



DAVE YOST

OHIO ATTORNEY GENERAL

Constitutional Offices
Section
Office: 614-466-2872

May 27, 2022

Sent via email to records@americanoversight.org

Sarah Colombo

Re: Public Records Request #22-107

Dear Ms. Colombo,

I am writing in response to the public records request that you submitted to the Ohio Attorney General's Office on March 29, 2022. As stated in our first response letter, dated May 5, 2022, We will be responding to your request on a rolling basis. Specifically, you requested the following:

“ 1. All email communications (including emails, email attachments, calendar invitations, and calendar invitation attachments) sent or received by any of the Office of the Ohio Attorney General personnel listed below regarding

- 1) Senator Sykes and/or House Minority Leader Russo's request to retain legal counsel separate from that of the Ohio Redistricting Commission, or
- 2) any petition to the Ohio Supreme Court to convert Senator Sykes and House Minority Leader Russo's objection to the then-current legislative district boundary proposal to an amicus curiae brief.

Office of the Ohio Attorney General Personnel:

- i. Dave Yost, Attorney General
- ii. Brenda Rinehart, First Assistant Attorney General
- iii. Benjamin Marrison, Chief of Staff
- iv. Carol O'Brien, Chief Counsel
- v. Jonathan Blanton, Deputy Attorney General for Major Litigation
- vi. Shawn Busken, Director of Outside Counsel
- vii. Michael Rodgers, Director of Policy and Public Affairs

2. Any formal or informal assessment, analysis, guidance, memorandum directive, order, advisory, policy interpretation, or similar document regarding

- 1) Senator Sykes and/or House Minority Leader Russo's request to retain legal counsel separate from that of the Ohio Redistricting Commission, or
- 2) Senator Sykes and House Minority Leader Russo's filing in the Ohio Supreme Court objecting to the then-current legislative redistricting maps. For both request items, please provide all responsive records from January 15, 2022, through the date the search is conducted.”

Please see attached the second and final set of records responsive to your public records request. Please note that we have redacted and/or withheld information that is subject to the attorney-client privilege and/or work-product doctrines, pursuant to *State ex rel. Lanham v. DeWine*, 135

30 E. Broad Street, 16th Floor, Columbus, Ohio 43215

www.OhioAttorneyGeneral.gov

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Public Records Request #22-107

Page 2 of 2

Ohio St.3d 191, 2013-Ohio-199, 985 N.E.2d 467, ¶ 26, and Information that is not a record of this office, pursuant to *State ex rel. Dispatch Printing Co. v. Johnson*, 106 Ohio St.3d 160, 2005-Ohio-4384, 833 N.E.2d 274.

This concludes our office's response to your request. Should you have any questions or concerns regarding our response, please feel free to contact the Public Records Unit at 614-466-2872 at your convenience.

Very respectfully yours,

MacKenzie Clayton

MacKenzie Clayton

Paralegal – Public Records Unit

CC: Bridget C. Coontz, Section Chief, Constitutional Offices Section

From: "Jonathan Blanton" </O=AG OF OHIO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=JBLANTON>
To: "Julie Pfeiffer" <Julie.Pfeiffer@OhioAGO.gov>, "Brenda Rinehart" <Brenda.Rinehart@OhioAGO.gov>, "Bridget Coontz" <Bridget.Coontz@OhioAGO.gov>
Subject: RE: [External]Activity in Case 2021-1193: League of Women Voters of Ohio, et al. v. Ohio Red
Date: Fri, 28 Jan 2022 17:19:49 -0000
Importance: Normal
Inline-Images: image001.png

Has Eric received the Sykes/Russo pleading?

Jonathan D. Blanton
Deputy Attorney General for Major Litigation
Office of Ohio Attorney General Dave Yost
Office 614.728.1171
Mobile 614.381.6496

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From: Julie Pfeiffer
Sent: Friday, January 28, 2022 11:24 AM
To: Brenda Rinehart <Brenda.Rinehart@OhioAGO.gov>; Jonathan Blanton <Jonathan.Blanton@OhioAGO.gov>; Bridget Coontz <Bridget.Coontz@OhioAGO.gov>
Subject: FW: [External]Activity in Case 2021-1193: League of Women Voters of Ohio, et al. v. Ohio Red



Julie M. Pfeiffer

Assistant Section Chief – Constitutional Offices

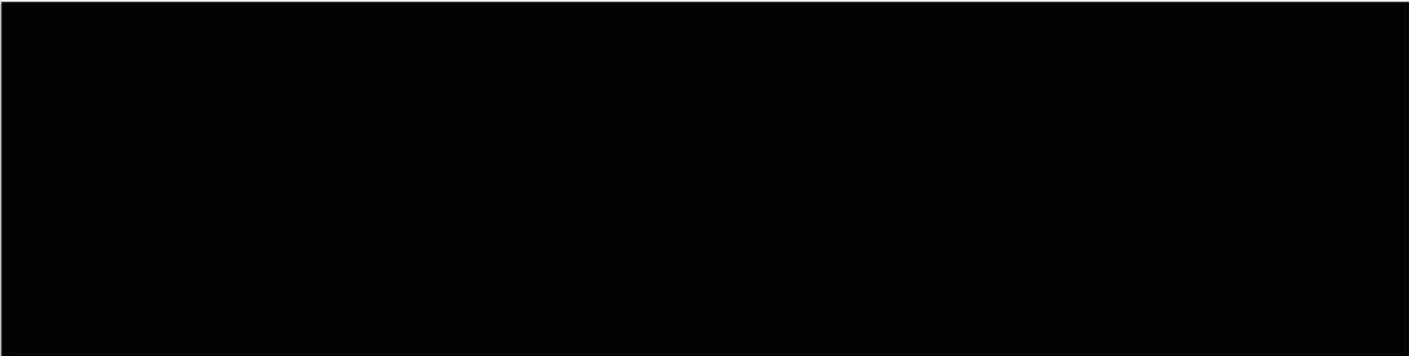
Office of Ohio Attorney General Dave Yost

Office Number: 614-466-2872

Fax Number: 866-422-9192

Julie.Pfeiffer@OhioAGO.gov

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From: SCO Case Activity Notification <do-not-reply@sc.ohio.gov>

Sent: Friday, January 28, 2022 11:10 AM

To: Sloan T. Spalding <STSpalding@ohioauditor.gov>

Subject: [External]Activity in Case 2021-1193: League of Women Voters of Ohio, et al. v. Ohio Red

***** Auditor of State Security Notice ***** This e-mail is from an external source. Think before you click links or open attachments.

Activity: Docket Item filed
Detail: Response of respondents Senator Vernon Sykes and House Minority Leader Allison Russo to the petitioners' objections
Case Number: 2021-1193
Caption: League of Women Voters of Ohio, et al. v. Ohio Redistricting Commission, et al.
Public <http://sc.ohio.gov/Clerk/ecms/#/caseinfo/2021/1193>

Docket:

Date Filed: 01/28/2022

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To: Jonathan Blanton <Jonathan.Blanton@OhioAGO.gov>; Brenda Rinehart <Brenda.Rinehart@OhioAGO.gov>; Bridget Coontz <Bridget.Coontz@OhioAGO.gov>
Subject: RE: [External]Activity in Case 2021-1193: League of Women Voters of Ohio, et al. v. Ohio Red

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Julie M. Pfeiffer

Assistant Section Chief – Constitutional Offices

Office of Ohio Attorney General Dave Yost

Office Number: 614-466-2872

Fax Number: 866-422-9192

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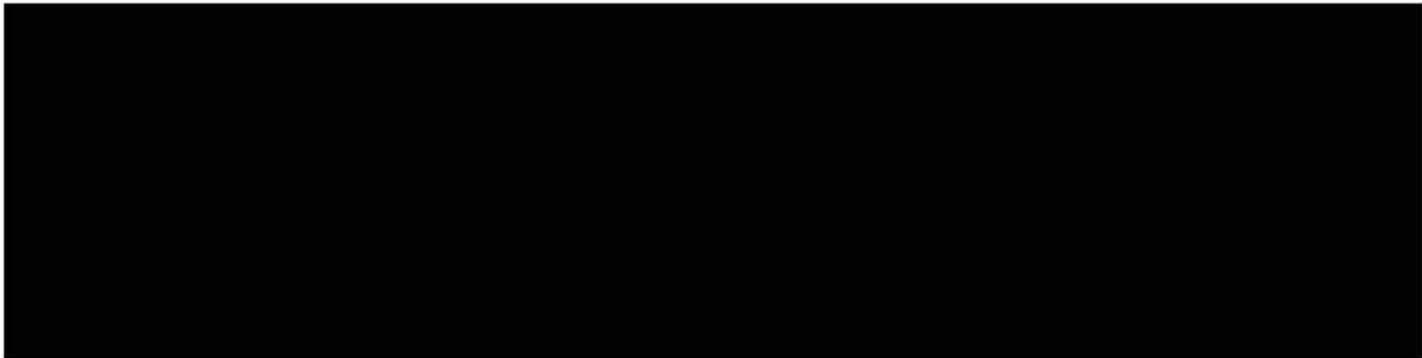
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Activity: Docket Item filed
Detail: Response of respondents Senator Vernon Sykes and House Minority Leader Allison Russo to the petitioners' objections
Case Number: 2021-1193
Caption: League of Women Voters of Ohio, et al. v. Ohio Redistricting Commission, et al.
Public Docket: <http://sc.ohio.gov/Clerk/ecms/#/caseinfo/2021/1193>
Date Filed: 01/28/2022

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From: "Shawn Busken" </O=AG OF OHIO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B28A91BBD6FB43059C8D3DE833BA8E2C-JOSEPH S BUSK>

To: "Joshua Richardson" <Joshua.Richardson@OhioAGO.gov>

Subject: 2022-01-31 Limited Intervention Motion to Convert

Date: Mon, 31 Jan 2022 18:52:38 -0000

Importance: Normal

Attachments: 2022-01-31_Limited_Intervention_Motion_to_Convert.docx

From: Julie Pfeiffer <Julie.Pfeiffer@OhioAGO.gov>

To: Jonathan Blanton <Jonathan.Blanton@OhioAGO.gov>, Brenda Rinehart <Brenda.Rinehart@OhioAGO.gov>, Bridget Coontz <Bridget.Coontz@OhioAGO.gov>

Subject: RE: [External]Activity in Case 2021-1193: League of Women Voters of Ohio, et al. v. Ohio Red

Date: Fri, 28 Jan 2022 12:23:05 -0500

Importance: Normal

Inline-Images: image001.png

I emailed him and haven't heard back yet.



Julie M. Pfeiffer

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Office of Ohio Attorney General Dave Yost

Office Number: 614-466-2872

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To: Julie Pfeiffer <Julie.Pfeiffer@OhioAGO.gov>; Brenda Rinehart <Brenda.Rinehart@OhioAGO.gov>; Bridget Coontz <Bridget.Coontz@OhioAGO.gov>

Subject: RE: [External]Activity in Case 2021-1193: League of Women Voters of Ohio, et al. v. Ohio Red

Has Eric received the Sykes/Russo pleading?

Jonathan D. Blanton

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Activity: Docket Item filed

Detail: Response of respondents Senator Vernon Sykes and House Minority Leader Allison Russo to the petitioners' objections

Case Number: 2021-1193

Caption: League of Women Voters of Ohio, et al. v. Ohio Redistricting Commission, et al.

Public Docket: <http://sc.ohio.gov/Clerk/ecms/#/caseinfo/2021/1193>

Date Filed: 01/28/2022

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Subject: RE: [External]Activity in Case 2021-1193: League of Women Voters of Ohio, et al. v. Ohio Red
Date: Fri, 28 Jan 2022 17:23:52 -0000
Importance: Normal
Inline-Images: image001.png

Response just posted. Downloading now. Will share.

Jonathan D. Blanton

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Office of Ohio Attorney General Dave Yost

Office 614.728.1171

Mobile 614.381.6496

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To: Brenda Rinehart <Brenda.Rinehart@OhioAGO.gov>, Jonathan Blanton
<Jonathan.Blanton@OhioAGO.gov>, Bridget Coontz <Bridget.Coontz@OhioAGO.gov>

Subject: FW: [External]Activity in Case 2021-1193: League of Women Voters of Ohio, et al. v. Ohio Red

Date: Fri, 28 Jan 2022 11:23:46 -0500

Importance: Normal

Inline-Images: image001.png



Julie M. Pfeiffer

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From: Erik J. Clark <ejclark@organlegal.com>
Sent: Friday, January 28, 2022 12:26 PM
To: Julie Pfeiffer <Julie.Pfeiffer@OhioAGO.gov>
Subject: Fwd: Service

I believe you were included on this email, but in case you did not receive it, I am forwarding it to you.

