IN THE SUPREME COURT OF OHIO

Meryl Neiman
2115 Clifton Ave.
Columbus, OH 43209

Regina C. Adams
14360 Rockside Rd.
Maple Heights, OH 44137

Bria Bennett
2977 Dunstan Dr. NW
Warren, OH 44485

Kathleen M. Brinkman
400 Pike St. Unit 809
Cincinnati, OH 45202

Martha Clark
4439 Filbrun Ln.
Trotwood, OH 45426

Susanne L. Dyke
2558 Guilford Rd.
Cleveland Heights, OH 44118

Carrie Kubicki
13201 Vermillion Rd.
Amherst, OH 44001

Dana Miller
1211 Dana Dr.
Oxford, OH 45056

Holly Oyster
21370 Harrisburg Westville Rd.
Alliance, OH 44601

Constance Rubin
3088 Whitewood St. NW
North Canton, OH 44720

Solveig Spjeldnes
87 University Estates Blvd.
Athens, OH 45701

Case No. _____

Original Action Filed Pursuant to Ohio Constitution, Article XIX, Section 3(A) and Article IV Section 2(B)(1)(f)

Expedited Election Matter Under S.Ct.Prac.R. 12.08

Everett Totty
145 S. St. Clair St. Unit 28
Toledo, OH 43604

Petitioners,

v.

Secretary of State Frank LaRose, in his official capacity as Secretary of State
22 North Fourth St.16th Floor
Columbus, OH 43215

House Speaker Robert R. Cupp, in his official capacity as Speaker of the Ohio House of Representatives
77 South High St. 14th Floor
Columbus, OH 43215

Senate President Matt Huffman, in his official capacity as President of the Ohio Senate
1 Capitol Sq. 2nd Floor
Columbus, OH 43215

Ohio Redistricting Commission
1 Capitol Sq.
Columbus, OH 43215

Respondents.

PETITIONERS' COMPLAINT IN ORIGINAL ACTION

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INTRODUCTION

1. In *Adams v. DeWine*, this Court found that the congressional redistricting plan passed by the General Assembly on November 20, 2021 ("November 20 Plan"), did not comply with Article XIX, Sections 1(C)(3)(a) and (b) of the Ohio Constitution, because it was "infused with undue partisan bias." Slip Opinion No. 2022-Ohio-89, ¶ 101. This partisan bias, the Court wrote, "extends from one end of the state to the other," and "defies correction on a simple district-by-district basis." *Id.* at ¶ 96. The Court therefore saw "no recourse but to invalidate the entire congressional-district plan." *Id.*

2. In going back to the drawing board after the General Assembly failed to adopt a remedial map within its allotted 30 days, the reconstituted Ohio Redistricting Commission (the "Commission") had clear instructions: "to draw a map that comports *with the directives of* [*the Court's*] *opinion*." *Id.* at ¶ 99 (emphasis in original).

3. The new congressional districting plan (the "March 2 Plan") does not comport with the Court's directives. Rather, it bears a striking resemblance to the plan struck down by the Court on January 14, and is again infused with partisan bias. It is an extreme partisan outlier again. It eschews sensible, compact districts that respect Ohio's political geography precisely because doing so would not result in extreme partisan advantage at odds with Ohio's voting patterns.

4. By the same token, the March 2 Plan unduly splits governmental units. In the urban areas of southwest and northeast Ohio in particular, the plan splits counties unnecessarily for the transparent purpose of minimizing the voting power of Democratic and Black voters.

5. Article XIX was added to the Constitution by an overwhelming majority of voters, who through their votes expressed their desire to have the opportunity to meaningfully participate in the democratic process by living and voting in districts that are drawn fairly. In adopting the

November 20 Plan, Respondents sought to turn the clock back to before 2018, when partisan map-drawers had free rein to press partisan advantage in the congressional districting as they wished. This Court set Respondents straight: it struck down the plan, ordered the General Assembly and, if necessary, the Commission back to the drawing board, and told it to draw a map that complied with Article XIX.

6. Undeterred, Respondents have enacted a plan that is more of the same. After the General Assembly sat on its hands for a month, the Commission took up the mantle and passed a congressional plan that makes, by its members' own admission, only minor changes to the invalidated plan. The Court should not countenance this flouting of its order, Article XIX, and the wishes of Ohio voters.

7. The Court should instead strike down the March 2 Plan; stay election-related deadlines and dates as appropriate; and, if necessary, itself adopt a constitutional plan or issue any other remedies it deems appropriate.

NATURE OF THE ACTION AND JURISDICTION

8. This is a case commenced pursuant to this Court's original jurisdiction under Article XIX, Section 3 and Article IV, Section 2(B)(1)(f) of the Ohio Constitution.

9. Pursuant to Article XIX, Petitioners seek a determination that the March 2 Plan is invalid.

10. Pursuant to Article IV, Section 2(B)(1)(f), Petitioners seek an order from this Court staying election-related deadlines, moving back the May 3 primary date for elections for congressional offices in the state. Petitioners also seek an order implementing a congressional plan that comports with Article XIX of the Ohio Constitution.

11. Under the current schedule for primary elections for United States House of

Representatives in Ohio, the primary will take place on May 3, 2022. This case therefore concerns a pending election that is less than 90 days away and qualifies as an expedited election matter under S.Ct.Prac.R. 12.08.

12. Petitioners affirmatively allege that they acted with the utmost diligence and that there has been no unreasonable delay or lapse of time in asserting their rights, and that there is no prejudice to Respondents.

PARTIES

13. Respondents include each Ohio elected official and entity with responsibility for approving, implementing, and potentially remedying Ohio's congressional plan, such that all necessary parties are before the Court.

14. Respondent Frank LaRose is the Ohio Secretary of State and is sued in his official capacity. He is the chief election officer in Ohio responsible for overseeing election administration pursuant to R.C. 3501.04.

15. Respondent Bob Cupp is the Speaker of the Ohio House of Representatives and is sued in his official capacity. The General Assembly has primary authority for drawing Ohio's congressional districts and passed the November 20 Plan, and was responsible for remedying that plan in the first instance after this Court deemed it invalid.

16. Respondent Matt Huffman is the President of the Ohio State Senate and is sued in his official capacity. The General Assembly has primary authority for drawing Ohio's congressional districts, passed the November 20 Plan, and was responsible for remedying that plan in the first instance after this Court deemed it invalid.

17. The Ohio Redistricting Commission is sued in its official capacity. It has secondary authority for drawing and remedying Ohio's congressional districts. The Commission voted to

approve the March 2 Plan and, in doing so, failed to remedy the legal defects in the November 20 Plan.

18. Petitioners are Ohio electors who live in districts that were drawn in violation of Article XIX.

19. Petitioner Meryl Neiman lives at 2115 Clifton Ave., Columbus, OH 43209, which is in District 3 in the November 20 Plan and District 3 in the March 2 Plan.

20. Petitioner Regina Adams lives at 14360 Rockside Rd., Maple Heights, OH 44137, which is in District 11 in the November 20 Plan and District 11 in the March 2 Plan.

21. Petitioner Bria Bennett lives at 2977 Dunstan Dr. NW, Warren, OH 44485, which is in District 6 in the November 20 Plan and District 14 in the March 2 Plan.

22. Petitioner Kathleen M. Brinkman lives at 400 Pike St. Unit 809, Cincinnati, OH 45202, which is in District 1 in the November 20 Plan and District 1 in the March 2 Plan.

23. Petitioner Martha Clark lives at 4439 Filbrun Ln., Trotwood, OH 45426, which is in District 10 in the November 20 Plan and District 10 in the March 2 Plan.

24. Petitioner Susanne L. Dyke lives at 2558 Guilford Rd., Cleveland Heights, OH 44118, which is in District 11 in the November 20 Plan and District 11 in the March 2 Plan.

25. Petitioner Carrie Kubicki lives at 13201 Vermillion Rd., Amherst, OH 44001, which is in District 5 in the November 20 Plan and District 5 in the March 2 Plan.

26. Petitioner Dana Miller lives at 1211 Dana Dr., Oxford, OH 45056, which is in District 8 in the November 20 Plan and District 8 in the March 2 Plan.

27. Petitioner Holly Oyster lives at 21370 Harrisburg Westville Rd., Alliance, OH 44601, which is in District 6 in the November 20 Plan and District 6 in the March 2 Plan.

28. Petitioner Constance Rubin lives at 3088 Whitewood St. NW, North Canton, OH

44720, which is in District 7 in the November 20 Plan and District 13 in the March 2 Plan.

29. Petitioner Solveig Spjeldnes lives at 87 University Estates Blvd., Athens, OH 45701, which is in District 12 in the November 20 Plan and District 12 in the March 2 Plan.

30. Petitioner Everett Totty lives at 145 S. St. Clair St. Unit 28, Toledo, OH 43604, which is in District 9 in the November 20 Plan and District 9 in the March 2 Plan.

LEGAL BACKGROUND

31. Article XIX of the Ohio Constitution, as adopted in 2018, sets forth the procedures and requirements for congressional redistricting in Ohio.

32. Article XIX creates a three-step process for redistricting, along with an impasse procedure to be used as a last resort if bipartisan compromise cannot be achieved. Under Article XIX, Section 1(A), the General Assembly is required to "pass a congressional district plan in the form of a bill by the affirmative vote of three-fifths of the members of each house," including the vote of "at least one-half of the members of each of the two largest political parties represented in that house," here the Democratic and Republican Parties. The General Assembly must do so by the last day of September in a year ending in one.

33. If the General Assembly cannot pass a bipartisan plan by the end of September, the process moves to the Ohio Redistricting Commission, a commission established under Article XI and consisting of the Governor, Secretary of State, Auditor of State, as well as appointees of the caucus leaders for the two largest parties in each of the two houses of the General Assembly. Ohio Constitution, Article XI, Section 1(A); *id.*, Article XIX, Section 1(B). The Commission must similarly pass a plan with bipartisan support, with a majority consisting of at least two members of the Commission representing each of the two largest political parties in the General Assembly. *Id*. If it cannot do so by the end of October, the process moves back to the General Assembly. *Id.*

34. If the process returns to the General Assembly for the next round, the bipartisanship requirements are lower. At this stage, while the General Assembly still needs three-fifths of each chamber to vote for a congressional map, it only needs one-third of the members of each of the largest political parties in each chamber. *Id.*, Section 1(C)(2).

35. Finally, if the General Assembly cannot achieve even this minimal threshold of bipartisanship, Article XIX, Section(C)(3) provides a last-resort impasse procedure. Under that provision, the General Assembly may pass a congressional plan by a simple majority, but that plan will only remain in effect for four years (i.e., two election cycles) and certain substantive requirements will apply that do not apply to bipartisan plans.

36. As relevant here, first, "[t]he general assembly shall not pass a plan that unduly favors or disfavors a political party or its incumbents." *Id.*, Section 1(C)(3)(a).

37. Second, "[t]he general assembly shall not unduly split governmental units, giving preference to keeping whole, in the order named, counties, then townships and municipal corporations." *Id.*, Section 1(C)(3)(b).

38. Article XIX, Section 3(A) grants this Court "exclusive, original jurisdiction in all cases arising under" Article XIX.

39. In the event this Court issues an order declaring a congressional plan invalid, the General Assembly must pass a congressional plan within thirty days of the issuance of the order. *Id.*, Section 3(B)(1).

40. If the General Assembly cannot meet this deadline, the Commission is reconstituted and must pass a plan within thirty days of the deadline described in Section 3(B)(1). *Id.*, Section 3(B)(2).

41. Thus, in the event this Court issues an order declaring a congressional plan invalid,

a plan must be filed with the secretary of state by one of the two authorities charged with congressional redistricting no later than 60 days after the order is issued.

42. Regardless of which entity ultimately remedies the invalid plan, the remedial congressional plan "shall remedy any legal defects in the previous plan identified by the court but shall include no changes to the previous plan other than those made in order to remedy those defects." *Id.*, Section 3(B)(1) & (2).

43. On January 14, 2022, this Court "invalidate[d] the entire [November 20 Plan]" and ordered, "By the plain language of Article XIX, Section 3(B), both the General Assembly and the reconstituted commission, should that be necessary, are mandated to draw a map that comports with the *directives of this opinion*." *Adams v. DeWine*, Slip Opinion No. 2022-Ohio-89, ¶¶ 96, 99.

