

IN THE SUPREME COURT OF OHIO

Charles E. Wilson, et al.,

Relators,

v.

Governor John Kasich, et al.,

Respondents.

Original Action filed
pursuant to Ohio Constitution,
Art. XI, §13

CASE NO.: 2012-0019

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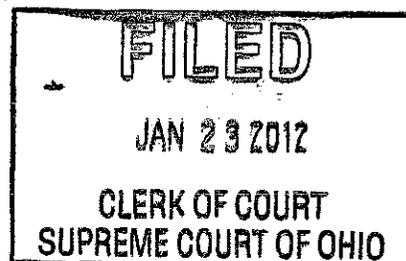
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TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	ii
I. INTRODUCTION	1
II. BACKGROUND AND FACTS	3
A. Overview of Article XI	3
B. The 2011 Reapportionment Process	5
III. ARGUMENT	13
A. Proposition of Law 1: The Enacted Plan Violates Article XI.....	13
1. Violations of Article XI, Section 7(A).....	14
2. Violations of Article XI, Sections 7(B) and (C) in Contiguous Subdivisions.....	17
3. Violations of Article XI, Sections 7(B) and (C) in Non-Contiguous Subdivisions.....	23
4. Violations of Article XI, Section 7(D).....	29
5. Illegal House Districts Invalidate the Senate Districts they Comprise	31
B. Proposition of Law 2: Respondents Violated the Open Meeting Act.....	32
1. Respondents Deliberated On the Apportionment Plan in Secret, Violating the Open Meeting Act.....	33
2. The Court has Jurisdiction Over this Claim.....	37
IV. CONCLUSION.....	37
PROOF OF SERVICE.....	39

APPENDIX	Appx. Page
Ohio Constitution, Article XI	1-5
Ohio Revised Code § 121.22	6-11
Appendix to Affidavit of Lloyd Pierre Louis page 828.....	12

TABLE OF AUTHORITIES

	<u>Page</u>
 <u>CASES</u>	
<i>Rocky River v. State Emp. Relations Bd.</i> , 43 Ohio St. 3d 1, 539 N.E.2d 103 (1989)	24
<i>Roderer v. Miami Twp. Bd. of Trustees</i> , 14 Ohio App.3d 155, 470 N.E.2d 183 (1983).....	25
<i>Springfield Local School Dist. Bd. of Edn. v. Ohio Assn. of Pub. School Emp. Local 530</i> , 106 Ohio App. 3d 855, 667 N.E.2d 458 (1995).....	33
<i>State ex rel. Cincinnati Post v. Cincinnati</i> , 76 Ohio St. 3d 540, 668 N.E.2d 903 (1996)	3, 32, 33, 36
<i>State ex rel. Citizens for Open, Responsive & Accountable Govt. v. Register</i> , 116 Ohio St. 3d 88, 876 N.E.2d 913 (2007)	37
<i>State ex rel. Delph v. Barr</i> , 44 Ohio St. 3d 77, 541 N.E.2d 59 (1989)	33
<i>State, ex rel. Engle v. Indus. Comm.</i> , 142 Ohio St. 425, 52 N.E.2d 743 (1944)	24
<i>State ex rel. The Fairfield Leader v. Ricketts</i> , 56 Ohio St. 3d 97, 564 N.E.2d 486 (1990)	33, 37
<i>State ex rel. Herbert v. Bricker</i> , 139 Ohio St. 499, 41 N.E.2d 377 (1942)	passim
<i>State ex rel. LetOhioVote.org v. Brunner</i> , 123 Ohio St. 3d 322, 916 N.E.2d 462 (2009)	24
<i>State ex rel. Ohio Gen. Assembly v. Brunner</i> , 114 Ohio St. 3d 386, 872 N.E.2d 912 (2007)	25
<i>State ex rel. Stoll v. Logan Cty. Bd. of Elections</i> , 117 Ohio St. 3d 76, 881 N.E.2d 1214 (2008)	24
<i>State v. Carswell</i> , 114 Ohio St. 3d 210, 871 N.E.2d 547 (2007)	24
<i>Sugarcreek Twp. v. Centerville</i> , 184 Ohio App. 3d 480, 921 N.E.2d 655 (2009).....	25

TABLE OF AUTHORITIES

(continued)

Page

Voinovich v. Ferguson,
63 Ohio St.3d 198 (1992).....13

White v. Clinton Cty. Bd. of Commrs.,
76 Ohio St. 3d 416, 667 N.E.2d 1223 (1996)3, 32

CONSTITUTION, STATUTES, AND CODES

Ohio Constitution, Article XI *passim*

Open Meeting Act, R.C. § 121.22 *passim*

Ohio Admin. Code § 011-1-033, 32

OTHER AUTHORITIES

Bandy, Joseph, *Stark County Official Highway Map*, Canton, OH, Stark County Engineer
(1963).....24

Elbin, Guy, *Franklin County Highway Map*, Columbus, OH, Franklin County
Engineering Department (1963)24

I. Introduction

Blatant partisan gerrymandering and backroom deals are often the primary features of reapportionment efforts in other states. Ohio is supposed to be different.

Ohioans long ago rejected a purely partisan approach to reapportionment. In the State's early days, "[p]rior to the Constitution of 1851, the apportionments of legislative districts had been made by the General Assembly, with the result that oftentimes political advantage was sought to be gained by the party in power." *State ex rel. Herbert v. Bricker*, 139 Ohio St. 499, 508, 41 N.E.2d 377 (1942). But Ohioans rejected this system, and "Article XI was incorporated in the Constitution for the purpose of correcting the evils of former days." *Id.* "The objective sought by the constitutional provisions was the prevention of gerrymandering." *Id.* at 509.

Article XI aimed to prevent gerrymandering by imposing detailed, neutral requirements on Ohio's reapportionment process and transferring that process from the General Assembly to a bipartisan Apportionment Board. Among Article XI's most important requirements is Section 7, which provides that House districts may not divide political subdivisions—counties, townships, cities, and wards—unless doing so is necessary to satisfy equal population requirements. When splitting a subdivision is required—e.g., when a county is too large to be fully contained in a single House district—the Constitution enumerates mandatory priorities for splits: maintain whole counties first, then townships, then cities, then city wards. Art. XI, § 7(B). If a district must split a governmental unit, it may only split one. *Id.* ¶ 7(C). In other words, keep communities together. The framers had good reasons for these rules: keeping communities whole helps prevent gerrymandering, makes it easier for voters to know what district they are in and who their representatives are (not so easy when the neighbor across the street is in a different district), and maintains communities of interest.

Unfortunately, Respondents, having a partisan supermajority on the Apportionment Board, chose to ignore Article XI in enacting the General Assembly apportionment plan they would have govern Ohio for the next decade. The map they adopted violates the Constitution by splitting hundreds of political subdivisions across Ohio where doing so was entirely unnecessary.

Respondents have conceded as much: they prepared and circulated amongst themselves a list of political subdivisions their plan splits, distinguishing between those that had to be divided for some legal reason and those that did not, with the vast majority falling into the latter category. *See* Appendix to Affidavit of Lloyd Pierre-Louis (“LPL Aff.”) at 828 (Summary contrasting subdivisions that had to be split—labeled “Must”—with those that did not). If this were not enough, Relators’ affiant, renowned redistricting expert Michael McDonald, has prepared alternative maps as examples demonstrating that the vast majority of subdivision splits in Respondents’ plan are unnecessary. In House districts alone, the adopted map splits political subdivisions 256 times, but McDonald’s alternative maps demonstrate that there are several ways to draw a plan that splits fewer than 100 subdivisions. Second Affidavit of Michael McDonald (“Second McDonald Aff.”) ¶ 4. McDonald’s alternative maps contain only 95 and 99 splits. The adopted map splits counties 52 times; McDonald’s maps contain only 30 county splits. The adopted map splits townships 105 times; McDonald’s maps contain only 21 and 22 township splits. The adopted map splits cities 58 times; McDonald’s contain only 34 and 37 city splits. And the adopted map splits city wards 41 times, while McDonald’s split wards only 10 times. In short, it is clear that Respondents split subdivisions for partisan gain, not for any valid reason. *See, e.g.,* DiRossi Dep. 163-64 and Exh. 33 (admitting that objective was to draw more Republican-leaning districts that would save millions in Republican campaign spending).

Respondents will apparently contend that many of their splits divide non-contiguous portions of townships and cities and that such splits are not covered by Article XI. *See, e.g.,* Answer of Respondents Kasich, Niehaus, and Yost ¶ 78. As explained below, this argument asks the Court to engage in unprecedented judicial activism, reading an exception into Article XI nowhere mentioned in its text, never before mentioned in a single case, and contrary to the very purpose of Article XI. Even if the Court were to accept Respondents’ invitation to rewrite Article XI, however, Respondents’ map would still unequivocally violate the Constitution: it contains 143 divisions of contiguous subdivisions, compared to only 74 and 75 such divisions in Professor McDonald’s alternative maps.

