

IN THE SUPREME COURT OF OHIO

LEAGUE OF WOMEN VOTERS OF
OHIO, *et al.*,

Petitioners,

v.

OHIO REDISTRICTING COMMISSION,
et al.,

Respondents.

Case No. 2021-1449

Original Action Filed Pursuant to Ohio
Const., art. XIX, Sec. 3(A)

PETITIONERS' MOTION TO ENFORCE THE COURT'S JANUARY 14, 2022
ORDER

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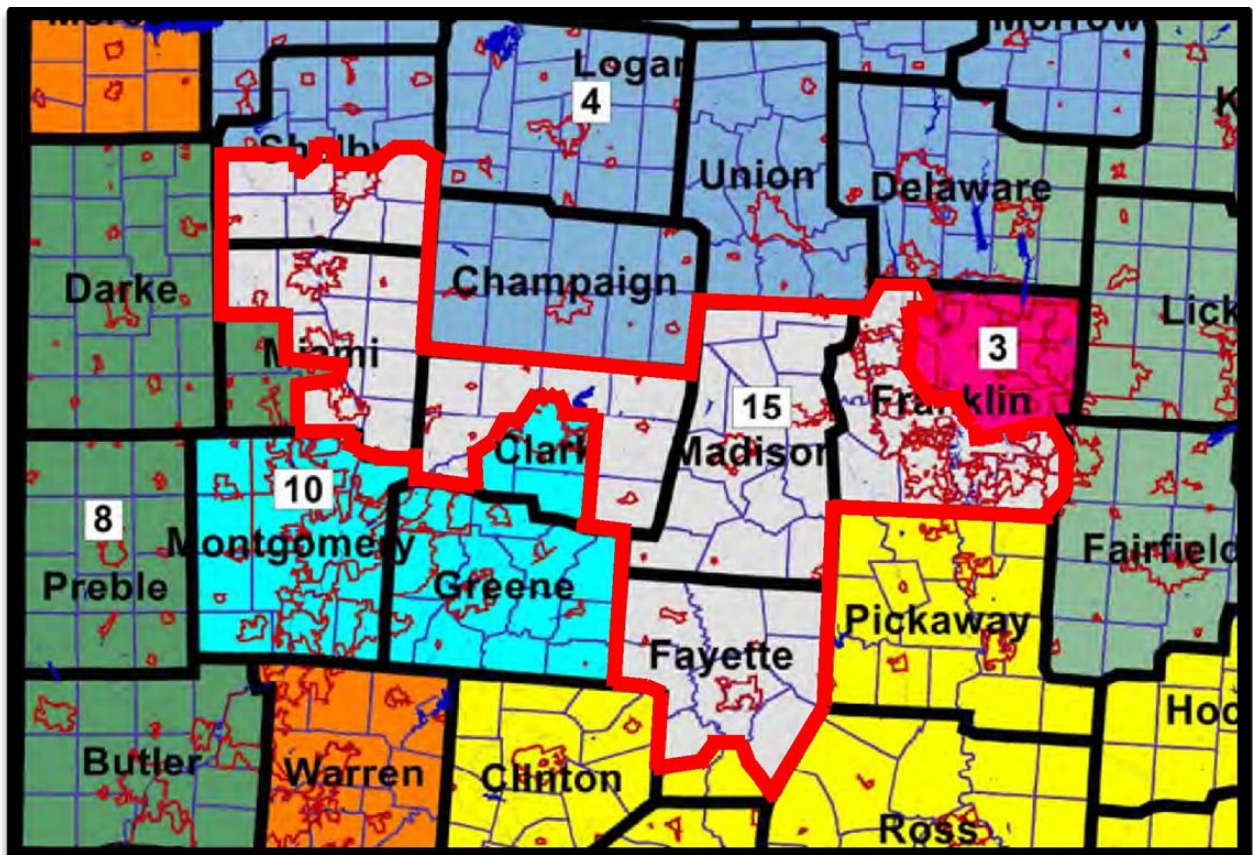
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INTRODUCTION

On January 14, 2022, this Court directed the General Assembly to enact a constitutional map. They failed to do so. Instead, they lateralled the ball to the Ohio Redistricting Commission (the “Commission”). On March 2, 2022, the Commission enacted an unconstitutional map (the “Revised Plan”). In so doing, the President of the Senate, who is a Commissioner, incredibly asserted that Article XIX’s prohibition of partisan gerrymandering does not apply to a revised plan. He did so while admitting that the Commission had drawn at least one “Frankenstein” district—Congressional District 15. It is a district that manifestly favors the Republican Party.



In District 15, outlined in red above, the Republican map drawers submerged Democratic precincts on the outskirts of Columbus into a district populated with Republican voters. This district sprawls westward, slicing up and splitting no fewer than five counties in its relentless

pursuit of partisan advantage. Thus, instead of permitting the second strong Democratic district that would naturally emerge in and around Franklin County, the Revised Plan tortured and contorted the map to fabricate a Republican stronghold in District 15.

District 1 is similarly flawed. As shown below, the Republican map drawers cracked Hamilton County and appended Warren County to District 1. The net effect is to eliminate what would otherwise be a strongly Democratic-leaning seat in Hamilton County and instead create a closely competitive district.

The resulting maps for these two districts plainly favor the Republican Party. Two manifestly non-compact districts were created that prevent the emergence of more compact Democratic-leaning districts. Accordingly, there can be no question that the Revised Plan unduly favors the Republican Party in violation of Article XIX, Section 3 of the Ohio Constitution.

It is high time that Ohio's congressional redistricting process be brought to a conclusion. In the face of this reality, the *League of Women Voters* Petitioners propose a simple solution that will achieve that objective. Through this motion, the *League of Women Voters* Petitioners respectfully request that this Court direct the General Assembly and/or the Commission to enact a plan that makes necessary corrections in two districts: Congressional District 1 and Congressional District 15.

Correcting these two districts will go a long way towards bringing the congressional map into constitutional compliance. How the map is drawn—how these corrections are specifically implemented—is up to the General Assembly and/or Commission at this point. This Court need not itself enact a map. This remedy is not complicated. It can be achieved swiftly—and is long overdue.

