

IN THE SUPREME COURT OF OHIO

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

Petitioners,

v.

OHIO REDISTRICTING COMMISSION,
et al.,

Respondents.

Case No. 2021-1193

Original Action Filed Pursuant to Ohio
Const., Art. XI and S.Ct.Prac.R. 14.03

PETITIONERS' OBJECTION TO THE OHIO REDISTRICTING COMMISSION'S
REVISED MAP

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INTRODUCTION

On January 22, 2022, the Ohio Redistricting Commission adopted a revised General Assembly map (“the Revised Map”) that violates Article XI of the Ohio Constitution in at least three material ways. First, the Revised Senate Map violates Section 6(B) because in drawing the map, the Commission deviated further from proportionality than required by any other provision of Article XI. Second, the Revised House Map also violates Section 6(B) because it also deviates further from proportionality than required by any other provision of Article XI. Third, the Commission drew its Revised House Map to primarily favor the Republican Party, in violation of Section 6(A).

ARGUMENT

I. Objection 1: The Revised Senate Map Violates Article XI, Section 6(B)

A. The Revised Senate Map’s Grouping of House Districts in Hamilton County Violates Section 6(B).

Section 6(B) of Article XI requires that the Ohio Redistricting Commission shall attempt to draw a general assembly district plan such that the “statewide proportion of districts whose voters... favor each political party... correspond closely to the statewide preferences of the voters of Ohio,” as long as the Commission does not violate the standards described in Sections 2, 3, 4, 5, or 7 of Article XI. The Revised Senate Map violates this provision by failing to meet the statewide proportion of districts who favor the respective parties in the state beyond the degree justified by any constraint set forth in other provisions of Article XI. Put differently, it provides fewer Senate districts that favor the Democratic Party, and more districts that favor the Republican Party than necessary to comply with the rest of Article XI.

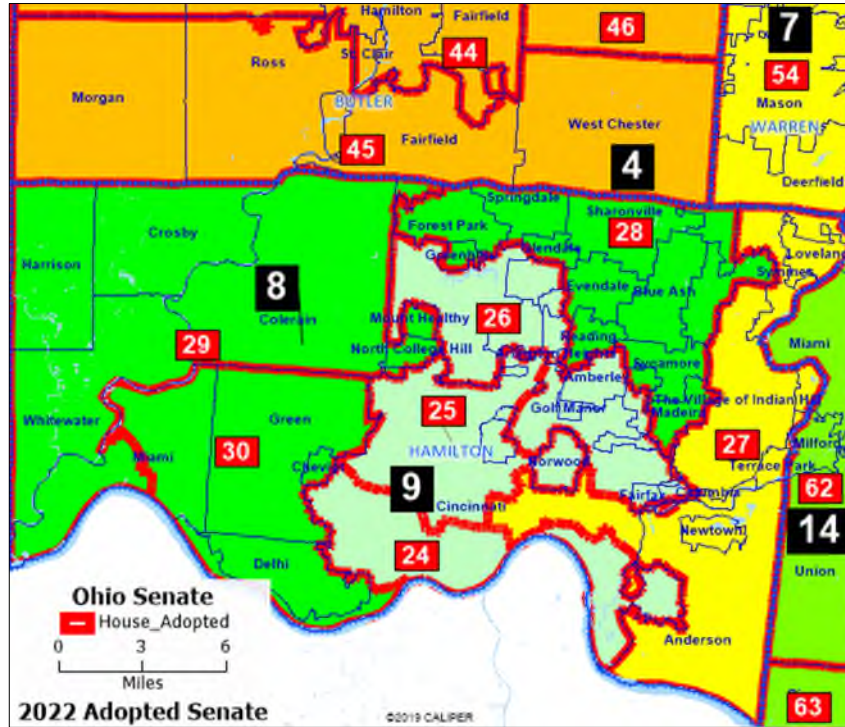
The Commission was required to attempt to draw a plan in which the statewide proportion of Senate districts whose voters favor the Republican Party corresponds closely to

54%. *See* January 12, 2022 Slip Op. ¶ 107. However, as noted in the Commission’s Section 8(C)(2) statement, “[t]he final adopted Senate district plan contains 20 Republican-leaning districts. This corresponds to approximately 60% of the total number of senate districts.” Levenson Appx., OBJ_0013 (Adopted Section 8(C)(2) statement). The Commission could easily have drawn a Senate map that corresponded more closely to proportionality without violating any provision of Article XI. The Commission only needed to make minimal and readily apparent changes to the Revised Senate Map to make it more proportional.