Best,
Erik

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Begin forwarded message:

From: Allison.Russo@ohiohouse.gov
Date: January 28, 2022 at 12:06:21 PM EST
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Subject: Service

Counsel:

Attached you will find the documents that were filed today by Co-Chair Vernon Sykes and myself that we are hereby serving upon you.

Thank you.

C. Allison Russo

Ohio House Minority Leader

IN THE SUPREME COURT OF OHIO

League of Women Voters of Ohio, *et al.*, :
: Case No. 2021-1193
Relators, :
v. : Original Action Filed Pursuant to Ohio
: Constitution, Article XI, Section 9(A)
Ohio Redistricting :
Commission, *et al.*, : [Apportionment Case Pursuant to S. Ct.
: Prac. R. 14.03]
Respondents. :
:
:

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

The Ohio Organizing Collaborative, *et al.*, :
: Case No. 2021-1210
Relators, :
v. : Original Action Filed Pursuant to Ohio
: Constitution, Article XI, Section 9(A)
Ohio Redistricting :
Commission, *et al.*, : [Apportionment Case Pursuant to S. Ct.
: Prac. R. 14.03]
Respondents. :
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RESPONSE OF RESPONDENTS SENATOR VERNON SYKES AND HOUSE
MINORITY LEADER ALLISON RUSSO TO PETITIONERS' OBJECTIONS

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**RESPONSE OF RESPONDENTS VERNON SYKES AND ALLISON RUSSO
TO PETITIONERS' OBJECTIONS**

We offer this pro se filing in response to the petitioners' objections to the purportedly remedial map approved by a majority of the Ohio Redistricting Commission on Saturday, January 22, 2022. We are: (1) Senator Vernon Sykes Co-Chair of the Ohio Redistricting Commission and State Senator for the 28th District of the Ohio Senate, and (2) Respondent House Minority Leader Allison Russo, Commissioner and Leader of the Minority Caucus in the Ohio House.¹ We are the only Democrats on the Commission. We are also the only woman and African American on the Commission.

As this Court well knows from prior proceedings, the interests of the Democratic Commissioners conflict with the Republican Commissioners' interests. Because of that conflict, the Ohio Attorney General appointed the Democratic Commissioners separate legal counsel. This appointment enabled the Democratic Commissioners, through legal counsel, to file their own pleadings and give voice to the efforts and perspectives of the Democratic Commissioners. This Court has recognized the Democratic Commissioners' distinct interests by allowing them to file their own briefs and allotting them time for oral argument to be shared not with the Republican Commissioners but with the petitioners (which time they ultimately ceded to the petitioners' counsel).

The Attorney General has now denied us, the current Democratic Commissioners, separate counsel and has unilaterally asserted that we will be represented by the Commission's counsel only. The Attorney General's Office first advised us that we were not allowed to file

¹ On January 12, 2022, Allison Russo, a Democrat and Representative for House District 24, was elected Leader of the House Minority Caucus, replacing former Minority Leader Emilia Sykes. On January 18, 2022, Leader Russo was sworn in as a member of the Ohio Redistricting Commission, and a notice was filed with the Court substituting Leader Russo as a party in this matter.

objections to the Commission’s maps alongside the petitioners, despite the fact that we had objections to the constitutionality of the majority’s ostensibly remedial map. After the petitioners’ objections, this Court afforded the respondents—which includes us—the opportunity to respond to the objections. However, the Attorney General has denied our assigned special counsel permission to file such a response or even consult with us. On January 26, 2022, our counsel told us that they would no longer represent or advise us. Indeed, the Attorney General has taken the position that we are not allowed to file a separate response at all, despite the fact the Court ordered “respondents” to file a response, if any, and the fact we are respondents. The Attorney General unilaterally declared, through his spokesperson, that “one counsel will respond to the court on behalf of the entire commission” and “[n]one of the individual members will respond separately.” *See* Jake Zuckerman, Ranking Dem says GOP Attorney General blocked her from lawyers in redistricting suit,” *Ohio Capital Journal* (Jan. 27, 2022), available at <https://perma.cc/U9YX-ETKK>. This is a shameless effort to thwart our ability to comply with the Court’s order and to separately inform the Court about what transpired in the Commission following the Court’s January 12, 2022, decision invalidating the General Assembly district plan.

There is a clear conflict between our interests, as Democratic Commissioners who are separately-named respondents, and the Republican Commissioners. The Democratic Commissioners’ multiple filings in these proceedings, including Answers to the Petitions, make that clear. The Commission and the Republican Respondents acknowledged this conflict when they advocated for a realignment, for oral argument purposes, of the “Relators and the Respondents who filed Answers in support of the Relators or whose interests are aligned with Relators.” *See* “Respondents The Ohio Redistricting Commission, Governor Mike Dewine,

Auditor of State Keith Faber, Ohio Secretary of State Frank LaRose, Ohio Senate President Matt Huffman and Ohio Speaker of the House Robert Cupp’s Joint Response to Relators’ Request for Oral Argument,” filed Nov. 3, 2021 in Case Nos. 2021-1193, 2021-1198 and 2021-1210, at p. 5. The Court has recognized this, realigning, for oral argument purposes, the Democratic Commissioners with the petitioners.

For the Attorney General to now insist that one pleading be filed on behalf of the entire Commission and all its individual members in response to the petitioners’ objections, and to forbid a separate filing by the Democratic Commissioners, blatantly ignores the conflicting interests and is unacceptable. We are named individually as respondents and will continue to file our own pleadings, regardless of the Attorney General’s improper moves, unless and until the Court instructs us otherwise. Because, at this juncture, we do not have the time to challenge the Attorney General’s decision before the Court’s deadline for the respondents’ responses, we have no choice but to file this pleading *pro se*.

Our pleading consists of three affidavits, from: (1) Co-Chair Sykes; (2) Leader Russo; and (3) Chris Glassburn, the map drawing expert we were able to retain to help us after the Court’s decision invalidating the maps. Through these affidavits, we are able to provide the Court with information about our discussions and actions that is within our personal knowledge and that is not public. We adopt the legal arguments submitted by the petitioners, but these affidavits provide further evidence substantiating the unconstitutionality of the maps, and, in particular, how the Commission’s majority violated Article XI, Section 6 of the Ohio Constitution. In addition, the affidavit of Chris Glassburn demonstrates—as the petitioners have also argued—that a proportional map complying with the requirements of Section 6 can be drawn without violating any other sections of Article XI.

We ask that the Court again invalidate the map adopted by the Republican Commissioners, order the Commission to draw a map that complies with the Ohio Constitution and this Court's pronouncements, and direct the Legislature and Secretary of State to make the necessary adjustments to the election schedule to accommodate this Court's orders.

Respectfully submitted,



Vernon Sykes



Allison Russo

*Respondents Senator Vernon Sykes
and House Minority Leader
Allison Russo, pro se*

CERTIFICATE OF SERVICE

I hereby certify that on January 28, 2022, a copy of the foregoing Response of Senator Vernon Sykes and House Minority Leader Allison Russo was filed by hand and sent via email to the following:

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IN THE SUPREME COURT OF OHIO

League of Women Voters of Ohio, *et al.*, :
: Case No. 2021-1193
Relators, :
v. : Original Action Filed Pursuant to Ohio
: Constitution, Article XI, Section 9(A)
Ohio Redistricting :
Commission, *et al.*, : [Apportionment Case Pursuant to S. Ct.
: Prac. R. 14.03]
Respondents. :
:
:

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

The Ohio Organizing Collaborative, *et al.*, :
: Case No. 2021-1210
Relators, :
v. : Original Action Filed Pursuant to Ohio
: Constitution, Article XI, Section 9(A)
Ohio Redistricting :
Commission, *et al.*, : [Apportionment Case Pursuant to S. Ct.
: Prac. R. 14.03]
Respondents. :
:
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AFFIDAVIT OF RESPONDENT VERNON SYKES

State of Ohio
County of Franklin, SS:

I, Vernon Sykes, hereby submit the following affidavit and state under oath and penalty of perjury as follows:

1. I have personal knowledge of all the information below.
2. I am a State Senator for Ohio's 28th Senate District. I also serve as a Commissioner and Co-Chair of the Ohio Redistricting Commission.

Republican Commissioners waited nearly a week after the Court's ruling to agree to reconvene the Commission to work on drafting new General Assembly maps.

3. Despite the Court's tight timeframe to convene the Commission in the days immediately after this Court's decision, Speaker Cupp did not schedule the Commission to reconvene until January 18, 2022—nearly a week after the Court's ruling and well into the Court's ten-day deadline for a new map.

4. Following the Supreme Court's decision on January 12, 2022, in the above-captioned case directing the Commission to develop a new map and my reappointment to the Redistricting Commission by Leader Kenny Yuko, I immediately began working with staff members of the Senate and House Democratic Caucuses about next steps and developing an action plan. Indeed, I was in communication with Speaker Cupp shortly after the Court's decision.

5. When I spoke with Speaker Cupp on Thursday, January 13, he indicated that the Commission would meet Friday (the following day), Saturday, or Monday. I indicated that sooner is better. Speaker Cupp's indication turned out to be incorrect, as the Commission did not agree to meet until six days after the Court's decision—over halfway through the time allotted by the Court to draw a constitutionally-compliant map.

6. In the meantime, I instructed my staff to prepare a statement for the Commission as a whole to release prior to its first meeting. In phone calls with Speaker Cupp during the weekend of January 15, I emphasized several points that I wanted to be included in the statement. *First*, I wanted the Commission to commit to achieving a 54% Republican and 46% Democratic map as directed by the Court. *Second*, I wanted the Commission to state an intent to provide opportunities for public input, including through public hearings. *Finally*, I wanted the Commission to state its intent to work together. Speaker Cupp told me that Republican Commissioners did not intend to include the 54%/46% metric or the opportunity for the public to testify in its statement.

7. On several other occasions over the ensuing days, I emphasized to Speaker Cupp that I wanted the Commission to hold public hearings and suggested some of them could be conducted virtually. I also made clear that, after proposing a revised map, the Commission should hold hearings across the state or virtually before formally adopting the proposed map in accordance with Article XI of the Ohio Constitution and the Court's decision. As the deadline approached, I continued to advocate to Speaker Cupp that the public should have an opportunity to provide input. Speaker Cupp rebuffed all my requests, indicating that there was not an appetite among the Republican members of the Commission for hearing more public testimony.

The Republican Commissioners refused to work together with the Democratic Commissioners on a single map.

8. The process leading to the Commission's adoption of its new, so-called "remedial" map was much like the process the Court condemned in analyzing the first map. The Republican Commission members kept me and the other Democratic Commissioner in the dark about their plans and actions and did not collaborate with us on proposed maps.

9. The first Commission meeting on January 18 was largely a pro forma session, and not one that advanced a collaborative map-drawing process. The Commission swore in new House Minority Leader-Elect Allison Russo but did not engage in any substantive discussion of any maps.

10. The next Commission meeting—and the first substantive meeting—was not until January 20, 2022, eight days from the Court’s decision and two days before the Commission’s declared deadline. At the outset of the January 20 Commission meeting, I was caught off guard and concerned when Republican Commissioners’ staff were handing out their copies of the Franklin County and Hamilton County maps, which they had just posted on the Commission website. Up to this point, I had directed my staff to meet with Republican staff members to work on a single map on a region-by-region basis. Republican staff had given similar (but not the same) county maps to my staff the day before, but there had been no agreement on them. I did not know that the Republican Commissioners would be submitting their own county maps on the Commission website before we could reach a consensus as a Commission on how those districts should be drawn.

11. Because Republican Commissioners posted only PDF versions of their maps with no accompanying hard data, I could not meaningfully review their proposals.

12. I asked Chris Glassburn, the expert the Democratic Commissioners retained to help in the map-drawing process, to present his draft Hamilton and Franklin County maps to the Commission that afternoon. The Republican Commissioners’ map drawers, however, did not present the Republicans’ maps to the Commission; indeed, Ray DiRossi and Blake Springhetti did not testify at all at that meeting. Instead, Speaker Cupp summarily discussed the maps. Mr. Glassburn, on the other hand, answered questions for about an hour about his draft. In questioning, Mr. Glassburn emphasized that the Republican staff would not agree that they were all working

toward a goal of a proportional map with 45 Democratic-leaning seats in the House and 15 in the Senate.

13. After the Commission's meeting, I had still hoped that we could agree to come up with a joint plan. I continued to assert to Speaker Cupp that there were pathways to reach a proportional map. He said he did not see a way of accomplishing it, but stated that if I could find one that Leader Russo and I should present it to the Commission.

