Amendments Act was passed in reaction to the highly-gerrymandered 2011 plan, this likely breakdown is nearly identical to the current General Assembly makeup elected under that plan (64-35 in the House and 25-8 in the Senate). (*Id.* ¶ 19, Supp. 334.) Second, and as important, the 2021 Plan virtually guarantees a veto-proof majority: most gubernatorial vetoes in Ohio can be overridden by 60 votes in the House and 20 votes in the Senate. *See* Ohio Constitution, Article II, Section 15. Third, the seat share described above comes nowhere near a proportional seat breakdown, which would result in a 54-45 breakdown in the house and an 18-15 breakdown in the Senate. (Aff. of J. Rodden ¶ 17, Supp. 333.)

The data show the Republican slant of the 2021 Plan is persistent and inelastic, meaning that partisan control of the General Assembly is unlikely to change even in years when Democrats receive a majority of the statewide vote. One can assess how each party performs under the 2021 Plan by using precinct-level data from past statewide races to see which candidate would have likely carried each district under the 2021 Plan. A useful comparison appears in the 2018 statewide election, in which Ohioans voted on the same ballot to re-elect U.S. Senator Sherrod Brown, a

Democrat, and elect Treasurer Robert Sprague, a Republican. Brown received a slightly greater share of the vote than Sprague, receiving 53.4% to Sprague's 53.3%. (*Id.* ¶ 31-32, Supp. 336.) Under the 2021 Plan, aggregating the precinct-level 53.3% of votes case for Sprague would result in a supermajority for Republicans in both houses. (*Id.*) However, aggregating the votes cast for Brown on that same day (in which Brown received *more* votes than Sprague) under the 2021 Plan *still* translates to a Republican majority. (*Id.*) That is to say: In a favorable electoral landscape for Republicans, Republicans win a majority of the seats, and in a favorable electoral landscape for Democrats, Republicans win a majority of the seats. (*Id.* ¶ 33, Supp. 337.)

I. The 2021 Plan favors the Republican party for reasons other than compliance with traditional redistricting criteria or the Ohio Constitution.

There is no question that the 2021 Plan favors the Republican party as a matter of *fact*. (*See* EXPERT_0027-32 (Aff. of C. Warshaw); Supp. 373-78.) The record shows that this was not happenstance or chance. The map-drawers in fact considered partisan data in drawing the plan, *see supra* Part III.C, and the Republican majority on the Commission in fact enacted the final plan on a party line vote because they refused to consider alternatives that would elect fewer Republicans, *see supra* Part III.G. And as discussed below, the record shows that the Republican bias in the 2021 Plan reflects a conscious attempt to favor Republicans, rather than amounting to a mere, inexorable side effect of Ohio's political geography.

At the outset, the Commission had before it plans that were submitted by the Democratic Commissioners and members of the public that were closer to proportionality and performed similarly to the Commission's map on traditional redistricting criteria and material compliance with the Ohio Constitution. (Aff. of J. Rodden ¶ 37, Supp. 337.) Nonetheless, the Commission chose not to consider any of those plans as potential starting points, instead starting with a map that, by any measure, was an extreme partisan gerrymander that would result in 69% of General

Assembly seats going to Republican candidates. (*Id.* at Tables 2 & 3, Supp. 340-43.)

Dr. Rodden uses both quantitative and qualitative analysis to show that the map drawers responsible for the 2021 Plan successfully created a plan with a higher proportion of Republican seats through "cracking" Democratic hubs in the state. (*Id.* ¶ 55-106, Supp. 344-63.) Indeed, Dr. Rodden drew his own alternative plan, and found that when he did *not* consciously attempt to "crack" and "pack" Democratic-leaning areas, the resulting plan came close to partisan proportionality. (*Id.* ¶ 38-45, Supp. 337-39.)

Cracking and packing to maximize Republican advantage was deployed across the state. (*Id.* ¶ 55-106, Supp. 344-63.) For example, Dr. Rodden shows that the 2021 Plan splits in half the increasingly Democratic-leaning Columbus suburbs along the border of Delaware County and the township of Delaware to prevent a compact majority-Democratic district from emerging—a classic example of cracking. (*Id.* ¶ 67, Supp. 347.) Also in Franklin County, the 2021 Plan introduces an unnecessary county split to separate the increasingly Democratic community of Dublin from the rest of Franklin County, combining it with relatively rural Union County, essentially embedding a growing Democratic community in a rural Republican district. (*Id.* ¶ 66, Supp. 347.) The alternative maps that Dr. Rodden analyzed, including one he drew himself, show other configurations that not only include more Democratic-leaning districts in Franklin County, but also introduce less egregious splits and deviate less from the ideal population. (*Id.* ¶ 68-74, Supp. 349-51.)

In Hamilton County, too, the 2021 Plan cracks Democratic communities to achieve partisan advantage—this time combining the majority-Black and overwhelmingly Democratic Forest Park City with the outer-ring suburbs and exurbs of Cincinnati, which are majority-white and Republican. (*Id.* ¶ 76, Supp. 351.) Again, the 2021 Plan under-populates districts to achieve this

partisan skew. (*Id.*)

The Commission's composition of Montgomery County provides a particularly stark example of breaking up majority-Black, majority-Democrat areas to prevent the emergence of Democratic districts. (*Id.* ¶ 83, Supp. 354.) The 2021 Plan extracts the Black community of Trotwood and other areas on the west side of Dayton to combine them with far-flung Preble County, which is rural and majority Republican and white. (*Id.* ¶ 84, Supp. 354.)

As Dr. Rodden summarizes, each of the case studies he considers show that Republican map-drawers packed and cracked Democratic communities to draw fewer Democratic-leaning districts near cities and, as a general matter, keep proximate groups of Democrats apart. (*Id.* ¶ 101-02, Supp. 362-63.) On the flip side, the Republican map-drawers worked to string together groups of Republican-leaning areas, even in urban counties. (*Id.* ¶ 103, Supp. 363.) Tellingly, in metro areas, Dr. Rodden's own map was more compact than the 2021 Plan, exemplifying that it was not only possible, but in many ways easier, to draw more Democratic-leaning districts than in the Republican Plan that the Commission rubber-stamped. (*Id.* ¶ 105-106, Supp. 363.)

IV. Argument

The 2021 Plan violates Article XI, Section 6's requirement that the Commission "shall attempt to draw a general assembly district plan that meets" the standards in Sections 6(A) and 6(B). As discussed below, at the very least, to "attempt" to meet Section 6 standards means the Commission must intentionally act with the purpose of meeting those standards. Here, there is direct evidence that the Commission did *not* attempt to comply with Section 6. Moreover, compelling circumstantial evidence supports the same conclusion: The 2021 Plan is so highly skewed in Republicans' favor that it is plain no attempt to comply with Section 6 was made.