FACTUAL BACKGROUND

A. The Ohio Supreme Court Invalidated the Initial Plan Enacted By the General Assembly.

On November 20, 2021, Governor Mike DeWine signed into law SB 258, a congressional districting map that was passed by a simple majority in the General Assembly. Ten days later, Petitioners filed a complaint before this Court alleging that the map drawn and passed by the General Assembly violated Article XIX of the Ohio Constitution.¹ Following expedited discovery, full merits briefing, and oral argument, this Court held that the General Assembly “did not comply with Article XIX, Sections 1(C)(3)(a) and (b) of the Ohio Constitution in passing the congressional-district plan” and thus invalidated that plan and ordered the General Assembly to “pass a new congressional-district plan, as Article XIX, Section 3(B)(1) requires.” *Adams v. DeWine*, Slip Opinion No. 2022-Ohio-89, ¶ 102. In particular, this Court ordered:

{¶ 99} 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.*

{¶ 102} We hold that the General Assembly did not comply with Article XIX, Sections 1(C)(3)(a) and (b) of the Ohio Constitution in passing the congressional-district plan. We therefore declare the plan invalid and we *order the General Assembly to pass a new congressional-district plan . . . that complies in full with Article XIX of the Ohio Constitution and is not dictated by partisan considerations.*

Id. ¶¶ 99, 102 (emphases added).

¹ Pursuant to this Court’s order, the parties formerly named as “Relators” in the above-captioned matter will hereafter be referred to as “Petitioners.” See *Adams*, Slip Opinion No. 2022-Ohio-89, n.2.

Consistent with the Court’s order and Article XIX, Section 3(B)(1), the General Assembly was then required to enact a congressional districting plan within 30 days of the Court’s order—*i.e.*, by February 13, 2022.

B. The General Assembly Failed to Pass a Plan in Accordance with the Court’s January 14 Order—and the Commission Enacted an Unconstitutional Map.

The February 13, 2022 deadline came and went without any action by the General Assembly.² On February 22, 2022, the Commission convened to discuss congressional districting plans. At that hearing, Speaker Cupp, Co-Chair of the Commission, explained that the responsibility for passing a congressional districting plan fell to the Commission, now that the General Assembly failed to pass a plan by its constitutionally mandated deadline. February 22, 2022 Ohio Redistricting Comm’n Hrg., at 00:01:36, <https://ohiochannel.org/video/ohio-redistricting-commission-2-22-2022>. A few days later, at a February 24 hearing, Secretary of State LaRose indicated that federal law stipulates that overseas and military ballots go out on March 18. February 24, 2022 Ohio Redistricting Comm’n Hrg., at 00:51:02, <https://ohiochannel.org/video/ohio-redistricting-commission-2-24-2022?version=audio>.

On March 1, 2022, the Commission held another hearing. At that hearing, Speaker Cupp and Senate President Huffman introduced a Republican-drawn congressional districting plan, to which they invited Democratic amendments. March 1, 2022 Ohio Redistricting Comm’n Hrg., at 00:34:25, <https://ohiochannel.org/video/ohio-redistricting-commission-3-1-2022?version=audio>.

On March 2, 2022, the Democratic Commissioners introduced amendments to the Republican-sponsored plan, which the Republican Commissioners promptly rejected. March 2,

² J.D. Davidson, *Ohio Lawmakers Miss Deadline for New Congressional District Map*, The Center Square (Feb. 14, 2022), <https://bit.ly/3sB0AJ1>.

2022 Ohio Redistricting Comm’n Hrg., at 00:52:29, <https://ohiochannel.org/video/ohio-redistricting-commission-3-2-2022>. The Commission then took up the Republican-sponsored plan, which was passed by a majority of the Commission on a 5–2 party-line vote. *Id.* at 00:53:04.³ In expressing his support, Senate President Huffman stated that, in his view, the anti-partisan gerrymandering provisions of Article XIX, Section 1(C)(3) were inapplicable to the Revised Plan, *see id.*, at 00:30:50–00:31:50—notwithstanding the clear mandate of this Court’s January 14, 2022 order to the contrary, *Adams*, Slip Opinion No. 2022-Ohio-89, ¶ 102.

As set forth below, the Revised Plan was required to comply with Section 1(C)(3) but indeed failed to comply with Section 1(C)(3) *and* this Court’s January 14, 2022 order.

ARGUMENT

I. Proposition of Law 1: This Court May Order the Enforcement of its January 14, 2022 Order By Directing the General Assembly and/or Commission to Enact a Map that Complies with Article XIX, Section 1(C)(3) of the Ohio Constitution.

A. This Court Has the Authority to Enforce Its January 14, 2022 Order By Directing the Enactment of a Constitutional Map.

On January 14, 2022, this Court held that the congressional district plan first enacted on November 20, 2021 violated Article XIX of the Ohio Constitution and unequivocally ordered the General Assembly and the Commission (should it prove necessary) to draw a new plan that comports with Article XIX. In particular, this Court ordered:

{¶ 99} 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.*

³ The Revised Plan is publicly available on the Ohio Redistricting Commission’s website. *See* Frank Strigari Map (Mar. 2, 2022), The Ohio Redistricting Comm’n, <https://redistricting.ohio.gov/maps> (“Congressional District Plan – Adopted by Commission or Passed by General Assembly”). The Revised Plan was also submitted to this Court by the *Adams* Petitioners in *Regina Adams v. Governor Mike DeWine*, No. 2021-1428 (Mar. 4, 2022). *See* ADAMS_128.

Adams, Slip Opinion No. 2022-Ohio-89, ¶ 99 (emphases added). Notably, the Court’s order specifically directed compliance with Sections 1(C)(3)(a) and (b):

{¶ 102} We hold that the General Assembly did not comply with Article XIX, **Sections 1(C)(3)(a) and (b)** of the Ohio Constitution in passing the congressional-district plan. We therefore declare the plan invalid and we order the General Assembly to pass a new congressional-district plan . . . that complies in full with Article XIX of the Ohio Constitution and is not dictated by partisan considerations.

Id. ¶ 102 (emphasis added).