44. The Ohio Constitution also grants this Court original jurisdiction over "any cause on review as may be necessary to complete [this Court's] determination." Ohio Constitution Art. IV Section 2(B)(1)(f). This Court recently exercised this jurisdiction in an action related to General Assembly redistricting, brought under Article XI of the Ohio Constitution, to order that the Commission adopt a new General Assembly plan within ten days of the Court's judgment:

> We are mindful of the imminent 2022 election cycle, which starts with the February 2, 2022 deadline for candidates for legislative offices to submit petitions and declarations of candidacy. See R.C. 3513.05. And because the election cycle should not proceed with a General Assembly–district map that we have declared invalid, it is appropriate to issue further remedial orders in an effort to have the redistricting commission adopt a plan that complies with Article XI in time for the plan to be effective for the 2022 election cycle. See Ohio Constitution, Article IV, Section 2(B)(1)(f); *State v. Steffen*, 70 Ohio St.3d 399, 407, 639 N.E.2d 67 (1994) (interpreting Section 2(B)(1)(f) "to authorize judgments in this court that are necessary to achieve closure and complete relief in actions pending before the court").

League of Women Voters of Ohio v. Ohio Redistricting Comm., 2022-Ohio-65, ¶ 136 (2022).

FACTS

A. Before 2018, Ohio's congressional redistricting process lacked transparency and frequently produced gerrymandered congressional maps.

44. Prior to the enactment of Article XIX, the Ohio Constitution contained no provisions addressing congressional redistricting.

45. In cycle after cycle, the lack of clear rules led to a redistricting process that was chaotic and opaque, producing gerrymandered maps that minimized the power of whichever party did not control redistricting in the state. [Exhibit 11.]

46. Under the old regime, every 10 years the General Assembly would convene, move maps forward with little or no bipartisan support, and ultimately enact maps that favored the party in power. [Exhibit 11.]

47. When congressional redistricting began in 2011, Republicans controlled the state House, Senate, and Governorship. This gave Republicans unbridled power to enact a congressional map of their choice. [Exhibit 11.]

48. Hoping to evade public scrutiny, Republicans drew maps behind closed doors. Early in the redistricting process, Republican Senate staffer Raymond DiRossi famously booked a 91-day stay at a Doubletree Hotel across the street from the statehouse that was nicknamed "the bunker." There, Republican congressional incumbents, party operatives, and Republican members of the General Assembly met privately to give their input and ensure that the maps ultimately presented for consideration maximized Republican chances of victory. They developed a map likely to result in 12 Republican-controlled districts and only four Democratic-controlled districts. [Exhibit 2.]

49. Republican incumbents' control of redistricting was so absolute that at some point in the mapmaking process they moved beyond merely guaranteeing wins in the maximum number

of seats to making sure top Republican donors remained in their districts. This, of course, led to a map that sacrificed traditional redistricting criteria, such as compactness, for blatant partisan advantage. In fact, one district was drawn to include an unpopulated tract of land that contained only the headquarters of an influential corporation; the incumbent did not want to lose out on the company's donations. [Exhibit 2.]

50. Republican mapmakers made sure to keep the congressional map "in the can" until Republicans were ready to vote on it. This was consistent with a presentation given by Republican consultant John Morgan at an event hosted by the Republican National Committee in Spring 2010 and attended by several Ohio Republican operatives, in which he instructed mapmakers that, when it came to the redistricting process, they should "keep it secret, keep it safe." [Exhibit 2]; *see also Ohio A. Philip Randolph Inst. v. Householder*, 373 F. Supp. 3d 978, 998-99 (S.D. Ohio 2019) *vacated and remanded sub nom*, *Chabot v. Ohio A. Philip Randolph Inst.*, 140 S. Ct. 102 (2019).

51. On September 13, 2011, the congressional map was introduced. After a false start in which an enacted map was nearly overturned by a referendum, the General Assembly approved a map, which the Governor signed into law shortly thereafter. *Id.* at 1005. The final map signed into law was an egregious Republican gerrymander. It effectively guaranteed Republicans a 12-4 advantage. To achieve this strikingly lopsided advantage, mapmakers repeated the same pattern in all urban areas in the state: Democratic voters were either "packed" into overwhelmingly Democratic districts or "cracked" into districts with strong Republican anchors to cancel out any Democratic votes. [Exhibit 2]; *see also Ohio A. Philip Randolph Inst.*, 373 F. Supp. 3d at 994. As a three-judge panel hearing a partisan gerrymandering claim against the 2011 map would later recognize, mapmakers "designed these districts with one overarching goal in mind—the creation of an Ohio congressional map that would reliably elect twelve Republican representatives and four

Democratic representatives." *Id.*

52. Sure enough, that was exactly what happened. In 2012, the first congressional elections were held under the 2011 map. Democrats won the races for President and United States Senator in Ohio with margins of over 100,000 votes each. However, Democrats won only four out of 12 congressional seats. What followed was the electoral equivalent of the movie *Groundhog Day*: In every subsequent election held under the map, the same 12 districts went to Republicans and the same four went to Democrats. (Affidavit of Dr. Jonathan Rodden at ¶ 14, 17 (March 4, 2022) ("3/4 Rodden Aff.").)

53. In May 2019, a three-judge panel of federal judges struck down the 2011 map as a partisan gerrymander. *Id.* Without reaching the merits, the U.S. Supreme Court reversed that decision on justiciability grounds in light of its opinion in *Rucho v. Common Cause*, which found that partisan gerrymandering is non-justiciable in federal courts but noted specifically that "[t]he [s]tates . . . are actively addressing the issue." 139 S. Ct. 2484, 2507 (2019). The fact remains that the 2011 map "dilute[d] the votes of Democratic voters by packing and cracking them into districts that are so skewed toward one party that the electoral outcome is predetermined." *Ohio A. Philip Randolph Inst.*, 373 F. Supp. 3d at 994.

B. Ohioans enacted Article XIX to end congressional partisan gerrymandering.

54. Following the embarrassment of the 2011 cycle, Ohioans soundly expressed their disapproval of partisan gerrymandered congressional maps.

55. On January 16, 2018, Senate Joint Resolution 5 (S.J.R. 5), a bill to reform congressional redistricting, was introduced by Republican Senator Matt Huffman in the Ohio Senate. [Exhibits 12, 13.]

56. Initially, the bill was not well-received. As noted by many stakeholders speaking in opposition to the bill, the as-introduced version did nothing to stop partisan gerrymandering.

[Exhibit 14.]

57. Legislators responded by amending S.J.R. 5. Prior to being reported out by the Senate Government Oversight and Reform Committee, S.J.R. 5 was amended to include a provision stating that if the General Assembly passes a plan by a simple majority, the following standard applies (among others): "[T]he general assembly shall not pass a plan that unduly favors or disfavors a party or its incumbents." [Exhibit 15.]

58. With the inclusion of this amendment, as well as a few others, S.J.R. 5 gained widespread bipartisan support. In less than three weeks, the bill was unanimously approved by the Senate, reported out of committee in the House, and approved in the House by a vote of 83 to 10. [Exhibit 12.] The legislation then headed to the ballot for a vote on May 8, 2018 as Issue 1.

59. The ballot question that voters were to consider in 2018 created a regime regulating congressional redistricting where none existed before. Whereas the General Assembly could previously enact a congressional redistricting plan like any other piece of legislation, under the new Article XIX, congressional redistricting proceeds in three phases, incentivizing bipartisanship and moving back and forth from the General Assembly to the Commission. *See supra* ¶¶ 41-43.

60. As outlined above, if the General Assembly passes a simple-majority map, it is not permitted to "pass a plan that unduly favors or disfavors a political party or its incumbents." Ohio Constitution, Article XIX, Section 1(C)(3)(a). Second, the General Assembly may not "unduly split governmental units, giving preference to keeping whole, in the order named, counties, then townships and municipal corporations." *Id.*, Section 1(C)(3)(b). Both provisions reflect skepticism of simple-majority plans: The first, explicitly, and the second, by preventing mapmakers from unabashedly splitting subdivisions to obtain partisan advantage. Additionally, the General Assembly must show its work: When it passes a congressional map by a simple majority, it is

required to include "an explanation of the plan's compliance" with the requirements described above. *Id.*, Section 1(C)(3)(d).

61. In addition to these impasse requirements, the new amendments impose certain line-drawing mandates on the body responsible for redistricting irrespective of the method of the plan's ultimate passage or its level of bipartisan support. These include requirements for population equality, contiguity, and keeping subdivisions whole. *See id.*, Section 2.

62. Prior to placing a question on the ballot, Ohio law requires a ballot board to approve proposed language for the question. As part of this process, proponents of the question submit a statement in support of this measure to the board. For Issue 1, the statement in support was submitted by a bipartisan group of legislators, including Senator Huffman and then-Representative (now Senator) Kirk Schuring. In their statement in support, the proponents explained that Issue 1 would create "A FAIR, BIPARTISAN, and TRANSPARENT PROCESS." According to the proponents, Issue 1 would "establish fair standards for drawing congressional districts through its requirement of **bipartisan approval**, or **use of strict anti-gerrymandering criteria**." Issue 1 would also, according to the proponents, "help keep our communities together by limiting the number of splits of counties, cities, and townships," and would ensure transparency by "requir[ing] multiple public meetings before adopting a proposed plan for congressional districts" and "allowing members of the public to submit a plan for congressional districts." [Exhibit 16.]

63. The ballot board approved the following language for placement on the ballot that May [Exhibit 17]:

Issue 1

TITLE

Proposed Constitutional Amendment

Proposed Constitutional Amendment Proposed by Joint Resolution of the General Assembly

To amend the version of Section 1 of Article XI that is scheduled to take effect January 1, 2021, and to enact Sections 1, 2, and 3 of Article XIX of the Constitution of the State of Ohio to establish a process for congressional redistricting.

A majority yes vote is necessary for the amendment to pass.

The proposed amendment would:

- End the partisan process for drawing congressional districts, and replace it with a process with the goals of promoting bipartisanship, keeping local communities together, and having district boundaries that are more compact.
- Ensure a transparent process by requiring public hearings and allowing public submission of proposed plans.
- Require the General Assembly or the Ohio Redistricting Commission to adopt new congressional districts by a bipartisan vote for the plan to be effective for the full 10-year period.
- Require that if a plan is adopted by the General Assembly without significant bipartisan support, it cannot be effective for the entire 10-year period and must comply with explicit anti-gerrymandering requirements.

If passed, the amendment will become effective immediately.

	YES	**SHALL THE AMENDMENT**
	NO	**BE APPROVED?**

64. One opinion piece from the run-up to the vote on Issue 1 encapsulated the many statements made in support of the measure. Now-Secretary of State and Respondent LaRose, who supported the reforms as a state senator, wrote, "Under the current process, the party with the majority draws the maps as they see fit, with no need for input from the minority party. . . . The voters of Ohio wanted us to put people before partisanship and work to address this seemingly intractable problem. Thankfully, we did." He continued, "I want my party to win elections because we have better candidates and better ideas—not because we use modern GIS mapping software

and pinpoint-accurate polling data to draw district lines better than the other party." The piece concluded with a vignette from the nation's founding: Benjamin Franklin, when asked following the 1787 Constitutional Convention what form of government the United States would adopt, responded, "a Republic, if you can keep it." If the amendment is adopted, LaRose wrote, "it will ultimately fall to the people charged with carrying out this process to do so in the same spirit of compromise with which it was drafted. We've created a balanced redistricting process, it will be up to the people of Ohio to keep it." [Exhibit 18.]

65. Voters headed to the polls to vote on redistricting reform on May 8, 2018. By an overwhelming margin of 75% to 25%, voters approved Issue 1. [Exhibit 1.] The voters had done their part to ensure that Ohio's congressional maps would be fair going forward. It now fell to the General Assembly and the Commission to follow the new law.

C. The 2021 congressional redistricting process ignored the new reforms, lacked transparency, and produced gerrymandered congressional maps.

1. The General Assembly and Commission sat on their hands for two months as Ohioans waited for proposed congressional maps.

66. The 2020 census revealed that Ohio would be entitled to 15 congressional districts for the next 10 years, one fewer than its prior 16. [Exhibit 4.]

67. As prescribed by Article XIX, the General Assembly was tasked with approving a bipartisan map with boundaries for each of these 15 districts in the first instance.

68. Despite promises of transparency and bipartisanship, the congressional redistricting process got off to an inauspicious start. As September 2021 passed, the General Assembly said nothing about congressional redistricting. Slowly, it became apparent that the General Assembly would not even convene a hearing to discuss congressional redistricting before blowing through its first September 30 deadline. [Exhibit 4.]

69. On September 29, the Senate Democratic caucus unveiled a congressional map,

formally introduced by Senate Minority Leader Kenny Yuko and Senator Sykes. [Exhibit 19.] That map was not taken up for consideration in committee, and neither Senate nor House Republicans introduced a map of their own.

70. Instead, that same day, Senate President Huffman announced that the General Assembly would not meet the September 30 deadline. [Exhibit 20.] The process therefore moved to the Commission.