14. Following the recess of the January 20, 2022 meeting, Leader Russo and I directed our map drawers, Chris Glassburn and Randall Routt, to draft a statewide map that was consistent with the Court's order and to address any issues raised by Republicans at the meeting. We also directed our staff to continue to work with Republican staff members with the goal of the Commission producing a single, jointly agreed-to map.

The Republican Commissioners did not disclose their statewide map until the day of the vote and refused to take feedback from the Democratic Commissioners or the public on their proposed maps.

15. The Commission did not reconvene again until Saturday, January 22, 2022—the Commission's stated deadline for approving a new map. Prior to that day, I had never been presented with any complete statewide map from the Republican Commissioners. I had only seen their proposals for a few counties. I was otherwise in the dark about their proposal. Because they did not share their work with my staff or me, I was excluded from collaborating and making suggestions on what they would propose that the Commission adopt.

16. That morning, I directed my staff to post Mr. Glassburn's proposed statewide General Assembly maps publicly, along with the supporting data.

17. On the day of the vote, the Republican Commissioners finally released their proposed maps. My staff received an email with the Republican Commissioners' map block assignment file in the morning, giving me little time to have my expert look at it prior to the

Commission's meeting and vote that afternoon. The Republican Commissioners did not post these maps publicly until a few hours before the convening of the Commission meeting. The public posting was only PDF images. So the public was left only with pictures—not meaningful data—to try to understand how those districts were drawn.

18. Throughout the day on January 22, I implored Speaker Cupp to allow public testimony and a panel discussion with Commissioners now that statewide maps had been released to the public.

19. But Speaker Cupp told me there was no appetite for public testimony, from him or his fellow Republican Commissioners. He told me that he believed any testimony would be repetitive, and the Republican Commissioners did not want to hear it again.

During the final Commission meeting, the Republican Commissioners refused to collaborate or make changes to make their map more proportional.

20. The only maps ever considered by the Commission were the Republican Commissioners' map (drawn by Messrs. DiRossi and Springhetti) and the Democratic Commissioners' map (drawn by Mr. Glassburn).

21. At the meeting, Mr. Glassburn presented a map that reached the 54% and 46% proportionality the Court designated. He again testified that the Republican Commissioners' mapmakers were not trying to reach that ratio, so his few interactions with them had been unsuccessful. And he expressed his willingness to continue working with the Commission and asked for their preferences for drawing districts, particularly in rural counties. But the Republican Commissioners instead just attacked the map. There were still over 7 hours left to create a fair map. I was prepared to continue working together to have an agreed-upon map.

22. The Republican Commissioners' map drawers also presented their map. I repeatedly asked Republican map drawers to identify any requirement in Article XI of Ohio's

Constitution that would prevent the Commission from drafting a proportional map. They would not do so.

23. To make my point that a more proportional map could be achieved without violating other parts of Article XI, I also asked Republican Commissioners and map drawers whether anything prevented the Commission from pairing a different combination of House Districts in Hamilton County to draw one additional Democratic-leaning Senate seat. My proposal would not have required the Commission to change any House district lines. The Republican map drawers paused—again, not answering my question. Speaker Cupp spoke up to say cursorily that the map drawers had “given the answer that [they] can give.” He then immediately and abruptly recessed the meeting.

24. During that recess, I spoke directly with Speaker Cupp and made an appeal for collaboration in reaching a constitutional map compliant with the Court’s decision. Specifically, I asked him whether all the map drawers could meet again to work together to get closer to the proportionality ratios set forth by the Court. I noted that my staff had specific suggestions that would push the map towards those ratios. For example, Mr. Glassburn suggested that another Democratic Senate district could be drawn in Hamilton County and that a Democratic House district could be drawn in the Athens area with relative ease. In the time remaining before the end of the day, Mr. Glassburn could work to fix any technical errors in his proposed map that the Republican Commissioners’ map-drawers identified. That would result in a map that was compliant with all the constitutional requirements, including Section 6’s proportionality standard.

25. Speaker Cupp indicated that he would speak with the Republican Commissioners. Approximately twenty minutes later, he responded to tell me that he had spoken with each Republican Commissioner and they just “didn’t feel there was enough time” and it was “too late.”

Yet there were over six hours remaining before the Commission's purported deadline. That was plenty of time to make significant changes to reach proportionality.

26. Moments later, the Commission reconvened and voted along party lines to adopt the Republicans' disproportionate map.

FURTHER AFFIANT SAYETH NAUGHT.


Vernon Sykes

Sworn to before me and subscribed in my presence this 28th day of January, 2022.


Notary Public



IN THE SUPREME COURT OF OHIO

League of Women Voters of Ohio, *et al.*, :
: Case No. 2021-1193
Relators, :
v. : Original Action Filed Pursuant to Ohio
: Constitution, Article XI, Section 9(A)
Ohio Redistricting :
Commission, *et al.*, : [Apportionment Case Pursuant to S. Ct.
: Prac. R. 14.03]
Respondents. :
:
:

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

The Ohio Organizing Collaborative, *et al.*, :
: Case No. 2021-1210
Relators, :
v. : Original Action Filed Pursuant to Ohio
: Constitution, Article XI, Section 9(A)
Ohio Redistricting :
Commission, *et al.*, : [Apportionment Case Pursuant to S. Ct.
: Prac. R. 14.03]
Respondents. :
:
:

AFFIDAVIT OF RESPONDENT ALLISON RUSSO

State of Ohio
County of Franklin, SS:

I, C. Allison Russo, hereby submit the following affidavit and state under oath and penalty of perjury as follows:

1. I have personal knowledge of all the information below.

2. I am a member of the Ohio House of Representatives, representing District 24. I assumed office on January 1, 2019. On January 12, 2022, the Ohio House Democratic Caucus elected me as the Ohio House Minority Leader. I was sworn in as Minority Leader during the House's session on January 26, 2022.

3. On January 12, 2022, the Ohio Supreme Court, in the above-captioned case, declared the General Assembly plan invalid and directed the Ohio Redistricting Commission ("Commission") to create a new plan in ten days.

Republican Commissioners delayed funding for experts the Democratic Commissioners needed to comply with the Court's order.

4. Because of my Republican colleagues' deliberate delays, there was no funding for a mapping expert who was dedicated to draw proportional districts in accordance with this Court's order until almost half of the period to redraw the maps had expired.

5. On January 13, 2022, Acting Minority Leader Kristin Boggs appointed me as Co-chair of the Legislative Task Force on Redistricting, Reapportionment, and Demographic Research. My co-chair is Senator Rob McColley, who was appointed by Commissioner and Senate President Matt Huffman. The legislature appropriates funds for redistricting support, and the Task Force allocates those funds to the legislative caucuses authorizing them to purchase equipment, software, and other useful redistricting services. On that same day, I signed a memorandum allocating Task Force funds to the Republican and Democratic legislative caucuses and sent it to my Task Force Co-Chair, Senator Rob McColley for his signature.

6. Beginning on January 14, 2022, I called and texted Sen. McColley about returning the signed funding memorandum. On the afternoon of January 16, 2022, still having not received his approval, I spoke with Commission Co-Chairman Speaker Bob Cupp and shared my concern that the funding memorandum had not been signed and we had been unable to engage a consultant to help us with the map drawing work.

7. Senator McColley's staff finally returned the signed memo late in the afternoon of Sunday, January 16. Only then could we enter a contract with Chris Glassburn to assist with map drawing and analysis. There were 6 days left before January 22, which the Commission stated was its deadline.

The Republican Commissioners and Republican staff would not work collaboratively with the Democratic Commissioners and Democratic staff to achieve a proportional map.

8. On January 17, 2022, I instructed my staff, including Mr. Glassburn, to work with the Republican Commissioners on a map containing 45 Democratic-leaning House Districts and 15 Democratic-leaning Senate Districts. I made clear to my staff that it was my objective to create a map that complied with Oh. Const. Article XI, Sections 2, 3, 4, 5, and 7 and also corresponded closely with statewide voter preferences in compliance with Section 6(B).

9. I asked my staff, including Mr. Glassburn and Sarah Cherry (Legal Counsel to the House Democratic Caucus), to report the substance of their attempts to collaborate with the Republican Commissioners and their team. It seemed to me that little substance emerged from the few meetings they had. As my staff reported, the Republican map drawers were not committed to drawing proportional maps even when presented with suggestions for doing so.

10. The Commission formally met on January 22, 2022 to adopt a map. Prior to that day, I had not received a copy of the map that the Republican Commissioners were going to

propose. I did not get that proposal until the morning of the vote. Indeed, I had little clue what was coming, given that the Republican map-makers had not made their plans—aside from a few counties—known and had not agreed that achieving proportionality, without violating any of the other constitutional requirements, was a goal.

11. At the meeting, Mr. Glassburn presented our Democratic proposal. Republican Commission members raised issues with the proposal. Mr. Glassburn made clear that he and the other map drawers, Ray DiRossi and Blake Springhetti, could resolve these issues if the Commission gave them time and directed them to work together to do so. But instead of directing Mr. DiRossi and Mr. Springhetti to work together with Mr. Glassburn to address the issues raised, the Commission abruptly recessed and then never again returned to work on or consider Mr. Glassburn's proposal.

12. During the recess, I participated in a conversation with Co-Chair Sykes and staff about asking the Commission Co-Chairman Speaker Bob Cupp for more time to work together to resolve issues with the map. Co-Chair Sykes and Mr. Glassburn left the room to make the request of Speaker Cupp. When they returned, Co-Chair Sykes told me that Co-Chair Cupp did not think there would be a willingness to work together on improving either the Democratic or Republican proposals or on a consensus map. A short time later, Co-Chair Sykes told me that the Speaker rejected the request and that the Commission would reconvene and vote on the Republican map with no additional changes. When the Commission reconvened, I voted against adoption of the legislative Republicans' maps.

13. The lack of collaboration doomed the Commission's map. Had improvements been allowed to the proposed maps, they could have satisfied this Court's decision. But the Republican Commissioners voted for their map without a single amendment.

14. After the Commission meeting ended, Co-Chair Sykes and I instructed Mr. Glassburn to continue work on an alternative set of map proposals. Specifically, I instructed him to address any issues raised by Republican Commission members. We were in agreement that there are various ways to draw a map that closely corresponds to voters' statewide preferences, does not favor or disfavor a political party, complies with the other provisions of Article XI, and satisfies the standards laid out by the Ohio Supreme Court in its January 12, 2022, decision. Mr. Glassburn's current proposal does just that.

The Attorney General has denied us access to counsel that can render conflict-free representation.

15. Not only did the Republican leaders refuse to collaborate with us on the maps, but now the Attorney General is attempting to muzzle us before this Court.

16. On January 26, 2022, our attorneys in this litigation informed me that the Attorney General of Ohio would not allow them to represent Co-Chair Sykes and me in this stage of the litigation, and consequently could not assist us in filing a response, despite the fact that the Court had ordered respondents—which we are—to file any responses by noon on Friday, January 28.

17. Recognizing that our interests diverge, the Attorney General has previously assigned the Democratic Commissioners outside counsel in this litigation separately from the Republican Commissioners.

18. I tried to reach the Attorney General by phone on January 26 and spoke to his First Assistant Attorney General Brenda Rinehart who informed me that not only could we not have outside counsel, but that the Attorney General would oppose our retaining pro bono counsel. When I spoke to the Attorney General the next day and asked him to reconsider, I expressed my concerns about being denied counsel given the conflict of interest between the

Respondents. Though he felt that the Commission was a single entity that deserves only one counsel, I expressed that I have also been named individually as a respondent in this lawsuit, and that my interests diverge from that of the Republican individuals named as Respondents. Certainly the map did not come from the Commission; as the process showed, it was the product of the Republican Commissioners without collaboration.

19. Because the Attorney General has denied Co-Chair Sykes and me counsel, we have no choice but to file pro se. Otherwise, the personal knowledge that we hold about this process would never get before the Court for its consideration of whether the Republican Commissioners' second map meets the requirements of Article XI, Section 6.

20. Our experience shows that it doesn't.

FURTHER AFFIANT SAYETH NAUGHT.


C. Allison Russo

Sworn to before me and subscribed in my presence this 28th day of January, 2022.


Notary Public



Charles Benjamin Cooper, Attorney At Law
NOTARY PUBLIC - STATE OF OHIO
My commission has no expiration date
Sec. 147.03 R.C.