In enacting the apportionment plan, Respondents not only ignored Article XI, they also flouted the Open Meeting Act, R.C. § 121.22. Ohioans long ago decided that reapportionment should be conducted in the public eye, not backrooms, and the Legislature adopted the Open Meeting Act to prevent “elected officials meeting secretly to deliberate on public issues without accountability to the public.” *State ex rel. Cincinnati Post v. Cincinnati*, 76 Ohio St. 3d 540, 544, 668 N.E.2d 903 (1996). The Apportionment Board is a public body covered by the Open Meeting Act, R.C. § 121.22(B)(1), Ohio Admin. Code § 011-1-03, which means the public has “not merely the right to know [its] final decision on a matter, but the ways and means by which those decisions were reached.” *White v. Clinton Cty. Bd. of Commrs.*, 76 Ohio St. 3d 416, 419, 667 N.E.2d 1223 (1996). Respondents, however, did not want the public to see how focused they were on achieving partisan gain even at the expense of constitutional requirements, so they and their staff met in secret, discussing partisan goals they never would have admitted in public. Their goal was to make “final decisions” well before the plan would be “unveil[ed]” so that they could prepare “for the scrutiny that will come . . . i.e. number of county splits, number of split wards, and twps and cities etc.” LPL Aff. at 314.

This is not how reapportionment is meant to be conducted in Ohio. Relators respectfully ask this Court to remind Respondents of that simple truth by invalidating the illegal plan they adopted by illegal means.

II. Background and Facts

A. Overview of Article XI

Article XI of the Constitution specifies the process of and rules for reapportionment of Ohio’s General Assembly, imposing detailed requirements to ensure that objective, efficient, and politically-neutral criteria govern the reapportionment process. *See Bricker*, 139 Ohio St. at 509, 41 N.E.2d 377 (“The objective sought by [Article XI] was the prevention of gerrymandering”).

Procedurally, Section 1 of Article XI establishes the Ohio Apportionment Board and makes it responsible for reapportioning the State’s General Assembly districts in compliance with the Constitution every ten years. The Board is composed of the “governor, auditor of state,

secretary of state,” one person chosen by the majority party in the House, and one person chosen by the minority party. The Board is thus necessarily bipartisan.

Substantively, Section 2 requires that the “population of the state, as determined by the federal decennial census,” be divided by 99 to determine the ideal population (or “ratio of representation”) for a House district, and by 33 to determine the ideal population for a Senate district. Once this ideal population is determined, Section 3 requires that the population of each House district “shall be substantially equal to the” ideal population, “as provided in Section 2 of this Article, and in no event shall any house of representatives district contain a population of less than ninety-five per cent nor more than one hundred five per cent of the” ideal population, “except in those instances where reasonable effort is made to avoid dividing a county in accordance with Section 9 of this Article.” (Section 9 allows a larger deviation—up to 10% in either direction from the ideal population—if such deviation allows creation of a House district consisting of one whole county, demonstrating the value placed on keeping counties whole.)

As to the actual drawing of House districts, Section 7(A) specifies that: “To the extent consistent with the requirements of Section 3 of this Article, the boundary lines of districts shall be so drawn as to delineate an area containing one or more whole counties.” Thus, the Apportionment Board is not to divide counties unless doing so is necessary to achieve equal population requirements. This is mandatory, not advisory.

Section 7(B) then provides: “Where the requirements of Section 3 of this Article cannot feasibly be attained by forming a district from a whole county or counties, such district shall be formed by combining the areas of governmental units giving preference in the order named to counties, townships, municipalities, and city wards.” Thus, if the Apportionment Board has to split a county to achieve equal population requirements, it is to do so by combining whole political subdivisions, choosing the first from this list in the order named that will accomplish the task. Section 7(C) further specifies: “Where the requirements of Section 3 of this Article cannot feasibly be attained by combining the areas of governmental units as prescribed in division (B) of this Section, only one such unit may be divided between two districts, giving preference in the

selection of a unit for division to a township, a city ward, a city, and a village in the order named.” Thus, if the Board must split a governmental unit between two districts, it may only split one, and must select the first from this list that will achieve equal population requirements.

Finally, in creating House districts, Section 7(D) requires that: “In making a new apportionment, district boundaries established by the preceding apportionment shall be adopted to the extent reasonably consistent with the requirements of Section 3 of this Article.” Thus, House district boundaries should not be changed from the prior apportionment unless leaving them unchanged would violate equal population requirements or other parts of Article XI.

B. The 2011 Reapportionment Process

Before the Apportionment Board ever officially convened, Respondents, the Republican members of the Board, secretly began working together to adopt a reapportionment plan that would maximize Republican gains from reapportionment. As early as June 2011, Respondents met together behind closed doors with Mark Braden, former Chief Counsel to the Republican National Committee, and John Morgan, a consultant hired by Mr. Braden, to discuss their strategy for reapportionment. LPL Aff. at 1 (Agenda for Braden visit). Respondents continued to meet with Braden and Morgan over the next several months, either together as a group or in serial meetings one after the other. *See, e.g., id.* at 2-18 (emails to arrange meetings in early July for Mr. Braden with Respondents); 35 (Agenda for serial meetings between Braden and Respondents on July 7); 311 (Sept. 1 email regarding “the displays that Mark Braden wants to show the principals in the meeting tomorrow”).

The Joint Secretaries of the Apportionment Board, Heather Mann and Ray DiRossi, arranged Braden’s meetings with Respondents and many of the other secret meetings that came later. Mann and DiRossi’s role was supposed to be assisting the Apportionment Board in conducting its duties in compliance with Article XI and other laws, including the Open Meeting Act; instead, from the beginning Mann and DiRossi treated their task as maximizing Republican advantage, and they worked to keep their meetings and communications with Respondents secret. For example, on July 7 Mann, DiRossi, and Braden met with each Republican member of

the Apportionment Board. *Id.* at 35 (Agenda for serial meetings between Braden and Respondents on July 7); 39-41 (Mann calendar entries showing serial meetings with Respondents on July 7). At these meetings, they presented to each Respondent “maps and data sets” with a clear directive: “Please do not forward these to other parties at this time.” *Id.* at 79 (providing data and maps to Governor’s staff and noting that “we provided these to the Auditor and Secretary’s offices as well”); *id.* at 139 (providing same data, maps, and directive to the Secretary of State’s office); 140 (providing same data, maps, and directive to the Auditor’s office). None of these meeting agendas, maps, or data sets were given to the Democratic member of the Apportionment Board, much less to the public. Instead, Respondents took great pains to restrict distribution of these materials and conceal their very existence.

Throughout these early meetings and related email conversations, Respondents made important decisions and made clear that partisan considerations were paramount. For example, early on they decided on a political measure to use in evaluating districts, a measure they never shared with the public. *Id.* at 19-20 (email from DiRossi to Respondents’ staff and Republican operatives stating: “As the respective Chiefs of Staff and other principals . . . get into evaluating districts - we all need to be on the same page with regards to what statewide non judicial races comprise our ‘political index’”); 141 (“[W]e seem to have agreement on using the 5 races listed below (equally weighted) to comprise our index number for apportionment and redistricting.”). Another of their first tasks was obtaining the addresses of “past and future opponents of current republican state reps,” *id.* at 145, 150-56 (listing addresses), a reapportionment criterion nowhere mentioned or contemplated in Article XI.

In early July, Mann and DiRossi took another important step towards maintaining the secrecy of their partisan endeavor: they rented a hotel room across from the Capitol to serve as a secret meeting place and reapportionment office for Respondents. *See id.* at 163-64 (emails arranging room rental). This room became known as “the bunker,” and Respondents and their staff frequently used it to conduct meetings in secret. *See, e.g., id.* at 229 (email from DiRossi to

Niehaus staff asking about “the 3 chiefs at bunker visit tomorrow”); 250 (“We will be back at bunker later today.”); 337 (DiRossi calendar entry for meeting “with Niehaus at Bunker”).

After establishing “the bunker,” Mann and DiRossi continued refining proposed reapportionment plans based on guidance from Respondents, even though the Apportionment Board had not even publicly met yet. *See, e.g., id.* at 190-94 (July 24 letter from DiRossi/Mann to consultant John Morgan regarding draft maps). Partisan considerations were at the forefront, e.g., in an email from DiRossi to Respondents’ staff circulating “a document that I am using and thought you and others may want,” which showed “all 99 house seats ranked according to our unified index.” *Id.* at 206. DiRossi noted that Democrats “hold 6 of *our* 50%+ seats . . . , at least they do now” *Id.* (emphasis added).

DiRossi and Mann also arranged meetings with Respondents’ staff to settle on rules for the Apportionment Board and a script for the Board’s first meeting, to be held on August 4. *Id.* at 197 (Email from Mann to Respondents’ staff listing issues to discuss at meeting); 204 (Mann circulating final script, rules, and schedule). Already, Respondents were following an illegal pattern: making decisions amongst themselves without convening the Board as a whole in order to avoid sharing information with the Board’s lone Democratic member. For example, after Respondents secretly agreed on rules to govern the Apportionment Board’s proceedings, Board Secretary Mann emailed Respondents’ staff and noted: “We need to decide how soon to share the apportionment board rules with the Democrats.” *Id.* at 200. Respondents took the same approach to the Board’s schedule, secretly agreeing on a schedule and then debating when to share it with the Democratic member. *Id.* at 201 (Email from Mann to Respondents’ staff asking “Are you all okay if we share the schedule of public hearings with them at this juncture . . . ?”); 217 (Email from Mann asking when to share “the rules and the schedule with the Democrats”).

Leaving nothing to chance, Respondents directed Mann and DiRossi to prepare a detailed script for the Board’s first meeting and for every subsequent meeting. These scripts, starting with the very first one, made clear that the outcomes of each meeting were preordained. For example, before the Board’s first meeting on August 4, the script Respondents had settled on

specified who would be elected Chair and Vice-Chair of the Board, specified that the Board's next official meeting would be on September 26, and presumed adoption of the already agreed public records policy. *Id.* at 233-40. The transcript of the meeting demonstrates that Respondents followed the script closely. *Id.* at 495-524. Additionally, over objections and a proposed amendment by the Board's Democratic member, the Board adopted its preordained schedule. *Id.* at 512-13.