71. The Commission likewise did nothing. The prior month, during state legislative redistricting, Commissioner LaRose expressed disappointment at how that process had not unfolded in the bipartisan manner he envisioned. "I believe October 1st we'll be back to work here with a new mission, drawing congressional districts for the state of Ohio. And when we are, this process will be different. It is not going to work this way next time," he said at the time. [Exhibit 21.] He was right, the congressional process *was* different. Instead of running a partisan process in which gerrymandered maps were drawn in secret by the Republican legislative leaders and then rubberstamped by the Republican Commissioners, the Commission simply did nothing at all. As October dragged on, no member of the General Assembly or Commission submitted a map for consideration. [Exhibit 5.]

72. On October 28, 2021, the Commission at last held its first and only hearing on congressional redistricting at the statehouse. The hearing was pro forma. Indeed, before the hearing was held, Co-Chair Cupp stated that the Commission would miss its October 31 deadline, would not be adopting a map, and would leave the process to the General Assembly. [Exhibit 5.] After the hearing concluded, the Commission took no further action. The second constitutional deadline of October 31 came and went, and the public was no closer to seeing a likely congressional map. [Exhibit 22.]

2. The House and Senate Republican caucuses introduced egregiously gerrymandered maps with no notice to the public, in an inaccessible format, and with no meaningful opportunity for the public to comment.

73. As discussed, November is the first month in which the General Assembly may pass a partisan map with a simple majority. And so, after running out the clock on redistricting processes requiring bipartisanship, the General Assembly finally sprang into action.

74. On the first day of November, the House Government Oversight Committee and the Senate Local Government and Elections Committee announced that hearings on redistricting proposals would be held on November 3, although no new maps were disseminated in advance of those hearings. As the two hearings gaveled into session, Republicans in each house introduced proposed congressional maps. [Exhibit 6.] This was the first the public (or Democratic members of the General Assembly) had seen of any Republican proposal. The timing of the proposals guaranteed that no meaningful testimony on the maps could be given, since all testimony was required to have been submitted at least 24 hours in advance of the hearings. [Exhibits 7, 8.]

75. Both maps were extreme partisan gerrymanders. [Exhibit 6.] Because the maps were never released in a format that was capable of being viewed in mapping software, it is difficult to precisely gauge the maps' performance on metrics like partisanship and compactness. [Exhibits 7, 8.] But such precision is unnecessary to see the extreme partisan nature of the maps. According to public reproductions of the maps in Dave's Redistricting App traced from the photos the Republican legislators provided, both maps create only two solidly Democratic districts, while the remaining districts either lean Republican or heavily favor Republicans. [Exhibit 6.]

76. The House Republican proposal was presented at the House Government and Oversight Committee hearing at 9:30 a.m. on November 3, 2021. Members of the Committee were shown the proposal 15 minutes before the start of the hearing. When a Democratic member requested a recess to review the maps, the chair overruled her and began the hearing. The map was

presented by sponsor Representative Scott Oelslager. When members of the Committee asked Representative Oelslager substantive questions about the map, such as whether the map's subdivision splits comply with Article XIX, whether the map kept communities together, or why certain districts were non-compact, he responded that he was not in a position to answer "technical questions." Representative Oelslager explained that this was because he did not draw the map. Instead, that work was done by House staffer Blake Springhetti, who was not made available to give testimony on the map. [Exhibit 7.]

77. Representatives also complained that the map was in a format that did not allow for meaningful analysis. [Exhibit 7.] Indeed, the House proposal was released as a grainy PDF image, in which county, city, and township splits could not be evaluated, nor could partisan composition be determined by anything other than guesswork. Although the House proposal did include a "block assignment file," the file consisted of a 5,882-page PDF listing each Ohio census block and the district to which it was assigned, a format that was effectively unusable in any mapping program and appeared designed to make it difficult to analyze the proposal accurately. [Exhibit 23.]

78. The Senate proposal was even less accessible. The map was made available to Committee members and the public at the moment the Senate Local Government and Elections Committee gaveled to order. [Exhibit 8.] The only format the map was available in was a PDF image. [Exhibit 23.] Neither proposal was made available in a more accessible format prior to the Joint Committee gaveling to order on November 10.

79. Neither sponsor for the Senate or House Republican proposal submitted written testimony in advance of their appearance. One member of the House Government Oversight Committee noted at the November 3 hearing that this practice was incongruous with the

requirement that the public submit testimony 24 hours in advance, and requested the chair waive this requirement. The chair demurred. [Exhibit 7.]

80. Public testimony on the Republican proposals was uniformly negative. Not a single individual testified as a proponent in favor of the Senate Republican proposal. [Exhibit 24.][1] At committee hearings on November 4, 8, 9, and 10, community members spoke in opposition to the Republican proposals. Speakers noted that the maps unnecessarily split the state's largest counties, thereby dividing communities of interest, [Exhibit 25], and did not reflect the partisan preferences of Ohio's voters [Exhibit 26].

3. The General Assembly convened a Joint Committee that saw near-uniform public opposition to the proposed Republican plans.

81. Under Article XIX, Section 1(G), "[b]efore the general assembly passes a congressional district plan under any division of this section, a joint committee of the general assembly shall hold at least two public committee hearings concerning a proposed plan."

82. On November 5, the General Assembly announced that a Joint Committee on Redistricting would convene on November 10.

83. The Joint Committee consisted of four Republican elected officials—Senator Theresa Gavarone as Co-Chair, Representative Shane Wilkin as Co-Chair, Senator Rob McColley, and Representative Oelslager—and two Democratic elected officials—Senate Minority Leader Yuko and Representative Beth Liston. [Exhibit 27.]

84. At the November 10 hearing, Democratic leaders introduced an amended map. [Exhibit 28.] No other congressional proposals were presented during the November 10 hearing.

85. Six members of the public testified at the November 10 hearing. None of those

[1] Although one individual commenting on November 4 was listed as a proponent, their submitted testimony criticizes the Republican Senate proposal.

individuals testified in support of the proposed Republican maps. [Exhibit 28.]

86. The Joint Committee held a second hearing on November 12. More than 20 members of the public spoke in opposition to the proposed Republican plans at the hearing. [Exhibit 29.]

87. At the conclusion of the November 12 hearing, Representative Liston inquired as to whether the Joint Committee would continue to meet and whether the Joint Committee would present a unified proposal. Co-Chair Wilkin provided no information on those points and abruptly adjourned the Committee. [Exhibit 29.]

4. The General Assembly adopted a congressional map that was even more gerrymandered than the 2011 map.

88. Having checked the constitutionally required box of holding two Joint Committee hearings, the process reached its inevitable dénouement: a new partisan gerrymander to replace the 2011 partisan gerrymander. Late in the evening on November 15, Senate Republicans, led by Senator McColley, introduced an amended map as a substitute bill (the "November 20 Plan"). [Exhibit 30.] The map was, yet again, only released as a PDF image, and members of the public would be expected to submit comments on the new plan the next morning. [Exhibit 31.] In its findings, the legislation claimed the map included six "safe" Republican seats, two "safe" Democratic seats, and seven "competitive" seats. [Exhibit 32.]

89. These findings did not stand up to scrutiny. In reality, the plan systematically and unduly favored Republicans. As set forth in an affidavit of expert of Dr. Jonathan Rodden submitted in the original *Adams* matter, considering precinct-level election results from all statewide elections from 2016 to 2020, under the November 20 Plan, Republicans would have had an *even better* chance of winning a supermajority of seats than they did under the map adopted in 2011. [11/22 Rodden Aff. ¶ 14-19.] Of the seven supposedly "competitive" districts, six advantage

Republicans, many decidedly so, with Republicans favored to win by more than 12 percentage points in one such district. [*Id.* ¶ 14.]

90. Moreover, under these exact same indices, the map in place from 2011-2020 contained districts with partisan index spreads as close (or closer) than those of the districts now characterized as "competitive." And even then, the party favored by the partisan index won every single one of those districts in each election held under the 2011 map. [*Id.* at ¶¶ 14, 17.]

91. Dr. Rodden ultimately concluded that Democrats could anticipate winning, at most, three out of 15 seats under the November 20 Plan. This represents 20% of the seats and, remarkably, fewer seats than Democrats won under the severely gerrymandered 2011 plan. [*Id.* ¶¶ 16-19.]

92. Nonetheless, the Senate Local Government and Elections Committee considered the bill, heard public testimony from only nine individuals (all in opposition), and approved it with a vote of 5-2 along partisan lines. [Exhibit 31.]

93. Notably, the Joint Committee, which previously met to consider other proposals on November 12, never gaveled back in to consider this new amendment before it was put on the agenda for consideration in the Senate Local Government and Elections Committee. Thus, although Article XIX, Section 1(G) required the Joint Committee to hold two public hearings before the General Assembly passed a congressional plan, the Joint Committee never held *any* hearings regarding the November 20 Plan.

94. Instead, the Senate Rules Committee voted to put the map on the floor later in the day, and the bill was then rushed to the Senate floor where Republicans approved it unanimously, without the support of any of their Democratic colleagues. [Exhibit 33.]

95. After the bill moved to the House, House Republican leadership tasked the House

Government Oversight Committee with considering the November 20 Plan. In what he described as "the Democratic caucus's desire to have a 10-year map, keep the largest counties whole, keep communities of interest together, make compact districts, and reflect the voting interests of Ohio voters," Representative Richard Brown offered an amendment to the November 20 Plan as "a compromise on congressional maps." Chair Wilkin rejected Representative Brown's proposed amendment as "out of order." He then immediately allowed Senator McColley to present the November 20 Plan, which Senator McColley claimed (inaccurately) was "the most competitive map offered by any caucus to date." The Committee then referred the bill to the full House of Representatives on an 8-5 party-line vote. [Exhibit 34.]

96. The next day, the full House of Representatives passed the bill 55 to 36. Several Republicans joined the Democrats in voting against the bill. [Exhibit 35.] These included Representatives Click, Edwards, Koehler, and Vitale. Responding to an Ohio Capitol reporter, Republican Representative Kyle Koehler stated that he voted against the bill because both his Republican and Democratic constituents objected to how the bill carved the city of Springfield—the county seat of Clark County—out of Clark County. "I can't think of a time I have ever had all my constituents agree on one issue," aside from their opposition to the splitting of Clark County, he said. [Exhibit 36.]

97. On November 19, the General Assembly sent the bill to Governor DeWine, and he signed it into law fewer than 24 hours after it hit his desk.

D. This Court invalidated the November 20 Plan as an unconstitutional gerrymander.

98. Because the November 20 Plan was approved by the General Assembly without any Democratic votes, it was subject to the additional impasse requirements of Section 1(C)(3) of Article XIX. Under those requirements, in relevant part, the plan may not unduly favor one party or its incumbents and may not unduly split political subdivisions.

99. On November 22, Petitioners sued the Respondents seeking to have the map declared invalid under Article XIX, Section 1(C)(3) of the Ohio Constitution because it unduly favored Republicans and Republican incumbents and unduly split political subdivisions. *See* Compl. *Adams v. DeWine*, No. 2021-1428 (Ohio 2021).

100. On January 14, 2022, this Court, agreeing with Petitioners, concluded that the November 20 Plan failed to meet either of these requirements. It held that the November 20 Plan was "invalid *in its entirety* because it unduly favors the Republican Party and disfavors the Democratic Party in violation of Article XIX, Section 1(C)(3)." *Adams* at ¶ 5 (emphasis added). The Court also held that the November 20 Plan "unduly splits Hamilton, Cuyahoga, and Summit Counties in violation of Section 1(C)(3)(b)." *Id.* The Court concluded that "[d]espite the adoption of Article XIX . . . the General Assembly did not heed the clarion call sent by Ohio voters to stop political gerrymandering." *Id.* at ¶ 4.

101. The Court explained that Section 1(C)(3)(a) prohibits "a plan that favors or disfavors a political party or its incumbents to a degree that is in excess of, or unwarranted by, the application of Section 2's and Section 1(C)(3)'s specific line-drawing requirements to Ohio's political geography." *Id.* at ¶ 40. It concluded that the evidence presented by Petitioners "overwhelmingly show[ed] that the enacted plan favors the Republican Party and disfavors the Democratic Party to a degree far exceeding what is warranted by Article XIX's line-drawing requirements and Ohio's political geography." *Id.* at ¶ 41. The Court looked to the plan's overall expected partisan performance, its treatment of certain geographic areas of the state, and other measures of partisan bias. *See id.* at ¶¶ 52, 62, 63. In particular, the Court identified "the inescapable conclusion" that "in each of Ohio's three largest metropolitan areas, the enacted plan contains districts that . . . are the product of an effort to pack and crack Democratic voters, which

results in more safe Republican districts or competitive districts favoring the Republican Party's candidates." *Id.* at ¶ 62. In conducting this analysis, the Court held that alternative congressional plans, including computer-simulated plans, "are relevant evidence that the enacted plan unduly favors the Republican Party." *Id.* at ¶ 68.