One clear example of the Commission’s failure is the Senate seats in Hamilton County. The Revised Senate Map contains two Senate districts entirely within Hamilton County—one Republican-leaning district and one Democratic-leaning district. But the Commission easily could have drawn two fully compliant Democratic Senate districts in Hamilton County using the Revised House Map. It deliberately chose not to do so, thus violating the proportionality requirement of Section 6(B).

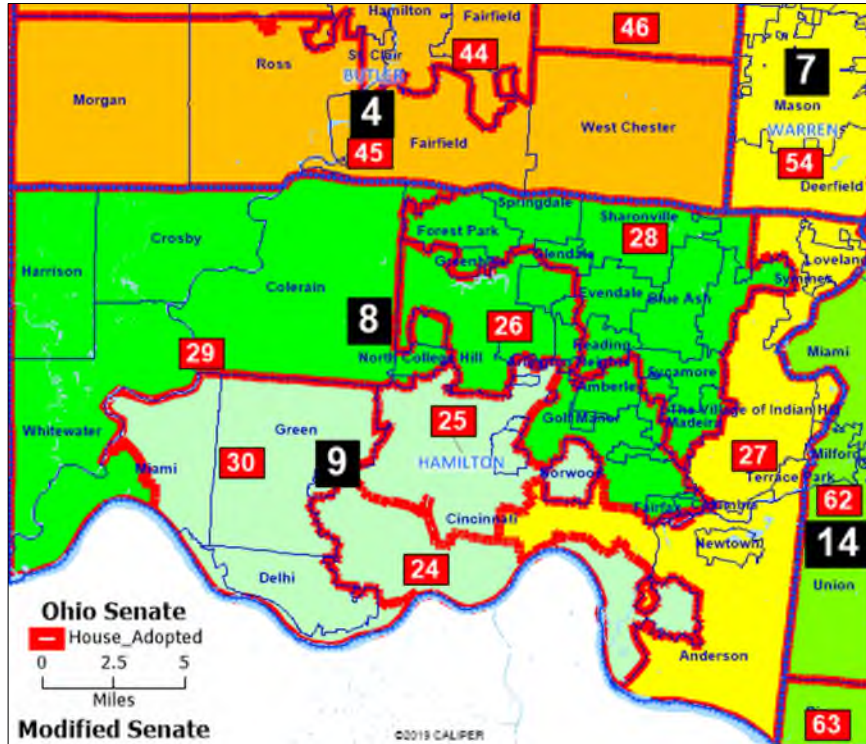
1. The Revised Map Packs Democrats into One Senate District in Hamilton County

As shown in Figure 1 from the Cooper Affidavit below, the Revised Senate Map combined House Districts 24, 25, and 26 to create Senate District 9, while combining House Districts 30, 29, and 28 to form a sprawling Senate District 8.



Cooper Affidavit Figure 1

The net effect was to pack Democratic voters into Senate District 9 (with a 72.6% Democratic vote share) while turning Senate District 8 into a Republican seat (with a 59.55% Republican vote share). *See* Affidavit of William Cooper (Jan. 25, 2022) ¶ 4 [hereinafter “Cooper Aff.”]. But swapping House Districts 26 and 30, so as to group House Districts 24, 25, and 30 into Senate District 9, and House Districts 26, 28, and 29 into Senate District 8, as shown below in Figure 2 of the Cooper Affidavit, would have instead created two Democratic-leaning Senate districts, instead of just one, in this heavily Democratic county. District 9 would have a 55.35% Democratic vote share, and District 8 would have a 55.31% Democratic vote share. *See* Cooper Aff. ¶ 7. This simple, equally compact reconfiguration would have brought the statewide plan closer to partisan proportionality without violating any other provision of Article XI. *See* Cooper Aff. ¶¶ 9–12.



Cooper Affidavit Figure 2

B. This Fully Compliant Alternative Was Squarely Before the Commission

1. The Democratic Alternative Map Eliminated the Undue Packing of Democrats into Senate District 9

This compliant Senate district pairing was placed squarely in front of the Commission.

The Democratic Commission members put forward a proposal for Hamilton County on January 20, 2022 (“the Democratic Pairing Proposal”). *See* Levenson Appx., OBJ_0001–OBJ_0006 (January 20, 2022 Democratic Franklin and Hamilton County Proposal). This proposal combined House Districts 24, 25, and 30 into one Hamilton County Senate District and House Districts 26, 28, and 29 into the other to create an additional Democratic Senate seat, bringing the Senate map closer to proportionality. *See id.* at 1–2; Levenson Appx., OBJ_0058–OBJ_0059 (Transcript of January 20, 2022 Commission Meeting). The Democratic Pairing Proposal was based on House districts that are slightly different from their Republican counterparts. But the

same basic pairing change could have been made to the Republican Proposal: the inclusion of House District 26 into Senate District 8, while moving House District 30 into Senate District 9. *See Cooper Aff.* ¶ 6. This would have had the same effect as the Democratic Pairing Proposal – the creation of two Democratic Senate seats in Hamilton County. *See id.* ¶ 7.