The Commission did not make any attempt to meet Section 6(B)'s standard that "[t]he

statewide proportion of districts whose voters, based on statewide state and federal partisan general election results during the last ten years, favor each political party shall correspond closely to the statewide preferences of the voters of Ohio." The 2021 Plan does not correspond to the "statewide preferences" of Ohio voters under any supportable definition, and the Commission's justification for how it purportedly does is both "asinine" and post hoc. Nor did the Commission attempt to meet Section 6(A)'s standard that "[n]o general assembly district plan shall be drawn primarily to favor or disfavor a political party." The map is not only biased toward Republicans by any objective measure, but both direct and circumstantial evidence from the mapmaking process demonstrate that the 2021 Commission Map was drawn primarily with the intent to advantage Republicans. Respondents therefore violated Section 6, which imposes binding, enforceable obligations on the Commission, as demonstrated by the plain text of Section 6, the structure of Article XI, and the history of Article XI's passage. This Court should declare the 2021 Plan invalid and order the Commission to enact a plan that complies with Article XI of the Ohio Constitution.

A. Proposition of Law 1: The 2021 Plan violates Article XI, Section 6(B).

1. The 2021 Plan is not proportional: The Commission's post hoc rationalization is asinine.

The 2021 Plan violates Article XI Section 6(B) because the Commission did not even *attempt* to achieve partisan proportionality in creating and approving the plan. At the outset, it is beyond cavil that the 2021 Plan does not *actually* correspond closely to the statewide preferences of Ohio voters. In the last decade, Ohioans cast 54.1% of votes for Republican candidates and 45.9% of votes for Democrats, which corresponds to 54 Republicans and 45 Democrats in the House and 18 Republicans and 15 Democrats in the Senate. (Aff. of J. Rodden ¶ 17, Supp. 333.) According to Dr. Rodden's report and the Commission itself, the 2021 Plan is likely to award Republicans 62 seats the House and 23 seats in the Senate. (*Id.* ¶ 54, Supp. 342.) This is not

proportional.

Pursuant to Section 8(C)(2), the Commission released a statement purporting to explain the 2021 Plan's compliance with this requirement. (STIP_0418-19 (8(C)(2) Statement), Supp. 106-07.) Because DiRossi and Springhetti were not told to comply with Section 6 (and did not attempt to do so), *see supra* Part III.D, and the Republican Commissioners sought to cut a deal maximizing Republican gains without reference to Section 6, *see supra* Part III.F, the mysterious author of the Section 8(C)(2) statement was left with the unenviable task of coming up with a rationalization after the fact. It did not go well.

According to the Section 8(C)(2) statement, the Commission understood "statewide preferences" to refer to two figures: the percentage of votes received by each party in partisan statewide elections over the last ten years (54-46 in favor of Republicans) and the percentage of elections won by each party in the same period (81-19 in favor of Republicans). (STIP_0418 (8(C)(2) Statement), Supp. 106.) By the statement's analysis, a plan is proportional if its partisan balance falls between these figures. (*Id.*) Since the projected percent of Republican seats under the 2021 Plan (64.4% by the Commission's estimates) falls between 54% and 81%—a 27-point spread—it "correspond[s] closely to the statewide preferences of the voters of Ohio." (*Id.*)

This interpretation of "statewide preferences" is indefensible, and a majority of Respondents in this case agree. *See supra* Part III.G. And for good reason. As Dr. Rodden confirms, the vast array of political science literature on this subject is also unified against this interpretation. (Aff. of J. Rodden ¶ 24, Supp. 335.)

Additionally, the 8(C)(2) statement's interpretation of 6(B) effectively reads the phrase "correspond[s] closely" out of the Constitution. 134 Ohio St.3d 221, 2012-Ohio-5367, 981 N.E.2d 814, ¶ 21 ("A court must presume a statute's effectiveness, meaning that all words should have

effect and no part should be disregarded.") (quotation marks and citation omitted). Under Section 6(B), the likely partisan breakdown for a map must "*correspond closely* to the statewide preferences of the voters of Ohio." (emphasis added). By the Commission's telling, however, a plan can pass muster under Section 6(B) if it awards 54% of seats to Republicans, or 81% of seats to Republicans, or any percentage in between that the Commission arbitrarily selects. If the word "closely" is to mean anything, surely it must require more than a range representing more than a quarter of all possible seat allocations.

Finally, the 8(C)(2) statement's proffered interpretation leads to absurd results. *See State ex rel. Dispatch Printing Co. v. Wells*, 18 Ohio St.3d 382, 384, 481 N.E.2d 632 (1985) ("It is an axiom of judicial interpretation that statutes be construed to avoid unreasonable or absurd consequences."). Under the 8(C)(2) statement's reasoning, if Republicans win 81% of statewide Ohio elections, it is appropriate to award Republicans 81% of the seats, since that is one possible metric for what voters in the state prefer. But consider this reasoning as applied to the state of Minnesota, where no Republican has won a statewide election in over ten years. (Aff. of J. Rodden ¶ 23, Supp. 334-35.) Under this rationale, it would be perfectly reasonable to award *100%* of the seats in the Minnesota legislature to Democrats, despite the fact that the Minnesota legislature is now split between the two parties and Minnesota regularly has close statewide elections. (*Id.*) And—under the 8(C)(2) statement's rationale—at the national level, where voter preferences can be measured only by the results of Presidential elections, since Democrats have won the popular vote in every election since 2008, it would be perfectly in line with the preferences of American voters to award 100% of the seats in Congress to Democrats. (*Id.*)

To quote Secretary LaRose, the rationale contained in the 8(C)(2) statement is "asinine." It was hastily prepared, commanded the agreement of (at most) three members of the seven-

member Commission, runs contrary to political science literature on the subject, and leads to absurd results. The common-parlance meaning of "statewide preferences" is the average vote share received by each party. (Aff. of J. Rodden ¶ 24, 28, Supp. 335-36.) There is no straight-faced argument that the 2021 Plan is proportional under this standard.

2. The Commission did not "attempt" to achieve partisan proportionality in adopting the 2021 Plan.

a. The 2021 Plan falls so far short of partisan proportionality that it cannot be described as an "attempt."

The 2021 Plan does not contain districts "closely correspond[ing]" to the statewide preferences of Ohio voters, and the Commission did not even attempt to pass a plan meeting that standard. First, the 2021 Plan falls so far short of partisan proportionality that it cannot be deemed an "attempt" to achieve that goal. As discussed, the plan is plainly not proportional, *see supra* Part IV.A.1. The expected seat allocation guarantees Republicans a veto-proof majority, is nearly identical to the current General Assembly breakdown, and is nowhere near a seat breakdown that corresponds to statewide voter preferences. *See id.*

Moreover, the 2021 Plan's failure to even come close to partisan proportionality cannot be explained away as a necessary consequence of complying with the other requirements of Article XI. As Dr. Rodden discusses, the plan proposed by the Democratic caucuses on September 15 achieves substantially greater partisan proportionality, while at the same time remaining in material compliance[3] with each of Article XI's other requirements. (Aff. of J. Rodden ¶ 51-52,

[3] In an affidavit submitted to the Court, DiRossi contends that several districts in the Democratic Caucus Plan do not comply with Article XI. (Aff. of R. DiRossi ¶ 8-33, Supp. 380-403.) A review of publicly available data from the Democratic Caucus Plan confirms that each of these supposed errors are immaterial and can be corrected without changing the partisan composition of the plan. (*See* Aff. of J. Rodden at 28-29, Supp. 355-56.) With two exceptions, the alleged constitutional violations concern contiguity errors (*i.e.*, portions of districts that are not geographically connected to one another). Every single contiguity error pointed out by DiRossi stems from small,

Supp. 341-42.) Additionally, Dr. Rodden himself has submitted a map to the Court that complies with each of Article XI's population and subdivision-split requirements while also coming much closer to partisan proportionality. (*Id.*)

Nor is the 2021 Plan's failure to reach proportionality explainable by an attempt to ensure districts are compact, as required under Section 6(C). Under any acceptable measurement for compactness, Dr. Rodden's plan performs better than the 2021 Plan, while the Democratic Caucus Plan performs just below the Commission's plan. (*Id.* ¶ 49, Supp. 341.) Given these alternative routes, the Commission plainly had the ability to draw a more proportional plan, but simply chose not to. The 2021 Plan therefore does not reflect an attempt to achieve partisan proportionality.