102. In addition, the Court held that the November 20 Plan unduly split three counties in violation of Section 1(C)(3)(b). The Court explained that "[a] split may be unwarranted if it cannot be explained by any neutral redistricting criteria but instead confers a partisan advantage on the party that drew the map – regardless of whether the plan complies with Article XIX, Section 2(B)." *Id.* at ¶ 83; *see also id.* at ¶ 77 (concluding the November 20 Plan contained undue splits because they "result[ed] in noncompact districts that cannot be explained by any neutral favor and serve no purpose other than to confer partisan advantage to the political party that drew the plan").

103. The Court held that the November 20 Plan's splits of Hamilton County were unwarranted and excessive, *id.* at ¶ 88, and the plan "split[] Summit and Cuyahoga Counties to confer partisan advantages on the Republican Party." *Id.* at ¶ 89.

104. In sum, the Court concluded that "[s]ystemic defects require[d] the passage of a new plan that complies with Article XIX." *Id.* at Section D. The Court explained:

> [I]n some circumstances, congressional plans that contain isolated defects may be subject to remediation simply by correcting the defects in the affected district or districts. But when a congressional-district plan contains systemic flaws such that constitutional defects in the drawing of some district boundaries have a consequential effect on the district boundaries of other contiguous districts, such a plan is incapable of being remediated with the surgical precision necessary to correct only isolated districts while leaving the rest of the plan intact.
>
> In this case, the partisan gerrymandering used to generate the 2021 congressional-district plan, through undue party favoritism and/or undue governmental-unit splits, extends from one end of the state to the other. This plan defies correction on a simple district-by-district

> basis, if only as a consequence of the equal-population requirement prescribed by Article XIX, Section 2 and governing law. We therefore see no recourse but to invalidate the entire congressional-district plan.

Id. at ¶¶ 95-96. The Court ordered that "[b]y the plain language of Article XIX, Section 3(B), both the General Assembly and the reconstituted commission, should that be necessary are mandated to draw a map that comports with the *directives of this opinion*." *Id.* at ¶ 99 (emphasis in original).

E. The General Assembly took no action following this Court's order.

105. Article XIX, Section 3(B)(1) provides that if a congressional plan is invalidated, then "[t]he general assembly shall pass a plan not later than the thirtieth day after" a final order is issued. The General Assembly had the power and authority to draw a new congressional plan. It chose not to exercise that authority.

106. Indeed, for the first week after this Court's ruling on the November 20 Plan, the General Assembly did nothing at all. Finally, Senator Rob McColley, the sponsor of the November 20 Plan, introduced a placeholder bill for a new congressional map on January 26. [Exhibits 42, 43.] That same day, President Huffman said that he expected the General Assembly to begin debating and potentially voting on a new map starting on February 7. [Exhibit 41.] President Huffman acknowledged that a congressional map would require approval from two-thirds of each chamber of the General Assembly, so that it could qualify as an emergency bill and take effect prior to the May 3, 2022 primary. [Exhibit 44]; *see also* Ohio Constitution, Article II, Section 1(d).

107. Committees in both the House and the Senate scheduled hearings for February 8. [Exhibits 45, 46]. A second Senate hearing was scheduled for February 9, and an "as-needed" House hearing schedule for February 10. [Exhibits 47, 50.]

108. The Republican caucus's approach to the remedial process changed dramatically on February 7, however. That day, this Court issued an order invalidating the Ohio Redistricting

Commission's remedial General Assembly Plan, which it had passed on January 22. *See LWV II,* at ¶ 3. The Court explained that the Commission had once again failed to comply with the partisan fairness and proportionality requirements of Article XI, Section 6. *See id.* The Court concluded: "Our instruction to the commission is—simply—to comply with the Constitution." *Id.* at ¶ 64.

109. Following the issuance of that order, the House Government Oversight Committee abruptly removed consideration of congressional maps from the agenda of its February 8 hearing. [Exhibit 45.] The next day, the Senate Budget Committee also announced that it would not introduce a congressional map. [Exhibits 48, 49, 50.]

110. On February 8, the Senate Democratic caucus released a proposed map, Senate Bill 237 ("February 8 Democratic Caucus Plan"). [Exhibit 51.][2] That same day, House Speaker Robert Cupp acknowledged that the Republican caucus would not even attempt to reach bipartisan agreement, stating, "It's pretty clear there's not going to be a two-third vote. So we'll just go where we can get it done so that we can have a primary election when it's scheduled in May." [Exhibit 52.] The Republican caucus thus chose not to introduce any congressional plan in the General Assembly, and let the clock run out on the remedial period, expressly because it did not want to try to reach bipartisan compromise, and it wanted the Commission—rather than the General Assembly—to draw the new congressional plan.

111. The General Assembly's February 14 deadline for a new congressional map passed without a single committee hearing, a single plan introduced by the majority caucus, or a single vote.

[2] The February 8 Democratic Caucus Plan is available on the Commission's website. *See* Maps, Ohio Redistricting Commission, https://www.redistricting.ohio.gov/maps (last accessed Mar. 21, 2022) (available under "Congressional District Plans – Commission Member Sponsors" and labeled "Yuko/Sykes SB 237 Revision").

F. The Commission adopted a new plan that was drawn without regard to Article XIX, Section 1(C)(3)(a) or 1(C)(3)(b).

1. The Commission did not introduce any congressional plans for the first half of its remedial period.

112. The Commission did nothing for the first week of the remedial period. The Commission finally met at noon on February 22 to discuss congressional redistricting for the first time since October 2021. [Exhibit 54]. Commission Co-Chair Senator Vernon Sykes stated that morning that he did not have any idea what the agenda of the meeting would be. [Exhibit 53.]

113. The meeting lasted less than ten minutes. [Exhibit 55.] The Commission Co-Chairs, House Speaker Bob Cupp and Senator Sykes, announced that the Commission would hold public hearings, but only individuals and organizations that had previously submitted full congressional plans would be permitted to speak. (*Id.*) The Commissioners then discussed scheduling a meeting regarding the General Assembly district plan and adjourned the meeting. (*Id.*)

114. The Commission held another meeting on February 23, during which three individuals who had previously submitted congressional plans testified. [Exhibits 58, 59.] On February 24, the Commission heard testimony on congressional plans from two individuals, and then shifted to discussing and adopting a new General Assembly district plan. [Exhibit 60.]

2. President Huffman developed a plan that was not released to Democratic Commissioners or the public until the day before its passage.

115. On February 27, a meeting occurred between the Democratic caucus's staff and the Republican caucus's staff, including Republican map-drawer Raymond DiRossi. [Exhibit 67.] House Minority Leader Allison Russo stated that no actual maps were shared with her staff, and that they did not receive answers to any of their questions about the Republican proposal. (*Id.*) Senator Sykes would later say that the meeting "was just a one way communication for the most part," in which the Democratic caucus was "sharing [its] ideas" but did not receive "suggestions

from the majority as it relates to the map." (*Id.*)[3]

116. On March 1, Co-Chair Speaker Cupp told a reporter that a Republican proposal would be introduced at 2 p.m. that afternoon, with a vote to be scheduled the next day, on March 2. [Exhibit 63.] The Democratic Commissioners reportedly did not receive the proposal until about an hour prior to the 2 p.m. meeting. [Exhibit 65.]

117. President Huffman then presented his proposal. Leader Russo explained that she would have additional questions once she had more time to review the plan, but as an initial matter asked why the proposal did not place Cincinnati in a district entirely within Hamilton County. [Exhibit 67]. President Huffman responded that under Article XIX, Section 3(B)(2), the Commission was required to make "no other changes" beyond remedying the "legal defects in the previous plan identified by the court." (*Id.*) President Huffman acknowledged that the court "identif[ied] Cuyahoga County and Hamilton County as problematic areas," but said that his proposal complied with the Court's directions and that the proposal's treatment of Hamilton County simply reflected "policy preferences and choices that commission members make." (*Id.*)

118. Leader Russo followed up, asking if President Huffman believed that his proposal addressed the Court's finding that the November 20 Plan "carve[d] out Hamilton County's northern Black population from its surroundings neighborhoods and combines it with a mostly rural district that ends 85 miles to the north." *Adams* at ¶ 86; [Exhibit 67.] President Huffman again cited "policy preferences." [Exhibit 67.] Next, Leader Russo suggested drawing a district entirely within Hamilton County. (*Id.*) She also suggested drawing District 9 to be more compact. (*Id.*) President Huffman responded that the map-drawers had not made changes to District 9 because

[3] Republican Commissioners disputed this characterization, although the precise reasons why are not clear from the public record. [Exhibit 67.] Petitioners cannot say exactly what did or did not occur—because the meeting occurred behind closed doors rather than in a public and transparent Commission meeting.

"the court did not comment on . . . that district." (*Id.*) Leader Russo then asked why District 15 was not drawn to be more compact. President Huffman acknowledged that District 15 was a "Frankenstein district" that resulted from other "choices in particular places." (*Id.*) Finally, Leader Russo asked why District 7 was drawn in a noncompact manner. President Huffman said that District 7 "is a little bit like [District 15] where it's made up of parts." (*Id.*)

119. Leader Russo suggested that President Huffman amend his map to address the abovementioned regions and asked on what timeline the Republican Commissioners would like to receive proposed amendments on the map. (*Id.*) Speaker Cupp said he was available that day but added the caveat that "one of the constraints, of course, is the time it would take to move things around." (*Id.*) Leader Russo responded that she had repeatedly asked for a draft of the map since the February 27 meeting but never received one. (*Id.*) It was also her understanding that other members of the Commission actually saw the map on the evening of February 27. (*Id.*) President Huffman responded that DiRossi presented "concepts" to members of the Commission but that the discussed map did not exist until February 28.[4] (*Id.*) Leader Russo contested that characterization, stating that her staff was not presented with any "concepts" during the February 27 hearing. (*Id.*) The Commission recessed until 10 a.m. the next day.

120. When the Commission reconvened on March 2, Senator Sykes moved that the Commission vote on the February 8 Democratic Caucus Plan. [Exhibit 69.] President Huffman expressed his opposition to the Democratic proposal, stating that he viewed it as "a step backwards." (*Id.*). Backwards from what is unclear: this was the first and only proposal offered by the Democratic caucus after the Court issued its January 14 decision. The Commission then immediately proceeded to a vote, rejecting the proposal on a 5-2 party-line vote (*Id.*)

[4] President Huffman did not explain why the map was not shared with Leader Russo on February 28 and was instead provided approximately one hour before the March 1 meeting.

121. President Huffman then moved that the Commission vote on an updated version of the map he had introduced the previous day. Only two changes were made between the March 1 and March 2 versions of President Huffman's plan. First, the boundary of District 15 was shifted slightly so that Republican Congressman Mike Carey's residence fell within that district. Second, certain subdivision splits were eliminated in District 1. (*Id.*)

122. Leader Russo proposed four amendments to President Huffman's proposal, which she explained would "mak[e] the least changes necessary to get this map to a map that we feel . . . upholds the Constitution by not unduly favoring the Republicans and disfavoring the Democrats." (*Id.*). She proposed swapping territory in Districts 1 and 8 so that District 1 would be wholly within Hamilton County; swapping territory between Districts 5 and 9 so that District 9 would be more compact and its Democratic vote share would move above toss-up range; changing the boundaries between Districts 15, 4, and 3 so that Districts 15 and 4 would be more compact, and swapping territory between Districts 7 and 11 to move District 7 into the Democratic-leaning tossup range. (*Id.*) Leader Russo stated that these changes would "result[] in an overall map . . . that does not unduly favor the Republican Party and disfavor the Democratic Party." (*Id.*).

123. President Huffman then expressed his view that the requirements of Article XIX, Section 1(C)(3)(a) and (b) do not apply to the Commission when it draws a congressional plan to replace an invalidated map. (*Id.*) He argued that because Section 3(B)(2) did not contain the text of those sections, "there's no unduly requirement." (*Id.*) President Huffman further claimed that Article XIX was intentionally framed so that the majority party could act unilaterally and without the constraints of Sections 1(C)(3)(a) and 1(C)(3)(b) when drawing a map under Section 3(B)(1) or (2), because such a remedial process would most likely occur close to the date of primary elections. (*Id.*)

124. Leader Russo expressed her view that this position was absurd, explaining that it was like "robbing a bank and saying that is my money." (*Id.*) Senator Sykes expressed similar concerns. After Leader Russo once more urged the other Commissioners to take additional time to discuss and attempt to reach bipartisan agreement, the Commission voted against her amendments on a party-line 5-2 vote. (*Id.*) The Commission then immediately voted to adopt President Huffman's proposal, on a party-line 5-2 vote. (*Id.*)

125. Respondent Secretary of State Frank LaRose is now moving forward with implementing the new gerrymandered plan. [Exhibit 73.]