The members of the Redistricting Commission were specifically informed several times that this Democratic Pairing Proposal would improve Section 6(B) compliance without introducing any new violations of Article XI. At the Commission’s January 20 meeting, Senator Sykes flagged this point, stating:

“[T]he pairing of the Senate districts was different . . . in the two proposals and in the Republican proposal, the pairing would lead to just one Democratic seat, and then with the Democratic proposal, it would mean two . . . And this would be an easy way to comply And that’s why we’re recommending this particular change.”

See Levenson Appx., OBJ_0071 (Transcript of January 20, 2022 Commission Meeting). At the end of the meeting, Senator Sykes reiterated the example regarding “a pairing of the . . . House districts to create Senate districts in Hamilton County, which is a simple thing to do[.]” *Id.* at OBJ_0099. He expressly questioned why there was “reluctance to accept that when we can do it and meet all of the other requirements” *Id.*

At the Commission’s final meeting on January 22, 2022, Senator Sykes again raised this recommendation, asking the Republican map-drawers about Hamilton County, where “pairing . . . the House district[s] would give you another Senate Democratic district, how – what stopped you, what prevented you from doing that?” *See Levenson Appx.*, OBJ_0223 (Transcript of January 22, 2022 Commission Meeting). Yet the Commission without explanation refused to adopt this straightforward modification.

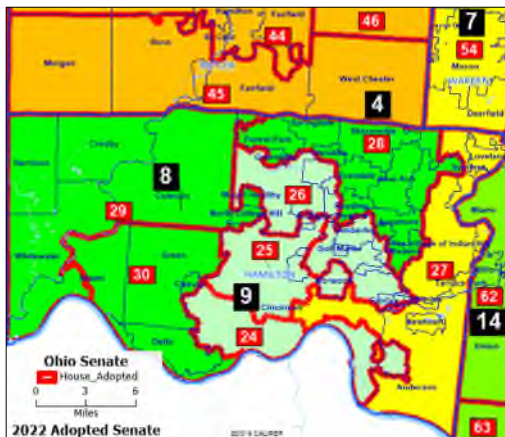
2. The Alternative Configuration is Fully Compliant with All Provisions of Article XI and At Least As Compact As the Revised Map

As mentioned above, the Revised House Map situates seven House districts entirely within Hamilton County. Under Article XI of the Ohio Constitution, two Senate districts had to be drawn from contiguous House districts entirely within Hamilton County.¹ The remaining Hamilton County House District had to be paired with districts outside Hamilton County to form another Senate district. The Democratic Pairing Proposal satisfies this requirement, as it only switches the pairing of contiguous House districts *within* Hamilton County.

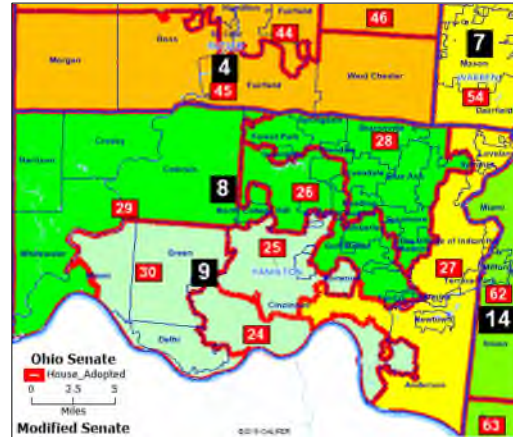
The Democratic Pairing Proposal also satisfies all other relevant requirements of Article XI. Specifically, this Senate pairing complies with Section 2, as each district would be represented by one Senator. It complies with Section 3(B)(1), as the population of the districts under the Democratic Pairing Proposal is within 5% of the Senate ratio of representation. *See* Cooper Aff. ¶ 8. It complies with Section 3(B)(2) in that it does not violate any state or federal law other than those described herein. It complies with Section 3(B)(3) as it is entirely contiguous. It complies with Section 5, as new Senate District 8 continues to hold the majority of the population from 2012–2022 Senate District 8 even after House districts 26 and 30 are switched between Senate Districts 8 and 9 under the Democratic Pairing Proposal. And it complies with Section 7, assuming that the Commission itself has used the correct county, township and municipal boundaries when drawing its districts.