Neither the General Assembly nor the Commission, however, complied with the Court’s order. As set forth below, the Commission (after the General Assembly failed to pass a plan) enacted a plan that unduly favors the Republican Party and unduly splits governmental units in the service of partisan objectives. In sum, the Commission violated Article XIX and this Court’s clear directive that the Commission draw an Article XIX-compliant plan. Accordingly, enforcement of this Court’s January 14 order is warranted.

It is well-established in Ohio that courts have inherent authority to enforce their orders. *See, e.g., Infinite Sec. Sols., L.L.C. v. Karam Properties, II, Ltd.*, 143 Ohio St.3d 346, 352, 2015-Ohio-1101, 37 N.E.3d 1211, 1219 (“Courts have inherent authority to enforce their final judgments and decrees.”); *Norwood v. Horney*, 110 Ohio St.3d 353, 387, 2006-Ohio-3799, 853 N.E.2d 1115, 1149 (emphasizing that “incidental to its constitutional grant of power, [a court has the] inherent power to do all things reasonably necessary to the administration of justice in the case before it”) (quoting *Smothers v. Lewis*, 672 S.W.2d 62, 64–65 (Ky. 1984)).

Accordingly, there is no doubt that this Court has the inherent and unequivocal authority “to enforce” its “decree[],” *see Infinite Sec.*, 143 Ohio St.3d at 352—*i.e.*, to direct the General Assembly or the Commission to “draw a map that comports with the directives of [the January 14, 2022] opinion,” *Adams*, Slip Opinion No. 2022-Ohio-89, ¶¶ 99, 102.

B. This Court Can Enforce its January 14, 2022 Order Against the Commission.

On December 6, 2021, this Court dismissed the Commission as a respondent in this action. Nonetheless, the Ohio Civil Rules and this Court’s case law make clear that this Court can enforce its January 14, 2022 order against *both* the General Assembly and the Commission.

Ohio Civil Rule 71 provides that “when obedience to an order may be lawfully enforced against a person who is not a party, he is liable to the same process for enforcing obedience to the order as if he were a party.” Ohio Civ. R. 71. That rule is “intended to eliminate the necessity of making persons technical parties to suits in order to reach a just and proper result,” thus underscoring the Court’s authority to enforce a decree even against a technical nonparty. 1970 Staff Note to Ohio Civ. R. 71 (1970).

The principle underlying Rule 71 fully applies here. Despite initially dismissing the Commission as a party, the Court’s January 14 order made clear that the Commission—should the General Assembly fail to act—has a constitutional duty to draw a congressional district plan that complies with Article XIX:

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, Slip Opinion No. 2022-Ohio-89, ¶ 99 (emphasis added). Thus, consistent with Rule 71 and the text of Article XIX, this Court made clear that its January 14 order may be lawfully enforced against the Commission *and* the General Assembly, regardless of whether the Commission is formally named as a respondent.

Indeed, the propriety of enforcing the January 14 order against a nonparty closely mirrors the process through which Ohio courts have enforced preliminary injunctions against technical nonparties. Under Ohio Civil Rule 65(D), an injunction is “binding upon the parties to the

action, their officers, agents, servants, employees, attorneys and *those persons in active concert or participation* with them who receive actual notice of the order whether by personal service or otherwise.” Ohio Civ. R. 65(D) (emphasis added).

Rule 65 has been applied so as to prevent a party from nullifying a decree by enlisting the aid of third parties to carry out the prohibited acts. As this Court held in *Planned Parenthood Ass’n of Cincinnati, Inc. v. Project Jericho*, nonparties may be bound by an injunction:

[T]o ensure that defendants [do] not nullify a decree by carrying out prohibited acts through aiders and abettors, although they were not parties to the original proceeding . . . [so long as those] [p]ersons acting in concert or participation with a party against whom an injunction has been issued must have actual notice of the injunction in order to be bound by it.

52 Ohio St.3d 56, 61, 556 N.E.2d 157, 163 (internal citations and quotations omitted). Here, too, the General Assembly handed off the task of enacting a map to the Commission—an entity that was surely on actual notice of this Court’s January 14 order, given the overlap in membership. *See Adams*, Slip Opinion No. 2022-Ohio-89, ¶ 99 (“[B]oth 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.”). Respondents cannot now nullify this Court’s order through this hand-off.

II. Proposition of Law 2: This Court Should Reject the Contention that the Constitutional Limitations on Partisan Gerrymandering Do Not Apply to the Revised Plan.

At the March 2, 2022 meeting of the Commission, Senate President/Commissioner Huffman made a remarkable pronouncement. He stated that in his view, when enacting a revised congressional plan, the Commission is no longer required to create a map that comports with the requirements of Article XIX, Sections 1(C)(3)(a)–(b). Those provisions set forth the requirements that a plan not “unduly” favor a political party or “unduly” split governmental units

(“the Unduly Requirements”).⁴ In short, Senator Huffman does not believe that the constraints on partisan gerrymandering apply to the Revised Plan. Senator Huffman is wrong for three reasons.

First, the Commission’s authority to draw a revised congressional plan is undertaken pursuant to Section 3(B)(2) of Article XIX. That provision provides, among other things, that the Commission’s plan must comply “with the provisions of this constitution that are then valid. . . .” Ohio Const., art. XIX, § 3(B)(2). Indisputably, as of this date, Sections 1(C)(3)(a)–(b)—the Unduly Requirements—remain valid constitutional provisions.

Second, Section 3(B)(2) further provides that a congressional district plan adopted under that section “shall remedy any legal defects in the previous plan identified by the court but shall include no other changes to the previous plan other than those made in order to remedy those defects.” *Id.* Only one “previous plan” exists—the congressional district plan adopted by the General Assembly and declared invalid by this Court on January 14, 2022. Indeed, the specific “defects” this Court identified were violations of the very same Unduly Requirements that Senator Huffman now says are inapplicable to the revised congressional plan. *Adams*, Slip Opinion No. 2022-Ohio-89, ¶ 5 (“We hold that the congressional-district plan is 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)(a). We also hold that the plan unduly splits Hamilton, Cuyahoga, and Summit Counties in violation of Section 1(C)(3)(b).”).

The Attorney General’s March 1, 2022 Opinion (the “AG Opinion”) only underscores the Commission’s responsibility to pass a map that complies with the Unduly Requirements. *See*

⁴ *See* March 2, 2022 Ohio Redistricting Comm’n Hrg., at 00:30:50–00:31:50, <https://ohiochannel.org/video/ohio-redistricting-commission-3-2-2022>.