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unpopulated or barely populated portions of census blocks that appear to have been accidentally assigned to one district and not the other. In almost each case, the issue can be remedied by reassigning the offending block without materially changing the population of the districts or creating impermissible subdivision splits. DiRossi seems to contend in two instances that this correction cannot be done without violating the population equality principle. (*See, e.g.*, Aff. of R. DiRossi ¶ 14, Supp. 383.) In each such case, however, any deviations in population can be offset by moving in census blocks from other districts, and this can be achieved without changing the partisan composition of the map or creating new subdivision splits. For example, in Senate Districts 15 and 3, the small fragment that bisects District 3 can be moved into that district, and District 15 can take in a vote tabulation district from the northern portion of District 5 (which is only underpopulated by 1.89%) to keep District 15's population within the 5% threshold. DiRossi also contends that Senate Districts 6 and 27 were incorrectly assigned under Article XI, Section 5, which requires that incumbent Senators whose term will not expire in the two years following the enactment of a redistricting plan must be assigned to the new Senate district containing the largest portion of the population of the Senator's current district. Assuming the plan violates Section 5, that problem can be remedied by simply swapping the numbers associated with the two districts. Finally, DiRossi points out that the Democratic Caucus Plan splits more than one township or municipal corporation in two districts in northwest Ohio in violation of Section 3(D)(3). This is true but immaterial: The splits did not have an impact on the partisan composition of the map (the 2021 Plan has the same number of Democratic-leaning districts in that region of the state), and the splits therefore could have been eliminated while remaining faithful to Section 6's requirements. Finally, and most importantly, it is plain that these minor quibbles (each of which could have been easily remedied) were not the reason the majority of Respondents did not consider, finalize as needed, and vote for the plan.

b. The mapmakers and Commissioners responsible for the 2021 Plan did not see it as their responsibility to achieve partisan proportionality.

No one involved in creating the 2021 Plan saw it as their responsibility to ensure that the plan achieved partisan proportionality. As discussed, the 2021 Plan was created by DiRossi and Springhetti, under the supervision of Speaker Cupp and President Huffman. *See supra* Part III.D. Neither DiRossi nor Springhetti considered it his responsibility to ensure compliance with any of Section 6's provisions while drawing the map. *Id. In* fact, both were expressly instructed by their bosses that it was not. *Id.* As a result, the mapmakers did not create the 2021 Plan with Section 6 in mind, much less try to meet the standards of Section 6. It is therefore impossible for anything they did to constitute an "attempt" to achieve partisan proportionality.

Nor did President Huffman take on the responsibility of ensuring compliance with Section 6. At his deposition, President Huffman explained that he did not view any of the provisions of Section 6 as mandatory and that as a result it was his view that the Commission did not need to consider Section 6 in creating the 2021 Plan. *Id.*

c. In revising the September 9 map, the Republican Commissioners' focus was on reaching a deal, not achieving proportionality.

As outlined in detail above, the map-drawers did not try to comply with Section 6 in the first instance, resulting in an initial plan hopelessly slanted toward Republicans. From there on out, the focus was not on complying with Section 6 or achieving proportionality; it was on obtaining the Democrats' votes in order to achieve a ten-year map. *See supra* Part III.F. And the attempt to win those votes proceeded by making the fewest changes possible that might win Democratic support. *See id.* In other words, if Democrats were willing to agree to a non-proportional plan, Republicans would have gladly accepted this outcome, despite such a plan's lack of compliance with Section 6(B). Since the Republican members of the Commission did not seek to achieve partisan proportionality during negotiations, any changes made through those

negotiations cannot constitute an attempt to achieve partisan proportionality.

B. Proposition of Law 2: The 2021 Plan violates Article XI, Section 6(A).

The 2021 Plan violates Article XI, Section 6(A) because the Commission drew a General Assembly plan primarily to favor the Republican Party. As an initial matter, as outlined above, *see supra* Part IV.A.1, the 2021 Plan has disproportionate partisan bias. That is not only a violation under Section 6(B), but also a violation under Section 6(A), which requires the Commission to attempt to draw a map that does not advantage or disadvantage a political party. The utter lack of partisan symmetry in the 2021 Plan that Dr. Rodden's affidavit lays out, (Aff. of J. Rodden ¶ 54, Supp. 342,) as well as the various measures showing extreme partisanship that Dr. Warshaw's affidavit calculates, (EXPERT_0027-32 (Aff. of C. Warshaw), Supp. 373-78,) are evidence that the 2021 Plan was drawn primarily to favor Republicans.

The 2021 Plan's lack of proportionality is not the result of mere happenstance, but rather a direct consequence of partisan considerations that predominated throughout the map-drawing process, in contravention of the Commission's constitutional mandate. Although this court has not yet had an occasion to interpret Section 6(A), other courts that have struck down gerrymanders provide useful guidance. Courts have held that a plan is drawn primarily to favor a political party when there is evidence, direct or indirect, of intent to favor one party. *See League of Women Voters of Fla. v. Detzner*, 172 So. 3d 363, 376 (Fla. 2015); *see also Reno v. Bossier Parish Sch. Bd.*, 520 U.S. 471, 488-89 (1997) (discussing the use of intent evidence in racial gerrymandering cases); *Miller v. Johnson*, 515 U.S. 900, 916 (1995) (discussing intent in racial gerrymandering cases); *In re Estate of Duiguid*, 24 Ohio St. 2d 137, 141, 265 N.E.2d 287 (1970) ("Subsequent acts of the parties may reflect, as circumstantial evidence, on the question of intent."); *State v. Huffman*, 131 Ohio St. 27, 38, 1 N.E.2d 313 (1936) ("[I]intent may be made to appear from circumstantial as

well as from direct evidence."). Here, there is both direct and indirect evidence.