¹ Specifically, Section 4(A) requires that Senate districts “be composed of three contiguous house of representatives districts,” and Section 4(B)(1) requires that any county larger than the senate ratio of representation “shall have as many senate districts wholly within the boundaries of the county as it has whole senate ratios of representation,” the replacement plan must draw two Senate districts from House districts entirely within Hamilton County. Pursuant to 4(B)(1), “any fraction of the population in excess of a whole ratio shall be a part of only one adjoining senate district.” The replacement plan meets this requirement by pairing House district 27 in Hamilton County with House districts 54 and 55 in Warren County, and this Senate district is not impacted by the modification proposed by Senator Sykes.

In addition, the Hamilton County Senate districts under the Democratic Pairing Proposal are at least as compact as those in the Revised Senate Map. Scoring the maps on the three most prominent measures of compactness, they emerge as equally compact: The Democratic Senate Proposal for the county achieves higher (more compact) scores than the Revised Senate Map on the Polsby-Popper scale; the Revised Senate Map scores slightly better on the Reock scale; and they score equivalently on Convex Hull scale. *See Cooper Aff. ¶¶ 9–10.* All three scales are available on Maptitude, and thus were readily available to the map-drawers. On top of this, a side-by-side visual comparison of the two maps confirms that the Democratic Proposal is at least, if not more, compact.



Cooper Affidavit Figure 1
Revised Senate Map in Hamilton County



Cooper Affidavit Figure 2
Democratic Pairing Proposal

3. The Alternative Pairings Were Rejected by the Commission Without Constitutional Explanation

Notwithstanding that a simple, compliant alternative was before the Commission, the Republican map-drawers refused to implement this change. On January 22, 2022 after three unproductive attempts to understand the map-drawers’ refusal, Senator Sykes asked for a fourth time about his request “to change the pairing in Hamilton County to produce an additional Democratic Senate district. What prevents you from doing that?” Levenson Appx., OBJ_0223

(Transcript of January 22, 2022 Commission Meeting). Republican map-drawers did not provide a response grounded in the other constitutional mandates found in Article XI, and Speaker Cupp ended questioning. *Id.* at OBJ_0226.

II. Objection 2: The Revised House Map Violates the Proportionality Requirement of Section 6(B)

Despite this Court’s clear instruction that the Respondents adopt a revised General Assembly map that complies with Article XI, Section 6(B), the Respondents have failed to do so. Although the Commission purports to have adopted a revised House district plan that attempts to correspond more closely to the statewide preferences of the voters of Ohio than the previous enacted plan, a closer examination reveals that the Revised House Map in fact fails to comply with Section 6(B).

A. The Revised House Map Actually Provides a Grossly Disproportionate Allocation of House Seats

Although the Respondents represent in their Section 8(C)(2) Statement that “[t]he final adopted House district plan contains 57 Republican-leaning districts,” a closer examination shows that Republicans can expect to win significantly more than 57 House districts under the Revised House Map. Dr. Imai calculated the number of Republican-leaning districts under the Revised House Map to be 61.6, rather than 57.² Report of Dr. Kosuke Imai (Jan. 25, 2022) ¶ 24 [hereinafter “Imai Rpt.”].

Although the Revised House Map was drawn to provide the Democrats nominally with 42 districts according to the Commission’s calculations, 12 of these “Democratic” districts are in fact toss-up districts – within 1 percentage point of 50% vote share. Imai Rpt. ¶ 8; Report of Dr.

² In doing so, he using the same methodology employed in his first expert report submitted to the Court on October 22, 2021 and the same set of elections used by the Commission. Report of Dr. Kosuke Imai (Oct. 22, 2021) ¶ 22; Imai Rpt. at ¶ 9.

Christopher Warshaw (Jan. 25, 2022) at 10 [hereinafter “Warshaw Rpt.”]. As drawn, these districts would have elected Republicans in the recent past. Imai Rpt. ¶¶ 11–13.

In contrast, all 57 of the House districts attributed by the Commission to the Republicans will reliably elect Republicans. Not a single Republican seat has a partisan index of less than 52.6%. Imai Rpt. ¶ 8. Because all of the Revised House Map’s toss-up districts were labeled by the map-drawers as Democratic-leaning and put into the Democratic side of the ledger, the map-drawers’ characterization of the map grossly overestimates the total number of Democratic-leaning districts in the Revised House Map. *Id.*

B. The Commission’s Characterization of the Revised House Map Conceals, and Grossly Underestimates, its Partisan Favoritism

The difference between the Commission’s reported number of Republican-leaning districts under the Revised House Map (57) versus the realistic number of Republican-leaning districts under the plan (61.6) stems from a difference in how votes are aggregated and subsequently translated into expected seat shares. Imai Rpt. ¶¶ 4–5, 24.