Ohio Attorney General Opinion No. 2022-004, at 11 (Mar. 1, 2022), [Bit.ly/3sN3VF6](https://bit.ly/3sN3VF6). That opinion confirms that “[i]n exercising its duties under Article XIX, Section 3(B)(2),” the Commission is required to remedy “defects in the previous plan identified by the court.” *Id.* (internal quotations omitted). It left no doubt as to what those “defects” constitute in this case: failures to “**satisfy the requirements in Article XIX, Section 1(C)(3)(a) and (b)** [the Unduly Requirements].” *Id.* at 4 (emphasis added).

Third, to the extent there is any ambiguity regarding the constitutional provisions at issue in this case (there is none), the AG opinion notes that ambiguous constitutional provisions “should not be interpreted in ways that incentivize government officials to act unconstitutionally.” *Id.* at 10. Yet this is precisely what Senator Huffman’s contention would do. It would incentivize the majority party, as well as the Commission, to enact a map that unquestionably violated the Unduly Requirements—a map that this Court would then invalidate. Then, according to Senator Huffman, the Commission could, under the auspices of Section 3(B)(2), pass a revised map that would *not* have to comply with the Unduly Requirements. Such a reading would undermine the entire purpose of Article XIX and the authority of this Court. It should be rejected outright.

III. Proposition of Law 3: The Revised Enacted Plan Violates Section 1(C)(3) By Unduly Favoring the Republican Party.

When considered as a statewide map, the Revised Plan does not comply with the requirements of Section (1)(C)(3)(a): it unduly favors the Republican Party. This is true whether one considers proportionality, traditional partisan bias metrics, and/or the asymmetrical competitiveness of the Revised Plan.

A. Proportionality

As Dr. Warshaw notes, the Revised Plan affords Republicans a grossly disproportionate share of the congressional seats relative to their statewide vote share. Based on the results of the 2020 congressional election, in which Democrats received 43% of the two-party vote, Dr. Warshaw finds that the Revised Plan would award them only 20% of the seats, with 80% likely going to Republicans. Ex. A, Affidavit of Dr. Christopher Warshaw (Mar. 6, 2022) (hereinafter “Warshaw Aff.”) at 4. Based on all statewide elections from 2016 to 2020, Dr. Warshaw reports that 72% of the seats are Republican-leaning even though Republicans won an average vote share of 55% in those elections. *Id.* at 5. Dr. Warshaw notes that the PlanScore model yields a similar conclusion: Republicans can be expected to win 76% of the seats even though the Republicans have garnered about 56% of the statewide vote in recent elections. *Id.* Dr. Warshaw sets forth the projected vote shares by district based on each of these three data sources in the following table:

District	Projected Democratic Vote Share			
	House 2020	Composite (2016-2020)	PlanScore	Average Dem. Share
1	0.50	0.51	0.52	0.51
2	0.25	0.29	0.25	0.26
3	0.69	0.69	0.69	0.69
4	0.29	0.31	0.30	0.30
5	0.34	0.37	0.34	0.35
6	0.34	0.39	0.33	0.36
7	0.41	0.44	0.43	0.43
8	0.37	0.37	0.37	0.37
9	0.47	0.49	0.46	0.47
10	0.42	0.46	0.46	0.45
11	0.78	0.79	0.75	0.78
12	0.31	0.35	0.32	0.33
13	0.49	0.51	0.49	0.49
14	0.40	0.43	0.40	0.41
15	0.43	0.45	0.44	0.44

Table 5: Democratic Vote Share Projections for Each District on Commission’s March 2 Plan using a Variety of Methods. Competitive districts in grey, Democratic districts in blue, and Republican districts in red.

Warshaw Aff. at 13. After considering the relative competitiveness of the Republican- and Democratic-leaning districts, Dr. Warshaw further concludes that Republicans are likely to win 12 out of Ohio’s 15 congressional seats, *i.e.*, about 75%. *Id.* at 12.

B. Partisan Bias Metrics

A review of the standard metrics that are used to measure partisan bias confirms that the Revised Plan unduly favors the Republican Party. As set forth in Dr. Warshaw’s Affidavit, this undue bias continues that which was enacted in 2011, with no material improvement over the original enacted plan:

Metric	Value	2016-2020 Composite	
		More Biased than this % Historical Plans	More Pro-Republican than this % Historical Plans
2012-2020 Plan			
Republican Seat Share	74%		
Efficiency Gap	-16%	90%	96%
Declination	-.56	89%	93%
Mean-Median Diff	-3%	39%	71%
Symmetry Bias	-17%	91%	93%
Average		77%	88%
Commission’s Original, Enacted Plan			
Republican Seat Share	76%		
Efficiency Gap	-18%	93%	97%
Declination	-.59	92%	95%
Mean-Median Diff	-2%	24%	63%
Symmetry Bias	-10%	69%	83%
Average		70%	85%
Commission’s Enacted March 2 Plan			
Republican Seat Share	72%		
Efficiency Gap	-14%	86%	94%
Declination	-.44	81%	88%
Mean-Median Diff	-1%	17%	59%
Symmetry	-11%	73%	84%
Average		70%	85%

Table 2: Composite bias metrics for enacted, March 2 Congressional plan based on statewide elections

Warshaw Aff. at 9; *see also id.* at 7–8 & Table 1 (finding similar results if one uses only the most recent congressional election as the reference point).

C. Asymmetry: Conversion of Democratic-Leaning Districts Into Toss-ups While Converting Weak Republican Districts into Safe Republican Districts

As Dr. Imai’s Report demonstrates, the partisan bias of the Revised Plan is quite extreme: it is a statistical outlier when compared to 5,000 simulated plans. *See* Ex. B, Report of Dr. Kosuke Imai (Mar. 6, 2022) (hereinafter “Imai Rep.”) ¶¶ 7–11. It achieves partisan ends “by turning Democratic-leaning districts into toss-up districts while making slightly Republican-leaning districts into safe Republican districts.” *Id.* ¶ 11; *see also id.* ¶ 7 (detailing how in the simulated plans, two districts that are toss-up districts are transformed into strong Republican-leaning districts under the Revised Plan); *id.* ¶¶ 8–9 (detailing conversely how three districts that are strong Democratic-leaning districts under the simulated plans are transformed into highly competitive districts under the Revised Plan).