1. There is direct evidence that the 2021 Plan was drawn with partisan intent.

The record reveals that achieving favorable outcomes for Republicans drove the entire map-drawing and negotiation process on the part of President Huffman, Speaker Cupp, and their map-drawing team. First, despite what their bosses said to the press at the time, DiRossi and Springhetti confirmed that they were considering partisan data while drafting their maps. *See supra* Part III.D. According to Speaker Cupp, the map drawers discussed the partisan performance of particular districts with the leaders of both Republican caucuses. *Id.* And the only known participants in the map drawing process outside of the majority party's legislative leaders are well-known national Republican party operatives. *Id.*

Second, the negotiating positions of the Republican legislative leaders provide direct evidence of partisan intent. That Republican legislative leaders sought to trade seats in hopes of reaching an agreement with the Democrats—up until they reached 62 Republican House seats and 23 Republican Senate seats, *see supra* Part III.F—shows that their primary purpose in adopting the 2021 Plan was to preserve a legislative supermajority for the Republicans. Their negotiations were based solely on partisan seat count and nothing more. Indeed, the only change from their proposed House map on September 9 to their final House map on September 16 was that five previously majority-Republican seats were now toss-up seats that were expected to favor Democrats by fewer than two percentage points. (Aff. of J. Rodden ¶ 21, Supp. 334.) In other words, it is charitable to suggest even that the Republican legislative leaders were willing to negotiate to a lower Republican seat count at the margins—all five of the House seats they "traded" could still very well end up in Republican hands.

The Commission's use of a separate, private process within the Republican caucus for drawing the 2021 Plan, and its disregard for the public Commission process, also serves as direct

evidence that the 2021 Plan was drawn primarily to favor Republicans. When considering the constitutionality of Florida's 2011 redistricting plan under a similar constitutional provision, the Florida Supreme Court held that the "existence of a separate process to draw the maps with the intent to favor or disfavor a political party or an incumbent is precisely what the Florida Constitution now prohibits," and that evidence of this separate process would "clearly" be "important" to help support a "claim that the Legislature thwarted the constitutional mandate." *League of Women Voters of Fla.*, 172 So. 3d at 388; *see* Fla. Const. art. III § 20 ("No apportionment plan or individual district shall be drawn with the intent to favor or disfavor a political party or an incumbent."). Here, despite that one of the primary tenets of the 2015 amendments to Article XI was increased transparency, the existence of a public process to consider General Assembly maps in 2021 had little, if any, bearing on the maps that were ultimately adopted. Instead, the 2021 Plan was drawn in much the same way that its predecessor had been: in secret, by DiRossi, and in reliance on nonpublic data from Republican political consultants. *See supra* Part III.D-E. All the while, Republican legislative leaders and map drawers focused on potential partisan breakdowns of potential maps in negotiating a final deal. *See supra* Part III.F. Several aspects of the Commission's mapmaking process bear the hallmarks of a two-track, public and private process, in which the substance of the maps was created in private.

First, although Article XI sets forth a timeline for the *Commission* to propose and adopt a General Assembly district plan, *see* Ohio Constitution, Article XI, Section 1(C), Speaker Cupp and President Huffman kept map-drawing firmly within the legislative caucuses. For example, when Leader Sykes asked during the August 31 meeting whether the Commission intended to propose its own map, Speaker Cupp and President Huffman responded that only the caucuses would present maps, not the Commission. (STIP_0163-65 (8/31/2021 Commission Hearing),

Supp. 79-81.) Moreover, the Commission had no staff or budget even to give all Commissioners access to map-drawing software. (DEPO_01717, 01720, 01831-32 (Huffman Dep. at 15:1-21, 18:7-9, 129:8-130:18), Supp. 309, 310, 326-27.)

Second, the Commission stripped the public process to its bare minimum, not even convening until just three and a half weeks before its constitutional deadline to pass a plan and holding its first substantive meeting just *one day* before that same deadline. *See supra* Part III.C-E; *see also Reno*, 520 U.S. at 489 ("Other considerations relevant to the purpose inquiry include . . . [d]epartures from the normal procedural sequence." (quoting *Village of Arlington Heights v. Metro Hous. Dev. Corp.*, 429 U.S. 252, 268 (1977))). Moreover, under any reading of the constitution, the Commission had to at least propose maps by September 1, but the Commission made no effort to do so until September 9—just six days before its final impasse deadline. (STIP_0204-05 (9/9/2021 Commission Hearing Pt. 2), Supp. 92-93) As a result, the public had an extremely limited opportunity to engage with the Republican map that the Commission ultimately proposed. Indeed, the vast majority of the public hearings that the Commission held occurred before the public had a map to consider, (*See* BENNETT_0101-02 (Senator Sykes Press Release); Supp. 55-56,) such that Ohioans were forced to testify to abstractions. In any event, the Commission members did not take those early hearings seriously, frequently sending surrogates rather than attending themselves. (*See generally* STIP_0003-159 (8/23-8/27/2021 Commission Hearings).) And even though the Commission members, for the most part, made appearances at the post-map hearings from September 12 to 14, there is little evidence that any of the public testimony was taken into account in drawing the final map. (*See generally* STIP_0228-391 (9/12-9/14/2021 Commission Hearings).)

Third, as set forth above, both the initial map-drawing and the revision processes took place

entirely behind the scenes at a location about which even the Republican statewide officials had no information. (DEPO_01021-22 (Faber Dep. at 37:25-38:10), Supp. 261-62.) The Republican map drawers took direction only from President Huffman and Speaker Cupp. *See supra* Part III.D. Despite the fact that dozens of maps were submitted via the Commission's public process in advance of the constitutional deadline, (STIP_0161-63 (8/31/2021 Commission Hearing), Supp. 77-79,) the only map that the Republican legislative leaders were willing to use, even as a starting point, was their own partisan gerrymander, *see supra* Part III.E. President Huffman's staff did not even feign interest in learning more about the Democrats' plan, (Discovery Vol. 6 at 228 (Huffman Production), Supp. 201,) and neither President Huffman nor Speaker Cupp was willing to give even Commissioners from their own political party opportunities to analyze the Republican maps or provide any input, *see supra* Part III.C-D.

The Democratic Commissioners' map-drawing process provides a useful comparison. Although, like the Republican process, it originated in the legislative caucuses, Senator Sykes and Leader Sykes made every effort to bring it into public view: They introduced their first map on August 31, (STIP_0161-63 (8/31/2021 Commission Hearing), Supp. 77-79,) before the first constitutional deadline of September 1, so that Ohioans had an opportunity to share input. And they invited each member of the Commission to sit down with their map drawers at the computer to review the maps in detail, ask questions, and make suggestions, many of which they incorporated into later amendments. *See supra* Part III.E. Direct evidence regarding the map-making process therefore shows that Republicans ran a separate redistricting process with the sole goal of creating maps that favored Republicans.