After the August 4 meeting, Respondents, their staff, and the Board Secretaries continued working to develop the most favorable map for Republicans. Respondents and their staff continued meeting in secret, now focusing on refining potential map configurations. *See, e.g., id.* at 274 (Email between Respondent Yost's staff noting meeting with Respondent Niehaus' staff "to develop a Franklin County map"). For example, on August 27 and 28, Mann and DiRossi met with staff for Respondent Niehaus and Speaker Batchelder "to set up a 'decision tree' and timeframe . . . to get specific direction on the various plans and options upon which we have worked." *Id.* at 288. Their communications made clear that Mann and DiRossi planned either to meet with Respondents directly or that Respondents would "relay[] through [their staff] . . . information on final decisions." *Id.* Respondents' staff also sent Mann and DiRossi "homework assignments" on how to achieve specific political goals. *See, e.g., id.* at 298 (Mann responding to email regarding proposed configuration of Medina County—home to Speaker Batchelder's district—to achieve a certain partisan index).

Throughout these secret deliberations, Respondents put on a show of holding hearings around the state to take input on redistricting decisions, appointing several of their staff as their official designees for these hearings. *Id.* at 279-82.¹ All the while, however, Respondents and many of these same staff continued holding serial and joint meetings with Mann, DiRossi, and Braden to make decisions about draft maps. *See, e.g., id.* at 302-05 (Mann and DiRossi

¹ Respondents identified as their designees Michael Grodhaus (Counsel to Respondent Kasich), Matt Schuler (Chief of Staff to Respondent Niehaus), Halle Pelger (Deputy Chief of Staff to Respondent Husted), Matt Damschroder (Deputy to Respondent Husted), and Mary Amos-Augsburger (Director of Policy for Respondent Yost). *Id.* at 279-82.

appointments with Respondents and discussion of “how long it took to go through this stuff with the chiefs”). For example, on September 2 Braden, DiRossi, and Mann met with all of “the principals” to review draft maps. *Id.* at 311 (Sept. 1 email from Mann to DiRossi: “attached is one of the displays that Mark Braden wants to show the principals in the meeting tomorrow”); 721 (Mann calendar entry showing meeting with Niehaus, Braden, and Batchelder). These meetings were not mere theoretical discussions. Respondents’ goal was to make “final decisions” well before the full Board met on September 26, when the plan would be “unveil[ed].” *Id.* at 314 (email from DiRossi to Respondents’ staff). This time was needed to prepare “for the scrutiny that will come . . . i.e. number of county splits, number of split wards, and twps and cities etc.” *Id.*

The Board Secretaries identified “15 Decisions” that had to be made to settle on a final plan, *id.* at 742-43 (DiRossi document listing decisions), and Respondents, their staff, and the Board Secretaries began meeting even more often than they had before, sometimes together and sometimes one after the other.² Respondents, their staff, and the Board Secretaries also began circulating near final drafts of proposed plans, including proposed alternative configurations of various districts. *See, e.g., id.* at 327-29 (Sept. 8 email from Mann to DiRossi showing alternative configurations of Summit, Stark, and Medina counties); 787-830 (narrative descriptions and proposed alternative maps for many counties). These alternative configurations always noted how many districts would “gain on index,” i.e., improve politically for Republicans. *See, e.g., id.* at 787. Respondents and their staff also discussed the districts they

² *See, e.g., id.* at 319-21 (Calendar entries showing Sept. 6 meeting between Respondents, staff, and the Board Secretaries); 330 (Email reflecting Sept. 12 meeting between Respondents’ staff and the Board Secretaries); 725 (same); 335 (Calendar entry reflecting Sept. 14 meeting between Respondent Niehaus and Board Secretaries); 336 (Calendar entry reflecting Sept. 15 meeting between Respondent Yost, Braden, and Board Secretaries); 337 (Calendar entry reflecting Sept. 15 meeting between Respondent Niehaus and Board Secretaries); 338 (Calendar entry reflecting Sept. 16 meeting between Respondent Niehaus, Speaker Batchelder, and Board Secretaries); 727 (same); 349-50 (Calendar entries for Sept. 19 meeting between Respondent Husted and Board Secretaries); 729 (same); 353 (Calendar entry for Sept. 20 meeting between Governor’s staff and Board Secretaries).

would propose with Republican incumbents, well before the districts were publicly disclosed. *See, e.g.*, 339 (Email from Rep. Baker to Mann: “please forward me the detailed district map”); 340 (Email from Sen. Manning to DiRossi proposing where to find additional Republican voters to put in Rep. Boose’s district); 367-69 (Letter from Rep. Hayes to Speaker Batchelder proposing changes to Districts 71 and 72).

The primary focus of Respondents’ discussions with their staff and the Board Secretaries was on the partisan benefits that would flow from the draft plans, not compliance with Article XI. For example, on September 18, a week before the Board officially met to review any plans, Secretary Mann circulated to Respondents’ staff “a helpful analysis of pre and post proposed House Districts.” *Id.* at 348. The “analysis” reflected how many more districts in the new apportionment plan would be safe Republican seats, noting that the new plan would create a “majority of seats that lean Republican (50% or better) on 2008 Presidential numbers,” and: “Previously, to retain a 50+ seat majority under 2008 Presidential year conditions, we had to win all seats above a 49.14%; now we only have to hold 50 or more seats that are 50.94% or better.” *Id.*; *see also id.* at 345-47 (email from Mann to DiRossi showing change in “political index” for every district in the old and new plans); 421-25 (Email from Mann to Respondent Yost providing political indices for every district in proposed plan). And DiRossi, after reviewing how much the Republican Party had spent on elections in each Ohio legislative district over the past decade, said: “[W]e have made significant improvements to many HDs on this list,” “hopefully saving millions over the coming years.” First McDonald Aff. Exh. B at 105-06.

Meanwhile, Respondents were well aware that the plan they had developed unnecessarily split many political subdivisions across Ohio in violation of Article XI. Indeed, the Board Secretaries prepared for Respondents a list of “Split Counties” and “Split Political Subdivisions” in their proposed plan showing dozens of splits, distinguishing between those that they believed necessary (marked “Must”) and those that were not. LPL Aff. at 744; *see also id.* at 828 (updated list after passage of final plan).

On September 23, Respondents finally released their plan to the public and to the Board's Democratic member for the first time. *Id.* at 666 (Democratic member Budish: "The first time I saw the majority map or any version of the map was Friday, September 23. As part of what seems to be a common thread while here, the Majority map was crafted under a shroud of secrecy."). Three days later, the Board held the one and only hearing where it took public testimony on its plan. At the September 26 Apportionment Board meeting, Respondents left nothing to chance. Respondents had previously agreed on a detailed script for the meeting, *id.* at 398-401, and the Board Secretaries even circulated to Respondents draft questions to use to grill witnesses who proposed alternative maps. *Id.* at 415-20. Respondents then used these pre-arranged questions to cross examine witnesses presenting plans different from Respondents' plan. *See, e.g., id.* at 551-53 (Transcript of Respondent Yost asking prearranged questions). By contrast, Respondents did not ask a single substantive question of Board Secretaries Mann and DiRossi about their plan, indicating that they had already acquiesced in that plan. *See id.* at 577-613 (Transcript of testimony of DiRossi and Mann showing no questions from Respondents). Respondents, however, could not control the content of public testimony, and several outside experts testified that the plan proposed by Respondents violated Article XI of the Constitution and was plainly motivated by partisan interests. *See, e.g., id.* at 532 (Ohio Campaign for Accountable Redistricting Manager Jim Slagle testifying that "the plan submitted Friday by the Apportionment Board appears to violate Article 11, Section 7 of the Ohio Constitution with respect to a number of districts"); 560 (League of Women Voters testifying that "political party continues to be the most important criteria as evidenced by the maps submitted by the staff of the Apportionment Board").

Unaffected by this public testimony, Respondents reconvened on September 28 to adopt their plan. Respondents had internally settled on this date in advance, regardless of whatever testimony might occur at the September 26 hearing. *See, e.g., id.* at 351-52 (Email from Mann: "[T]he Board publicly adopted Sept. 26th as the date the Apportionment Board will meet next (to hear testimony on plans) and have internally adopted Sept. 28th as the date the Apportionment

Board will meet to adopt a plan.”). At the September 28 meeting, Respondents again came prepared with a script, *id.* at 447-50, which they largely followed. Respondents first adopted a technical amendment correcting several typos and scrivener’s errors in the proposed plan. *Id.* at 633-36. Then, as planned, Respondent Yost proposed a substantive amendment to change the boundaries of House Districts 87 and 88, to change the boundaries of a number of House and Senate Districts in Southeast Ohio (House Districts 71, 72, 78, 93, 94, 97), and to change which House Districts would go in Senate Districts 21 and 25 in Northeast Ohio. *Id.* at 637-44. Neither the public nor the Board’s Democratic member had seen the substantive amendment before the meeting, and it is undisputed that the proposed amendment was based entirely on private requests by legislators, none of which had been raised at the September 26 hearing or publicly debated. *Id.*; *see also id.* at 430-31 (Mann, DiRossi, and Respondent Niehaus staffer discussing proposed change to Southeast Ohio over email). The Board tabled the portion of the amendment related to Northeast Ohio due to confusion over the exact nature of the private request for revision there, but otherwise adopted the amendment without change by a 4-1 partisan vote. *Id.* at 677. The Board then adopted its proposed plan by the same divided margin. *Id.* at 680. In doing so, Respondents closely followed their agreed script. Indeed, where the script inadvertently repeated the same statement twice, *id.* at 460, Respondent Niehaus faithfully repeated it—*twice*—at the meeting, *id.* at 670-71.