IN THE SUPREME COURT OF OHIO

League of Women Voters of Ohio, et al., :
: **Case No. 2021-1193**
Relators, :
v. : **Original Action Filed Pursuant to Ohio**
: **Constitution, Article XI, Section 9(A)**
Ohio Redistricting :
Commission, et al., : **[Apportionment Case Pursuant to S. Ct.**
: **Prac. R. 14.03]**
Respondents. :
:
:

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

The Ohio Organizing Collaborative, et al., :
: **Case No. 2021-1210**
Relators, :
v. : **Original Action Filed Pursuant to Ohio**
: **Constitution, Article XI, Section 9(A)**
Ohio Redistricting :
Commission, et al., : **[Apportionment Case Pursuant to S. Ct.**
: **Prac. R. 14.03]**
Respondents. :
:
:

AFFIDAVIT OF CHRIS GLASSBURN

State of Ohio
County of Franklin, SS:

I, Chris Glassburn, hereby submit the following affidavit and state under oath and penalty of perjury as follows:

1. I have personal knowledge of all of the information below. I am more than 18 years of age.

2. I am the President of Project Govern, a company that provides map drawing services and advises on redistricting matters. I contracted with the Ohio House and Senate Democratic caucuses on January 16, 2022, for the purpose of drawing a proportional map consistent with the Supreme Court's January 12, 2022, directives.

3. Attached to my affidavit are the following exhibits:

- a. Exhibit A: Democrats' Proposed House and Senate Maps (1/22/22).
- b. Exhibit B: Democrats' Proposed House and Senate Maps (1/26/22).
- c. Exhibit C: USB flash drive containing block equivalency data for the Democrats' Proposed Maps (1/22/22 and 1/26/22).
- d. Exhibit D: My company bio.

The Republican map drawers would not collaborate with me to reach a proportional General Assembly map, nor would they even agree that proportionality was a goal.

4. As a contracted expert for the Ohio House and Senate Democrats, I attended four meetings with varying staff from the Republican and Democratic Commissioners, including Randall Routt (Senate Democratic Caucus staffer), Sarah Cherry (Legal Counsel to the House Democratic Caucus), Ray DiRossi (the Senate Republicans' map drawer), and Blake Springhetti (the House Republicans' map drawer). These meetings reflect that the Republicans were both unwilling to accept proportionality as a goal for the maps and rejected many of my suggestions for

achieving proportionality for reasons wholly unconnected to the Constitution's line-drawing requirements.

5. At the first staff meeting, on January 17, 2022, Mr. DiRossi expressed that he wished to use the map previously adopted by the Commission, but struck down by the Supreme Court, as the basis for the next map drawing. Ms. Cherry responded that because the map was declared unconstitutional, it would not be appropriate to use as a starting point. Regardless, Mr. DiRossi stated that he would still prefer to use the invalidated map.

6. Throughout all of these meetings, I consistently asked Mr. DiRossi and Mr. Springhetti if they agreed that our goal was to reach the Supreme Court's ordered proportionality of districts, 54% Republican and 46% Democratic, so long as it is possible without violating any other constitutional requirements. They would never agree. For instance, in our first meeting, when I asked if a 54% to 46% breakdown was our goal, Mr. DiRossi responded that he would attempt to comply with the Supreme Court order. Yet it became clear that the Republican map drawers' view of complying with the Court's order was not proportionality. I kept asking Mr. DiRossi if the 54% Republican and 46% Democratic proportionality was the objective, and he would not agree. Mr. DiRossi would only respond evasively that he would attempt to comply with the Supreme Court order. This trend continued throughout all our meetings. Because the Republican map drawers did not seek proportionality overall, it was impossible to collaborate with them. We could not have any fruitful conversations about drawing districts in any region—and what pressure that would put on linedrawing in other parts of the State—because the Republicans would not agree to aim for proportionality.

7. At every single meeting I asked the Republican map drawers if the goal was to get to proportionality (54% - 46%) while complying with the other constitutional linedrawing requirements. At every meeting they would *not* accept that goal.

8. In all of our meetings, I made multiple suggestions as to how we could reach proportionality while complying with all other constitutional requirements, but the Republican map drawers would not agree to my suggestions. For example, in our second meeting on January 18, throughout the meeting, I made various suggestions about how various regions of the state needed to have districts drawn in order to achieve proportionality statewide. Throughout our discussions, it became clear that Mr. DiRossi was considering a series of districts that were 50%+1 Democratic throughout the state. I stated that if districts were consistently drawn as 50%+1 Democratic throughout the state, it would lead to an asymmetry in the balance of Democratic seats and reflect that the map was disproportionately favoring or disfavoring a party. Mr. DiRossi and the Republican representatives did not respond.

9. Throughout our discussions it was clear that the Republican mapmakers were unwilling to adopt suggestions to reach proportionality if it harmed their partisan concerns. For example, I demonstrated how it was possible to draw 2 Democratic Senate seats (of 2) and 6 Democratic House seats (of 7) in Hamilton County. Mr. DiRossi and Mr. Springhetti stated that the Republicans would not be supportive of drawing the 6th Democratic House seat or the 2nd Democratic Senate seat in Hamilton County. Mr. Springhetti stated, without reference to constitutional linedrawing requirements, that the Republicans needed both Republican House seats to be on the Western side of Hamilton County. I understand that two existing Republican incumbents live on the Western side of the county. Additionally, Mr. DiRossi responded that the Republicans needed the 7th Hamilton County seat to be connected to Warren County instead of

Butler County as in previous Democratic plans—again, without reference to constitutional line-drawing constraints.

10. I frequently told the Republican map drawers that their districts were not as compact as they could be, nor were they targeted to reaching a proportional map. For instance, during our third staff meeting on January 19, Mr. DiRossi passed out a proposed map of Franklin County with a district that was irregular and stretched from the middle of the western edge of the county, cut completely across the southern edge of the county, and then ran up to the middle of the eastern side. I noted that the seat was drawn very marginally Democratic and appeared to be gerrymandered. Mr. DiRossi stated that there was no requirement on how Democratic a seat could be, just that it had to be “sub 50” (i.e., under 50% Republican). I replied that the district was not compact and was unnecessary to achieve statewide proportionality or to meet goals inside of Franklin County for doing so. My concerns were rejected, and that unusually drawn district is now part of the Republican Commissioners’ adopted map.

Because the Republican map drawers would not collaborate with me, I drew a proportional map complying with all constitutional requirements.

11. Because the Republican map drawers would not collaborate with me, or even agree on the proportionality objective, I began focusing on drawing a separate map to demonstrate that a proportional map could be achieved while complying with all the constitutional requirements. I did not complete this map until the early morning hours of January 22. This map has 45 Democratic House seats (54 Republican) and 15 Democratic Senate Seats (18 Republican).

12. Later in the morning on January 22, I asked Mr. Rouff to send these files to all the Republican Commissioners’ staff and to post the files to the Commission website. He did so.

13. The House and Senate maps I put together on January 22 were uploaded to the Commission website at <https://www.redistricting.ohio.gov/assets/district-maps/district-map->

580.zip. A true and accurate copy of that map is attached as Exhibit A, and the respective block equivalency files on the USB flash drive enclosed as Exhibit C.

14. The January 22, 2022 maps are also available here:

- a. Democrats' Proposed House Map (1/22/22):
<https://davesredistricting.org/maps#viewmap::5fcc3511-629b-40ec-9220-85ef943415e6>.
- b. Democrats' Proposed Senate Map (1/22/22):
<https://davesredistricting.org/maps#viewmap::2af4b8a3-58f3-4f73-99b3-cbcf29d45035>.

15. I presented the map I drafted to the Commission on the afternoon of January 22, 2022. I answered questions before the Commission and offered my continued willingness to work on the maps. If I had been provided several hours, I could have addressed the issues the Republican map drawers raised with this map. But I was not provided that opportunity, as the Republicans pushed through a vote on their map.

16. After the meeting, Co-Chair Sykes and Leader Russo instructed me to work on an alternative set of map proposals to address issues flagged by Republican Commission members. I have addressed all the issues flagged and am still able to draw a map that mirrors the partisan proportionality of the state (*i.e.*, 45/54 in the House; 15/18 in the Senate). The revised map is attached as Exhibit B, and the respective block equivalency files on the USB flash drive enclosed as Exhibit C.

17. The January 26, 2022 maps are also available here:

- a. Democrats' Proposed House Map (1/26/22):
<https://davesredistricting.org/maps#viewmap::744e3245-b230-48aa-b0ae-ccf9e700654e>.
- b. Democrats' Proposed Senate Map (1/26/22):
<https://davesredistricting.org/join/3531bfd5-09fa-4b8f-bf56-03a08848e885>.

The Republican Commissioner would not allow me to suggest amendments to their last-minute proposed map before it was adopted.

18. I received notice of the proposed Republican map at approximately 9:00am on January 22, the morning the map was voted on. The meeting was originally scheduled for 9:30am, then delayed several times. Overall, I was given the files less than six hours before the Commission reconvened. I had very little time to analyze it because I was only provided with the block assignment files and it takes time to make the data usable and evaluate whether it complies with all the constitutional provisions, including proportionality.

19. During the meeting, Auditor Faber asked for amendments to the Republican map. I remarked that the map was not proportional because so many so-called Democratic seats were in fact toss-ups, and that drawing so many so-called Democratic districts with such a razor thin margin was evidence of the map drawers' partisan bias. I offered suggestions for additional Democratic House seats in the areas of Hamilton, Franklin, Lucas, Montgomery and Athens Counties. I also noted that a Democratic Senate seat could be created in Hamilton County by simply changing which districts were paired together in the Senate Seats. I made other suggestions to reach proportionality while complying with the other constitutional requirements. The meeting recessed.

20. During the recess, Co-Chair Sykes and I met briefly with Speaker Cupp. Co-Chair Sykes indicated that the Democrats would like to offer amendments to the Republican plan. Speaker Cupp asked me how long it would take. I responded that it could be as little as two hours if we could sit at a computer and draw maps together. Speaker Cupp stated that he was doubtful that he could get support, but that he would speak to the Republican Commission members. Our offer to collaborate was rejected. A short time later, Republican Commission Members returned

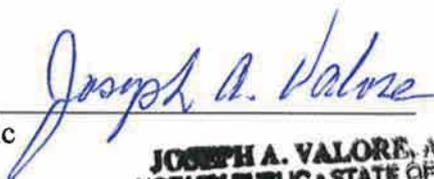
to the meeting room and resumed the full Commission meeting. No amendments or joint drawing efforts were agreed to or made by the Republicans.

FURTHER AFFIANT SAYETH NAUGHT.



Chris Glassburn

Sworn to before me and subscribed in my presence this 28th day of January, 2022.

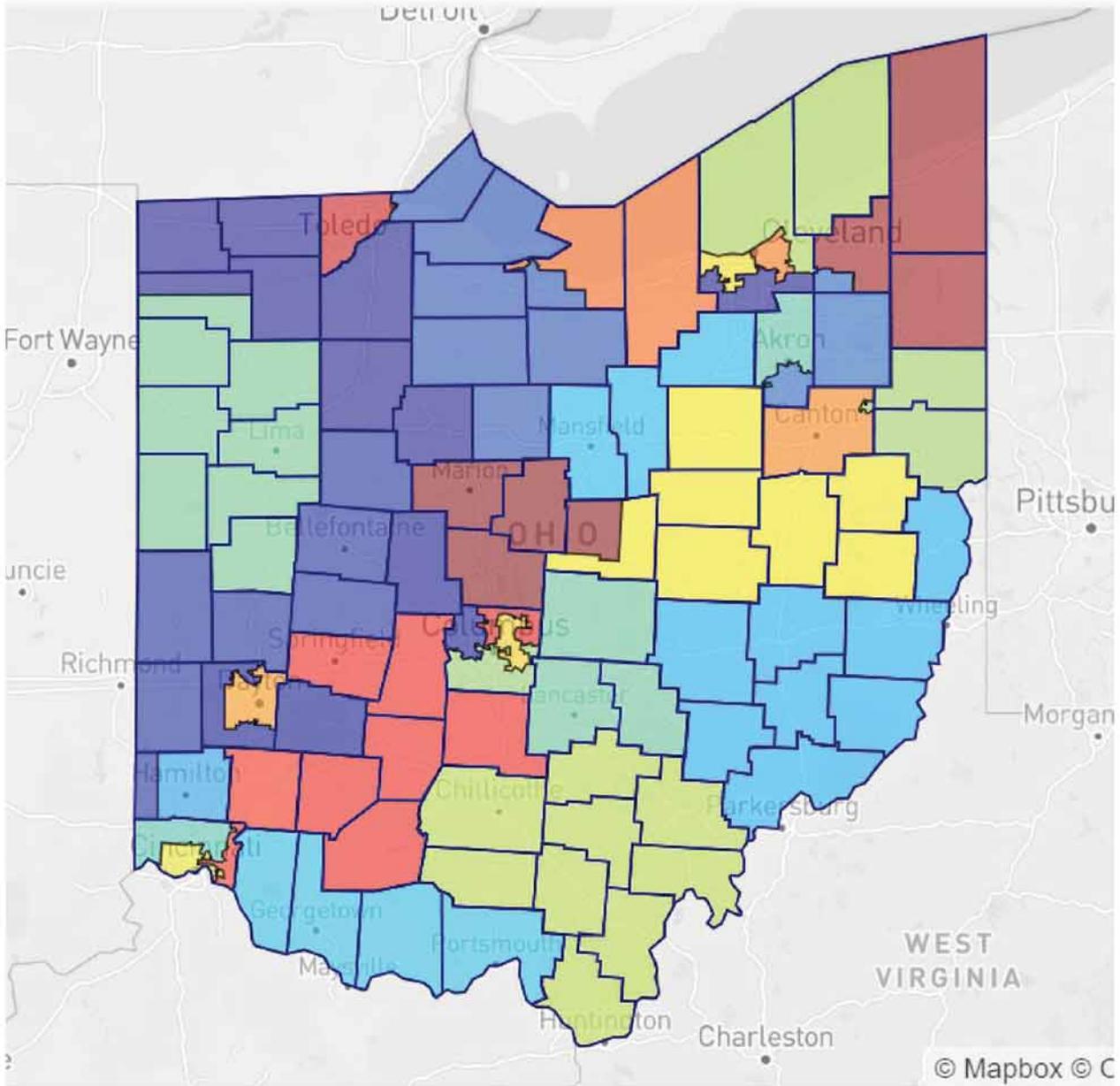


Notary Public

JOSEPH A. VALORE, ADV.
NOTARY PUBLIC • STATE OF OH
My commission has no expiration date
Section 147.03 O.R.C.