To arrive at its calculation of 57 House district seats, the Commission took an “all-or-nothing” approach which “classifies a district as ‘Republican-leaning’ if the total number of Republican votes exceeds the total number of Democratic votes, and otherwise as “Democratic-leaning,” after summing up the total number of votes for Democratic and Republican candidates tallied across the 2016–2020 statewide elections. Imai Rpt. ¶¶ 4–5. Under this method, competitive districts that lean Democratic even with the slightest of margins (e.g., 50% +1 vote in favor of Democrats) are counted as equivalent to a safe Democratic district (e.g., a district where Democrats win 100% of the vote). Imai Rpt. ¶ 6.

To arrive at his calculation of 61.6 House district seats, Dr. Imai uses a methodological approach that more accurately accounts for, and thus more accurately predicts, voter preferences.

Imai Rpt. ¶ 9. This method involves first determining the likely winner in a district based on the vote totals for each statewide election and then averaging this number of election victories across all the statewide elections to arrive at the average number of elections a political party is expected to win. *Id.* Thus, this method accounts for the fact that “toss-up districts, unlike safe districts, are sometimes won by Republican candidates and other times won by Democrats, depending on elections” and counts fractional seat shares accordingly. *Id.* ¶ 10. Each party’s electoral viability is recognized, and not submerged in an “all-or-nothing” total that is then projected onto all future elections under the map.

Dr. Imai provides several reasons why this method more accurately predicts the expected number of House districts that will lean Republican or Democrat. Imai Rpt. ¶¶ 10–17. As one illustrative example, House District 52 is counted by the map-drawers as Democratic-leaning because across the 2016–2020 statewide elections, the total Republican vote share was 49.94% and the total Democratic vote share was 50.06%. Imai Rpt. ¶ 12. Although Republicans would have won this proposed district four times out of the nine statewide elections from 2016–2020, the Commission nevertheless counts House District 52 as a Democratic-leaning district. *Id.* In contrast, under the calculation method used by Dr. Imai, a fractional 5/9 share of this district is counted as Democratic-leaning and the remaining 4/9 is counted as Republican-leaning. *Id.*

The potential mischief achievable by Commission’s counting method is clearly demonstrated by another illustrative example provided by Dr. Imai. Dr. Imai “conduct[ed] a so-called *leave-one-out* analysis by removing one election out of the 2016–2020 election set used by the Commission and applying their methodology to the remaining election data.” Imai Rpt. ¶ 15. This type of analysis is often used in statistics to examine the robustness of a methodology, and here shows the effects on seat share when one removes just one election from the set of data

used. *Id.* “Since there exist a total number of 9 statewide elections in this set, repeating this procedure yields 9 different estimates of the number of ‘Republican-leaning’ districts under the revised plan.” *Id.* Under Dr. Imai’s method, the elimination of one election would only have a modest effect on expected seat share corresponding to no more than one-ninth of the political scoring for each district. Imai Rpt. ¶ 17. Under the Commission’s approach the effect is potentially much greater than that – and in this case, it was to the tune of between 6 and 12 seats. Imai Rpt. ¶ 16.

And that explains what happened here. Figure 2 from Dr. Imai’s report, reproduced below, compares the expected seat share of the revised House district plan, both for his and the Commission’s aggregation method, using each of these nine different estimates where one election is “left out.” Imai Rpt. ¶¶ 16, 17.