Two days later, the Board reconvened in an “Emergency Meeting,” the sole purpose of which was to pass the portion of the substantive amendment the Board had tabled on September 28. Again following a script, *id.* at 471-73, the Board quickly passed that amendment by a 4-0 vote, with the Democratic member absent because of a Jewish holiday. *Id.* at 684-85. Even before the meeting, DiRossi, “[a]ssuming the hearing today goes the way Heather and I expect it to,” had sent the revised maps incorporating the amendment to Respondent Husted’s office for posting online. *Id.* at 484-85.

As Respondents had plotted all along, the final map was a huge victory for partisan Republican interests. As Respondent Husted put it, Republicans would be doing “some end zone

dances.” *Id.* at 675. And even Respondents and their Republican colleagues thought the process they had followed was “ugly.” *Id.* at 493, 679 (Yost: “I find this to be an unlovely process.”).

Respondents were well aware, however, that their adopted plan was extremely vulnerable under Article XI. Mann and DiRossi prepared an analysis of the final plan showing a partial list of political subdivisions the final plan split; it listed 18 counties and many other subdivisions that had been split unnecessarily. *Id.* at 828 (Summary document contrasting counties that had to be split—labeled “Must”—with those that did not); 712 (Handwritten notes from Respondent Yost listing political subdivisions split by enacted plan). Undaunted by these flaws, Respondent Kasich, as directed by the Board’s majority, published the Board’s plan on October 5.

III. Argument

A. Proposition of Law 1: The Enacted Plan Violates Article XI

As Respondent Niehaus correctly noted at an Apportionment Board meeting, “the Board does not have the option to ignore requirements of the Ohio Constitution.” *Id.* at 670-71. Unfortunately, Respondents did just that, and dozens of the districts they adopted in the General Assembly reapportionment plan for the next decade violate Article XI, as detailed below.

There are a few places in Ohio where the competing requirements of Article XI make it impossible to comply with every provision. This Court has previously held that Sections 4, 9, and 11 of Article XI are “coequal,” and that where such “coequal” requirements “are irreconcilable,” the Apportionment Board has “the duty to choose the proper course, and this court will not order them to correct one constitutional violation by committing another.” *Voinovich v. Ferguson*, 63 Ohio St.3d 198, 200 (1992). Here, however, Relators have only challenged decisions made by the Apportionment Board where the provisions of Article XI were plainly “reconcilable.” Indeed, every one of the violations detailed below could have been avoided without creating another violation of Article XI, as demonstrated by the alternative maps created by Relators’ affiant, redistricting expert Professor Michael McDonald. *See* Second McDonald Aff. Respondents nonetheless chose to violate Article XI in the ways described.

To prove these violations, Relators need not show that partisan considerations motivated them, for violations of Article XI caused by inadvertence or incompetence are forbidden just as much as violations adopted for partisan gain. But evidence of partisan considerations highlights where Article XI violations were plainly adopted for no legitimate reason. Relators therefore detail below—to the extent possible given the illegal cloak of secrecy under which Respondents operated—that many of the Article XI violations Respondents committed were for baldly partisan reasons, an affront to Ohio’s longstanding and nationally admired constitutional restrictions on partisan gerrymandering.

1. Violations of Article XI, Section 7(A)

Article XI, Section 7(A) is clear and simple: “To the extent consistent with the requirements of Section 3 of this Article, the boundary lines of districts shall be so drawn as to delineate an area containing one or more whole counties.” Thus, the Apportionment Board must not divide counties unless doing so is necessary to achieve equal population requirements. The reasons for this rule are straightforward: keeping counties whole not only helps prevent partisan gerrymandering, it also makes it easy for residents to know what district they are in and it helps keep residents with similar concerns and interests together in one district. *See Bricker*, 139 Ohio St. at 509, 41 N.E.2d 377 (“The objective sought by [Article XI] was the prevention of gerrymandering.”); LPL Aff. at 541 (Jim Slagle testifying: “When you split communities and divide them up, the first problem is it makes it much more difficult for individual voters to even know what district they are in.”); 542 (“[T]he other problem is it tends to break up communities of interest.”).

Nonetheless, Respondents repeatedly flouted Section 7(A)’s requirements, splitting counties over 50 times even though Professor McDonald’s maps make clear that at most 30 county splits are necessary. A perfect example of Respondents’ approach is in House District 70. “District 70 in the enacted plan includes part of Medina County, all of Ashland County, and part of Holmes County. But there is no reason why District 70 needs to include part of Holmes County.” Second McDonald Aff. ¶ 12. Professor McDonald drew two alternative plans in

which District 70 is comprised solely of Ashland County and part of Medina County, and Holmes County is left undivided in another district. *Id.* Exhs. A-2, B-2. This change creates no other constitutional violations. *Id.* ¶ 12. *See also* Affidavit of Jim Slagle (“Slagle Aff.”) ¶ 9 (listing District 70 as one of several drawn in violation of 7(A)). Indeed, Respondents themselves recognized that Holmes County did not need to be divided. Respondents prepared an analysis of their enacted plan listing “Split Counties” in the House map and distinguishing between those they believed had to be split for some reason (marked as “Must”) and those that did not have to be split. LPL Aff. at 828. Holmes County is clearly listed as being split, and not for any valid reason. *Id.* Moreover, Respondents split Holmes County despite pleas from Holmes County officials to keep the county whole. As the Holmes County Auditor wrote: “We in Holmes County do not understand this split of our County. . . . We feel very strongly we should be left whole.” *Id.* at 444-45.

Similarly, House District 78 in the Board’s plan divides Athens, Pickaway, and Muskingum Counties. First Affidavit of Michael McDonald (“First McDonald Aff.”) Exh. C at 43-44. These counties do not need to be divided for any valid reason. Indeed, Muskingum and Pickaway Counties are listed as split for no valid reason *in Respondents’ own analysis*, LPL Aff. at 828, and that analysis omits Athens County altogether, even though it is undeniably split in Respondents’ plan. First McDonald Aff. Exh. C at 43. Moreover, Professor McDonald drew two alternative plans in which all of these counties were left whole without creating any new constitutional violations. Second McDonald Aff. ¶ 14, Exhs. A-5, B-5. *See also* Slagle Aff. ¶ 9 (listing District 78 as one of several drawn in violation of 7(A)). Further evidence that District 78’s bizarre shape and multiple split counties were not motivated by any valid reason comes from the extensive discussions Respondents, Mann, and DiRossi had about altering this and surrounding districts to achieve political objectives, including increasing Republican presence in surrounding districts and ensuring that Republican Representative Hottinger would soon have an open seat to run for the Senate. *See, e.g.*, LPL Aff. at 659-60 (DiRossi testimony that District 78

was modified at Rep. Hottinger's request to create an open Senate seat for him); *id.* at 430-31 (showing political indices for alternative versions of District 78 and surrounding districts).

District 84 in the Board's plan also violates Section 7(A), unnecessarily dividing Auglaize and Shelby Counties. First McDonald Aff. Exh. C at 46-47. Respondents' own analysis again shows that there was no need to divide these counties, LPL Aff. at 828, and Professor McDonald's analysis confirms this, as he was able to prepare two alternative maps that kept both counties whole without creating any other constitutional violations. Second McDonald Aff. ¶ 15, Exhs. A-3, A-6, B-3, B-6. *See also* Slagle Aff. ¶ 9 (listing District 84 as one of several drawn in violation of 7(A)).

District 91 reflects yet another Section 7(A) violation. The district that District 91 replaced (District 86 in the prior apportionment) was composed of three whole counties—Clinton, Highland, and Pike—and divided no political subdivisions. It did not need to be changed to achieve population equality or for any other valid reason. Nonetheless, Respondents changed the District by adding part of Ross County to it, unnecessarily splitting Ross County. First McDonald Aff. Exh. C at 51. Respondents' own analysis again showed that Ross County did not need to be split, LPL Aff. at 828, and Professor McDonald's analysis confirms this, as his two alternative maps both kept Ross County whole without creating any other constitutional violations. Second McDonald Aff. ¶ 16, Exhs. A-6, B-6. *See also* Slagle Aff. ¶ 9 (listing District 91 as one of several drawn in violation of 7(A)).

Finally, Districts 94 and 95 in the Board's plan both unnecessarily divide Washington County. First McDonald Aff. Exh. C at 53-55. Respondents' own analysis demonstrated this, LPL Aff. at 828, and Professor McDonald's alternative maps confirm it, as they each left Washington County whole without creating any other constitutional violations. Second McDonald Aff. ¶¶ 17-18, Exhs. A-5, B-5. *See also* Slagle Aff. ¶ 9 (listing Districts 94 and 95 as drawn in violation of 7(A)).