Exhibit A
to Affidavit of Chris Glassburn

Dems Senate Proposal – January 22, 2022



Dems House Proposal – January 22, 2022

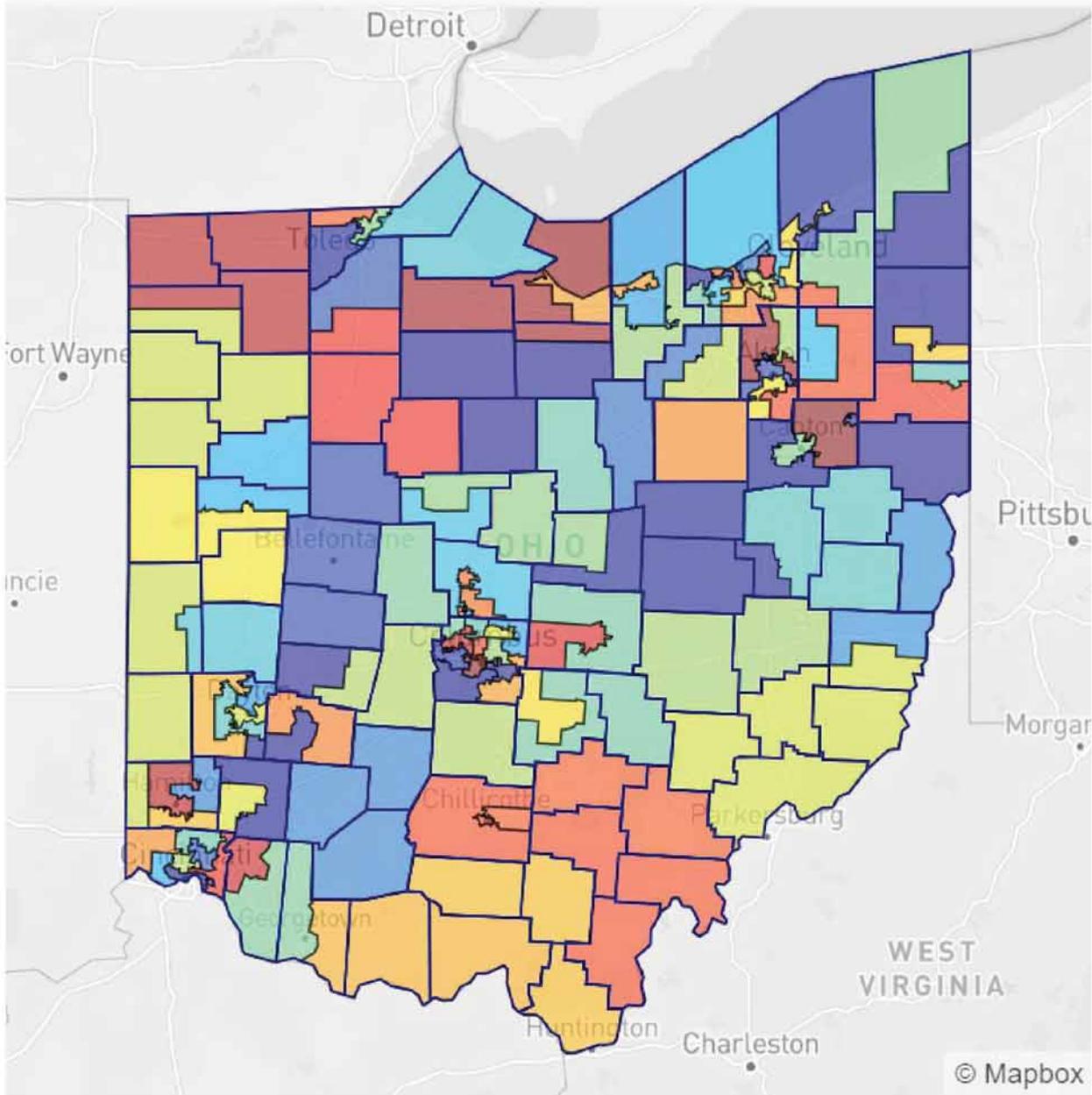
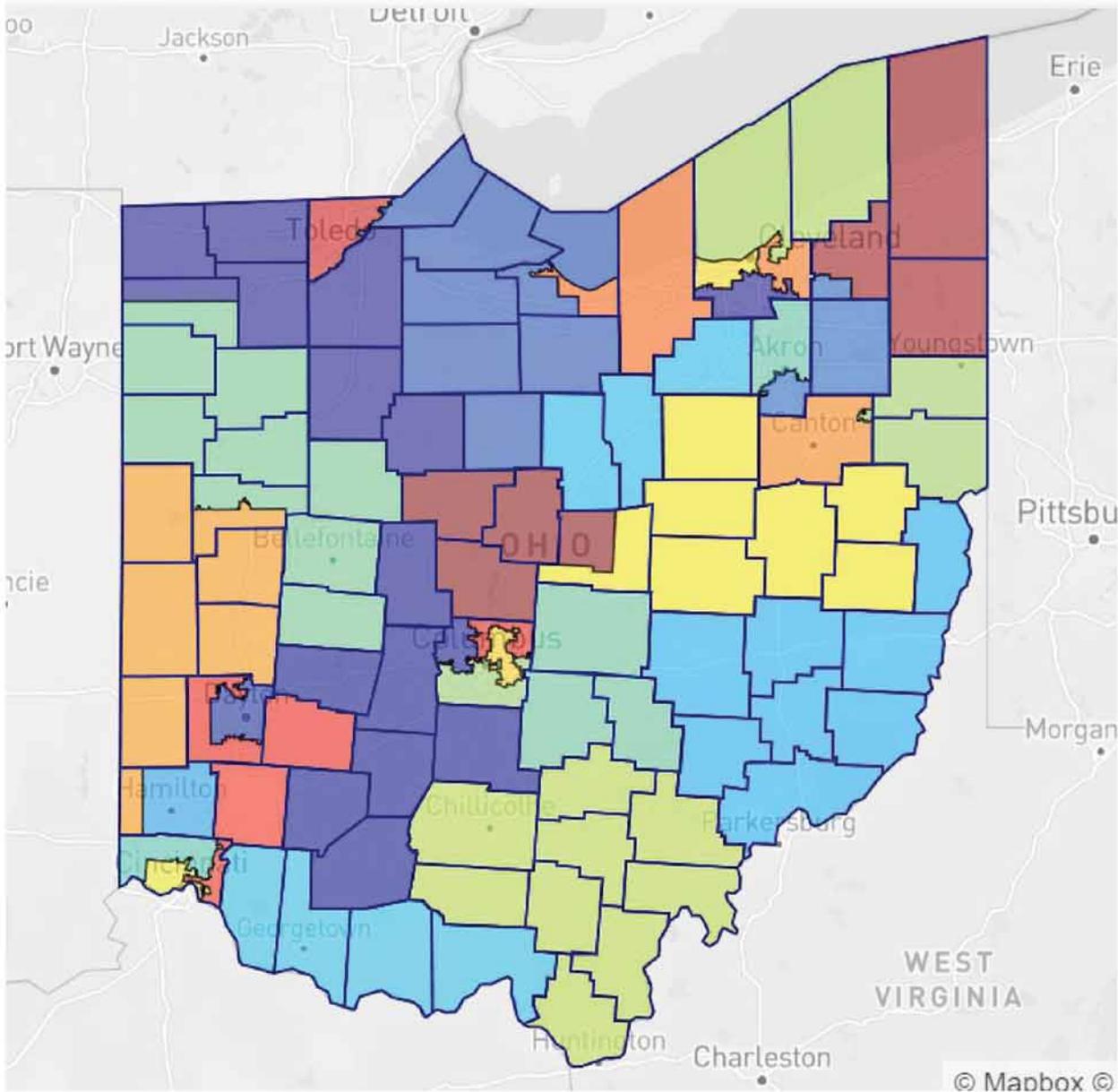


Exhibit B
to Affidavit of Chris Glassburn

Dems Senate Proposal – January 26, 2022



Dems House Proposal – January 26, 2022

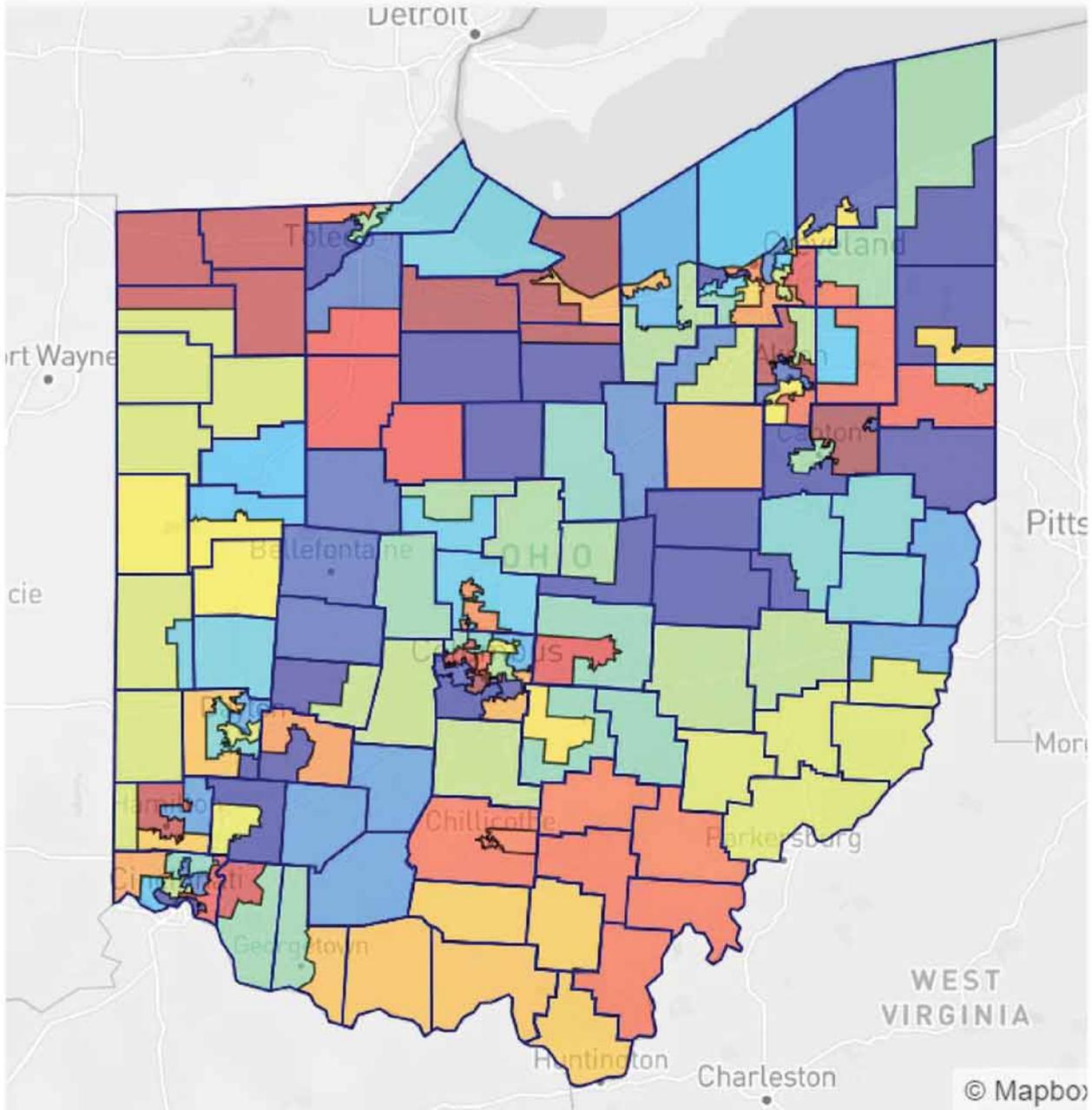


Exhibit C
to Affidavit of Chris Glassburn

Exhibit D
to Affidavit of Chris Glassburn

Organizational Profile

Project Govern



Chris Glassburn, Lead Consultant & Mapmaker

23993 Fairlawn Drive
North Olmsted, OH 44070
440-570-9726
Chris@ProjectGovern.com

Chris Glassburn is one of the top consultants providing campaign management, public engagement, and electoral data services in Ohio. In 2011, Glassburn served as the redistricting consultant and mapmaker for the Ohio House Democratic Caucus for Congressional Redistricting. Glassburn also served as the Democratic minority consultant and mapmaker for the Ohio Apportionment Board and as the Democratic mapmaker for plaintiffs in *Wilson v. Kasich* (decided 4-3 against, with current Supreme Court Chief Justice O'Connor dissenting).