IV. Proposition of Law 4: The Revised Plan Has Enacted Non-Compact Districts That Unduly Favor the Republican Party.

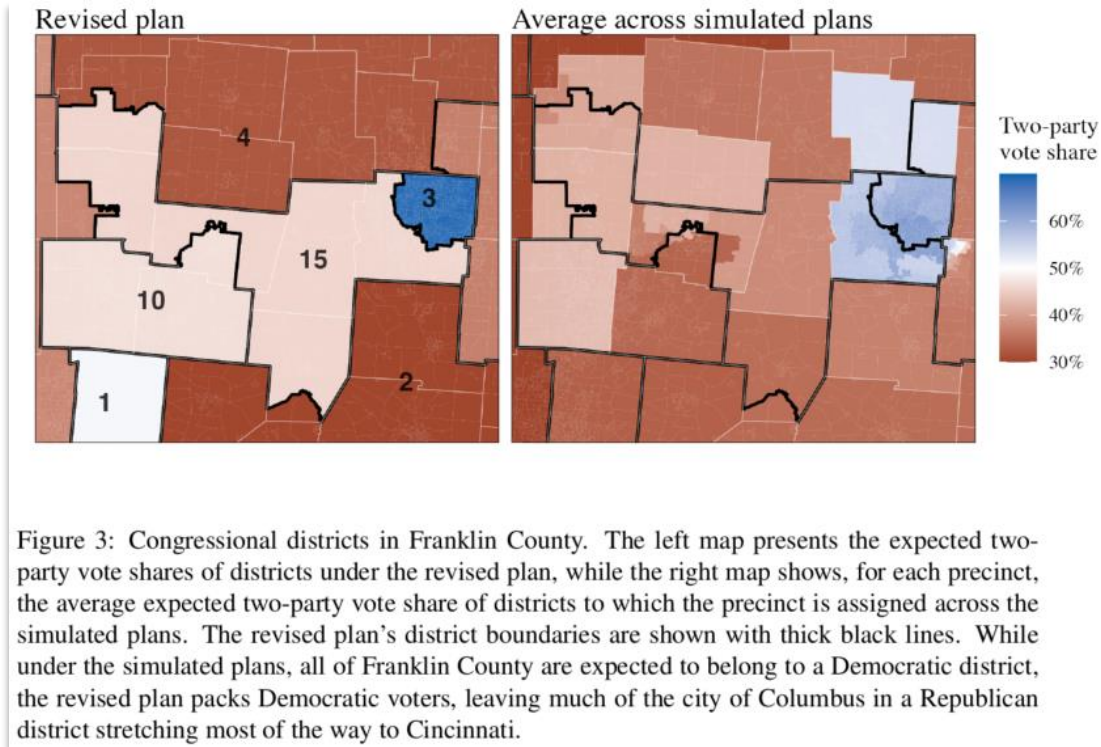
The Revised Plan achieved its partisan result through a specific mechanism proscribed by Article XIX: it created non-compact districts that were drawn in a particular manner so as to enhance the strength of the Republican Party. This constitutional defect is egregiously manifest in two districts: Congressional District 1 and Congressional District 15. Indeed, the undue partisan bias of the Revised Plan largely originates in the undue bias manifest in these two districts. Imai Rep. ¶¶ 12–13 (setting forth how the partisan bias of these two districts in the Revised Plan compared to the partisan leaning of 5,000 simulated plans).

A. Congressional District 15

1. District 15 Unduly Favors the Republican Party.

As shown below in Dr. Imai’s Report, the Revised Plan submerges Democratic voters on the outskirts of Columbus in Franklin County into District 15, which is fabricated out of territory stretching to the west. Imai Rep. ¶ 19. By doing so, the Revised Plan dilutes Democratic voters’

votes and creates an additional safe Republican district. It thus deprives Democratic voters in Franklin County of a reasonable opportunity to elect a Democratic candidate. *Id.*



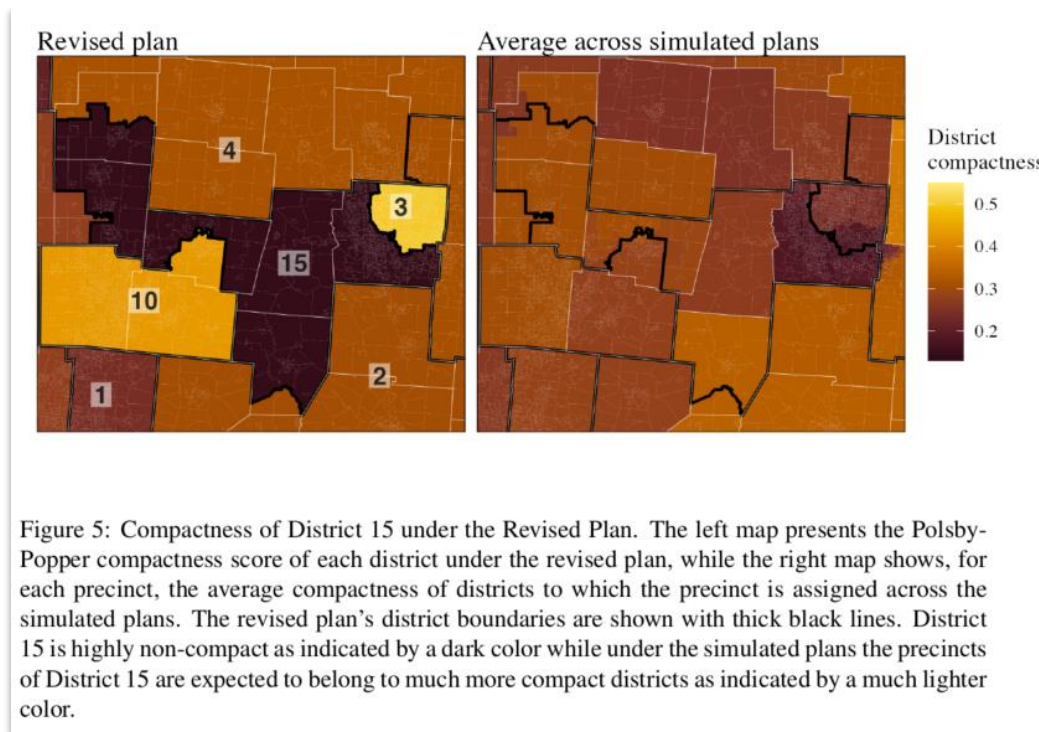
2. District 15 Is Manifestly Non-Compact.