2. Violations of Article XI, Sections 7(B) and (C) in Contiguous Subdivisions

Sections 7(B) and (C) are closely related and so are discussed together here. Section 7(B) provides that where the equal population requirements of Article XI, Section 3 “cannot feasibly be attained by forming a district from a whole county or counties, such district shall be formed by combining the areas of governmental units giving preference in the order named to counties, townships, municipalities, and city wards.” Thus, if the Apportionment Board has to split a county to achieve equal population requirements, it is to do so by combining whole political subdivisions, choosing the first from this list in the order named that will accomplish the task. Section 7(C) then specifies that where it is necessary to split a political subunit to achieve equal population requirements, “only one such unit may be divided between two districts, giving preference in the selection of a unit for division to a township, a city ward, a city, and a village in the order named.” Thus, if the Board must split a government unit between two districts, it may include only one split subdivision within the House district, and must select the first from this list that will achieve equal population requirements. The reasons for these rules are clear: they help prevent gerrymandering, they keep communities of interest together, and they make it easier for voters to know who their representatives are. *See Bricker*, 139 Ohio St. at 509, 41 N.E.2d 377 (“The objective sought by [Article XI] was the prevention of gerrymandering.”); LPL Aff. at 541 (Jim Slagle testifying: “When you split communities and divide them up, the first problem is it makes it much more difficult for individual voters to even know what district they are in.”) *id.* at 542 (“[T]he other problem is it tends to break up communities of interest.”).

Dozens of districts in the enacted plan violate Sections 7(B) and (C). Respondents argue that where a district divides non-contiguous portions of a political subdivision, that division “does not count” for purposes of Sections 7(B) and (C). *See, e.g., Answer of Respondents Kasich, Niehaus, and Yost* ¶ 78. As explained below, this position invites this Court to engage in unprecedented judicial activism by rewriting the Constitution to include an exception that lacks any basis in the Constitution's text, precedent, or logic. But before addressing that argument we first focus on places where the Board's enacted plan violates Sections 7(B) and (C) with respect

to *contiguous* political subdivisions and thus is illegal even accepting Respondents' novel and irresponsible position.

a. Violations of Section 7(B) in Contiguous Subdivisions

Over a dozen House districts in the enacted plan divide contiguous political subdivisions where no such division was necessary to achieve equal population requirements. All of these districts violate Section 7(B) and should be rejected.

(i) North Ridgeville

House Districts 55 and 57 in Respondents' plan both unnecessarily divide contiguous portions of the city of North Ridgeville in Lorain County. First McDonald Aff. Exh. C at 29-30. Respondents' own analysis reached this same conclusion, describing North Ridgeville as a "Contiguous Split Subdivision." LPL Aff. at 828; *see also id.* at 461 (Respondents' analysis showing that their plan "splits 15 [contiguous] political subdivisions," only five of which—"Columbus, Akron, Dayton, Toledo, Cleveland"—had to be split for population reasons). Respondents' admission is confirmed by Professor McDonald's work. Both example maps he developed not only keep North Ridgeville whole, they also avoid splitting any other political subdivisions in Lorain County and introduce no other constitutional violations. Second McDonald Aff. ¶ 9, Exhs. A-11, B-11. So why was North Ridgeville split? Because Respondents were "looking for Republicans in Lorain County for Boose," i.e., Republican Representative Terry Boose, who represents part of Lorain County, and "splitting North Ridgeville" was one way to ensure that they could get enough Republicans into his district to render it a safe seat. LPL Aff. at 340-41. *See also* Slagle Aff. ¶ 10 (listing districts drawn in violation of 7(B)).

(ii) Austintown Township

House Districts 58 and 59 in Respondents' plan both unnecessarily divide contiguous portions of Austintown Township in Mahoning County. First McDonald Aff. Exh. C at 31. Respondents' own analysis again reached this same conclusion. LPL Aff. at 828 (Respondents' analysis showing Austintown Township as a "Contiguous Split Subdivision"); *id.* at 461

(Respondents' analysis showing that their plan "splits 15 [contiguous] political subdivisions," with Austintown Township not among those that had to be split for population reasons). Respondents' admission is confirmed by Professor McDonald's work. Both example maps he developed avoid splitting Austintown Township or any political subdivision in Mahoning County and they introduce no other constitutional violations. Second McDonald Aff. ¶ 10, Exhs. A-18, B-18. *See also* Slagle Aff. ¶ 10 (listing districts drawn in violation of 7(B)).

(iii) Brunswick City

House Districts 69 and 70 in Respondents' plan both unnecessarily divide contiguous portions of Brunswick City in Medina County. First McDonald Aff. Exh. C at 36-38. Once again, Respondents' own analysis concedes this point. LPL Aff. at 828 (Respondents' analysis showing Brunswick City as a "Contiguous Split Subdivision"); *id.* at 461 (Respondents' analysis showing that their plan "splits 15 [contiguous] political subdivisions," with Brunswick City not among those that had to be split for population reasons). Professor McDonald's sample maps confirm that these divisions were unnecessary. Both example maps he developed avoid splitting Brunswick City or any political subdivision in Medina County and they introduce no other constitutional violations. Second McDonald Aff. ¶ 12, Exhs. A-2, B-2. *See also* Slagle Aff. ¶ 10 (listing districts drawn in violation of 7(B)).

(iv) Plain Township

House Districts 48 and 49 in Respondents' plan both unnecessarily divide contiguous portions of Plain Township in Stark County. First McDonald Aff. Exh. C at 25-26. Respondents' own analysis again reached this same conclusion. LPL Aff. at 828 (Respondents' analysis showing Plain Township as a "Contiguous Split Subdivision"); *id.* at 461 (Respondents' analysis showing that their plan "splits 15 [contiguous] political subdivisions," with Plain Township not among those that had to be split for population reasons). Respondents' admission is confirmed by Professor McDonald's work. Both example maps he developed avoid splitting Plain Township, and they split only one contiguous political subdivision in all of Stark County (Canton City), rather than the four contiguous subdivisions split by Respondents' plan

(Bethlehem Township, Canton Township, Plain Township, and Massillon City). *Compare* First McDonald Aff. Exh. C at 25-27 (listing Stark County subdivisions split in enacted plan) *with* Second McDonald Aff. ¶ 8, Exhs. A-15, A-18, B-15, B-18 (listing Stark County subdivisions split in McDonald's plans). *See also* Slagle Aff. ¶ 10 (listing districts drawn in violation of 7(B)).

(v) Cuyahoga Falls

House Districts 34, 36, and 37 in Respondents' plan unnecessarily carve up the city of Cuyahoga Falls in Summit County. First McDonald Aff. Exh. C at 29-30. As with the others, Respondents' own analysis reached this same conclusion. LPL Aff. at 828 (showing Cuyahoga Falls as a "Contiguous Split Subdivision"); *id.* at 461 (Respondents' analysis showing that their plan "splits 15 [contiguous] political subdivisions," with Cuyahoga Falls not among those that had to be split for population reasons). Further evidence of the violation comes from Professor McDonald's work. Both example maps he developed not only keep Cuyahoga Falls whole, they also avoid splitting any other political subdivisions in Summit County other than Akron, which must be split because its population is too large to fit in one House District. Second McDonald Aff. ¶ 7, Exhs. A-16, B-16. *See also* Slagle Aff. ¶ 10 (listing districts drawn in violation of 7(B)).

(vi) Massillon City

House Districts 38 and 49 in Respondents' plan both unnecessarily divide contiguous portions of Massillon City in Stark County. First McDonald Aff. Exh. C at 20, 26. Respondents' own analysis again reached this same conclusion. LPL Aff. at 828 (Respondents' analysis showing Massillon City as a "Contiguous Split Subdivision"); *id.* at 461 (Respondents' analysis showing that their plan "splits 15 [contiguous] political subdivisions," with Massillon City not among those that had to be split for population reasons). Respondents' admission is confirmed by Professor McDonald's work. Both example maps he developed keep Massillon City whole and create no new constitutional violations. Second McDonald Aff. ¶ 8, Exhs. A-15, A-18, B-15, B-18. *See also* Slagle Aff. ¶ 10 (listing districts drawn in violation of 7(B)).

(vii) Mentor City

House Districts 60 and 61 both unnecessarily divide contiguous portions of Mentor City in Lake County. First McDonald Aff. Exh. C at 32. Respondents' own analysis again reached this same conclusion. LPL Aff. at 828 (showing Mentor City as a "Contiguous Split Subdivision"); *id.* at 461 (Respondents' analysis showing that their plan "splits 15 [contiguous] political subdivisions," with Mentor City not among those that had to be split for population reasons). Respondents' admission is confirmed by Professor McDonald's work. Both example maps he developed split no political subdivisions in Lake County. Second McDonald Aff. ¶ 11, Exhs. A-2, B-2. *See also* Slagle Aff. ¶ 10 (listing districts drawn in violation of 7(B)).

(viii) Marietta City

House Districts 94 and 95 in Respondents' plan both unnecessarily divide contiguous portions of Marietta City in Washington County. First McDonald Aff. Exh. C at 53-55. Respondents' own analysis again reached this same conclusion. LPL Aff. at 828 (Respondents' analysis showing Marietta City as a "Contiguous Split Subdivision"); *id.* at 461 (Respondents' analysis showing that their plan "splits 15 [contiguous] political subdivisions," with Marietta City not among those that had to be split for population reasons). Respondents' admission is confirmed by Professor McDonald's work. Both example maps he developed avoid splitting Marietta City or any political subdivision in Washington County and they introduce no other constitutional violations. Second McDonald Aff. ¶¶ 17-18, Exhs. A-5, B-5. *See also* Slagle Aff. ¶ 10 (listing districts drawn in violation of 7(B)).