A vigorous advocate of fair redistricting practices, Glassburn has spoken on dozens of public panels on redistricting reform. Since 2014, Glassburn has periodically served as a redistricting consultant to the Ohio League of Women Voters in their efforts to end gerrymandering. He was a lead co-author of both Ohio Constitutional Amendments that were overwhelmingly passed by voters to reform apportionment of the Ohio General Assembly (2015) and redistricting for Congress (2018).

From 2014 to 2016 Glassburn served as the Senior Policy Advisor to Cuyahoga County Executive Armond Budish. In his role for Cuyahoga County Glassburn held responsibility for assisting in the creation and passage of the biennial budget, supervising the agenda and alternate chairing the board of control, policy lead on behalf of the County Executive and lead of appointments to board and commissions.

In January 2017, Glassburn founded the firm Project Govern. Glassburn most recently has served as a consultant to issue campaigns in the May, 2021 Primary Election. In total, Glassburn has served as the lead consultant and/or campaign manager to over 120 individual candidate or issues campaigns with over a 90%-win rate. Some of his non-partisan/candidate clients have included the Sherwin Williams, Innovation Ohio, The Cuyahoga County Port Authority, the County Action Committee (Cuyahoga County HHS Levy), The Cleveland Clergy Coalition, LEAD Ohio and numerous confidential private sector clients.

Glassburn is a lifelong Northeast Ohioan and serves as a City Councilman and Leader of the Democratic Party in North Olmsted, Ohio. He and his wife Megan and daughter Adrianna live in North Olmsted.

From: [Shawn Busken](#)
To: [Kelly Woods](#)
Subject: FW: Sykes / Russo response
Date: Wednesday, February 2, 2022 12:54:00 PM
Attachments: [image003.png](#)

FYI

From: Charles Miller
Sent: Wednesday, February 02, 2022 12:17 PM
To: AG Dave Yost <Dave@OhioAGO.gov>; Brenda Rinehart <Brenda.Rinehart@OhioAGO.gov>
Cc: Shawn Busken <Shawn.Busken@OhioAGO.gov>; Bethany McCorkle <Bethany.McCorkle@OhioAGO.gov>
Subject: Sykes / Russo response



Charles M Miller

Counsel to the Attorney General
Office of Ohio Attorney General Dave Yost
Columbus: **614-752-8237**
Cincinnati: **513-852-1565**
Office Cell: **513-607-0406**
Charles.Miller@OhioAGO.gov

** Please note that, in adherence to best practices brought about in response to COVID-19, the Ohio Attorney General's Office moved to a "remote work" status effective March 18, 2020. All members of the office remain available remotely during normal business hours. Thank you for your patience*

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From: [Charles Miller](#)
To: [AG Dave Yost](#); [Brenda Rinehart](#)
Cc: [Shawn Busken](#); [Bethany McCorkle](#)
Subject: Sykes / Russo response
Date: Wednesday, February 2, 2022 12:16:35 PM
Attachments: [image003.png](#)



Charles M Miller

Counsel to the Attorney General
Office of Ohio Attorney General Dave Yost
Columbus: **614-752-8237**
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** Please note that, in adherence to best practices brought about in response to COVID-19, the Ohio Attorney General's Office moved to a "remote work" status effective March 18, 2020. All members of the office remain available remotely during normal business hours. Thank you for your patience*

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From: [Shawn Busken](#)
To: [Bridget Coontz](#); [Jonathan Blanton](#); [Jonathan Fulkerson](#); [Michael Rodgers](#)
Subject: FW: time stamped copy attached
Date: Monday, January 31, 2022 3:26:00 PM
Attachments: [Intervention and convert to amicus motion \(file stamped\).pdf](#)
[image001.png](#)

FYI

From: Charles Miller
Sent: Monday, January 31, 2022 3:09 PM
To: AG Dave Yost <Dave@OhioAGO.gov>; Brenda Rinehart <Brenda.Rinehart@OhioAGO.gov>
Cc: Shawn Busken <Shawn.Busken@OhioAGO.gov>; Bethany McCorkle <Bethany.McCorkle@OhioAGO.gov>
Subject: time stamped copy attached

All,

Here is the version that appears on the Court's docket.

Bethany—FYI. This is public now.

Chip



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In the
Supreme Court of Ohio

LEAGUE OF WOMEN VOTERS OF OHIO, et al., :
:
: *Relators,* : Case No. 2021-1193
:
: v. : Original Action Pursuant to
: Ohio Const., Art. XI
OHIO REDISTRICTING COMMISSION, et al., :
: *Respondents.* : Apportionment Case
:
:

 :
BRIA BENNETT, et al., :
:
: *Relators,* : Case No. 2021-1198
:
: v. : Original Action Pursuant to
: Ohio Const., Art. XI
OHIO REDISTRICTING COMMISSION, et al., :
: *Respondents.* : Apportionment Case
:
:

 :
OHIO ORGANIZING COLLABORATIVE, et al., :
:
: *Relators,* : Case No. 2021-1210
:
: v. : Original Action Pursuant to
: Ohio Const., Art. XI
OHIO REDISTRICTING COMMISSION, et al., :
: *Respondents.* : Apportionment Case
:
:

 :

MOTION FOR LIMITED INTERVENTION BY ATTORNEY GENERAL &
MOTION TO CONVERT "RESPONSE" TO AMICI BRIEF

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MOTION

Ohio Attorney General Dave Yost moves, pursuant to S.Ct.Prac.R. 4.01 and Civil R. 24 (incorporated into Original Actions by S.Ct.Prac.R. 12.01(A)(2)(b)), to intervene in for the limited purpose of filing this motion, which seeks to convert the January 28, 2022 “Response of respondents Senator Vernon Sykes and House Minority Leader Allison Russo to the petitioners’ objections” (“Response”) into an *amici curiae* filing.

As the Response itself thoroughly details, the Attorney General decided that only the Redistricting Commission itself should respond to the Petitioners’ Objections. No individual member was authorized to file in their official capacity. The Republican Statewide Office Holders were denied the right to file official separate responses. So were *both* legislative factions—Republican and Democrat alike. The actions of the Commission as a body were the subject of the Objections—not the separate actions of any individual member. Accordingly, as more fully discussed below, the Attorney General, as the Chief Law Officer of the State of Ohio, deemed that a single response was in order.

Of course, this Court regularly accepts filings by *amici curiae*. The self-described “pro se” filing is better categorized as an amicus filing by the individuals in their personal capacities. *See, e.g.*, S.Ct.Prac.R. 16.06. As such, the Attorney General requests he be permitted limited intervention to protect his powers as Chief Law Officer of the State of Ohio, and that the Response be deemed an amicus brief. *Derolph v. State*, 2001-Ohio-5092, 94 Ohio St. 3d 40, 43, 760 N.E.2d 351, 354; *See also, Id.* at 47-48, 357 (Cook, J., dissenting).

LIMITED STATEMENT OF RELEVANT FACTS

The Response was, as admitted by the filers, an unauthorized filing on behalf of a State entity. In response to the Court's Order, and subsequent Objections, no individual member of the Commission – Republican or Democrat – has been permitted to make an individual filing. The Commission speaks through its official actions and through its votes. Accordingly, Counsel to the Commission is the only counsel permitted to represent the Commission to respond to Petitioners' Objections.

Respondents Allison Russo and Vernon Sykes filed the *pro se* Response, asserting they were *denied* legal counsel in this proceeding. This is false. At all relevant times, the minority members of the Commission have had counsel. At their earlier request, the Attorney General assigned the then Democrat members of the Commission (prior to Commissioner Russo's substitution as a member) the outside counsel they requested – Ice Miller.

On Thursday, January 27, 2022, Respondents requested that their appointed counsel, Ice Miller, withdraw as counsel. On Friday January 28, 2022, Ice Miller complied with the request. Upon that withdrawal, Respondents Allison Russo and Vernon Sykes were still represented by counsel – the Attorney General's Office, their statutory counsel under R.C. §109.361. Indeed, a specific Assistant Attorney General, walled off from other in-house attorneys, was specifically tasked with representing Russo and Sykes should they have decided not to engage outside counsel. Importantly,

the “8(C) Minority Report” of Commissioners Sykes and Russo is of record with this court, setting forth their position.¹

The filers of the *pro se* Response knew and acknowledged that the Attorney General decided that only the Redistricting Commission, and no individual Commissioner would be authorized to file an official response on behalf of the State or any of its components. The *pro se* filers elected to proceed independently. As such, Respondents’ Response, agreeing with Petitioners’ Objections, should have been filed in the form of an amicus brief.

ARGUMENT

The Attorney General is the Chief Law Officer of the State of Ohio. R.C. §109.02. “[N]o state officer or board, or head of a department or institution of the state shall employ, or be represented by, other counsel or attorneys at law. The attorney general shall appear for the state in the trial and argument of all civil and criminal causes in the supreme court in which the state is directly or indirectly interested.” *Id.* The decisions of how to afford legal counsel, and how to conduct litigation, are within the control of the Attorney General. *Accord, Bd. of Trs. of the Tobacco Use Prevention & Control Found. v. Boyce*, 2010-Ohio-6207, ¶ 29, 127 Ohio St. 3d 511, 518, 941 N.E.2d 745, 753 (rejecting State

¹ A copy of the Minority Report is available as Exhibit 11 to the Commission’s Response (Jan 28, 2022).

Board’s argument that the Attorney General “sabotaged” the board by declining to provide legal counsel for an executive session).

In the waning days of the *DeRolph* litigation, this Court ruled on the Attorney General’s objection to the participation of certain State actor *amici* in court ordered mediation, citing the above law. This Court responded: “We acknowledge the import of these statutory provisions. What is surprising, however, is that the Attorney General in her November 26 response acknowledges that the counsel who have represented two Governors and four leaders of the houses of the General Assembly over the course of this appeal were not appointed special counsel pursuant to this statutory authority. She had not, however, objected before November 26 to the representation of any elected official as an *amicus curiae* by private counsel or rebutted the inference that the counsel had been appointed special counsel.” *DeRolph*, 94 Ohio St.3d, at 42. The majority concluded, “The Attorney General has failed to timely object to numerous elected officials’ appearing as *amici* in their official capacities,” and found the argument waived. *Id.* at 43. The *DeRolph* majority recognizes the Attorney General’s right to control State litigation, and thus, the need for his limited intervention here. Also here, the Attorney General has objected the very day after the unauthorized filing. Thus, there has been no waiver.

The dissent in *DeRolph* did not find waiver, and thus, reached the merits. Its analysis is informative here. “The majority does not explicitly find that the Attorney

General is wrong to seek to exclude the amici from settlement proceedings based on the status of those individuals. Rather, the majority contends that it is simply too late to object to the involvement of the amici to keep them from the negotiating table. But nowhere does the law accord amici the status of parties.” *Id.* at 48 (Cook, J., dissenting). The dissent concluded, “To treat the amici as if they were parties ignores this court’s own rules and law on the subject.” *Id.* Where the majority and the dissent agree is that had the Attorney General timely asserted her right (the then Attorney General was female) to control litigation, she would have prevailed.

Of course, under Ohio law, dissenting members of a board or legislative body lack standing to challenge the action in their official capacity. See *ProgressOhio.org, Inc. v. JobsOhio*, 2012-Ohio-2655, ¶ 28, 973 N.E.2d 307, 316 (10th Dist.), (“The [Supreme] court indicated that a legislator voting in the minority would not have standing”), citing *State ex rel. Ohio Gen. Assembly v. Brunner*, 114 Ohio St.3d 386, 2007 Ohio 3780, ¶¶ 17-19, 20, 872 N.E.2d 912.