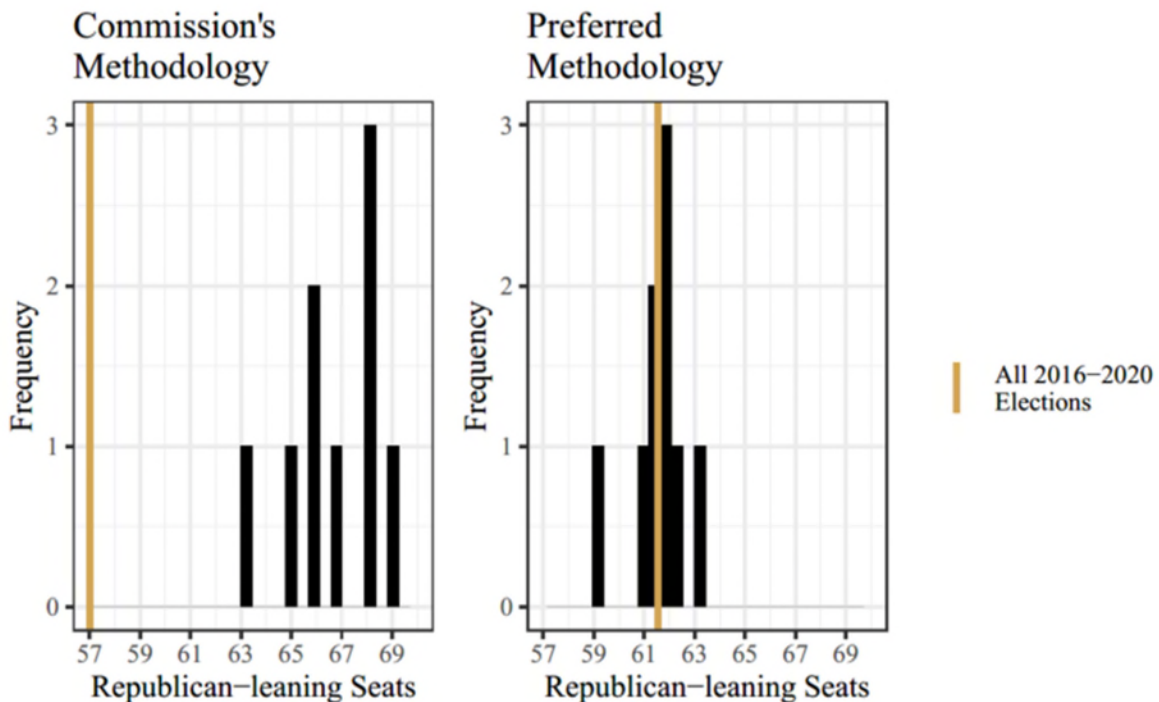


Figure 2: Comparison of election calculations for counting Republican-leaning seats for the 9 statewide elections for 2016-2020, leaving one election out for each calculation.

The results of leave-one-out analysis when applied to the calculation of seat share using the Commission’s methodology are telling. When any one election left out of the nine in the set of statewide elections from 2016–2020 is removed, the number of Republican-leaning house districts under the Revised House Map (between 63 and 69) “is much greater than the result based on all 9 statewide elections” (57). Imai Rpt. ¶ 16. Accordingly, Dr. Imai concluded that the Commission’s approach “grossly underestimates the total number of ‘Republican- leaning’ districts.” *Id.* The Commission’s precarious aggregation method exposes the unreliability of their estimated seat count. In contrast, under Dr. Imai’s method “[t]he total number of expected Republican seats under the revised plan ranges from 59.2 to 63.1 with the estimate based on all 9 statewide elections located in the middle of the leave-one-out distribution.” Imai Rpt. ¶ 17. Under a more methodologically accurate method, it is clear that the Revised House Map fails to meet Section 6(B)’s proportionality requirement.

III. Objection 3: The Objective Evidence of the Revised House Map’s Partisan Skew Demonstrates that It Primarily Favors the Republican Party in Violation of Section 6(A).

In considering whether a Plan violates the Section 6(A) prohibition on drawing a map that primarily favors one particular party, this Court’s January 12, 2022 Opinion identified several factors, including: (1) the map drawers’ intent (Slip Op. ¶ 116), (2) the number of seats afforded to a political party (¶ 121); (3) traditional partisan bias metrics (¶ 122 – 123); and (4) whether the natural political geography of a the state explained the partisan skew (¶¶ 124 , 131). The Revised House Map fails to pass muster under each of these factors.

A. The Commission’s Creation of Numerous Nominally Democratic Leaning Districts While Creating a Large Number of Safe Republican Districts Reveals Its Partisan Intent

As noted above, the Commission’s consistent pattern of choosing to provide very narrow margins for many of its alleged “Democratic leaning” districts and an ample margin for the Republican leaning districts, demonstrates that the map was drawn primarily to favor the Republican Party. Imai Rpt. ¶ 8; Warshaw Rpt. at 10.

B. The Number of Republican Leaning Seats Created By the Revised House Map Demonstrates Its Partisan Bias

When compared to Dr. Imai’s representative set of 5,000 possible redistricting maps that comply with Ohio’s constitutional requirements and reflect the state’s political geography, the Revised House Map creates 2.7 more Republican-leaning House districts than the average simulated plan. Indeed, Dr. Imai found that the Revised House Map creates more Republican districts than *any* of the 5,000 simulated plans and is over 5 standard deviations away from the mean. Imai Rpt. ¶ 24.

Accordingly, the Revised House Map remains a clear statistical outlier, and rests on too much partisanship in favor of the Republican Party. *See Common Cause v. Rucho*, 318 F.Supp.3d 777, 876, n.33 (M.D.N.C. 2018), vacated and remanded on other grounds, 139 S.Ct. 2484, 204 L. Ed. 2d 931 (2019) (reasoning that when “a districting plan is standard deviations from the mean in terms of the partisan composition of the delegation it produces, that amounts to probative and reliable statewide evidence that the plan rests on ‘too much’ partisanship”); *Castaneda v. Partida*, 430 U.S. 482, 496, n.17 (1977) (finding evidence of manipulation “if the difference between the expected value and the observed number is greater than two or three standard deviations”).

Figure 4 of Dr. Imai’s Report, reproduced below, shows the extent to which the revised House district plan (in yellow) is an extreme outlier in terms of expected seat share.