(ix) Columbus City Wards

Many House districts in Respondents' plan unnecessarily divide contiguous portions of wards in the city of Columbus. Specifically, House Districts 17 and 18 in Respondents' plan unnecessarily split contiguous portions of Columbus Ward 31, First McDonald Aff. Exh. C at 8-9, House Districts 22 and 24 unnecessarily split contiguous portions of Columbus Ward 22, *id.* at 11-13, and House District 19 unnecessarily splits contiguous portions of Columbus Ward 81, *id.* at 9. Respondents' own analysis recognizes these unnecessary splits. LPL Aff. at 828

(Respondents' analysis showing Columbus Wards 22, 31, and 81 as "Contiguous Split Subdivision[s]"). Respondents' admission is confirmed by Professor McDonald's work. Both example maps he developed avoid splitting any of these wards while dramatically reducing the total number of subdivisions divided in Franklin County. Second McDonald Aff. Exhs. A-9, A-18, B-9, B-18. *See also* Slagle Aff. ¶ 10 (listing Districts 17, 18, 19, 22, and 24 as drawn in violation of 7(B)).

b. Violations of Section 7(C) in Contiguous Subdivisions

Section 7(C) says: "Where the requirements of Section 3 of this Article cannot feasibly be attained by combining the areas of governmental units as prescribed in division (B) of this Section, only one such unit may be divided between two districts, giving preference in the selection of a unit for division to a township, a city ward, a city, and a village in the order named." In other words, only one subdivision may be split in any district, and the first choice for division should be a township, then a city ward, then a city, and finally a village. Respondents' plan repeatedly violates these rules, even as to *contiguous* subdivisions.

(i) Stark County

In Respondents' plan for Stark County, House District 48 divides contiguous portions of Bethlehem Township, Canton Township, and Plain Township, while District 49 divides contiguous portions of Bethlehem Township, Canton Township, Plain Township, and Massillon City. First McDonald Aff. Exh. C at 25-26, Second McDonald Aff. ¶ 8. There was no need for any of these divisions, however, and certainly not for dividing more than one subdivision between two districts in clear violation of Section 7(C). Indeed, Professor McDonald's alternative plans divided not a single subdivision in District 48 and divided only the city of Canton in District 49, complying with Section 7(C) and creating no new constitutional violations. Second McDonald Aff. ¶ 8, Exhs. A-15, A-18, B-15, B-18.

(ii) Franklin County

In Franklin County, meanwhile, Columbus is too populous to be contained in one House district and therefore must be divided, but Respondents created far more divisions than necessary

in Franklin County and ignored the order of divisions specified by Section 7(C). Specifically, House District 23 in the enacted plan splits contiguous portions of Columbus City and Hilliard City within Franklin County. First McDonald Aff. Exh. C at 12-13. But there was no need to divide both, as evidenced by Professor McDonald's alternative plans that kept Hilliard City whole and divided only one contiguous subdivision (Columbus) in District 23. Second McDonald Aff. Exhs. A-9, B-9, A-18, B-18.

Additionally, Section 7(C) specifies that when a subdivision must be divided to achieve equal population requirements, a township should be split before a city ward is. Yet Respondents' plan unnecessarily divides numerous city wards within Columbus where townships could have been divided instead. Specifically, House Districts 17, 18, 22, and 24 in the enacted plan all unnecessarily divide wards within the city of Columbus. First McDonald Aff. Exh. C at 8-14. By contrast, Professor McDonald was able to create each of these districts by dividing townships instead of city wards, and in doing so he reduced the total number of wards split in Columbus from seven in Respondents' plan (Wards 22, 31, 45, 50, 59, 79, 81) to only one (Ward 8). *Compare* First McDonald Aff. Exh. C at 8-14 *with* Second McDonald Aff. Exhs. A-18, B-18.

3. Violations of Article XI, Sections 7(B) and (C) in Non-Contiguous Subdivisions

Beyond the numerous Article XI violations detailed above, Respondents' plan also violates Article XI by dividing dozens of non-contiguous townships and city wards. Respondents, however, claim that if a ward or township is non-contiguous because of annexations or other factors, then the limitations imposed by Section 7 simply do not apply. *See, e.g.,* Answer of Respondents Kasich, Niehaus, and Yost ¶ 78. That view finds no support in constitutional text or precedent and should be rejected. If it is, over a dozen more districts, beyond those discussed above, also violate Article XI and must be invalidated.

a. Section 7 Contains No Exemption for Non-contiguous Areas

Respondents' view that Article XI, Section 7 does not apply to non-contiguous subdivisions finds no support in the constitutional text. Sections 7(B) and (C) detail when and how political subdivisions in Ohio may be split in the reapportionment process, and neither one makes any exception for non-contiguous subdivisions. That should be the end of the matter, for "[c]ourts are not authorized to add exceptions that are not contained in the express language of the[] constitutional provisions." *State ex rel. LetOhioVote.org v. Brunner*, 123 Ohio St. 3d 322, 334, 916 N.E.2d 462, 475 (2009) (citing *State ex rel. Stoll v. Logan Cty. Bd. of Elections*, 117 Ohio St. 3d 76, 881 N.E.2d 1214, ¶ 39 (2008) ("the statute contains no exception, and we cannot add one to its express language")). *See also, e.g., Rocky River v. State Emp. Relations Bd.*, 43 Ohio St. 3d 1, 15, 539 N.E.2d 103 (1989) ("Where the language of a statute or constitutional provision is clear and unambiguous, it is the duty of courts to enforce the provision as written.").

If the plain language were not enough, other rules of interpretation require the same conclusion. In particular: "The general rule as to the interpretation of constitutional amendments may be stated thus: The body enacting the amendment will be presumed to have had in mind existing constitutional or statutory provisions . . . touching the subject dealt with." *State, ex rel. Engle v. Indus. Comm.*, 142 Ohio St. 425, 432, 52 N.E.2d 743, 747 (1944). *See also State v. Carswell*, 114 Ohio St. 3d 210, 211, 871 N.E.2d 547, 549 (2007) (same). When the current version of Article XI was adopted in 1967, statutorily authorized non-contiguous political subdivisions existed all over Ohio. *See, e.g., Elbin, Guy, Franklin County Highway Map*, Columbus, OH, Franklin County Engineering Department (1963); *Bandy, Joseph, Stark County Official Highway Map*, Canton, OH, Stark County Engineer (1963). Respondents would have this Court find that the legislators who drafted Article XI either were unaware of this basic fact of Ohio political geography or intended to create an exception for such subdivisions but failed to mention it. Either finding would fly in the face of this Court's prior holdings that drafters of a constitutional provision are presumed to know the law at the time and that unwritten exceptions

will not be added to constitutional provisions. *See, e.g., id.; LetOhioVote.org*, 123 Ohio St. 3d at 334.

The Court should follow its longstanding rules and refuse to read an unwritten exception into Article XI, especially when there is no basis in precedent for doing so. No case from this Court or any other suggests that Article XI, Section 7 exempts non-contiguous subdivisions.

Moreover, following the plain language of Section 7 makes logical sense. Non-contiguous portions of townships or wards may be geographically separated from their counterparts, but often barely so, and in any case they share common issues, services, and political concerns, ranging from emergency services to tax rates. *See, e.g., Sugarcreek Twp. v. Centerville*, 184 Ohio App. 3d 480, 499, 921 N.E.2d 655 (2009) (“Townships also have authority to tax coextensively with their borders.”) (citing R.C. 5705.03; *Roderer v. Miami Twp. Bd. of Trustees*, 14 Ohio App.3d 155, 158, 470 N.E.2d 183 (1983)). It is thus perfectly understandable why Article XI’s drafters would prefer that such subdivisions be kept together in reapportionment. *See also, e.g., LPL Aff.* at 451-55 (Letter from Lake County Board of Elections protesting complications caused by splitting non-contiguous portions of Painesville Township into different districts). In addition, given that the central purpose of Article XI “was the prevention of gerrymandering,” *Bricker*, 139 Ohio St. at 509, and that requiring political subdivisions to be kept whole—whether they be contiguous or not—helps prevent gerrymandering, reading in a contrary exception would fly in the face of the provision’s purpose.

Finally, even if reading such an exception into Article XI would give the majority party members of the Apportionment Board some “practical advantage[s],” that is unimportant, for this Court will choose whatever “reading more closely comports with the constitutional text, which is the controlling factor.” *State ex rel. Ohio Gen. Assembly v. Brunner*, 114 Ohio St. 3d 386, 396, 872 N.E.2d 912 (2007). The choice here is clear: Article XI, Section 7 nowhere says that it exempts non-contiguous subdivisions from its strictures, and this Court should not read in such an exception.

b. Dozens of Districts in the Enacted Plan Illegally Divide Non-contiguous Subdivisions

Applying Article XI, Section 7 as written, with no implied exception allowing the unbridled division of non-contiguous political subdivisions, it is undisputed that many districts in the enacted plan unnecessarily divide subdivisions in violation of Sections 7(B) and (C).

In Hamilton County, Relators challenge three districts as violating Sections 7(B) and (C): Districts 27, 28, and 31. Complaint ¶¶ 117-31. Because of Cincinnati's size, some districts in Hamilton County must divide political subdivisions, but Respondents created far more divisions than were necessary.

Specifically, in House District 27, Respondents' plan splits both Cincinnati and Columbia Township. First McDonald Aff. Exh. C at 15. Neither division was necessary, however, as Professor McDonald drew two alternative maps in which Columbia Township is kept whole in House District 27 and the district does not divide Cincinnati or any other political subdivision. Second McDonald Aff. ¶ 6, Exhs. A-10, A-18, B-10, B-18. Thus, District 27 in the enacted plan violates both Sections 7(B) and (C). *Id.* ¶ 6. *See also* Slagle Aff. ¶¶ 10-11 (listing District 27 as violating Sections 7(B) and (C)).