G. The March 2 Plan is also a partisan gerrymander and partisan outlier.

126. Like the November 20 Plan, the March 2 Plan is an extreme partisan outlier that unduly favors the Republican Party and disfavors the Democratic Party.

1. The March 2 Plan excessively advantages the Republican Party and its incumbents.

127. Democrats have received about 47% and Republicans about 53% of the statewide vote share in recent years (2016-2020). (Affidavit of Dr. Jonathan Rodden at ¶ 12 (March 4, 2022) ("3/4 Rodden Aff.").) The March 2 Plan comes nowhere near to approximating this partisan split. (*Id.* at ¶ 23.) It, like the plan before, starkly advantages Republicans.

128. Dr. Jonathan Rodden concludes that the March 2 Plan is likely to award Republicans *at least* 11 (or 73%) of Ohio's 15 congressional seats. (*Id.*) The March 2 Plan creates only three seats with Democratic majorities greater than 52% (indeed, one of those is at just 52.15%), and it creates two seats with bare Democratic majorities of 50.23% and 51.04%. [Exhibit 70]; (3/4 Rodden Aff. at ¶ 14.) Even if one were to assume that Democrats are likely to win the seat indexed at 52.15% and to win one of the two razor-thin toss-up seats—a highly optimistic outcome for Democrats—Democrats can anticipate winning only four, or a mere 27%, of the

state's congressional seats. (3/4 Rodden Aff. at ¶ 20.) Again, this is despite a statewide vote share of 47%—a full 20 percentage points greater than the share of congressional seats they would realistically be able to achieve under the March 2 Plan.

129. In addition, while most of the Democratic-leaning seats are barely Democratic, the Republican-leaning seats are all highly Republican. None of the ten Republican-leaning seats in the March 2 Plan has a Republican majority in the 50-52% vote share range. The most "competitive" Republican-leaning seat still gives Republicans a 53.3% expected vote share. (*See id.* at ¶ 26.) The advantage that this gives Republican candidates—even before one considers incumbency effects—is dramatic. Even if Democrats won 50% of the statewide vote—which would be 3% more than their average performance over the last three election cycles—they would win, at most, five of the state's 15 seats, and not pick up *any* of the Republican-leaning seats. (*Id.* at ¶ 27.). Yet, if Republicans were to experience an equivalent shift of 3% above their average performance in the same last three election cycles, and win 56% of the statewide vote, they would win 13 of the state's 15 seats, a total of approximately 87% of Ohio's congressional delegation. (*Id.* at ¶ 28.) The Commission's manipulation of competitive seats to create a durable ceiling on Democrats' ability to translate votes into political power evinces highly unequal treatment of Ohio's two major parties. Partisan metrics confirm this: the March 2 Plan has an efficiency gap of 10%—much higher than the alternative plans that Dr. Rodden considered—and an electoral bias measure of around 17%—exactly the same as that in the November 20 Plan. (*Id.* at ¶ 47-48.)

130. The Republican partisan advantage is even starker in the treatment of incumbent candidates. Much like the November 20 Plan, Republican incumbents largely continue to enjoy Republican majorities in their districts based on the electoral data described above. Of the 12 Republican incumbents that held seats under the 2011 plan, one is not running for re-election, ten

are still in safe Republican seats, and only one (Congressman Chabot) is in a nominally Democratic-leaning district. (*Id.* at ¶ 31.) As Dr. Rodden notes, even Congressman Chabot's seat is safer for Republicans than it appears: he consistently out-performs the statewide Republicans running in his district and has a four-point incumbency advantage (*Id.* at ¶ 15.) Given that his district under the March 2 Plan retains about 70 percent of its population under the 2011 plan, Congressman Chabot is still likely to win re-election (*Id.*). The story is entirely different for Democratic incumbents. Of the four congressional incumbents, only two reside in safe Democratic districts, and the other two live in dramatically reconfigured ones. Congressman Ryan (who is running for Senate) is placed in a safely Republican district already held by a Republican incumbent. (*Id.* at ¶ 32.) And Congresswoman Kaptur is placed in a district with a bare Democratic majority with only about half of the population from her previous district. (*Id.* at ¶ 16.)

2. Neither the technical-line drawing requirements of Article XIX nor Ohio's political geography explain the extreme Republican skew of the March 2 Plan.

131. The Court is already familiar with the 1,000 computer-simulated congressional plans generated by Dr. Jowei Chen, in the original *Adams* matter, using the non-partisan criteria specified by the Ohio Constitution, including equal population, contiguity, and minimizing splits of political subdivisions. (*See* Aff. of Dr. Jowei Chen ¶¶ 11-12, 14. (Dec. 10, 2021).) As Dr. Chen has explained, these simulations "fully account for Ohio's unique political geography, its political subdivision boundaries, and its unique constitutional districting requirements." (*Id.* at ¶ 94.) They were *not* programmed to achieve any partisan outcome. (*Id.* at ¶ 14.) Dr. Chen previously used this "districting simulation analysis" "to identify how much of the electoral bias in [the November 20 Plan] is caused by Ohio's political geography and how much is caused by the map-drawer's

intentional efforts to favor one political party over the other." (*Id.* at ¶ 95.)[5]

132. Dr. Chen has concluded that, like the November 20 Plan, the March 2 Plan "is an extreme partisan outlier, both at the statewide level and with respect to the partisan characteristics of its individual districts." (Affidavit of Dr. Jowei Chen ¶ 3 (Mar. 4, 2022) ("Chen Aff.").) The point is made most clearly by a comparison of the district-level partisan vote share of the March 2 Plan's districts and the corresponding districts in the computer-simulated plans. Similar to its predecessor, the March 2 Plan packs Democratic voters into a small number of districts, thereby improving Republican performance in other districts. The most Democratic district in the March 2 Plan, District 11, is more heavily Democratic than ***98.8%*** of the most-Democratic districts in each of the 1,000 computer-simulated plans. (*Id.* at ¶ 14.) District 11 achieves this by packing Democratic voters in the Cleveland area to a more extreme extent than nearly all of the computer-simulated plans. Similarly, the second-most Democratic district in the March 2 Plan, District 3, is more heavily Democratic than ***90.4%*** of the second-most Democratic districts in each of the 1,000 computer-simulated plans. (*Id.* at ¶ 15.) District 3 packs Democratic voters in the Columbus area, making it a more Democratic district than the second-most Democratic district in the vast majority of the computer-simulated plans. Meanwhile, the March 2 Plan's most Republican district, District 2, is *less* heavily Republican than ***90.1%*** of the most Republican districts in each of the 1,000 computer-simulated plans. (*Id.* at ¶ 16.) Dr. Chen explains that these partisan characteristics "are consistent with an effort to favor the Republican party by packing Democratic voters into a small number of districts that very heavily favor the Democratic party." (*Id.* ¶ 11.)

133. As Dr. Chen explains, the three districts described above (Districts 11, 3, and 2)

[5] The block assignment files of each of Dr. Chen's 1,000 simulated congressional plans were provided to the Court and Respondents on December 10, 2021 in the *Adams* case. *See* Affidavit of Derek S. Clinger, *Adams v. DeWine*, No. 2021-1428 at ¶ 15 (Dec. 10, 2021). Petitioners intend to file these simulated plans with the Court along with their merits brief in this matter.

contain more Democratic voters than the vast majority of their counterparts in the 1,000 computer-simulated plans. (*Id.* at ¶ 17.) By placing "extra" Democratic voters in the three most partisan-extreme districts, the map-drawers of the March 2 Plan allocated fewer Democratic voters to other districts, thus improving likely Republican performance in those other areas. (*Id.*) Indeed, four districts in the March 2 Plan have a Republican vote share that is higher than over ***95%*** of their counterpart districts in the computer-simulated plans, demonstrating that packing Democrats into the three abovementioned districts allowed for the emergence of four unusually safe Republican districts. (*Id.* at ¶ 17-23.) Like the November 20 Plan, the March 2 Plan is a partisan outlier that packs Democratic voters into a small number of districts to maximize Republican performance in the remaining districts. The March 2 Plan favors the Republican Party in a manner and to an extent that is unexplainable by Ohio's political geography.

134. The March 2 Plan is also a statistical outlier in terms of the number of districts it creates that are safely Republican versus safely Democratic. Using the definition of competitiveness articulated by the Commission during the passage of the November 20 Plan, Dr. Chen found that the March 2 Plan contains nine safe Republican seats, one *more* than the November 20 Plan. (*Id.* ¶¶ 25, 27.) The March 2 Plan also contains more safe Republican seats than 97% of the 1,000 computer-simulated plans. (*Id.* ¶ 31.) Moreover, it contains only two safe Democratic seats, the same number as the November 20 Plan and fewer than 95.1% of the computer-simulated plans. (*Id.* ¶¶ 28, 30.)

135. Finally, the March 2 Plan is a statistical outlier in terms of its compactness. Dr. Chen noted that every single one of the 1,000 computer-simulated plans had a greater average Polsby-Popper score and a greater Reock score[6] than the March 2 Plan. Thus, the plan "is

[6] Polsby-Popper and Reock are widely accepted measurements for measuring district compactness.

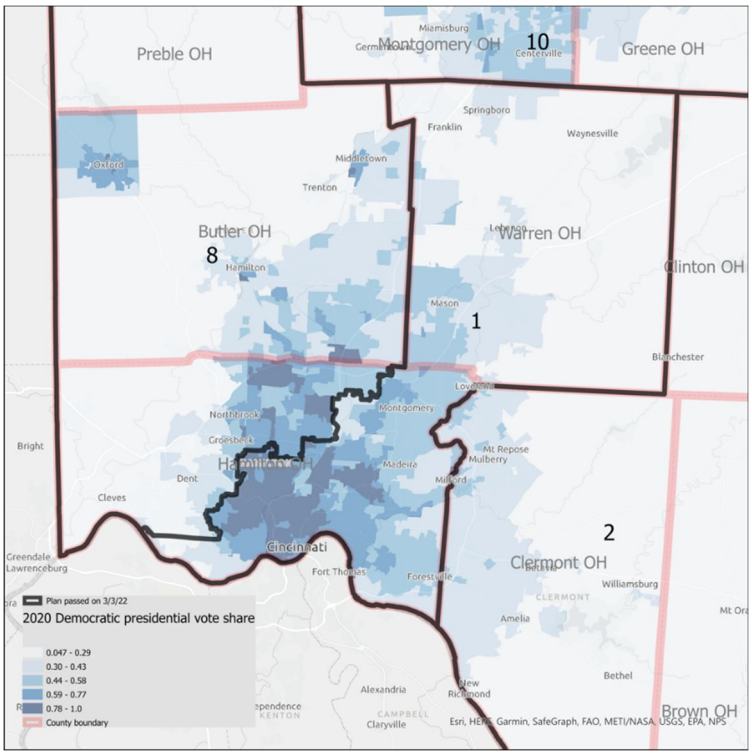
significantly less compact . . . than what could reasonably have been expected from a districting process adhering to the Ohio Constitution's requirements." (*Id.* at ¶¶ 36-37.)

3. The March 2 Plan's treatment of Ohio's urban areas needlessly splits communities and starkly disadvantages Democrats, to the benefit of Republicans.

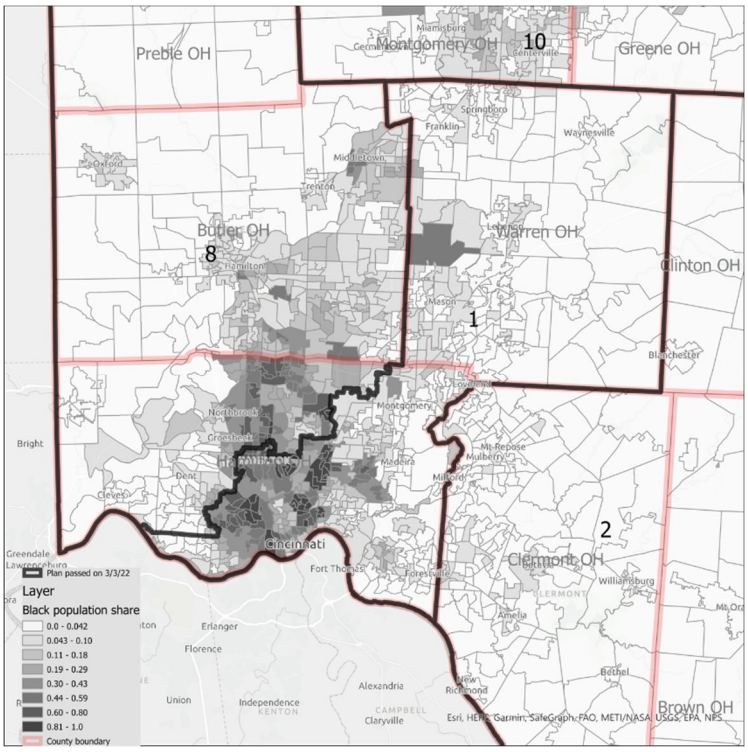
136. Like the November 20 Plan, the March 2 Plan prevents the emergence of Democratic-majority districts by needlessly splitting communities and subordinating traditional redistricting principles, particularly in metropolitan areas, which tend to favor Democrats. (3/4 Rodden Aff. ¶ 35.) For example, in Hamilton County, the March 2 Plan separates the city of Cincinnati from its northern suburbs, instead combining the city of Cincinnati with rural white areas in Warren County that tend to favor candidates of the opposite party. That maneuver creates a significantly more advantageous construction of District 1 for Republicans than would be the case if the district were drawn using neutral principles. (*Id.* at ¶¶ 36-38.)