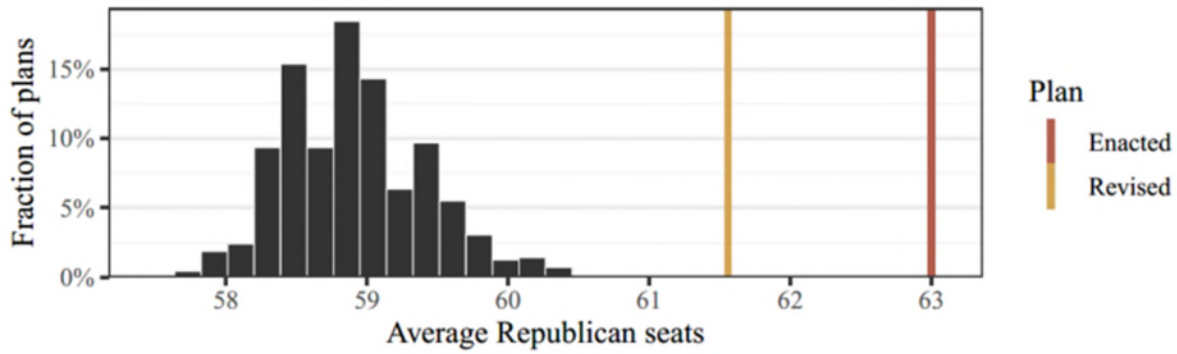


Figure 4: Average number of Republican seats calculated for the 5,000 simulated House redistricting plans computed by averaging across the 9 statewide elections from 2016 to 2020. Overlaid are the values for the revised plan (yellow) and the enacted plan (red).

C. The Revised House Map’s Partisan Bias Is a Statistical Outlier

Further, the Revised House Map was drawn primarily to favor the Republican Party. The well-established partisan bias metrics all demonstrate that it has a substantial partisan skew. Dr. Warsaw measured the partisan skew of the Revised House Map using the efficiency gap, mean-median gap, partisan symmetry, and declination measure and concluded that the Revised House Map would “have a very large pro-Republican bias.” Warsaw Rpt. at 6. He then compared the partisan skew of the Revised House Map to the Rodden Revised Map, also before the Commission. *Id.* This comparison highlights that the skew is a result of the method of counting the toss-up districts. Dr. Rodden’s map, which also has nominally 57 Republican House seats, has a much lower partisan skew because it lacks the same number of toss-up districts, mischaracterized as Democratic seats, in the Revised House Map. Warsaw Rpt. at 11.

Dr. Warsaw specifically uses two methods for his partisan bias estimates: a composite metric, and a more sophisticated estimate from PlanScore that adjusted for future predicted

trends. Under the first method, analyzing the Revised House Map Dr. Warshaw calculates that when “average[d] across all four metrics, the plan is more extreme than 74% of previous plans and more pro-Republican than 86% of previous plans,” leading him to conclude that “Ohio’s revised [House] plan has a substantial pro-Republican bias.” Warshaw Rpt. at 14. Using his second PlanScore method, Dr. Warshaw finds that the Revised House Map “is slightly *more biased* than the original plan” and “favors Republicans in 99% of PlanScore’s scenarios” and “is more extreme than 76% of previous plans and more pro-Republican than 91% of previous plans.” Warshaw Rpt. at 16.

As a point of comparison, Dr. Warshaw also examined the proposed House map submitted to the Commission by Dr. Rodden. Dr. Warshaw concluded that the plan submitted by Dr. Rodden was more proportional and “more fair based on a variety of generally accepted Political Science metrics of partisan bias in districting” than the Revised House Map, which provides evidence that the partisanship of the Revised House Map was not simply a result of political geography or adherence to the other constitutional requirements. Warshaw Rpt. at 17.

Moreover, as Dr. Imai’s analysis demonstrates, the Revised House Map is an outlier on the four well-established partisan bias metrics when compared to his representative set of 5,000 simulated maps. Imai Rpt. ¶ 21. In making this statistical comparison, Dr. Imai analyzed the following four metrics and calculated the number of standard deviations between the Revised House Map and the mean across the simulated maps:

- Efficiency Gap: more than 5 standard deviations greater than the mean (Imai Rpt. ¶ 22.)
- Mean-Median Gap: more than 8 standard deviations greater than the mean (*Id.*)
- Partisan Symmetry: more than 9 standard deviations greater than the mean (*Id.*)

- Declination: more than 6 standard deviations greater than the mean (*Id.*)

Based on these standard deviation calculations, Dr. Imai concluded that the Revised House Map is a statistical outlier on all four of these widely accepted partisan bias metrics. Imai Rpt. ¶¶ 21, 22; see *Castaneda*, 430 U.S. at 496, n.17. (finding evidence of improper manipulation “if the difference between the expected value and the observed number is greater than two or three standard deviations”). Indeed, the Revised House Map exhibits a worse partisan bias than any of the 5,000 simulated plans under these metrics. Imai Rpt. ¶ 21. Figure 3 of Dr. Imai’s report, reproduced below, compares the Revised House Map to his set of 5,000 simulated plans.