To do anything other than grant this motion will cause this Court (and others in the future) to be flooded with multiple, competing filings offering the purported legal positions of the State, or components thereof, thereby depriving the Attorney General of his longstanding statutory and inherent power to ensure the State speaks with one voice—or multiple voices only when so authorized. Granting this motion “serves to prevent the judicial process from being used to usurp the powers of the political

branches” by granting official governmental standing to a person who does not hold it. *Hollingsworth v. Perry*, 570 U.S. 693, 704-05, 133 S. Ct. 2652, 2661 (2013) Accordingly, the *pro se* filing should be treated as an amicus filing. *State ex rel. Citizen Action v. Hamilton Cty. Bd. of Elections*, 2007-Ohio-5379, ¶ 24, 115 Ohio St. 3d 437, 440, 875 N.E.2d 902, 906 (“Although we have denied the city’s motion to intervene for the reasons previously set forth, the city is entitled to file an amicus curiae brief without leave of court.”)

Dated: January 31, 2022

Respectfully submitted,

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Subject: Ohio Redistricting Commission, et al., 2021-1193, 2021-1198, 2021-1210
Date: Monday, January 31, 2022 3:16:12 PM
Attachments: [2022-01-31 Limited Intervention Motion to Convert.pdf](#)
[image003.png](#)

Counsel,

Please see the attached motion, which was filed today in the three redistricting cases. This will be the only form of service. Thank you.

Regards,



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In the
Supreme Court of Ohio

LEAGUE OF WOMEN VOTERS OF OHIO, et al.,	:	
	:	
<i>Relators,</i>	:	Case No. 2021-1193
	:	
v.	:	Original Action Pursuant to
	:	Ohio Const., Art. XI
OHIO REDISTRICTING COMMISSION, et al.,	:	
	:	Apportionment Case
<i>Respondents.</i>	:	
<hr/>		
BRIA BENNETT, et al.,	:	
	:	
<i>Relators,</i>	:	Case No. 2021-1198
	:	
v.	:	Original Action Pursuant to
	:	Ohio Const., Art. XI
OHIO REDISTRICTING COMMISSION, et al.,	:	
	:	Apportionment Case
<i>Respondents.</i>	:	
<hr/>		
OHIO ORGANIZING COLLABORATIVE, et al.,	:	
	:	
<i>Relators,</i>	:	Case No. 2021-1210
	:	
v.	:	Original Action Pursuant to
	:	Ohio Const., Art. XI
OHIO REDISTRICTING COMMISSION, et al.,	:	
	:	Apportionment Case
<i>Respondents.</i>	:	

MOTION FOR LIMITED INTERVENTION BY ATTORNEY GENERAL &
MOTION TO CONVERT "RESPONSE" TO AMICI BRIEF

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MOTION

Ohio Attorney General Dave Yost moves, pursuant to S.Ct.Prac.R. 4.01 and Civil R. 24 (incorporated into Original Actions by S.Ct.Prac.R. 12.01(A)(2)(b)), to intervene in for the limited purpose of filing this motion, which seeks to convert the January 28, 2022 “Response of respondents Senator Vernon Sykes and House Minority Leader Allison Russo to the petitioners’ objections” (“Response”) into an *amici curiae* filing.

As the Response itself thoroughly details, the Attorney General decided that only the Redistricting Commission itself should respond to the Petitioners’ Objections. No individual member was authorized to file in their official capacity. The Republican Statewide Office Holders were denied the right to file official separate responses. So were *both* legislative factions—Republican and Democrat alike. The actions of the Commission as a body were the subject of the Objections—not the separate actions of any individual member. Accordingly, as more fully discussed below, the Attorney General, as the Chief Law Officer of the State of Ohio, deemed that a single response was in order.

Of course, this Court regularly accepts filings by *amici curiae*. The self-described “pro se” filing is better categorized as an amicus filing by the individuals in their personal capacities. *See, e.g.*, S.Ct.Prac.R. 16.06. As such, the Attorney General requests he be permitted limited intervention to protect his powers as Chief Law Officer of the State of Ohio, and that the Response be deemed an amicus brief. *Derolph v. State*, 2001-Ohio-5092, 94 Ohio St. 3d 40, 43, 760 N.E.2d 351, 354; *See also, Id.* at 47-48, 357 (Cook, J., dissenting).

LIMITED STATEMENT OF RELEVANT FACTS

The Response was, as admitted by the filers, an unauthorized filing on behalf of a State entity. In response to the Court's Order, and subsequent Objections, no individual member of the Commission – Republican or Democrat – has been permitted to make an individual filing. The Commission speaks through its official actions and through its votes. Accordingly, Counsel to the Commission is the only counsel permitted to represent the Commission to respond to Petitioners' Objections.

Respondents Allison Russo and Vernon Sykes filed the *pro se* Response, asserting they were *denied* legal counsel in this proceeding. This is false. At all relevant times, the minority members of the Commission have had counsel. At their earlier request, the Attorney General assigned the then Democrat members of the Commission (prior to Commissioner Russo's substitution as a member) the outside counsel they requested – Ice Miller.

On Thursday, January 27, 2022, Respondents requested that their appointed counsel, Ice Miller, withdraw as counsel. On Friday January 28, 2022, Ice Miller complied with the request. Upon that withdrawal, Respondents Allison Russo and Vernon Sykes were still represented by counsel – the Attorney General's Office, their statutory counsel under R.C. §109.361. Indeed, a specific Assistant Attorney General, walled off from other in-house attorneys, was specifically tasked with representing Russo and Sykes should they have decided not to engage outside counsel. Importantly,

the “8(C) Minority Report” of Commissioners Sykes and Russo is of record with this court, setting forth their position.¹

The filers of the *pro se* Response knew and acknowledged that the Attorney General decided that only the Redistricting Commission, and no individual Commissioner would be authorized to file an official response on behalf of the State or any of its components. The *pro se* filers elected to proceed independently. As such, Respondents’ Response, agreeing with Petitioners’ Objections, should have been filed in the form of an amicus brief.

ARGUMENT

The Attorney General is the Chief Law Officer of the State of Ohio. R.C. §109.02. “[N]o state officer or board, or head of a department or institution of the state shall employ, or be represented by, other counsel or attorneys at law. The attorney general shall appear for the state in the trial and argument of all civil and criminal causes in the supreme court in which the state is directly or indirectly interested.” *Id.* The decisions of how to afford legal counsel, and how to conduct litigation, are within the control of the Attorney General. *Accord, Bd. of Trs. of the Tobacco Use Prevention & Control Found. v. Boyce*, 2010-Ohio-6207, ¶ 29, 127 Ohio St. 3d 511, 518, 941 N.E.2d 745, 753 (rejecting State

¹ A copy of the Minority Report is available as Exhibit 11 to the Commission’s Response (Jan 28, 2022).

Board’s argument that the Attorney General “sabotaged” the board by declining to provide legal counsel for an executive session).

In the waning days of the *DeRolph* litigation, this Court ruled on the Attorney General’s objection to the participation of certain State actor *amici* in court ordered mediation, citing the above law. This Court responded: “We acknowledge the import of these statutory provisions. What is surprising, however, is that the Attorney General in her November 26 response acknowledges that the counsel who have represented two Governors and four leaders of the houses of the General Assembly over the course of this appeal were not appointed special counsel pursuant to this statutory authority. She had not, however, objected before November 26 to the representation of any elected official as an *amicus curiae* by private counsel or rebutted the inference that the counsel had been appointed special counsel.” *DeRolph*, 94 Ohio St.3d, at 42. The majority concluded, “The Attorney General has failed to timely object to numerous elected officials’ appearing as *amici* in their official capacities,” and found the argument waived. *Id.* at 43. The *DeRolph* majority recognizes the Attorney General’s right to control State litigation, and thus, the need for his limited intervention here. Also here, the Attorney General has objected the very day after the unauthorized filing. Thus, there has been no waiver.

The dissent in *DeRolph* did not find waiver, and thus, reached the merits. Its analysis is informative here. “The majority does not explicitly find that the Attorney

General is wrong to seek to exclude the amici from settlement proceedings based on the status of those individuals. Rather, the majority contends that it is simply too late to object to the involvement of the amici to keep them from the negotiating table. But nowhere does the law accord amici the status of parties.” *Id.* at 48 (Cook, J., dissenting). The dissent concluded, “To treat the amici as if they were parties ignores this court’s own rules and law on the subject.” *Id.* Where the majority and the dissent agree is that had the Attorney General timely asserted her right (the then Attorney General was female) to control litigation, she would have prevailed.

Of course, under Ohio law, dissenting members of a board or legislative body lack standing to challenge the action in their official capacity. See *ProgressOhio.org, Inc. v. JobsOhio*, 2012-Ohio-2655, ¶ 28, 973 N.E.2d 307, 316 (10th Dist.), (“The [Supreme] court indicated that a legislator voting in the minority would not have standing”), citing *State ex rel. Ohio Gen. Assembly v. Brunner*, 114 Ohio St.3d 386, 2007 Ohio 3780, ¶¶ 17-19, 20, 872 N.E.2d 912.

To do anything other than grant this motion will cause this Court (and others in the future) to be flooded with multiple, competing filings offering the purported legal positions of the State, or components thereof, thereby depriving the Attorney General of his longstanding statutory and inherent power to ensure the State speaks with one voice—or multiple voices only when so authorized. Granting this motion “serves to prevent the judicial process from being used to usurp the powers of the political

branches” by granting official governmental standing to a person who does not hold it. *Hollingsworth v. Perry*, 570 U.S. 693, 704-05, 133 S. Ct. 2652, 2661 (2013) Accordingly, the *pro se* filing should be treated as an amicus filing. *State ex rel. Citizen Action v. Hamilton Cty. Bd. of Elections*, 2007-Ohio-5379, ¶ 24, 115 Ohio St. 3d 437, 440, 875 N.E.2d 902, 906 (“Although we have denied the city’s motion to intervene for the reasons previously set forth, the city is entitled to file an amicus curiae brief without leave of court.”)

Dated: January 31, 2022

Respectfully submitted,

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Attachments: [image003.png](#)
[image001.png](#)

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** Please note that, in adherence to best practices brought about in response to COVID-19, the Ohio Attorney General's Office moved to a "remote work" status effective March 18, 2020. All members of the office remain available remotely during normal business hours. Thank you for your patience*

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Here also is the email service list that was used to serve the document we're responding to, for you to use as a cheat.

Chip

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** Please note that, in adherence to best practices brought about in response to COVID-19, the Ohio Attorney General's Office moved to a "remote work" status effective March 18, 2020. All members of the office remain available remotely during normal business hours. Thank you for your patience*

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From: SCO e-Filing Portal <efilingportal@sc.ohio.gov>

Sent: Monday, January 31, 2022 2:51 PM

To: Charles Miller <Charles.Miller@OhioAGO.gov>

Subject: e-Filing Portal Filing Submission

Dear Charles Michael Miller,

This email verifies that you uploaded the following documents through the Supreme Court of Ohio's e-Filing Portal on 1/31/2022 2:51:11 PM to case 2021-1193, League of Women Voters of Ohio, et al. v. Ohio Redistricting Commission, et al..

Documents Submitted

MOTION FOR LIMITED INTERVENTION BY ATTORNEY GENERAL MOTION TO CONVERT "RESPONSE" TO AMICI BRIEF

The reference number for your submission is 61709.

Pursuant to S.Ct.Prac.R. 3.02(A)(3)(e), documents must be submitted by 11:59:59 p.m. local observed time in Columbus, Ohio on or before the date they are due. Documents submitted through the e-Filing portal after 5:00:00 p.m. will not be reviewed by the Clerk's Office until the next business day. The documents will be considered timely if they comply with the Rules of Practice and were received on or before 11:59:59 on the date they were due.

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From: [Charles Miller](#)
To: [AG Dave Yost](#); [Brenda Rinehart](#)
Cc: [Shawn Busken](#); [Bethany McCorkle](#)
Subject: time stamped copy attached
Date: Monday, January 31, 2022 3:09:11 PM
Attachments: [Intervention and convert to amicus motion \(file stamped\).pdf](#)
[image003.png](#)

All,

Here is the version that appears on the Court's docket.

Bethany—FYI. This is public now.