2. There is also circumstantial evidence that the 2021 Plan was drawn with partisan intent.

Courts have also held that a plan is drawn to favor a single political party when it

subordinates traditional redistricting criteria to partisan goals. For example, in *League of Women Voters of Pennsylvania v. Commonwealth (LWV PA)*, 178 A.3d 737 (Pa. 2018), the Pennsylvania Supreme Court struck down the state's congressional map, concluding that the plan violated voters' rights under the state constitution's Free and Equal Elections Clause. *Id.* at 803. The court found, based on objective evidence such as expert testimony on alternative maps, that neutral redistricting criteria such as compactness and contiguousness were "subordinated to the pursuit of partisan political advantage." *Id.* at 817. As Dr. Rodden outlines in his report, that is exactly what happened here. (Aff. of J. Rodden ¶ 54, Supp. 342.) The Commission chose the Republican plan despite ample opportunity to consider several other plans that materially complied with Article XI's line-drawing requirements, either exceeded or matched the Republican plan on compactness scores, and achieved substantially higher partisan fairness than the Republican plan. (*Id.* ¶ 48-54, Supp. 341-42.)

Courts also consider the existence of districts that combine disparate communities of interest for no apparent reason as circumstantial evidence of partisan intent. *See LWV PA*, 178 A.3d at 819-821 (pointing to "geographic idiosyncrasies" that "strengthen[ed] the votes of voters inclined to vote for Republicans . . . and weaken[ed] those inclined to vote for Democrats" as evidence of partisan intent). Here, Dr. Rodden lays out all the ways in which the 2021 Plan dilutes Democratic votes around cities, often cracking communities of color and submerging them in overwhelmingly white, Republican districts. (*See, e.g.*, Aff. of J. Rodden ¶ 75-80, Supp. 351-54.) Those case studies exemplify that the map drawers' goal was to maintain supermajority Republican advantage, even when doing so resulted in an unnatural grouping of precincts or disrespect for communities of interest.

3. Respondents responsible for the proposed and adopted maps did not concern themselves with Section 6 compliance.

Additionally, as outlined above, *see supra* Part IV.IV.A.2.b, the Commissioners did not think they were responsible for complying with any of Section 6's standards, including that in 6(A). For the reasons stated in that section, they similarly could not have attempted to comply with 6(A).

C. Proposition of Law 3: Article XI, Section 6's "shall attempt" language is binding and enforceable.

The record here is stark and the conclusion inexorable: The Commission neither complied with Article XI, Section 6 nor did it attempt to comply with that section. Consistent with President Huffman's apparent belief that Section 6 is non-binding, *see supra* Part III.D, Relators anticipate that Respondents will argue that Section 6 is unenforceable by this Court. Not so.

Article XI, Section 6 mandates that the Commission "shall attempt to draw a general assembly district plan that meets" the standards set forth in subsections 6(A) and 6(B). Respondents violated this requirement because, as discussed above, they did not make *any* attempt to meet the requirements of subsections 6(A) and 6(B). The phrase "shall attempt" imposes mandatory obligations on the Commission that this Court can and should enforce. This is made clear by the text of Section 6, the structure of Article XI, and the history of Article XI's passage.

1. By its plain meaning, Section 6 imposes a mandatory requirement that the Commission attempt to comply with Section 6's standards.

"[I]n construing the Constitution," this Court "appl[ies] the same rules of construction [for] construing statutes." *Toledo City Sch. Dist. Bd. of Educ. v. State Bd. of Educ.*, 146 Ohio St.3d 356, 2016-Ohio-2806, 56 N.E.3d 950, ¶ 16. Because "[t]he court's paramount concern in statutory construction is the legislative intent in the statute's enactment," *Wilson* at ¶ 13, in the constitutional context the court looks to the "intent of the electorate in adopting the article," *id.*, and the "intent

of the framers," *Toledo City Sch. Dist. Bd. of Edu.* at ¶ 16. The court seeks "intent first in the statutory language." *State v. Bryant*, 160 Ohio St.3d 113, 2020-Ohio-1041, 154 N.E.3d 31, ¶ 12. "When a term is not defined in [a] statute, [the court] give[s] the term its plain and ordinary meaning," looking "to the particular statutory language at issue, as well as the language and design of the statute as a whole." *Lingle v. State*, 164 Ohio St.3d 340, 2020-Ohio-6788, 172 N.E.3d 977, ¶ 15.

The term "shall attempt," by its plain and ordinary meaning, imposes an obligation to at the very least take affirmative steps to achieve a goal. This Court has made clear that the word "[s]hall means must. And 'the word 'must' is mandatory. It creates an obligation. It means obliged, required, and imposes a physical or moral necessity." *Wilson v. Lawrence*, 150 Ohio St.3d 368, 2017-Ohio-1410, 81 N.E.3d 1242, ¶ 13. "Shall" therefore imposes a mandatory obligation "unless other language evidences a clear and unequivocal intent to the contrary." *Lawrence* at ¶ 13. As for "attempt," Merriam-Webster defines the term as "to make an effort to do, accomplish, solve, or effect." *Attempt*, Merriam-Webster.com, https://www.merriam-webster.com/dictionary/attempt (last visited Oct. 28, 2021). Taken together, the words "shall attempt" evince the electorate's and the Amendments' framers' intent to require the Commission to attempt to accomplish Section 6's requirements, so long as the Commission does not violate other constitutional requirements in doing so. *See* Ohio Constitution, Article XI, Section 6 ("Nothing in this section permits the commission to violate the district standards described in Section 2, 3, 4, 4, or 7 of this article.").

Ohio courts have concluded that the same or similar phrases impose an affirmative obligation. For example, in *State ex rel. Republic Steel Corporation v. Ohio Civil Rights Commission*, this Court examined an Ohio statute providing that the Ohio Civil Rights Commission, upon finding probable discriminatory practices, "shall endeavor to eliminate such

practices by information methods of conference, conciliation, and persuasion" before issuing a complaint. 44 Ohio St.2d 178, 180, 339 N.E.2d 658 (1975). This Court concluded that "it is clear the General Assembly intended a *completed* attempt at conciliation to be a *condition precedent* to the issuance of a complaint." *Id.* at 181 (emphases added). Even efforts that "had begun, but were not completed" were insufficient to meet this standard. *Id.* at 184. Similarly, the Sixth District Court of Appeals interpreting the same statute held that the precise phrase "shall attempt" requires affirmative efforts taken "in good faith" that are either successful or "completed and unsuccessful." *See Harbor Mark Marinas, Inc., v. Ohio Civil Rights Comm.*, 64 Ohio App.2d 120, 123, 411 N.E.2d 811 (6th Dist. 1978). The Fifth District Court of Appeals elaborated more recently that "partially completed conciliation efforts or no conciliation efforts are insufficient" to meet the statutory requirement. *State ex rel. Third Family Health Servs. v. Ohio Civil Rights Comm.*, 2021-Ohio-1179, 170 N.E.3d 42, ¶ 31 (5th Dist.). Similarly here, Article XI Section 6's "shall attempt" language requires the Commission to make a complete, good faith attempt to comply with the standards set forth in that section. The Commission violated Section 6 because it made no attempt, much less a partially completed attempt, to meet the standards in subsections 6(A) and 6(B).