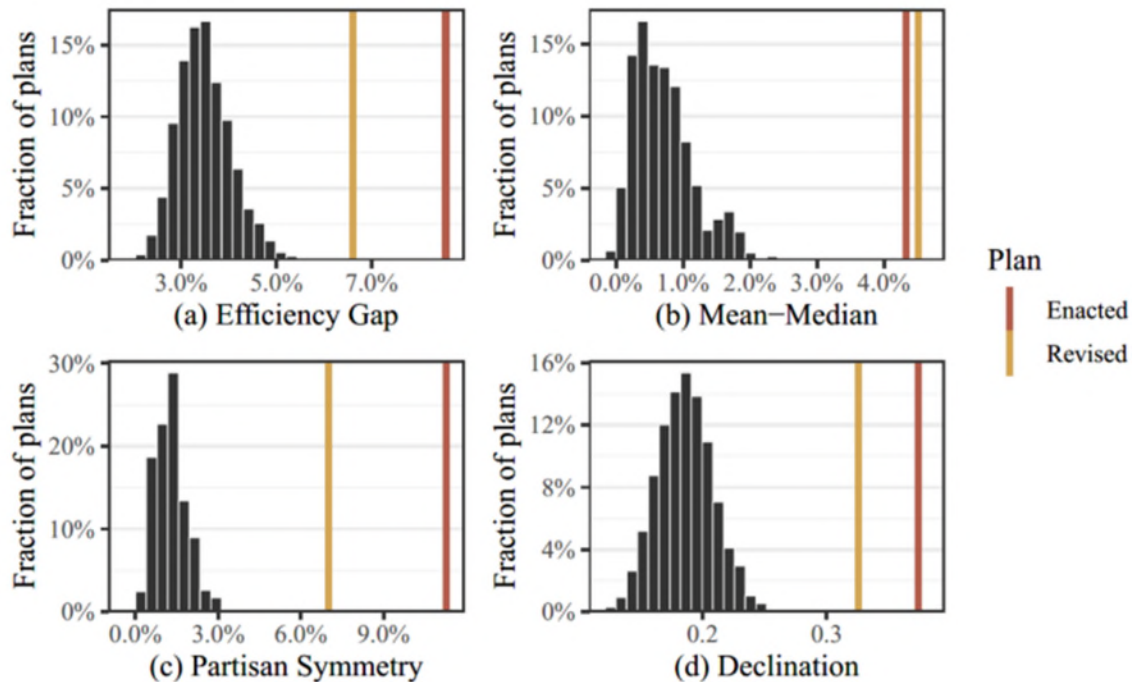


Figure 3: Four partisan bias measures calculated for the 5,000 simulated House redistricting plans computed by averaging across the 9 statewide elections from 2016 to 2020. Overlaid are the values for the revised plan (yellow) and the enacted plan (red). For each measure, larger values (towards the right) correspond to more Republican-favoring plans.

D. The Partisan Skew of the Adopted Plan Cannot Be Explained By Ohio's Political Geography

As this Court noted in its January 12, 2022 Opinion, Dr. Imai's 5,000 simulated maps neutralizes the effect of Ohio's political geography. Slip Op. ¶ 124. Accordingly, that factor cannot explain the partisan skew of the Revised House Map.

IV. The Revision of the Map Can Be Timely Undertaken

This Court has already found that it has the power to order a remedy for violations of Article XI, Section 6 of the Ohio Constitution. Given that the Revised Senate Map and the Revised House Map fail to meet Section 6 requirements, the LWV Petitioners request that this Court order that the Commission once again revise these plans, but this time in line with Section 6.³³ To the extent the Respondents raise concerns about election timing, that schedule is the product of statutory enactments and administrative actions. Should the Court determine that there are constitutional infirmities with the Revised Map, it can direct the Legislature and Secretary of State to make the necessary adjustments to the election schedule.

³³ To the extent that Respondents will argue that they could not become more compliant with Section 6(B) on either map, the Revised General Assembly Map produced by Dr. Rodden illustrates that it is in fact possible to draw a map closer to proportionality.

CERTIFICATE OF SERVICE

I, Freda J. Levenson, hereby certify that on January 25, 2022, I caused a true and correct copy of the following documents to be served by email upon the counsel listed below:

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