Higher Polsby-Popper scores or higher Reock scores suggest higher compactness. (3/4 Rodden Aff. ¶ 38).

Democratic Vote Share and Boundaries of the March 2 Plan, Cincinnati Area

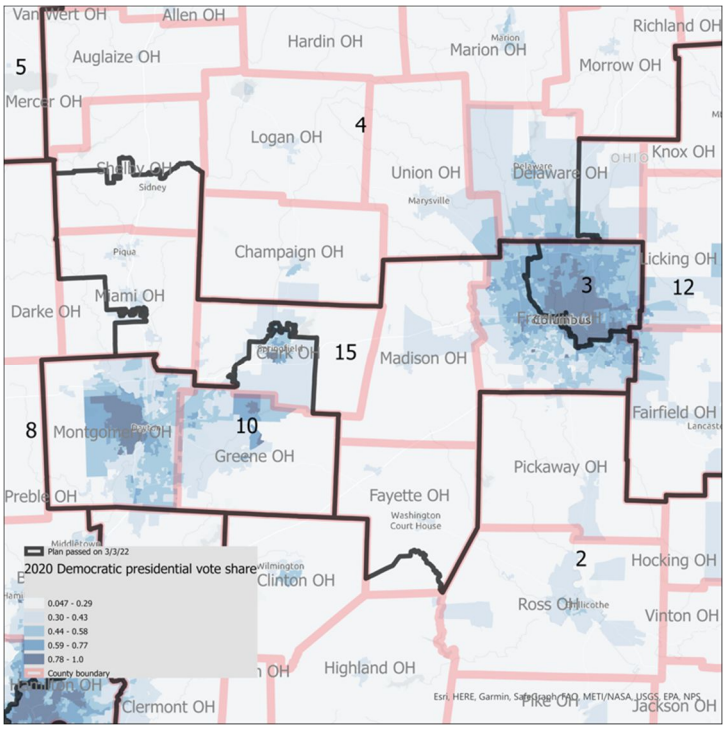


Black Population and March 2 Plan Districts, Cincinnati Area



137. Likewise, in Franklin County, the March 2 Plan packs the most Democratic part of Columbus into District 3 and submerges other Democratic-leaning parts of the city and suburbs in a safe Republican District 15 that includes the most rural, Republican communities in west-central Ohio. Thus, for example, downtown Columbus, where this Court sits, is in the same congressional district as half of Shelby County, almost 100 miles away. Given this geography, it should not be surprising to learn that District 15 is extremely noncompact compared to Columbus-area districts in alternative plans that were before the Commission. (*Id.* at ¶¶ 39-40.)

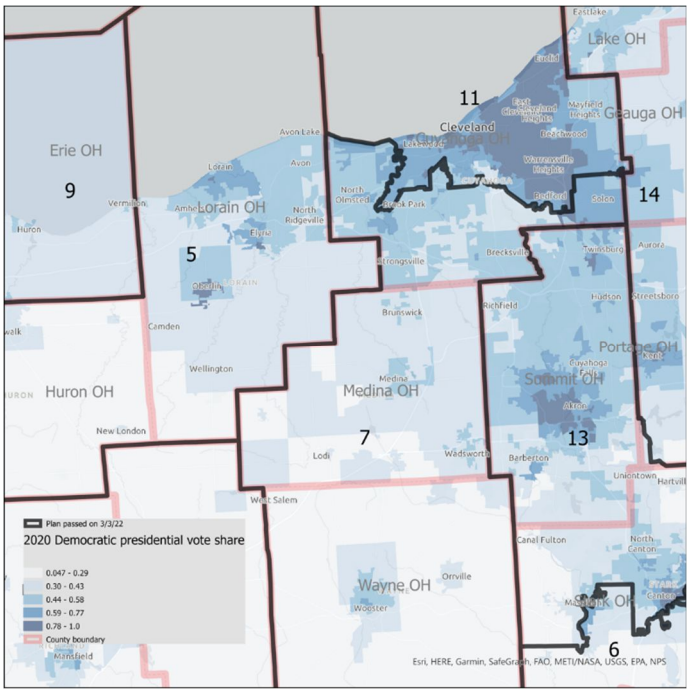
March 2 Plan, Columbus Area



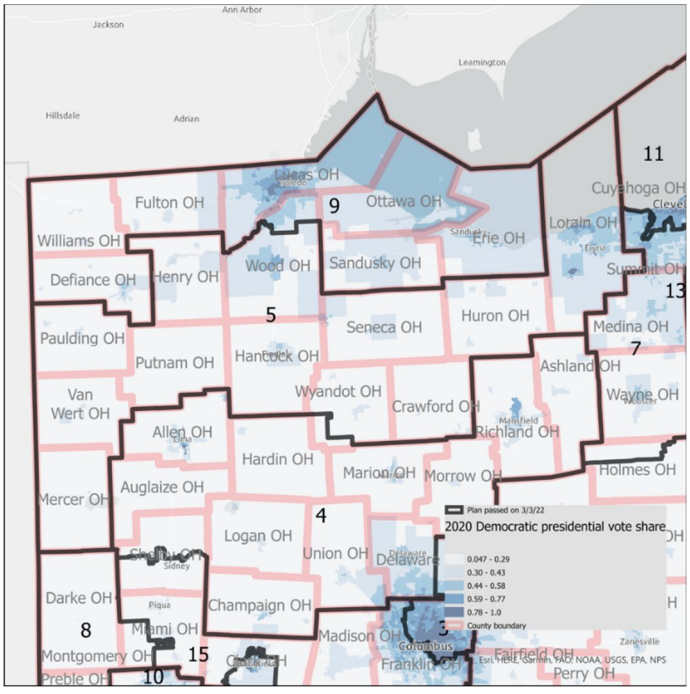
138. The configuration of Cuyahoga County in the March 2 Plan follows this same pattern. The most Democratic communities in the Cleveland area are packed into District 11, while Democratic-leaning suburbs are split off and combined with rural areas in the south to produce a safely Republican District 7. Similarly, the March 2 Plan extracts Lorain County from its surrounding environment altogether, combining it not with District 9 in the northwest nor with the

Cleveland suburbs, but instead with rural counties extending to the state's western border. The resulting non-compact districts are again evidence of partisan advantage. (*Id.* at ¶¶ 41-45.)

March 2 Plan, Cleveland Area



March 2 Plan, Northwest Ohio



139. Dr. Chen's simulations analysis confirms Dr. Rodden's qualitative analysis. Dr. Chen found that the March 2 Plan's districts in Franklin, Cuyahoga, and Hamilton Counties "are outliers in terms of compactness and partisanship, in ways that systematically favor the Republican Party." (Chen Aff. ¶ 32.) He explained that those districts "exhibit more favorable partisan characteristics for the Republican Party than the vast majority of districts covering the same local areas in the 1,000 computer-simulated plans." (*Id.* at ¶ 33.)

140. In Franklin County, Dr. Chen finds that the March 2 Plan's "two Columbus-area districts are clearly more favorable to Republicans than the two Columbus-area districts in the vast majority of the simulated plans." (*Id.* at ¶ 43.) He explains that District 3, "which contains most of Columbus' population, is more heavily Democratic than 89.6% of the 1,000 simulated plans' districts with the most Columbus population." (*Id.* at ¶ 43.) As a result, District 15, "which contains the second-most of Columbus' population, is more heavily Republican than ***99.4%*** of the simulated plans' districts with the second-most Columbus population." (*Id.* at ¶ 43 (emphasis added).) Moreover, the March 2 Plan's District 15 "is less geographically compact than nearly every computer-simulated district containing the second-most of Columbus' population." (*Id.* at ¶ 46.) Dr. Chen concludes the March 2 Plan's "Columbus-area districts were drawn in order to create a more Republican-favorable outcome than would normally emerge from a districting process following the Ohio Constitution's Article XIX requirements." (*Id.* at ¶ 45.) This outcome was achieved "by sacrificing the geographic compactness of" District 15. (*Id.* at. ¶ 46.)

141. In Hamilton County, the March 2 Plan's Cincinnati-based district, District 1, has a higher Republican vote share than over 84.2% of the simulated districts containing Cincinnati. (*Id.* at ¶ 51.) Dr. Chen explains that District 1 "achieves this unnaturally high Republican vote share by . . . connecting Warren County with the fragmented portion of Hamilton County containing

Cincinnati." (*Id.* at ¶ 51-52.) This "increas[es] the Republican vote share of [District 1] to a significantly higher level than if the Cincinnati-based district had been drawn entirely within Hamilton County." (*Id.* at ¶ 51.) Dr. Chen explains that District 1 is less compact than the vast majority of simulated districts: it has "a lower Polsby-Popper score than 96.9% of the simulated districts containing Cincinnati." (*Id.* at ¶ 52.) Thus, "by subordinating geographic compactness, the [March 2 Plan] created a Cincinnati-based district that was more favorable to the Republican Party" than the vast majority of simulated plans. (*Id.*)

142. Finally, in Cuyahoga County, the March 2 Plan's "districts are clearly more favorable to Republicans than the two Cuyahoga-based districts in the vast majority of the simulated plans." (*Id.* at ¶ 57). District 11, which contains Cleveland, "is more heavily Democratic than 98.8% of the 1,000 simulated plans' Cleveland-based districts. Consequently, [District 7], which contains the second-most of Cuyahoga's population, is more heavily Republican than all 100% of the simulated plans' districts with the second-most Cuyahoga population." (*Id.*) "In other words, every one of the 1,000 simulated plans contains one safe Democratic district based in Cleveland, as well as a second Cuyahoga-based district that is electorally competitive or Democratic leaning." (*Id.* at ¶ 58.) But the March 2 Plan packs Democratic voters into District 11 in order to increase the Republican vote share of District 7, making it safely Republican. (*Id.*). As with the other urban areas, both District 11 and District 7 are "significantly less geographically compact than the vast majority of their geographically analogous districts in the simulated plans." (*Id.* at ¶ 59.) Dr. Chen therefore concludes that the March 2 Plan's "Cuyahoga County-area districts were collectively drawn in a manner that favors the Republican Party by subordinating geographic compactness." (*Id.* at ¶ 61.)

H. The May 3, 2022 primary election for congressional races is fast approaching.

143. The Commission approved the March 2 Plan with just two months remaining before

the date set for primary elections for congressional races and with several election-related deadlines mere weeks away.

144. Under new legislation enacted by the General Assembly and signed into law by Governor DeWine on March 11, 2022, absentee ballots for uniformed service members and overseas citizens, sent pursuant to the federal Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA") must be ready for use no later than April 5, 2022. [Exhibit 74]. After this time, the Secretary LaRose has instructed County Boards of Elections to "transmit UOCAVA ballots as soon as possible to voters who submitted an absentee ballot application" provided no protests have been filed against candidates on the ballot or such contests have been resolved. (*Id.*)

145. Under the current schedule, primary elections for congressional races will be held on May 3, 2022.

146. Even before the Commission approved the March 2 Plan, on February 28, the Ohio Association of Election Officials wrote to President Huffman, asking him to consider moving the primary date in order to insure a successful primary election and expressing concern that constitutional maps would not be in place in time for officials to adequately prepare for the May 3, 2022 primary date. [Exhibit 61.]

147. It did not have to be like this. As described above, the General Assembly and Commission chose to bide their time following this Court's ruling on January 14. The General Assembly squandered 30 days without releasing a map or holding a hearing. The Commission then spent another half a month keeping its map "in the can," only to release a plan that barely changes the previous, invalidated plan. And all throughout, the General Assembly refused to move the primary date, despite the fact that it had no plans to enact a new congressional plan on its own.

FIRST CAUSE OF ACTION—Violation of Article XIX, Section 1(C)(3)(a) and Section 3(B)(2) of the Ohio Constitution

148. Petitioners restate and incorporate by reference all prior paragraphs and the paragraphs in the counts below as though fully set forth in this paragraph.