Federal courts have likewise interpreted the phrase "shall attempt" to impose an affirmative obligation. The Age Discrimination in Employment Act provides that the Equal Employment Opportunity Commission "shall attempt to eliminate the discriminatory practice or practices alleged [by a complainant], and to effect voluntary compliance with the requirements of [the Act] through informal methods of conciliation, conference, and persuasion." 29 U.S.C. § 626(b). The Eighth Circuit has interpreted "shall attempt" to require "exhaustive" and "strong, affirmative attempts . . . to effect compliance." *Brennan v. Ace Hardware Corp.*, 495 F.2d 368, 374 (8th Cir. 1974); *see also Dunlop v. Res. Sciences Corp.*, 410 F. Supp. 836 (N.D. Okla. 1976) (interpreting

"shall attempt" to require one "to take some affirmative action or to make some reasonable effort").

The plain, ordinary meaning of Section 6 requires the Commission to take affirmative steps to meet the standards in subsections 6(A) and 6(B), unless it cannot do so because of the need to comply with other constitutional provisions.

2. Article XI's structure and history further confirm that Section 6 is mandatory.

Should this Court look beyond the plain text of Section 6, the structure of Article XI and the history of the enactment of the Fair Districts Amendments also confirm that Section 6 imposes an affirmative obligation on the Commission. If a statute is ambiguous, or "reasonably susceptible to more than one meaning," "courts seek to interpret the statutory provision in a manner that most readily furthers the legislative purpose as reflected in the wording used in the legislation." *State v. Black*, 142 Ohio St.3d 332, 2015-Ohio-513, 30 N.E.3d 918, ¶ 38. "To determine the General Assembly's intent, the court may consider several factors, including the object sought to be obtained, the legislative history, and the consequences of a particular construction." *Id.*

Reading Section 6 as non-binding would conflict with the structure and purpose of Article XI for at least three reasons. First, this reading would violate the canon of construction that courts must "avoid construing a statute in a way that would render a portion of the statute meaningless or inoperative." *New Riegel Local Sch. Dist. Bd. of Educ. v. Buehrer Grp. Architecture & Eng'g, Inc.*, 157 Ohio St.3d 164, 2019-Ohio-2851, 133 N.E.3d 482, ¶ 29. Here, interpreting Section 6 as non-binding would effectively erase that section from Article XI. If Section 6 compliance was optional, then the statutory scheme would be no different in its practical effect than if Section 6 were never included in the enactment. Moreover, this interpretation would render the specific term "shall attempt" superfluous. To render Section 6 inoperative in such a way would fly in the face of the canon that statutes should be read to give all its words meaning.

Second, interpreting Section 6 as non-binding would conflict with the requirements of Section 8. A "statute must be construed as a whole and each of its parts must be given effect so that they are compatible with each other and related enactments." *See Dillon v. Farmers Ins. of Columbus, Inc.*, 145 Ohio St.3d 133, 2015-Ohio-5407, 47 N.E.3d 794, ¶ 17. Section 8 sets forth an impasse procedure for when, as occurred here, the Commission fails to adopt a plan with the approval of at least two members of each of the two major political parties. Section 8(C)(2) requires the Commission to include in its plan "a statement explaining what the commission determined to be the statewide preferences of voters of Ohio and the manner in which the" plan meets Section 6(B)'s proportionality requirement. An interpretation of Section 6 as non-binding is incompatible with Section 8(C)(2)'s requirement that a plan passed without the requisite bipartisan support include a statement explaining how the Commission complied with Section 6(B): If compliance with 6(B) were optional, then it would be incongruous to ever require the Commission to explain how it complied with the provision.

Third, construing Section 6 as non-binding would produce absurd results. This Court has a "duty to construe statutes to avoid unreasonable or absurd results." *State ex rel. Boggs v. Springfield Local Sch. Dist. Bd. of Educ.*, 93 Ohio St.3d 558, 562, 757 N.E.2d 339 (2001). If Section 6 were non-binding, the Commission could announce that it intended to ignore Section 6 and enact a hyper-partisan gerrymander and, so long as the Commission complied with the rest of Article XI, voters would have no recourse. That cannot have been the Amendments' intent.

The history of the Fair Districts Amendments' passage, both in the General Assembly and during the referendum process, confirms this interpretation of Section 6. When construing a constitutional amendment approved by voters via referendum, courts "consider how the language would have been understood by the voters who adopted the amendment." *City of Centerville v.*

Knab, 162 Ohio St.3d 623, 2020-Ohio-5219, 166 N.E.3d 1167, ¶ 22. "The purpose of the amendment and the history of its adoption may be pertinent in determining the meaning of the language used." *Id.* During legislative debates on HJR 12, even its opponents assumed that Section 6 would be mandatory. *See supra* Part III.B. Supporters, including many Respondents, promised that the measure would prohibit partisan favoritism in redistricting. *Id.* The voters who went to the polls on November 3, 2015 to approve Issue 1 by an overwhelming margin were no doubt aware of the message being conveyed by these legislators and organizations, and therefore had little doubt that a "yes" vote meant a vote in favor of mandatory partisan fairness requirements.

The circumstances surrounding HJR 12 and Issue 1, including the problems that prompted its inception, provide further basis for interpreting Section 6 as binding. The measure was expressly adopted to prevent a partisan process such as the one that led to the 2011 plan from occurring again. The outcome of the 2021 redistricting process illustrates how an interpretation of Article XI as non-binding or non-enforceable runs contrary to the intent behind the Fair Districts Amendments. The map approved by the Commission is not meaningfully different from the map approved by the 2011 apportionment board in terms of its partisan breakdown. (Aff. of J. Rodden ¶ 19, Supp. 334.) It is hard to imagine that Ohioans chose to vote for redistricting reforms that would lead to a substantially similar outcome as that in the previous redistricting cycle. Section 6 imposes mandatory requirements on the Commission and is therefore binding and enforceable.

V. Conclusion

For the foregoing reasons, Relators request that this Court declare the 2021 Plan invalid and order the Commission to comply with the requirements of Article XI of the Ohio Constitution, including Section 6's requirement that it attempt to draw a plan that "correspond[s] closely to statewide preferences" of Ohio voters and does not "primarily favor or disfavor a political party."

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Respectfully submitted,

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APPENDIX

Ohio Constitution, Article XI (2021)

Section 1: Ohio redistricting commission

(A) The Ohio redistricting commission shall be responsible for the redistricting of this state for the general assembly. The commission shall consist of the following seven members:

(1) The governor;

(2) The auditor of state;

(3) The secretary of state;

(4) One person appointed by the speaker of the house of representatives;

(5) One person appointed by the legislative leader of the largest political party in the house of representatives of which the speaker of the house of representatives is not a member;

(6) One person appointed by the president of the senate; and

(7) One person appointed by the legislative leader of the largest political party in the senate of which the president of the senate is not a member.

No appointed member of the commission shall be a current member of congress.

The legislative leaders in the senate and the house of representatives of each of the two largest political parties represented in the general assembly, acting jointly by political party, shall appoint a member of the commission to serve as a co-chairperson of the commission.

(B)(1) Unless otherwise specified in this article or in Article XIX of this constitution, a simple majority of the commission members shall be required for any action by the commission.

(2)(a) Except as otherwise provided in division (B)(2)(b) of this section, a majority vote of the members of the commission, including at least one member of the commission who is a member of each of the two largest political parties represented in the general assembly, shall be required to do any of the following:

(i) Adopt rules of the commission;

(ii) Hire staff for the commission;

(iii) Expend funds.