District 28 in Respondents' plan divides Springfield Township and Sycamore Township, First McDonald Aff. Exh. C at 16, but population requirements only require dividing one subdivision in District 28, as Professor McDonald's alternative plans show, Second McDonald Aff. ¶ 6, Exhs. A-10, A-18, B-10, B-18 (dividing only Springfield Township). Because District 28 in Respondents' plan unnecessarily divides Sycamore Township and divides both Sycamore and Springfield Townships, it also violates Sections 7(B) and (C). *Id.* ¶ 6. *See also* Slagle Aff. ¶¶ 10-11 (listing District 27 as violating Sections 7(B) and (C)).

Finally in Hamilton County, District 31 in Respondents' plan again divides both Cincinnati and Columbia Township. First McDonald Aff. Exh. C at 17. But there is no need to divide Columbia Township, and Professor McDonald's alternative plans for District 31 divide only Cincinnati, and that only because the city's size requires it. Second McDonald Aff. ¶ 6,

Exhs. A-10, A-18, B-10, B-18. Because District 31 unnecessarily divides Columbia Township and divides both Columbia Township and Cincinnati, it also violates Sections 7(B) and (C). *Id.* ¶ 6. *See also* Slagle Aff. ¶¶ 10-11 (listing District 31 as violating Sections 7(B) and (C)).

Crucially, the revisions Professor McDonald made to avoid the violations discussed above did not cause new violations in other districts in Hamilton County or anywhere else. *See* Second McDonald Aff. ¶ 4. Indeed, his proposed districts for Hamilton County dramatically reduce the number of divided subdivisions countywide. *Compare* First McDonald Aff. Exh. C at 15-17 (enacted plan for Hamilton County) *with* Second McDonald Aff. Exhs. A-18, B-18 (alternative plans for Hamilton County). His solutions in other counties meet the same standard, as he reduces the total number of subdivision splits in the state from over 250 in Respondents' plan to less than 100 in each of his plans. *See* Second McDonald Aff. ¶¶ 4-5.

Respondents followed similar patterns of constitutional violations throughout the state despite straightforward alternatives being available. Because these violations are so numerous and are essentially uncontested if Sections 7(B) and (C) apply to non-contiguous subdivisions, Relators will merely list the remainder and where they can be found in the enacted plan.

- House District 17 in the Apportionment Board plan divides Wards 31, 50, and 79 of Columbus City; Franklin Township; and Hamilton Township.
- House District 18 in the Apportionment Board plan divides Clinton Township and Ward 31 of Columbus City.
- House District 19 in the Apportionment Board plan divides Blendon Township; Ward 81 of Columbus City; Jefferson Township; Milton Township; and Sharon Township.
- House District 20 in the Apportionment Board plan divides Ward 45 of Columbus City; Hamilton Township; Jefferson Township; Madison Township; and Truro Township.
- House District 21 in the Apportionment Board plan unnecessarily divides Norwich Township; Perry Township; Sharon Township; and Washington Township.

- House District 22 in the Apportionment Board plan divides Blendon Township; Clinton Township; Wards 22 and 59 of Columbus City; Perry Township; and Sharon Township.
- House District 23 in the Apportionment Board plan divides Ward 79 of Columbus City; Franklin Township; Hilliard City; Norwich Township; and Prairie Township.
- House District 24 in the Apportionment Board plan divides Ward 22 of Columbus City; Franklin Township; Hilliard City; Norwich Township; Perry Township; Prairie Township; Sharon Township; and Washington Township.
- House District 34 in the Apportionment Board plan divides Ward 2 of Akron City; Bath Township; and Cuyahoga Falls.
- House District 35 in the Apportionment Board plan divides Ward 2 of Akron City; Coventry Township; and Springfield Township.
- House District 36 in the Apportionment Board plan divides Coventry Township; Cuyahoga Falls and Ward 8 of Cuyahoga Falls; and Springfield Township.
- House District 38 in the Apportionment Board plan divides Massillon City, Tuscarawas Township, and Bath Township.
- House District 40 in the Apportionment Board plan divides Clayton City and Ward 1 of Clayton City; Clay Township; Ward 3 of Dayton City; Harrison Township; and Riverside City.
- House District 41 in the Apportionment Board plan divides Riverside City.
- House District 43 in the Apportionment Board plan divides Clayton City and Ward 1 of Clayton City; Ward 3 of Dayton City; Harrison Township; and Trotwood City and Ward 4 of Trotwood City.
- House District 45 in the Apportionment Board plan divides Toledo City and Sylvania Township.
- House District 48 in the Apportionment Board plan divides Bethlehem Township; Canton Township; Perry Township; and Plain Township.

- House District 49 in the Apportionment Board plan divides Bethlehem Township; Canton Township; Massillon City; Osnaburg Township; Perry Township; Plain Township; and Tuscarawas Township.
- House Districts 55 and 57 in the Apportionment Board plan divide Eaton Township; Grafton Township; and North Ridgeville, including Ward 3 of North Ridgeville.
- House Districts 60 and 61 in the Apportionment Board plan both divide Mentor City and Painesville Township.
- House Districts 69 and 70 in the Apportionment Board plan divide Brunswick City; Brunswick Hills Township; and York Township.
- House District 71 in the Apportionment Board plan divides Etna Township and Madison Township.
- House District 84 in the Apportionment Board plan divides Duchoquet Township and St. Mary's Township.
- House Districts 94 and 95 in the Apportionment Board plan divide Marietta City and Marietta Township.

4. Violations of Article XI, Section 7(D)

Article XI, Section 7(D) is quite simple. It requires only that: "In making a new apportionment, district boundaries established by the preceding apportionment shall be adopted to the extent reasonably consistent with the requirements of Section 3 of this Article." In other words, if a preexisting district's population meets the equal population requirements of Section 3, the boundaries of that preexisting district "shall be adopted" in the new apportionment. This requirement is no mere formality; instead, it embodies a longstanding principle of Ohio reapportionment: unnecessary changes to districts should be avoided because they provide an excuse for political gerrymandering. *See, e.g., Bricker*, 139 Ohio St. at 509, 41 N.E.2d 377 (holding that if districts could be changed for no reason, "the way for gerrymandering [would be] opened up"). Preserving preexisting districts also has the benefit of providing continuity for residents and officeholders, so that voters know what district they are in and who their

representatives are, and representatives know the issues facing their districts, both of which facilitate political engagement and a well functioning democracy.

Despite the clarity, simplicity, and importance of Section 7(D), Respondents violated it repeatedly. A glaring and inexcusable example is in new House District 91, which replaced House District 86 in the prior plan. District 86 was composed of three whole counties—Clinton, Highland, and Pike—and divided no political subdivisions. The 2010 Census showed that District 86 complied with the equal population requirements of Article XI, Section 3, so it should not have been changed. The ideal population for new House districts was 116,530 people, and District 86's population was 114,338, less than 2% from the ideal and well within the 5% deviation allowed by Section 3. LPL Aff. at 95 (Redistricting Handbook for Ohio). Nonetheless, Respondents reconfigured District 86 by adding part of Ross County to the district, violating Section 7(D)'s clear language. (The new district also violates Section 7(A)'s prohibition on splitting counties, as discussed below.) This change was not required in order to comply with any other provision of Article XI. Indeed, new District 91 is actually *farther* from the ideal population than was preexisting District 86. First McDonald Aff. Exh. C at 62 (Final Engrossed Apportionment Plan showing population of District 91 as 122,263). And it was eminently possible to craft a plan that would have left preexisting District 86 intact—in fact, Relators' affiant, Professor McDonald, drew *two* such plans just by way of example. See Second McDonald Aff. ¶ 16, Exhs. A-6, B-6. See also Slagle Aff. ¶ 12 (listing District 91 as one of several drawn in violation of Section 7(D)).

Respondents also violated Section 7(D) in reapportioning the two House districts in Lake County. In the prior apportionment, Lake County contained House Districts 62 and 63. The 2010 Census showed that both of those districts fell within 5% of the ideal population for a House district in the new apportionment plan, and thus should have been left alone pursuant to Section 7(D). LPL Aff. at 92 (Redistricting Handbook for Ohio). Nonetheless, Respondents substantially revised those districts, which are renumbered 60 and 61 in the new plan. This change was not required in order to comply with any other provision of Article XI, as it was

easily possible to draw a plan that would have left districts 62 and 63 intact, as demonstrated by both of Professor McDonald's alternative plans. Second McDonald Aff. ¶ 11, Exhs. A-2, B-2. See also Slagle Aff. ¶ 12 (listing Districts 60 and 61 as violating Section 7(D)). Respondents nonetheless made this change, apparently to ensure that new District 61 would be a safer Republican seat than prior District 63 had been—indeed, the new district is substantially more Republican than the prior district. First McDonald Aff., Exh. B-1 at 114. Respondents' partisan purpose was transparent: they were aware that Republicans had spent several million dollars over the prior decade helping Republican candidates in District 63, and they thought this change would “hopefully sav[e] millions” for the Republican Party this decade. *Id.* at 106 (email from DiRossi to Speaker Batchelder's Chief of Staff).

Finally, House District 84 in the enacted plan violates Section 7(D). In the prior apportionment, Mercer, Preble, and much of Darke Counties together comprised District 77, and that district did not need to change to meet the population requirements of Article XI, Section 3. LPL Aff. at 94 (Redistricting Handbook for Ohio showing District 77 less than 2% from the ideal population). Altering this preexisting district to transfer much of it into new House District 84 therefore violated Section 7(D), and as Professor McDonald's alternative maps demonstrate, this violation was entirely avoidable. See Second McDonald Aff. ¶ 15, Exhs. A-3, A-6, B-3, B-6. See also Slagle Aff. ¶ 12 (listing District 84 as violating Section 7(D)). Nonetheless, Respondents went ahead with it anyway, apparently hoping that by altering prior District 77's shape they could create two safe Republican Senate seats in an area where they otherwise could not. See, e.g., LPL Aff. at 699 (noting that altering District 77 would allow 4 counties—Montgomery, Miami, Darke, and Preble—to be divided into two Senate districts, and that this combination “has potential”).