Given its “Frankenstein” contours, it is not surprising that District 15 has the lowest compactness score of any district in the Revised Plan, as shown by Dr. Warshaw. In addition, he reports that it is amongst the least compact districts in the nation—whether measured over the past 200 years or just by reference to the 2020 election cycle:

District 15 receives the lowest compactness scores. Its Reock score is 0.28 and its Polsby-Popper score is 0.14. Both of these scores rank in the bottom quintile of the compactness scores for all congressional districts over the past 200 years. . . . They also rank in the bottom quintile of the compactness scores for congressional districts around the country in the 2020 cycle.

Warshaw Aff. at 13–14.

Dr. Imai’s comparison of the Revised Plan’s compactness to that of 5,000 simulated plans underscores this point. As set forth in the figure immediately below, District 15 has a significantly lower compactness score than what would be seen in corresponding districts in his simulated plans. Imai Rep. ¶ 22 & Figure 5. Specifically, Dr. Imai compares the average Polsby-Popper compactness score of districts in the simulated plans that include precincts falling within District 15 of the Revised Plan against the Polsby-Popper compactness score of District 15. *Id.*



Id. The left-hand map of Figure 5, above, shows the non-compactness of District 15 under the Revised Plan. As Dr. Imai notes:

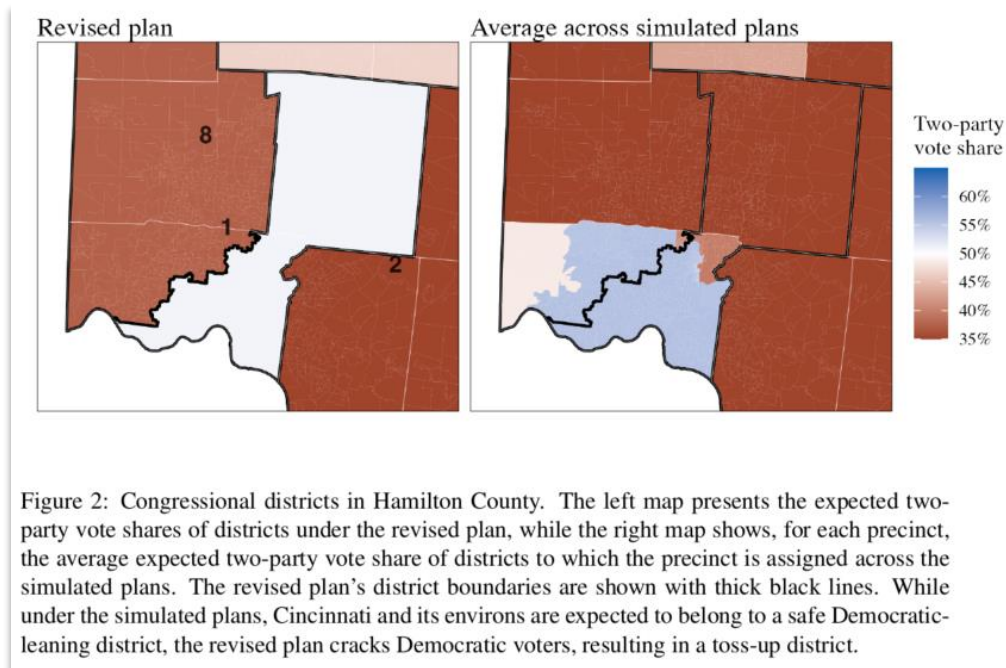
This district combines part of Columbus and its environs with Madison County and extends into five other counties in the west. As a result, the district splits a total of five counties and has a highly non-compact shape with the Polsby-Popper compactness score of 0.144, the lowest of all fifteen districts under the revised plan (though District 3 that packs Democratic voters of Columbus is highly compact).

Id. By contrast, as shown in the right-hand map of Figure 5, the simulated plans on average assign the precincts of District 15 to much more compact districts (indicated by a lighter color). The average district compactness score for these precincts under the simulated plans is 0.224, which is 56% higher than the compactness score of District 15 under the Revised Plan. *Id.*

B. Congressional District 1

1. District 1 Unduly Favors the Republican Party.

In Hamilton County, the Revised Plan cracks Democratic voters into Districts 1 and 8, substantially reducing the Democratic voting strength in District 1. *See* Imai Rep. ¶ 15. As a result of these manipulations—including the appendage of Warren County to District 1—the Revised Plan has no safe Democratic seats in Hamilton County, whereas the simulated plans yield a relatively safe Democratic seat. *Id.* at ¶ 17. This conclusion is depicted in Dr. Imai’s Figure 2, reproduced below:



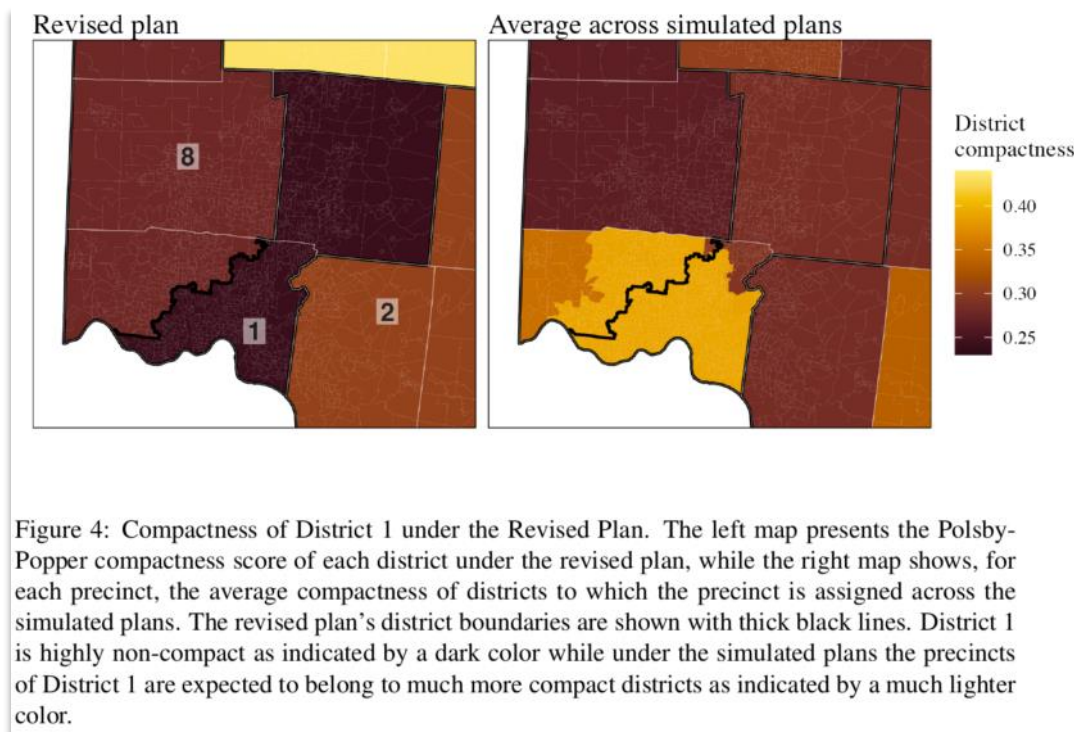
Imai Rep. ¶ 16 & Figure 2.

The story is straightforward. Voters in Cincinnati would normally be expected to belong to a strongly Democratic-leaning district, as demonstrated by the simulated plans. But as a result of the unnatural, forced pairing of Hamilton and Warren counties in the Revised Plan’s District 1, these voters instead belong to a much less Democratic-leaning district. *Id.* ¶ 14.

2. District 1 Is Manifestly Non-Compact.

As Dr. Warshaw has determined, District 1 under the Revised Plan also receives low compactness scores—with a Reock score of 0.31 and a Polsby-Popper score of 0.25. District 1’s Reock score is in the bottom quartile for *all* congressional districts over the past 200 years, and its Polsby-Popper score is “well below the average” across that same time frame. *See* Warshaw Aff. at 15.

Dr. Imai’s comparison of District 1 and the 5,000 simulated plans leads to the same conclusion, as depicted in Figure 4, reproduced below:



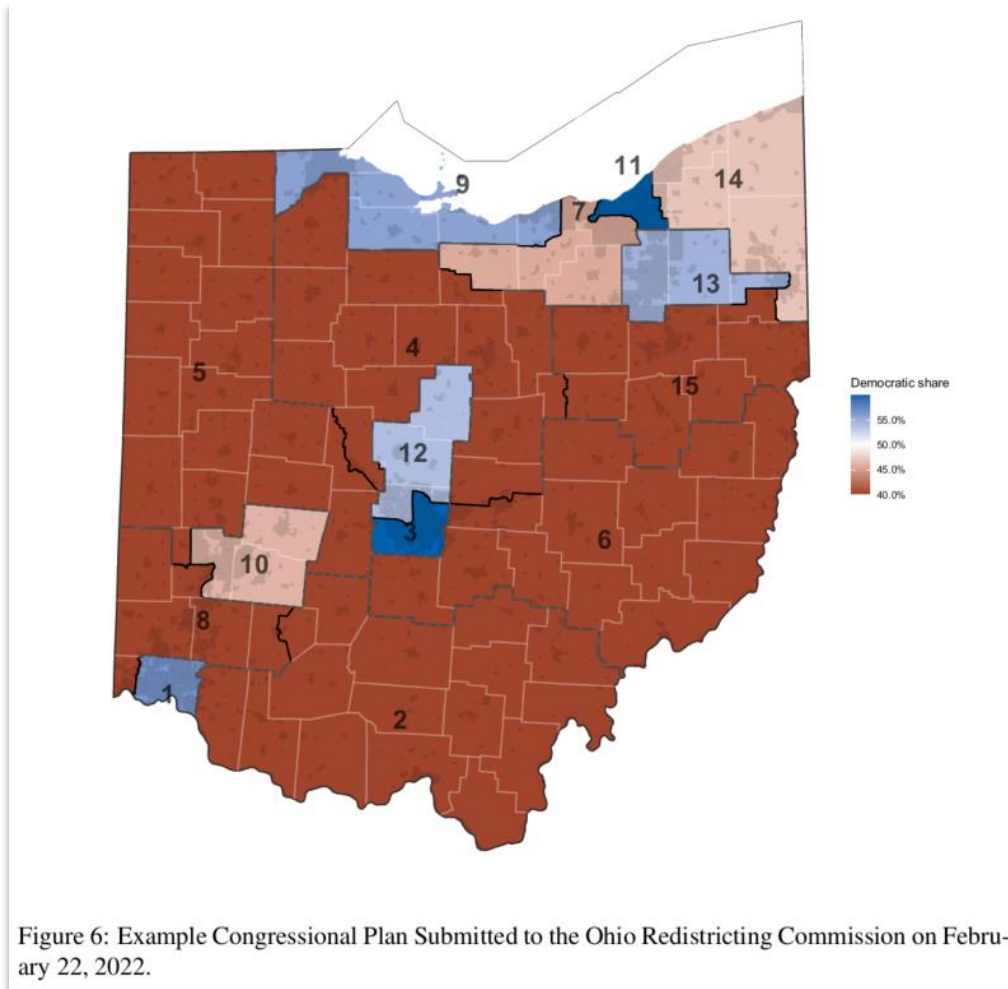
Imai Rep. ¶ 21 & Figure 4.

The left-hand map in Figure 4 shows the compactness of District 1 under the Revised Plan. As Dr. Imai observes: “This district combines part of Cincinnati and its environs with Warren County, resulting in a highly non-compact shape with the Polsby-Popper compactness score of 0.241.” *Id.* ¶ 21.