149. The November 20 Plan was passed by a simple majority of the General Assembly without bipartisan support. As such, it was subject to the requirements of Article XIX, Section 1(C)(3).

150. These requirements include Section 1(C)(3)(a)'s prohibition on passing a plan "that unduly favors or disfavors *a political party* or its *incumbents*." (emphasis added).

151. The March 2 Plan was adopted in response to the Court's order and "shall remedy any legal defects in the previous plan identified by the court." Article XIX, Section 3(B)(2); *see also Adams* at ¶ 98; *id.* at ¶ 102 ("We hold that the General Assembly did not comply with Article XIX, Section[] 1(C)(3)(a). . . . We therefore . . . order . . . a new congressional-district plan . . . that complies in full with Article XIX of the Ohio Constitution and is not dictated by partisan considerations."). Thus, compliance with the Court's January 14 opinion requires, among other things, a congressional plan that does not unduly favor a political party and its incumbents.

152. The March 2 Plan, like the November 20 Plan before it, unduly favors the Republican Party and its incumbents, while disfavoring the Democratic Party and its incumbents. The partisan breakdown of the November 20 Plan is ten safe Republican-leaning seats compared to two or three Democratic-leaning seats. This result, which is an extreme partisan gerrymander in favor of Republicans by any measure, is achieved by the packing and cracking of political subdivisions and communities of color.

153. Of the 12 districts currently held by Republican incumbents, all but one remains likely to vote Republican, with the exception of District 13, which is held by a retiring incumbent

and only slightly tilts toward the Democratic Party. District 1 nominally leans Democratic, but the Republican incumbent consistently out-performs the statewide Republicans running in his district and has a four-point incumbency advantage. Meanwhile, among the already disproportionately small four-member Democratic delegation, two members are now more likely than not to fail to gain reelection under the November 20 Plan. In one district, a Democratic incumbent is paired with a Republican incumbent in a solid red district. In another, the Democratic incumbent is placed in a dramatically reconfigured district that has only a bare Democratic majority.

154. Countless other plans presented to the General Assembly and/or the Commission, including the House and Senate Democratic proposals, comply with all requirements of Article XIX, while at the same time keeping communities together and achieving a partisan balance that resembles voter preferences.

155. The March 2 Plan's differential treatment of Democrats and Republicans, as well as its artfully precise splits of communities and carefully constructed district boundaries, makes clear that the plan not only unduly favors the Republican Party and its incumbents in its effect, but also in its intent.

156. Petitioners have no adequate remedy at law and will be irreparably harmed by the continued violation of their constitutional rights.

157. As a result of this violation of Article XIX, this Court should stay all election-related deadlines now in place; order that the primary election set for May 3, 2022 be postponed to a date that allows for the orderly implementation of a new, constitutionally compliant congressional plan; and order the adoption of a congressional plan of the Court's choosing; or (in the alternative), order the General Assembly or (if necessary) the Commission to reconvene to adopt a new, constitutionally-compliant, congressional plan. Petitioners seek this relief pursuant

to this Court's original jurisdiction over "any cause on review as may be necessary to complete its determination." Ohio Constitution, Art. IV, Section 2(B)(1)(f); *see also League of Women Voters of Ohio v. Ohio Redistricting Comm.*, 2022-Ohio-65 at ¶ 136 (ordering further relief under Article IV, Section 2(B)(1)(f) in original action related to General Assembly redistricting brought under Article XI, noting that "because the election cycle should not proceed with a General Assembly–district map that we have declared invalid, it is appropriate to issue further remedial orders in an effort to have the redistricting commission adopt a plan that complies with Article XI in time for the plan to be effective for the 2022 election cycle").

158. Respondents acted in bad faith in adopting a plan in contravention of Article XIX, Section 1(C)(3)(a), as evidenced by their failure to adhere to Article XIX's procedural requirements and their "contrived attempts to justify an untenable position" with respect to whether the November 20 Plan and March 2 Plan meet (or, in the latter case, is even subject to) the requirements listed in Section 1(C)(3). *See State ex rel. The Fairfield Leader v. Ricketts*, 56 Ohio St. 3d 97, 104, 564 N.E.2d 486, 493 (1990).

SECOND CAUSE OF ACTION—Violation of Article XIX, Section 1(C)(3)(b) and Section 3(B)(2) of the Ohio Constitution

159. Petitioners restate and incorporate by reference all prior paragraphs and the paragraphs in the counts below as though fully set forth in this paragraph.

160. The November 20 Plan was passed by a simple majority of the General Assembly without bipartisan support. As such, it is subject to the requirements of Article XIX Section 1(C)(3).

161. These requirements include Section 1(C)(3)(b), which states that the "general assembly shall not unduly split governmental units, giving preference to keeping whole, in the order named, counties, then townships and municipal corporations."

162. The March 2 Plan was adopted in response to the Court's order and "shall remedy any legal defects in the previous plan identified by the court." Article XIX, Section 3(B)(2); *see also Adams* at ¶ 98; *id.* at ¶ 102 ("We hold that the General Assembly did not comply with Article XIX, Section[] . . . 1(C)(3)(b). . . . We therefore . . . order . . . a new congressional-district plan . . . that complies in full with Article XIX of the Ohio Constitution and is not dictated by partisan considerations."). Thus, compliance with the Court's January 14 opinion requires, among other things, a congressional plan that does not unduly split political subdivisions.

163. The March 2 Plan, like the November 20 Plan before it, unduly splits governmental units. The March 2 Plan excessively divides communities in metropolitan areas of Ohio, despite that no other redistricting criterion (constitutional or otherwise) requires it to do so—as demonstrated by the maps put forward by the Senate Democrats, for example. As such, those splits are undue.

164. Petitioners have no adequate remedy at law and will be irreparably harmed by the continued violation of their constitutional rights.

165. As a result of this violation of Article XIX, this Court should stay all election-related deadlines now in place; order that the primary election set for May 3, 2022 be postponed to a date that allows for the orderly implementation of a new, constitutionally compliant congressional plan; and order the adoption of a congressional plan of the Court's choosing; or (in the alternative), order the General Assembly or (if necessary) the Commission to reconvene to adopt a new, constitutionally-compliant, congressional plan. Petitioners seek this relief pursuant to this Court's original jurisdiction over "any cause on review as may be necessary to complete its determination." Ohio Constitution, Art. IV, Section 2(B)(1)(f); *see also League of Women Voters of Ohio v. Ohio Redistricting Comm.*, 2022-Ohio-65 at ¶ 136 (ordering further relief under Article

IV, Section 2(B)(1)(f) in original action related to General Assembly redistricting brought under Article XI, noting that "because the election cycle should not proceed with a General Assembly–district map that we have declared invalid, it is appropriate to issue further remedial orders in an effort to have the redistricting commission adopt a plan that complies with Article XI in time for the plan to be effective for the 2022 election cycle").

166. Respondents acted in bad faith in adopting a plan in contravention of Section 1(C)(3)(b), *see supra* ¶ 157.

PRAYER FOR RELIEF

Accordingly, Petitioners respectfully request that this Court:

A. Declare that the March 2 Plan adopted by Respondents is invalid for failure to comply with Article XIX of the Ohio Constitution;

B. Pursuant to Article IV, Section 2(B)(1)(f) of the Ohio Constitution, issue a permanent injunction and judgment barring Respondents from calling, holding, supervising, administering, or certifying any elections under the March 2 Plan, as Petitioners have no adequate remedy at law and will be irreparably harmed by the continued violation of their constitutional rights;

C. Pursuant to Article IV, Section 2(B)(1)(f) of the Ohio Constitution, stay relevant election-related deadlines to ensure that Ohioans vote under a constitutional map in the 2022 primary and general elections.

D. Pursuant to Article IV, Section 2(B)(1)(f) of the Ohio Constitution, move the date set for the primary elections for congressional races to a date that will allow the elections to be conducted under a constitutionally valid congressional plan.

E. Pursuant to Article IV, Section 2(B)(1)(f) of the Ohio Constitution, order the

adoption of a new map, chosen by the Court, that remedies the defects articulated in its January 14, 2022 Opinion.

F. In the alternative, pursuant to Article IV, Section 2(B)(1)(f) of the Ohio Constitution, order the General Assembly, or if necessary the Commission, to adopt a congressional map that remedies the defects articulated in the Court's January 14, 2022 Opinion.

G. Hold hearings, consider briefing and evidence, and otherwise take actions necessary to adopt a constitutional plan;

H. Retain jurisdiction of this action to render any and all further orders that the Court may from time to time deem appropriate; and

I. Grant such other or further relief the Court deems appropriate, including, but not limited to, an award of Petitioners' attorneys' fees and reasonable costs.

Respectfully submitted,

/s/ Donald J. McTigue

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**Applications for Admission Pro Hac Vice Forthcoming

Counsel for Petitioners

IN THE SUPREME COURT OF OHIO

Meryl Neiman, *et al.*, **Relators,** **v.** **Secretary of State Frank LaRose, *et al.*,** **Respondents.**	**Case No. _____** Original Action Filed Pursuant to Ohio Constitution, Article XIX, Section 3(A) and Article IV Section 2(B)(1)(f) *Expedited Election Matter Under S.Ct.Prac.R. 12.08*

VERIFICATION OF DEREK S. CLINGER

Franklin County

/ss

State of Ohio

I, Derek S. Clinger, having been duly sworn and cautioned according to law, hereby state that I am over the age of eighteen years and am competent to testify to the facts set forth below based on my personal knowledge and having personally examined all records referenced in this affidavit, and further state as follows:

1. I am an attorney at law licensed to practice in the State of Ohio, and I serve as legal counsel to the Relators in this action.

2. Exhibit 1 to the Complaint is a true and correct copy of election results for Issue 1 from the May 8, 2018 Primary Election Official Canvass on Secretary of State Frank LaRose's website.

3. Exhibit 2 to the Complaint is a true and correct copy of the Ohio Campaign for Accountable Redistricting's Ohio Redistricting Transparency Report, entitled "The Elephant in the Room."

4. Exhibit 3 to the Complaint is a true and correct copy of a February 13, 2021 article in The Blade by Liz Skalka, entitled "With new maps coming in 2021, days are numbered for Ohio's gerrymandered 'snake on a lake'."

5. Exhibit 4 to the Complaint is a true and correct copy of an October 1, 2021 article in Springfield Sun-News by Jim Gaines, entitled "Ohio lawmakers miss deadline to draw new congressional districts. What's next?"

6. Exhibit 5 to the Complaint is a true and correct copy of an October 27, 2021 article in Cleveland.com by Andrew Tobias, entitled "Ohio Redistricting Commission to hold meeting, but won't approve congressional maps before adjourning."

7. Exhibit 6 to the Complaint is a true and correct copy of a November 3, 2021 article in The Statehouse News Bureau by Andy Chow, entitled "Democratic lawmakers unveil Congressional map proposals."

8. Exhibit 7 to the Complaint is a true and correct transcription of the House Government Oversight Committee's November 3, 2021 hearing.

9. Exhibit 8 to the Complaint is a true and correct transcription of the Senate Local Government and Elections Committee's November 3, 2021 hearing.

10. Exhibit 9 to the Complaint is a true and correct copy of a November 19, 2021 article in The Ohio Capital Journal by Nick Evans, entitled "Ohio House approves congressional maps largely along party lines."

11. Exhibit 10 to the Complaint is a true and correct copy of a November 20, 2021 article in The Columbus Dispatch by Laura A. Bischoff, entitled "Gov. DeWine approves congressional map over objections of voting rights groups, Democrats."

12. Exhibit 11 to the Complaint is a true and correct copy of a report from the League of Women Voters of Ohio and Common Cause Ohio, entitled "Ohio's Gerrymandering Problem: Why Haven't We Fixed This Yet?"

13. Exhibit 12 to the Complaint is a true and correct copy of the Ohio Legislative Service Commission's final analysis of S.J.R. 5, as adopted by the 132nd General Assembly.

14. Exhibit 13 to the Complaint is a true and correct copy of S.J.R. 5, as introduced during the 132nd General Assembly Regular Session (2017-2018).

15. Exhibit 14 to the Complaint is a true and correct copy of the League of Women Voters of Ohio's January 23, 2018 testimony on S.J.R. 5.

16. Exhibit 15 to the Complaint is a true and correct copy of S.J.R. 5, as reported by the Senate Government Oversight and Reform Committee.

17. Exhibit 16 to the Complaint is a true and correct copy of the bipartisan statement submitted to the Ohio Ballot Board for approval for ballot language for Issue 1.

18. Exhibit 17 to the Complaint is a true and correct copy of the certified ballot language for Issue 1.

19. Exhibit 18 to the Complaint is a true and correct copy of a February 18, 2018 opinion piece in Cleveland.com by Frank LaRose, entitled "Ohio's historic congressional redistricting reform."