(b) If the commission is unable to agree, by the vote required under division (B)(2)(a) of this section, on the manner in which funds should be expended, each co-chairperson of the commission shall have the authority to expend one-half of the funds that have been appropriated to the commission.

(3) The affirmative vote of four members of the commission, including at least two members of the commission who represent each of the two largest political parties represented in the general assembly shall be required to adopt any general assembly district plan. For the purposes of this division and of Section 1 of Article XIX of this constitution, a member of the commission shall be considered to represent a political party if the member was appointed to the commission by a member of that political party or if, in the case of the governor, the auditor of state, or the secretary of state, the member is a member of that political party.

(C) At the first meeting of the commission, which the governor shall convene only in a year ending in the numeral one, except as provided in Sections 8 and 9 of this article and in Sections 1 and 3 of Article XIX of this constitution, the commission shall set a schedule for the adoption of procedural rules for the operation of the commission.

The commission shall release to the public a proposed general assembly district plan for the boundaries for each of the ninety-nine house of representatives districts and the thirty-three senate districts. The commission shall draft the proposed plan in the manner prescribed in this article. Before adopting, but after introducing, a proposed plan, the commission shall conduct a minimum of three public hearings across the state to present the proposed plan and shall seek public input regarding the proposed plan. All meetings of the commission shall be open to the public. Meetings shall be broadcast by electronic means of transmission using a medium readily accessible by the general public.

The commission shall adopt a final general assembly district plan not later than the first day of September of a year ending in the numeral one. After the commission adopts a final plan, the commission shall promptly file the plan with the secretary of state. Upon filing with the secretary of state, the plan shall become effective.

Four weeks after the adoption of a general assembly district plan or a congressional district plan, whichever is later, the commission shall be automatically dissolved.

(D) The general assembly shall be responsible for making the appropriations it determines necessary in order for the commission to perform its duties under this article and Article XIX of this constitution.

Section 3: Ratio of representation in house and senate; requirements for general assembly district plan; priority for creation and numbering of house districts; splitting of counties, municipal corporations, or townships

(A) The whole population of the state, as determined by the federal decennial census or, if such is unavailable, such other basis as the general assembly may direct, shall be divided by the number “ninety-nine” and by the number “thirty-three” and the quotients shall be the ratio of representation in the house of representatives and in the senate, respectively, for ten years next succeeding such redistricting.

(B) A general assembly district plan shall comply with all of the requirements of division (B) of this section.

(1) The population of each house of representatives district shall be substantially equal to the ratio of representation in the house of representatives, and the population of each senate district shall be substantially equal to the ratio of representation in the senate, as provided in division (A) of this section. In no event shall any district contain a population of less than ninety-five per cent nor more than one hundred five per cent of the applicable ratio of representation.

(2) Any general assembly district plan adopted by the commission shall comply with all applicable provisions of the constitutions of Ohio and the United States and of federal law.

(3) Every general assembly district shall be composed of contiguous territory, and the boundary of each district shall be a single nonintersecting continuous line.

(C) House of representatives districts shall be created and numbered in the following order of priority, to the extent that such order is consistent with the foregoing standards:

(1) Proceeding in succession from the largest to the smallest, each county containing population greater than one hundred five per cent of the ratio of representation in the house of representatives shall be divided into as many house of representatives districts as it has whole ratios of representation. Any fraction of the population in excess of a whole ratio shall be a part of only one adjoining house of representatives district.

(2) Each county containing population of not less than ninety-five per cent of the ratio of representation in the house of representatives nor more than one hundred five per cent of the ratio shall be designated a representative district.

(3) The remaining territory of the state shall be divided into representative districts by combining the areas of counties, municipal corporations, and townships. Where feasible, no county shall be split more than once.

(D)(1)(a) Except as otherwise provided in divisions (D)(1)(b) and (c) of this section, a county, municipal corporation, or township is considered to be split if any contiguous portion of its territory is not contained entirely within one district.

(b) If a municipal corporation or township has territory in more than one county, the contiguous portion of that municipal corporation or township that lies in each county shall be considered to be a separate municipal corporation or township for the purposes of this section.

(c) If a municipal corporation or township that is located in a county that contains a municipal corporation or township that has a population of more than one ratio of representation is split for the purpose of complying with division (E)(1)(a) or (b) of this section, each portion of that municipal corporation or township shall be considered to be a separate municipal corporation or township for the purposes of this section.

(2) Representative districts shall be drawn so as to split the smallest possible number of municipal corporations and townships whose contiguous portions contain a population of more than fifty per cent, but less than one hundred per cent, of one ratio of representation.

(3) Where the requirements of divisions (B), (C), and (D) of this section cannot feasibly be attained by forming a representative district from whole municipal corporations and townships, not more than one municipal corporation or township may be split per representative district.

(E)(1) If it is not possible for the commission to comply with all of the requirements of divisions (B), (C), and (D) of this section in drawing a particular representative district, the commission shall take the first action listed below that makes it possible for the commission to draw that district:

(a) Notwithstanding division (D)(3) of this section, the commission shall create the district by splitting two municipal corporations or townships whose contiguous portions do not contain a population of more than fifty per cent, but less than one hundred per cent, of one ratio of representation.

(b) Notwithstanding division (D)(2) of this section, the commission shall create the district by splitting a municipal corporation or township whose contiguous portions contain a population of more than fifty per cent, but less than one hundred per cent, of one ratio of representation.

(c) Notwithstanding division (C)(2) of this section, the commission shall create the district by splitting, once, a single county that contains a population of not less than ninety-five per cent of the ratio of representation, but not more than one hundred five per cent of the ratio of representation.

(d) Notwithstanding division (C)(1) of this section, the commission shall create the district by including in two districts portions of the territory that remains after a county that contains a population of more than one hundred five per cent of the ratio of representation has been divided into as many house of representatives districts as it has whole ratios of representation.

(2) If the commission takes an action under division (E)(1) of this section, the commission shall include in the general assembly district plan a statement explaining which action the commission took under that division and the reason the commission took that action.

(3) If the commission complies with divisions (E)(1) and (2) of this section in drawing a district, the commission shall not be considered to have violated division (C)(1), (C)(2), (D)(2), or (D)(3) of this section, as applicable, in drawing that district, for the purpose of an analysis under division (D) of Section 9 of this article.

Section 4: Composition and numbering of senate districts

(A) Senate districts shall be composed of three contiguous house of representatives districts.

(B)(1) A county having at least one whole senate ratio of representation shall have as many senate districts wholly within the boundaries of the county as it has whole senate ratios of representation. Any fraction of the population in excess of a whole ratio shall be a part of only one adjoining senate district.

(2) Counties having less than one senate ratio of representation, but at least one house of representatives ratio of representation, shall be part of only one senate district.

(3) If it is not possible for the commission to draw representative districts that comply with all of the requirements of this article and that make it possible for the commission to comply with all of the requirements of divisions (B)(1) and (2) of this section, the commission shall draw senate districts so as to commit the fewest possible violations of those divisions. If the commission complies with this division in drawing senate districts, the commission shall not be considered to have violated division (B)(1) or (2) of this section, as applicable, in drawing those districts, for the purpose of an analysis under division (D) of Section 9 of this article.