The right-hand map in Figure 4 depicts the average map across the set of simulated plans—which is far more compact in Hamilton County. As Dr. Imai observes: “because a majority of my simulated plans keep Cincinnati and its environs in the same district, these areas are expected to belong to a more compact district indicated by a lighter color.” *Id.* Thus, “the average district compactness score for these precincts under the simulated plans is 0.341, which is 42% higher than the compactness score of District 1 under the [R]evised [P]lan.” *Id.*

C. An Alternative Was Before the Commission that Did Not Have These Constitutional Defects—But Was Ignored.

On February 22, 2022, the *League of Women Voters* Petitioners submitted to the Commission an Example Congressional District Plan (the “Example Plan”) crafted by Dr. Imai that is *more compliant* with Article XIX of the Ohio Constitution than the Revised Plan. Imai Rep. ¶ 3; *League of Women Voters* Petitioners’ Map (Feb. 22, 2022), The Ohio Redistricting Comm’n, <https://redistricting.ohio.gov/maps> (“Congressional District Plans/Maps - General Public Sponsors”). As Dr. Imai states: “This [E]xample [P]lan [reproduced below] demonstrates that it is possible to generate a redistricting plan that is free of partisan bias and compactness problems while complying with the other redistricting criteria.” Imai Rep. ¶ 23.



Id. Figure 6.

1. The Example Plan Highlights the Critical Constitutional Defects in the Revised Plan.

District 1. Under the Example Plan, District 1 is wholly and compactly contained in Hamilton County without spilling into Warren County, in contrast to the Revised Plan. As a result, District 1 does not cross a county line and is much more compact under the Example Plan (Polsby-Popper compactness score of 0.474) than under the Revised Plan (compactness score of 0.241). Imai Rep. ¶ 24. Unlike the Revised Plan, which cracks Democratic voters in Cincinnati and its northern environs into two districts (Districts 1 and 8), the Example Plan keeps these areas together in a single compact district. The result: District 1 is a safer Democratic district

under the Example Plan (Democratic vote share of 56.3%) than under the Revised Plan (Democratic vote share of 51.0%). *Id.*

District 15. Under the Revised Plan, as noted above, the portion of Franklin County that is not included in District 3 is submerged into District 15. Under the Example Plan, Franklin County is also split into two districts: the Example Plan’s District 3 contains the southern part of Franklin County, while the northern part of the county is included in a district identified as “District 12.” District 12 of the Example Plan is much more compact than District 15 in the Revised Plan. It has a Polsby-Popper compactness score of 0.250. By contrast, District 15 in the Revised Plan has an extremely low compactness score of 0.144. Imai Rep. ¶ 25. As Dr. Imai concludes:

The partisan implication of this difference is clear. Under the Example Plan, both Districts 3 and 12 are Democratic-leaning with Democratic vote shares of 65.7% and 53.7%, respectively, whereas the revised plan ends up with one packed Democratic district (District 3 with the Democratic vote share of 68.9%) and one safe Republican district (District 15 with the Democratic vote share of 45.8%).

Id.

V. Remedy: This Court Should Direct the General Assembly and/or Commission to Enact a Plan that Brings Districts 1 and 15 into Compliance with the Ohio Constitution and this Court’s January 14, 2022 Order.

This Court should invalidate the Revised Plan because of its failure to comply with Article XIX, Section 1(C)(3)(a) as set forth above. In so doing, this Court should specifically require the General Assembly and/or Commission to enact a plan that remedies the two specific defects identified in this motion: (i) the improperly non-compact configuration of Congressional District 1 that unduly favors the Republican Party; and (ii) the improperly non-compact configuration of Congressional District 15 that unduly favors the Republican Party.

Districts 1 and 15 both suffer from the same two infirmities: (i) each is manifestly non-compact, and (ii) each district's irregular shape is designed to serve improper partisan ends. In order to achieve a constitutional plan, the Court should direct that both infirmities be corrected. The fixes are straightforward. For District 1, a corrected plan would bring it fully within Hamilton County, encompassing Cincinnati and its environs—without spilling into Warren County or other adjacent rural areas. Such a district would both be compact and would not crack the Democratic-leaning voters of Hamilton County. For District 15, a corrected plan would split Franklin County into two compact districts, neither of which ranges to far flung counties west or south. Such districts would avoid packing Democrats in part of Franklin County while cracking the remainder.

This is what Sections 3(B)(1) and (2) require: that the Court identify constitutional defects, and that the General Assembly and/or Commission address those defects in a revised map. In particular, as regards a plan enacted by the General Assembly, Section 3(B)(1) provides:

In the event that [. . .] any congressional district plan [. . .] is challenged and determined to be invalid [. . .] then, notwithstanding any other provisions of this constitution, the general assembly shall pass a congressional district plan in accordance with the provisions of this constitution that are then valid **The revised map must 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.**

Ohio Const., art. XIX, § 3(B)(1) (emphasis added). Similarly, as regards a plan enacted by the Commission, Section 3(B)(2) states:

A congressional district plan adopted under this division shall remedy any legal defects in the previous plan identified by the court **but shall include no other changes to the previous plan other than those made in order to remedy those defects.**

Id. § 3(B)(2) (emphasis added).

Petitioners respectfully submit that it is premature at this juncture for the Court itself to implement a plan. Indeed, at least one Commissioner (Senator Huffman) has recognized publicly that the Commission is intent on correcting the defects identified by this Court. *See* March 1, 2022 Ohio Redistricting Comm’n Hrg., at 00:13:28, <https://ohiochannel.org/video/ohio-redistricting-commission-3-1-2022>. Accordingly, the appropriate course is to follow the procedure set forth in Article XIX, Section 3 of Ohio’s Constitution and to identify specific defects in the Revised Plan. That is all that needs to be done at this time. Correction of the two defective districts will materially improve the constitutionality of the congressional plan.

Most important, correction of the two specific districts identified in this motion will bring this process to an expeditious conclusion. Petitioners are therefore proposing a focused and practical solution to the dispute before this Court. There is no need for further delay: it is time for the voters of Ohio to have the benefit of a constitutional map.

CONCLUSION

For the foregoing reasons, Petitioners respectfully request that this Court grant their motion to enforce and require the General Assembly and/or Commission to enact a plan that remedies the two specific districts identified in this motion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Freda J. Levenson, hereby certify that on this 7th day of March 2022, I caused a true and correct copy of the following documents to be served by email upon the counsel listed below:

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