Chip



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In the
Supreme Court of Ohio

LEAGUE OF WOMEN VOTERS OF OHIO, et al., :
:
: *Relators,* : Case No. 2021-1193
:
: v. : Original Action Pursuant to
: Ohio Const., Art. XI
OHIO REDISTRICTING COMMISSION, et al., :
: *Respondents.* : Apportionment Case
:
:

 :
BRIA BENNETT, et al., :
:
: *Relators,* : Case No. 2021-1198
:
: v. : Original Action Pursuant to
: Ohio Const., Art. XI
OHIO REDISTRICTING COMMISSION, et al., :
: *Respondents.* : Apportionment Case
:
:

 :
OHIO ORGANIZING COLLABORATIVE, et al., :
:
: *Relators,* : Case No. 2021-1210
:
: v. : Original Action Pursuant to
: Ohio Const., Art. XI
OHIO REDISTRICTING COMMISSION, et al., :
: *Respondents.* : Apportionment Case
:
:

 :

MOTION FOR LIMITED INTERVENTION BY ATTORNEY GENERAL &
MOTION TO CONVERT "RESPONSE" TO AMICI BRIEF

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MOTION

Ohio Attorney General Dave Yost moves, pursuant to S.Ct.Prac.R. 4.01 and Civil R. 24 (incorporated into Original Actions by S.Ct.Prac.R. 12.01(A)(2)(b)), to intervene in for the limited purpose of filing this motion, which seeks to convert the January 28, 2022 “Response of respondents Senator Vernon Sykes and House Minority Leader Allison Russo to the petitioners’ objections” (“Response”) into an *amici curiae* filing.

As the Response itself thoroughly details, the Attorney General decided that only the Redistricting Commission itself should respond to the Petitioners’ Objections. No individual member was authorized to file in their official capacity. The Republican Statewide Office Holders were denied the right to file official separate responses. So were *both* legislative factions—Republican and Democrat alike. The actions of the Commission as a body were the subject of the Objections—not the separate actions of any individual member. Accordingly, as more fully discussed below, the Attorney General, as the Chief Law Officer of the State of Ohio, deemed that a single response was in order.

Of course, this Court regularly accepts filings by *amici curiae*. The self-described “pro se” filing is better categorized as an amicus filing by the individuals in their personal capacities. *See, e.g.*, S.Ct.Prac.R. 16.06. As such, the Attorney General requests he be permitted limited intervention to protect his powers as Chief Law Officer of the State of Ohio, and that the Response be deemed an amicus brief. *Derolph v. State*, 2001-Ohio-5092, 94 Ohio St. 3d 40, 43, 760 N.E.2d 351, 354; *See also, Id.* at 47-48, 357 (Cook, J., dissenting).

LIMITED STATEMENT OF RELEVANT FACTS

The Response was, as admitted by the filers, an unauthorized filing on behalf of a State entity. In response to the Court's Order, and subsequent Objections, no individual member of the Commission – Republican or Democrat – has been permitted to make an individual filing. The Commission speaks through its official actions and through its votes. Accordingly, Counsel to the Commission is the only counsel permitted to represent the Commission to respond to Petitioners' Objections.

Respondents Allison Russo and Vernon Sykes filed the *pro se* Response, asserting they were *denied* legal counsel in this proceeding. This is false. At all relevant times, the minority members of the Commission have had counsel. At their earlier request, the Attorney General assigned the then Democrat members of the Commission (prior to Commissioner Russo's substitution as a member) the outside counsel they requested – Ice Miller.

On Thursday, January 27, 2022, Respondents requested that their appointed counsel, Ice Miller, withdraw as counsel. On Friday January 28, 2022, Ice Miller complied with the request. Upon that withdrawal, Respondents Allison Russo and Vernon Sykes were still represented by counsel – the Attorney General's Office, their statutory counsel under R.C. §109.361. Indeed, a specific Assistant Attorney General, walled off from other in-house attorneys, was specifically tasked with representing Russo and Sykes should they have decided not to engage outside counsel. Importantly,

the “8(C) Minority Report” of Commissioners Sykes and Russo is of record with this court, setting forth their position.¹

The filers of the *pro se* Response knew and acknowledged that the Attorney General decided that only the Redistricting Commission, and no individual Commissioner would be authorized to file an official response on behalf of the State or any of its components. The *pro se* filers elected to proceed independently. As such, Respondents’ Response, agreeing with Petitioners’ Objections, should have been filed in the form of an amicus brief.

ARGUMENT

The Attorney General is the Chief Law Officer of the State of Ohio. R.C. §109.02. “[N]o state officer or board, or head of a department or institution of the state shall employ, or be represented by, other counsel or attorneys at law. The attorney general shall appear for the state in the trial and argument of all civil and criminal causes in the supreme court in which the state is directly or indirectly interested.” *Id.* The decisions of how to afford legal counsel, and how to conduct litigation, are within the control of the Attorney General. *Accord, Bd. of Trs. of the Tobacco Use Prevention & Control Found. v. Boyce*, 2010-Ohio-6207, ¶ 29, 127 Ohio St. 3d 511, 518, 941 N.E.2d 745, 753 (rejecting State

¹ A copy of the Minority Report is available as Exhibit 11 to the Commission’s Response (Jan 28, 2022).

Board’s argument that the Attorney General “sabotaged” the board by declining to provide legal counsel for an executive session).

In the waning days of the *DeRolph* litigation, this Court ruled on the Attorney General’s objection to the participation of certain State actor *amici* in court ordered mediation, citing the above law. This Court responded: “We acknowledge the import of these statutory provisions. What is surprising, however, is that the Attorney General in her November 26 response acknowledges that the counsel who have represented two Governors and four leaders of the houses of the General Assembly over the course of this appeal were not appointed special counsel pursuant to this statutory authority. She had not, however, objected before November 26 to the representation of any elected official as an *amicus curiae* by private counsel or rebutted the inference that the counsel had been appointed special counsel.” *DeRolph*, 94 Ohio St.3d, at 42. The majority concluded, “The Attorney General has failed to timely object to numerous elected officials’ appearing as *amici* in their official capacities,” and found the argument waived. *Id.* at 43. The *DeRolph* majority recognizes the Attorney General’s right to control State litigation, and thus, the need for his limited intervention here. Also here, the Attorney General has objected the very day after the unauthorized filing. Thus, there has been no waiver.

The dissent in *DeRolph* did not find waiver, and thus, reached the merits. Its analysis is informative here. “The majority does not explicitly find that the Attorney

General is wrong to seek to exclude the amici from settlement proceedings based on the status of those individuals. Rather, the majority contends that it is simply too late to object to the involvement of the amici to keep them from the negotiating table. But nowhere does the law accord amici the status of parties.” *Id.* at 48 (Cook, J., dissenting). The dissent concluded, “To treat the amici as if they were parties ignores this court’s own rules and law on the subject.” *Id.* Where the majority and the dissent agree is that had the Attorney General timely asserted her right (the then Attorney General was female) to control litigation, she would have prevailed.

Of course, under Ohio law, dissenting members of a board or legislative body lack standing to challenge the action in their official capacity. *See ProgressOhio.org, Inc. v. JobsOhio*, 2012-Ohio-2655, ¶ 28, 973 N.E.2d 307, 316 (10th Dist.), (“The [Supreme] court indicated that a legislator voting in the minority would not have standing”), *citing State ex rel. Ohio Gen. Assembly v. Brunner*, 114 Ohio St.3d 386, 2007 Ohio 3780, ¶¶ 17-19, 20, 872 N.E.2d 912.

To do anything other than grant this motion will cause this Court (and others in the future) to be flooded with multiple, competing filings offering the purported legal positions of the State, or components thereof, thereby depriving the Attorney General of his longstanding statutory and inherent power to ensure the State speaks with one voice—or multiple voices only when so authorized. Granting this motion “serves to prevent the judicial process from being used to usurp the powers of the political

branches” by granting official governmental standing to a person who does not hold it. *Hollingsworth v. Perry*, 570 U.S. 693, 704-05, 133 S. Ct. 2652, 2661 (2013) Accordingly, the *pro se* filing should be treated as an amicus filing. *State ex rel. Citizen Action v. Hamilton Cty. Bd. of Elections*, 2007-Ohio-5379, ¶ 24, 115 Ohio St. 3d 437, 440, 875 N.E.2d 902, 906 (“Although we have denied the city’s motion to intervene for the reasons previously set forth, the city is entitled to file an amicus curiae brief without leave of court.”)

Dated: January 31, 2022

Respectfully submitted,

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Collaborative, et al., in Case No. 2021-1210*

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/s/ Charles Miller

Charles M. Miller

From: [Joshua Richardson](#)
To: [Charles Miller](#)
Cc: [Shawn Busken](#)
Subject: RE: e-Filing Portal Filing Submission
Date: Monday, January 31, 2022 3:05:52 PM
Attachments: [image001.png](#)

Yes, no problem

Joshua Richardson

From: Charles Miller
Sent: Monday, January 31, 2022 3:05 PM
To: Joshua Richardson <Joshua.Richardson@OhioAGO.gov>
Cc: Shawn Busken <Shawn.Busken@OhioAGO.gov>
Subject: FW: e-Filing Portal Filing Submission

Josh,

Thanks for your help with this. Can you handle the email service for us? I've attached the filed pdf, which contains the service list.

Here also is the email service list that was used to serve the document we're responding to, for you to use as a cheat.

Chip

From: Allison.Russo@ohiohouse.gov
Date: January 28, 2022 at 12:06:21 PM EST
To: flevenson@acluohio.org, "Erik J. Clark" <ejclark@organlegal.com>, dcarey@acluohio.org, Ashley Merino <amerino@organlegal.com>, athomas@aclu.org, bridget.coontz@ohioago.gov, jepstein@aclu.org, Julie.Pfieffer@ohioago.gov, rfram@cov.com, michael.walton@ohioago.gov, jgonzalez@cov.com, mkeenana@cov.com, asharma@cov.com, marent@cov.com, akhanna@elias.law, bstafford@elias.law, pellis@reedsmith.com, MPYingling@reedsmith.com, nsalazar@reedsmith.com, bsutherland@reedsmith.com, bfliegel@reedsmith.com, alicia.bannon@nyu.edu, rudensky@brennan.law.nyu.edu, herensteine@brennan.law.nyu.edu, klein@elias.law, abranche@elias.law, jjasrasaria@elias.law, dmctigue@electionlawgroup.com, dornette@taftlaw.com, john.branch@nelsonmullins.com, bryan@taftlaw.com, tom.farr@nelsonmullins.com, alyssa.riggins@nelsonmullins.com, phillip.strach@nelsonmullins.com, pwilliamson@taftlaw.com, stephanie.chmiel@thompsonhine.com, Mary.Csarny@thompsonhine.com, skaufman@ulmer.com, dgarci@ulmer.com, sdorland@ulmer.com, rweiner@campaignlegalcenter.org, clamar@campaignlegalcenter.org, vrichardson@campaignlegalcenter.org, emily.woerner@cincinnati-oh.gov, shannon.price@cincinnati-oh.gov, haseley@goconnorlaw.com,

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Subject: Service



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** Please note that, in adherence to best practices brought about in response to COVID-19, the Ohio Attorney General's Office moved to a "remote work" status effective March 18, 2020. All members of the office remain available remotely during normal business hours. Thank you for your patience*

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From: SCO e-Filing Portal <efilingportal@sc.ohio.gov>
Sent: Monday, January 31, 2022 2:51 PM
To: Charles Miller <Charles.Miller@OhioAGO.gov>
Subject: e-Filing Portal Filing Submission

Dear Charles Michael Miller,

This email verifies that you uploaded the following documents through the Supreme Court of Ohio's e-Filing Portal on 1/31/2022 2:51:11 PM to case 2021-1193, League of Women Voters of Ohio, et al. v. Ohio Redistricting Commission, et al..

Documents Submitted

MOTION FOR LIMITED INTERVENTION BY ATTORNEY GENERAL MOTION TO CONVERT "RESPONSE" TO AMICI BRIEF

The reference number for your submission is 61709.

Pursuant to S.Ct.Prac.R. 3.02(A)(3)(e), documents must be submitted by 11:59:59 p.m. local observed time in Columbus, Ohio on or before the date they are due. Documents submitted through the e-Filing portal after 5:00:00 p.m. will not be reviewed by the Clerk's Office until the next business day. The documents will be considered timely if they comply with the Rules

of Practice and were received on or before 11:59:59 on the date they were due.

You will be notified of the filing or rejection of each document after it is reviewed.

This is a non-monitored email. Do not reply directly to it. If you have questions, please contact the Clerk's Office at 614-387-9530.

Items received through the e-Filing Portal will be reviewed in the order in which they are received by the Clerk's Office. Due to high volume, review of documents for compliance with the Rules of Practice can take up to one business day -- please allow sufficient time for such review when e-Filing. Deputy Clerks are unable to fulfill requests for immediate review. Documents that do not comply with the Rules of Practice on or before their filing deadline cannot be accepted for filing.