(C) The number of whole ratios of representation for a county shall be determined by dividing the population of the county by the ratio of representation in the senate determined under division (A) of Section 3 of this article.

(D) Senate districts shall be numbered from one through thirty-three and as provided in Section 5 of this article.

Section 5: Determining which senator will represent district when senate district boundaries are changed in general assembly district plan

At any time the boundaries of senate districts are changed in any general assembly district plan made pursuant to any provision of this article, a senator whose term will not expire within two years of the time the plan becomes effective shall represent, for the remainder of the term for which the senator was elected, the senate district that contains the largest portion of the population of the district from which the senator was elected, and the district shall be given the number of the district from which the senator was elected. If more than one senator whose term will not so expire would represent the same district by following the provisions of this section, the plan shall designate which senator shall represent the district and shall designate which district the other senator or senators shall represent for the balance of their term or terms.

Section 6: Standards for Ohio redistricting commission in drawing general assembly district plan

The Ohio redistricting commission shall attempt to draw a general assembly district plan that meets all of the following standards:

(A) No general assembly district plan shall be drawn primarily to favor or disfavor a political party.

(B) The statewide proportion of districts whose voters, based on statewide state and federal partisan general election results during the last ten years, favor each political party shall correspond closely to the statewide preferences of the voters of Ohio.

(C) General assembly districts shall be compact.

Nothing in this section permits the commission to violate the district standards described in Section 2, 3, 4, 5, or 7 of this article.

Section 8: Proceedings when Ohio redistricting commission fails to timely adopt final general assembly district plan under Art. XI, § 1

(A)(1) If the Ohio redistricting commission fails to adopt a final general assembly district plan not later than the first day of September of a year ending in the numeral one, in accordance with Section 1 of this article, the commission shall introduce a proposed general assembly district plan by a simple majority vote of the commission.

(2) After introducing a proposed general assembly district plan under division (A)(1) of this section, the commission shall hold a public hearing concerning the proposed plan, at which the public may offer testimony and at which the commission may adopt amendments to the proposed plan. Members of the commission should attend the hearing; however, only a quorum of the members of the commission is required to conduct the hearing.

(3) After the hearing described in division (A)(2) of this section is held, and not later than the fifteenth day of September of a year ending in the numeral one, the commission shall adopt a final general assembly district plan, either by the vote required to adopt a plan under division (B)(3) of Section 1 of this article or by a simple majority vote of the commission.

(B) If the commission adopts a final general assembly district plan in accordance with division (A)(3) of this section by the vote required to adopt a plan under division (B)(3) of Section 1 of this article, the plan shall take effect upon filing with the secretary of state and shall remain effective until the next year ending in the numeral one, except as provided in Section 9 of this article.

(C)(1)(a) Except as otherwise provided in division (C)(1)(b) of this section, if the commission adopts a final general assembly district plan in accordance with division (A)(3) of this section by a simple majority vote of the commission, and not by the vote required to adopt a plan under division (B)(3) of Section 1 of this article, the plan shall take effect upon filing with the secretary of state and shall remain effective until two general elections for the house of representatives have occurred under the plan.

(b) If the commission adopts a final general assembly district plan in accordance with division (A)(3) of this section by a simple majority vote of the commission, and not by the vote required to adopt a plan under division (B) of Section 1 of this article, and that plan is adopted to replace a plan that ceased to be effective under division (C)(1)(a) of this section before a year ending in the numeral one, the plan adopted under this division shall take effect upon filing with the secretary of state and shall remain effective until a year ending in the numeral one, except as provided in Section 9 of this article.

(2) A final general assembly district plan adopted under division (C)(1)(a) or (b) of this section shall include a statement explaining what the commission determined to be the statewide preferences of the voters of Ohio and the manner in which the statewide proportion of districts in the plan whose voters, based on statewide state and federal partisan general election results during the last ten years, favor each political party corresponds closely to those preferences, as described in division (B) of Section 6 of this article. At the time the plan is adopted, a member of

the commission who does not vote in favor of the plan may submit a declaration of the member's opinion concerning the statement included with the plan.

(D) After a general assembly district plan adopted under division (C)(1)(a) of this section ceases to be effective, and not earlier than the first day of July of the year following the year in which the plan ceased to be effective, the commission shall be reconstituted as provided in Section 1 of this article, convene, and adopt a new general assembly district plan in accordance with this article, to be used until the next time for redistricting under this article. The commission shall draw the new general assembly district plan using the same population and county, municipal corporation, and township boundary data as were used to draw the previous plan adopted under division (C) of this section.

Section 9: Jurisdiction; proceedings upon determination of invalidity by unappealed, final court order

(A) The supreme court of Ohio shall have exclusive, original jurisdiction in all cases arising under this article.

(B) In the event that any section of this constitution relating to redistricting, any general assembly district plan made by the Ohio redistricting commission, or any district is determined to be invalid by an unappealed final order of a court of competent jurisdiction then, notwithstanding any other provisions of this constitution, the commission shall be reconstituted as provided in Section 1 of this article, convene, and ascertain and determine a general assembly district plan in conformity with such provisions of this constitution as are then valid, including establishing terms of office and election of members of the general assembly from districts designated in the plan, to be used until the next time for redistricting under this article in conformity with such provisions of this constitution as are then valid.

(C) Notwithstanding any provision of this constitution or any law regarding the residence of senators and representatives, a general assembly district plan made pursuant to this section shall allow thirty days for persons to change residence in order to be eligible for election.

(D)(1) No court shall order, in any circumstance, the implementation or enforcement of any general assembly district plan that has not been approved by the commission in the manner prescribed by this article.

(2) No court shall order the commission to adopt a particular general assembly district plan or to draw a particular district.

(3) If the supreme court of Ohio determines that a general assembly district plan adopted by the commission does not comply with the requirements of Section 2, 3, 4, 5, or 7 of this article, the available remedies shall be as follows:

(a) If the court finds that the plan contains one or more isolated violations of those requirements, the court shall order the commission to amend the plan to correct the violation.

(b) If the court finds that it is necessary to amend not fewer than six house of representatives districts to correct violations of those requirements, to amend not fewer than two senate districts

to correct violations of those requirements, or both, the court shall declare the plan invalid and shall order the commission to adopt a new general assembly district plan in accordance with this article.

(c) If, in considering a plan adopted under division (C) of Section 8 of this article, the court determines that both of the following are true, the court shall order the commission to adopt a new general assembly district plan in accordance with this article:

(i) The plan significantly violates those requirements in a manner that materially affects the ability of the plan to contain districts whose voters favor political parties in an overall proportion that corresponds closely to the statewide political party preferences of the voters of Ohio, as described in division (B) of Section 6 of this article.

(ii) The statewide proportion of districts in the plan whose voters, based on statewide state and federal partisan general election results during the last ten years, favor each political party does not correspond closely to the statewide preferences of the voters of Ohio.