20. Exhibit 19 to the Complaint is a true and correct copy of a September 30, 2021 article in The Ohio Capital Journal by Susan Tebben, entitled "Senate Dems propose congressional map."

21. Exhibit 20 to the Complaint is a true and correct copy of a September 30, 2021 article in The Associated Press by Farnoush Amiri, entitled "Ohio lawmakers set to miss another redistricting deadline."

22. Exhibit 21 to the Complaint is a true and correct copy of a transcription of the Ohio Redistricting Commission's September 15, 2021 meeting

23. Exhibit 22 to the Complaint is a true and correct copy of a November 1, 2021 article in The Hill by Reid Wilson, entitled "Ohio redistricting commission gives up on US House map."

24. Exhibit 23 to the Complaint is a true and correct copy of a November 3, 2021 Daily Kos Elections Live Digest by David Nir, entitled "OH Redistricting."

25. Exhibit 24 to the Complaint is a true and correct copy of the Senate Local Government and Elections Committee webpage listing the names of individuals who submitted testimony regarding S.B. No. 237 and S.B. No. 258.

26. Exhibit 25 to the Complaint is a true and correct copy of written testimony submitted by Catherine Turcer at the Senate Local Government and Elections Committee's November 8, 2021 hearing.

27. Exhibit 26 to the Complaint is a true and correct copy of written testimony submitted by Andrea Yagoda at the Senate Local Government and Elections Committee's November 8, 2021 hearing.

28. Exhibit 27 to the Complaint is a true and correct copy of the General Assembly's announcement of a meeting of the Joint Committee on Congressional Redistricting.

29. Exhibit 28 to the Complaint is a true and correct transcription of the Joint Committee on Congressional Redistricting's November 10, 2021 hearing.

30. Exhibit 29 to the Complaint is a true and correct transcription of the Joint Committee on Congressional Redistricting's November 12, 2021 hearing.

31. Exhibit 30 to the Complaint is a true and correct copy of a November 16, 2021 article in The Statehouse News Bureau by Andy Chow, entitled "Proposed Congressional maps show different approaches to representation in Ohio."

32. Exhibit 31 to the Complaint is a true and correct transcription of the Senate Local Government and Elections Committee's November 16, 2021 hearing.

33. Exhibit 32 to the Complaint is a true and correct copy of pages 901 through 903 of S.B. 258.

34. Exhibit 33 to the Complaint is a true and correct transcription of the Senate's November 16, 2021 floor debate.

35. Exhibit 34 to the Complaint is a true and correct transcription of the House Government Oversight Committee's November 17, 2021 hearing.

36. Exhibit 35 to the Complaint is a true and correct transcription of the House's November 18, 2021 floor debate.

37. Exhibit 36 to the Complaint is a true and correct copy of a November 19, 2021 article in Ohio Public Radio by Andy Chow, entitled "Ohio House Approves Congressional District Map, Now Heads To Gov. DeWine."

38. Exhibit 37 to the Complaint is a true and correct copy of an October 23, 2018 article in The Cincinnati Enquirer by Jackie Borchardt, entitled "Gerrymandering: The secret issue Ohio will vote on in the midterm election."

39. Exhibit 38 to the Complaint is a true and correct copy of a November 19, 2021 article in The Highland County Press, entitled "Rep. Wenstrup announces intent to seek re-election in 2nd District."

40. Exhibit 39 to the Complaint is a true and correct copy of an August 12, 2021 article in The Columbus Dispatch by Mark Ferenchik, Bill Bush, and Marc Kovac, entitled "Census: Two-thirds of Ohio counties lose population; Columbus passes 900,000 residents."

41. Exhibit 40 to the Complaint is a true and correct copy of the 2020 presidential election results in Hamilton County.

42. Exhibit 41 is a true and correct copy an article by reporter Laura Hancock titled "As congressional redistricting deadline looms, Ohio Senate Republicans head to sunny Florida for top-dollar fundraiser," first published on Cleveland.com on January 26, 2022, available at https://www.cleveland.com/news/2022/01/as-congressional-redistricting-deadline-looms-ohio-senate-republicans-head-to-sunny-florida-for-top-dollar-fundraiser.html.

43. Exhibit 42 is a true and correct copy of the 2022 S.B. No. 286 as introduced.

44. Exhibit 43 is a true and correct screenshot of the Ohio General Assembly's website for the status of 2022 S.B. No. 286, as of March 3, 2022, available at https://www.legislature.ohio.gov/legislation/legislation-status?id=GA134-SB-286.

45. Exhibit 44 is a true and correct copy of an article by reporter Andy Chow titled "Movement on new Ohio Congressional district map not expected for another week," first published by the Statehouse News Bureau on January 28, 2022, available at https://news.wosu.org/politics-government/2022-01-28/movement-on-new-ohio-congressional-district-map-not-expected-for-another-week.

46. Exhibit 45 is a true and correct copy of the Announcement of the Ohio House Government Oversight Committee's meeting and agenda for February 8, 2022 (2nd Revision).

47. Exhibit 46 is a true and correct copy of the notice and agenda for the Ohio Senate Government Budget Committee's February 8, 2022 committee meeting.

48. Exhibit 47 is a true and correct copy of the notice and agenda for the Ohio Senate Government Budget Committee's February 9, 2022 committee meeting.

49. Exhibit 48 is a true and correct copy of a tweet from reporter Josh Rultenberg (@JoshRultNews) on February 8, 2022 at 9:18am, https://twitter.com/JoshRultNews/status/1491053852170547200?s=20&t=tyf1KEnFbRpPVIEtwLTrAw.

50. Exhibit 49 is a true and correct copy of a tweet from reporter Josh Rultenberg (@JoshRultNews) on February 8, 2022 at 9:19am, https://twitter.com/JoshRultNews/status/1491054202944061441?s=20&t=WmN0CLGZQeu5uS5SCpzQQg.

51. Exhibit 50 is a true and correct copy of a tweet from reporter Josh Rultenberg (@JoshRultNews) on February 8, 2022 at 10:10am, https://twitter.com/JoshRultNews/status/1491066922544545804?s=20&t=tyf1KEnFbRpPVIEtwLTrAw.

52. Exhibit 51 is a true and correct copy of a tweet from reporter Josh Rultenberg (@JoshRultNews) on February 8, 2022 at 11:20am, including full copies of the images included with the tweet, https://twitter.com/JoshRultNews/status/1491084578685349891?s=20&t=tyf1KEnFbRpPVIEtwLTrAw.

53. Exhibit 52 is a true and correct copy of a tweet from reporter Josh Rultenberg (@JoshRultNews) on February 8, 2022 at 12:30pm, https://twitter.com/JoshRultNews/status/1491102067720847361?s=20&t=v8VW8JMh9R9sdN-T0_jTnw.

54. Exhibit 53 is a true and correct copy of a tweet from reporter Josh Rultenberg (@JoshRultNews) on February 22, 2022 at 09:37am, https://twitter.com/JoshRultNews/status/1496132024125509633?s=20&t=tyf1KEnFbRpPVIEtwLTrAw.

55. Exhibit 54 is a true and correct copy of the Ohio Redistricting Commission's notice and agenda for its February 22, 2022 meeting.

56. Exhibit 55 is a true and correct copy of the transcript of the Ohio Redistricting Commission's February 22, 2022 meeting from the Ohio Redistricting Commission's website, https://redistricting.ohio.gov/meetings.

57. Exhibit 56 is a true and correct copy of a letter sent by Ohio Secretary of State Frank LaRose to Ohio Senate President Matt Huffman on February 22, 2022.

58. Exhibit 57 is a true and correct copy of a letter sent by Ohio Attorney General Dave Yost to Ohio Governor Mike DeWine and the leaders of majority and minority caucuses of the General Assembly on February 22, 2022.

59. Exhibit 58 is a true and correct copy of the Ohio Redistricting Commission's notice and agenda for its February 23, 2022 meeting.

60. Exhibit 59 is a true and correct copy of the transcript of the Ohio Redistricting Commission's February 23, 2022 meeting from the Ohio Redistricting Commission's website, https://redistricting.ohio.gov/meetings.

61. Exhibit 60 is a true and correct copy of the transcript of the Ohio Redistricting Commission's February 24, 2022 meeting from the Ohio Redistricting Commission's website, https://redistricting.ohio.gov/meetings.

62. Exhibit 61 is a true and correct copy of a letter sent by the President and Vice President of the Ohio Association of Election Officials to Senate President Matt Huffman on February 28, 2022.

63. Exhibit 62 is a true and correct copy of the Ohio Redistricting Commission's notice and agenda for its March 1, 2022 meeting.

64. Exhibit 63 is a true and correct copy of a tweet from reporter Josh Rultenberg (@JoshRultNews) on March 1, 2022 at 12:25pm, https://twitter.com/JoshRultNews/status/1498711082403176448?s=20&t=tyf1KEnFbRpPVIEtwLTrAw.

65. Exhibit 64 is a true and correct copy of a tweet from reporter Josh Rultenberg (@JoshRultNews) on March 1, 2022 at 12:28pm, https://twitter.com/JoshRultNews/status/1498711741127036930?s=20&t=tyf1KEnFbRpPVIEtwLTrAw.

66. Exhibit 65 is a true and correct copy of a tweet from reporter Josh Rultenberg (@JoshRultNews) on March 1, 2022 at 12:51pm, https://twitter.com/JoshRultNews/status/1498717578918711299?s=20&t=tyf1KEnFbRpPVIEtwLTrAw.

67. Exhibit 66 is a true and correct copy of a tweet from reporter Josh Rultenberg (@JoshRultNews) on March 1, 2022 at 2:06pm, https://twitter.com/JoshRultNews/status/1498736359716139012?s=20&t=tyf1KEnFbRpPVIEtwLTrAw.

68. Exhibit 67 is a true and correct copy of the transcript of the Ohio Redistricting Commission's March 1, 2022 meeting from the Ohio Redistricting Commission's website, https://redistricting.ohio.gov/meetings.

69. Exhibit 68 is a true and correct copy of 2022 Ohio Atty.Gen.Ops. No. 2022-004.

70. Exhibit 69 is a true and correct copy of the transcript of the Ohio Redistricting Commission's March 2, 2022 meeting from the Ohio Redistricting Commission's website, https://redistricting.ohio.gov/meetings.

71. Exhibit 70 is a true and correct copy of the table of statistics for the congressional-district plan adopted by the Ohio Redistricting Commission on March 2, 2022 that is available on the Commission's website, https://redistricting.ohio.gov/assets/district-maps/district-map-973.zip.

72. Exhibit 71 is a true and correct copy of the map for the congressional-district plan adopted by the Ohio Redistricting Commission on March 2, 2022 that is available on the Commission's website, https://redistricting.ohio.gov/assets/district-maps/district-map-973.zip.

73. Exhibit 72 is a true and correct copy of an article by reporter Jessie Balmert titled "Ohio voters just approved Issue 1 to curb gerrymandering in Congress" that was first published by the Cincinnati Enquirer on May 8, 2018, available at https://www.cincinnati.com/story/news/politics/elections/2018/05/08/ohio-issue-1-gerrymandering/580679002/.

74. Exhibit 73 is a true and correct copy of a directive issued by Secretary of State Frank LaRose on March 2, 2022 to County Boards of Elections Board Members, Directors, and Deputy Directors.

75. Exhibit 74 is a true and correct copy of a directive issued by Secretary of State Frank on March 11, 2022 County Boards of Elections Board Members, Directors, and Deputy Directors.

76. Exhibit 75 is a true and correct copy of an expert report authored by Dr. Jonathan Rodden submitted on November 22, 2021 in *Adams v. DeWine*, No. 2021-1428 (Ohio 2021).

77. Exhibit 76 is a true and correct copy of an expert report authored by Dr. Jonathan Rodden submitted on March 4, 2022 in *Adams v. DeWine*, No. 2021-1428 (Ohio 2021).

78. Exhibit 77 is a true and correct copy of an expert report authored by Dr. Jowei Chen submitted on December 10, 2021 in *Adams v. DeWine*, No. 2021-1428 (Ohio 2021).

79. Exhibit 78 is a true and correct copy of an expert report authored by Dr. Jowei Chen submitted on March 4, 2022 in *Adams v. DeWine*, No. 2021-1428 (Ohio 2021).

80. I have read the Complaint filed in this action and affirm that the factual allegations contained therein are true.

Derek S. Clinger

Sworn to before me this 21st day of March, 2022.

Notary Public

JOHN COREY COLOMBO
Attorney at Law
Notary Public, State of Ohio
My Commission Has No Expiration
Section 147.03 R.C.

My commission expires DOES NOT EXPIRE