5. Illegal House Districts Invalidate the Senate Districts they Comprise

Article XI, Section 11 requires that “Senate districts shall be composed of three contiguous House of Representatives districts.” Because the House districts discussed above

were drawn in violation of Article XI and are invalid, the Senate districts made up of these invalid House districts also violate Article XI and must be redrawn.

B. Proposition of Law 2: Respondents Violated the Open Meeting Act

“One of the strengths of American government is the right of the public to know and understand the actions of their elected representatives. This includes not merely the right to know a government body’s final decision on a matter, but the ways and means by which those decisions were reached.” *White*, 76 Ohio St. 3d at 419, 667 N.E.2d 1223. The Ohio Open Meeting Act (“the Act”), R.C. § 121.22, puts these important principles into effect by preventing “elected officials meeting secretly to deliberate on public issues without accountability to the public.” *Cincinnati Post*, 76 Ohio St. 3d at 544, 668 N.E.2d 903. The Act requires that “public bodies”—including the Apportionment Board, R.C. § 121.22(B)(1), Ohio Admin. Code § 011-1-03—conduct all “meetings” in public. R.C. § 121.22(C). The Act defines “meetings” as “any prearranged discussion of the public business of the public body by a majority of its members,” R.C. § 121.22(B)(2), and this definition includes “back-to-back meetings, which, taken together, were attended by a majority of” the public body. *Cincinnati Post*, 76 Ohio St. 3d at 542, 668 N.E.2d 903. Any “resolution, rule, or formal action of any kind is invalid unless adopted in an open meeting of the public body.” R.C. § 121.22(H). Moreover, “[a] resolution, rule, or formal action adopted in an open meeting that results from deliberations in a meeting not open to the public is invalid.” *Id.* The Act “shall be liberally construed to require public officials to take official action and to conduct all deliberations upon official business only in open meetings.” *Id.* § 121.22(A).

Respondents, aware that their relentless focus on partisan gerrymandering and disregard for Article XI would not sit well with the public, chose to ignore these rules. In doing so, Respondents forgot that “public scrutiny is necessary to enable the ordinary citizen to evaluate the workings of his or her government and to hold government accountable.” *White*, 76 Ohio St.

3d at 420, 667 N.E.2d 1223, 1226. Because the public was unable to hold Respondents accountable, it is now up to this Court to do so.

1. Respondents Deliberated On the Apportionment Plan in Secret, Violating the Open Meeting Act

“A resolution, rule, or formal action adopted in an open meeting that results from deliberations in a meeting not open to the public is invalid.” R.C. § 121.22(H). The apportionment plan Respondents adopted “result[ed] from deliberations in a meeting not open to the public” and therefore “is invalid.” *Id.*

To demonstrate this, Relators need not show that Respondents “conclusively decide[d]” on the plan before the Apportionment Board officially adopted it. *State ex rel. Delph v. Barr*, 44 Ohio St. 3d 77, 81, 541 N.E.2d 59 (1989). *See also Springfield Local School Dist. Bd. of Edn. v. Ohio Assn. of Pub. School Emp. Local 530*, 106 Ohio App. 3d 855, 864, 667 N.E.2d 458 (1995) (“A conclusive decision among board members on any measure, however, is not necessary to prove a violation.”) (citing *Delph*, 44 Ohio St. 3d at 81, 541 N.E.2d 59). Rather, Relators need show only that Respondents engaged in “a discussion and consideration” of potential plans. *Id.* at 864 (quoting *Webster’s Third New International Dictionary* 596 (1961)). Indeed, this Court has held that an illegal meeting occurred where officials “discussed annexation generally, including their respective concerns about water and sewer service, planning, and traffic,” even though “[n]o specific proposals were made and no official action was taken at that time.” *State ex rel. The Fairfield Leader v. Ricketts*, 56 Ohio St. 3d 97, 98, 564 N.E.2d 486 (1990).

Additionally, Relators need not show that Respondents all met at once to discuss the plan. Rather, Relators need show only that a majority of the Board, i.e., at least three Respondents, met consecutively with each other or a third party to deliberate about the plan. *See, e.g., Cincinnati Post*, 76 Ohio St. 3d at 542, 668 N.E.2d 903. As this Court has wisely held, public officials cannot “circumvent the requirements of the statute by setting up back-to-back-meetings” in a game of “legislative musical chairs.” *Id.* at 543-44.

Despite Respondents' attempts at secrecy, the facts Relators have uncovered plainly satisfy these standards. In the months before Respondents officially adopted the apportionment plan, they repeatedly met to discuss the content of the plan, sometimes all at once and sometimes one after the other in meetings with the Board Secretaries (Mann and DiRossi) and their consultant (Braden). For example, on July 7 Mann, DiRossi, and Braden met with each Republican member of the Apportionment Board. LPL Aff. at 35 (Agenda for serial meetings between Braden and Respondents on July 7); 39-41 (Mann calendar entries showing serial meetings with Respondents on July 7). Respondents apparently did not keep minutes for these meetings, or at least have not made them available to Relators and the public, so the range of topics discussed is unclear, but there is no question that Mann, DiRossi, and Braden presented each Respondent with "maps and data sets." *Id.* at 79 (providing data and maps to Governor's staff and noting that "we provided these to the Auditor and Secretary's offices as well"); 139-40 (providing same data to Auditor and Secretary of State). Three days later, DiRossi emailed Braden, several of Respondents' staff, and other Republican operatives to say that a decision had been reached on what political indices Respondents wanted to use to evaluate districts. *Id.* at 141 ("[W]e seem to have agreement on using the 5 races listed below (equally weighted) to comprise our index number for apportionment and redistricting.").

As the deadline for adopting a reapportionment plan approached, the Board Secretaries identified "15 Decisions" that had to be made to settle on a final plan. *Id.* at 742-43 (DiRossi document listing decisions); 278 (Email from DiRossi to Niehaus staffer: "Menu of redistricting items for Niehaus"). From late August to mid-September, Braden, DiRossi, and/or Mann met with each Respondent to discuss these decisions and the resulting shapes of specific districts. *See, e.g., id.* at 303 (August 25 meeting with Respondent Niehaus); 302 (August 29 meeting with Respondent Yost); 311 (Sept. 1 email from Mann to DiRossi: "attached is one of the displays that Mark Braden wants to show the principals in the meeting tomorrow"); 721 (Sept. 2 meeting with Respondent Niehaus); 319-21 (Sept. 6 meeting between Respondents, staff, and the Board Secretaries); 330 (Sept. 12 meeting between Respondents' staff and the Board Secretaries); 725

(same); 335 (Sept. 14 meeting with Respondent Niehaus); 336 (Sept. 15 meeting with Respondent Yost); 337 (Sept. 15 meeting with Respondent Niehaus); 338 (Sept. 16 meeting with Respondent Niehaus); 727 (same); 349-50 (Sept. 19 meeting with Respondent Husted); 729 (same); 353 (Sept. 20 meeting with Respondent Kasich's staff).³ Respondents again did not keep minutes of these meetings, or at least have not produced them to Relators or the public, but it is clear that the goal of these meetings was to make "final decisions" about the plan well before the Board officially met and the plan would be "unveil[ed]." *Id.* at 314 (email from DiRossi to Respondents' staff).

On September 23, Respondents finally released their plan to the public. Three days later, the Board held the only hearing where it took public testimony on the plan. Respondents had previously agreed on a detailed script for the meeting, *id.* at 398-401, and did not ask a single substantive question of Board Secretaries Mann and DiRossi about their plan, indicating that they had already acquiesced in it. *See id.* at 577-613 (Transcript of testimony of DiRossi and Mann showing no questions from Respondents). As one member of the public testified: "The process that this Board is following in developing its plan behind closed doors and dropping its plans at the last minute renders these public hearings . . . little more than a farce." *Id.* at 616.

Respondents reconvened on September 28 to adopt their plan, a date they had internally agreed upon long in advance, regardless of whatever testimony might occur at the September 26 hearing. *See, e.g., id.* at 351-52 (Email from Mann: "[T]he Board . . . have internally adopted Sept. 28th as the date the Apportionment Board will meet to adopt a plan."). Respondents again came prepared with a script, *id.* at 447-50, which they largely followed. They adopted a minor technical amendment, *id.* at 633-36, and then, as planned, Respondent Yost proposed a

³ Some of these meetings also included Respondents' staff who they had designated as their official "designees" to represent them on the Apportionment Board when they could not be present: Michael Grodhaus (Counsel to Respondent Kasich), Matt Schuler (Chief of Staff to Respondent Niehaus), Halle Pelger (Deputy Chief of Staff to Respondent Husted), Matt Damschroder (Deputy to Respondent Husted), and Mary Amos-Augsburger (Director of Policy for Respondent Yost). *Id.* at 279-82.

substantive amendment with three parts. *Id.* at 637-44. Neither the public nor the Board's Democratic member had seen the substantive amendment before the meeting, and it is undisputed that the proposed amendment was based entirely on private requests by legislators, none of which had been raised at the September 26 hearing or publicly debated. *Id.*; *see also id.* at 430-31 (Mann, DiRossi, and Respondent Niehaus staffer discussing proposed change to Southeast Ohio over email). The Board tabled one portion of the amendment due to confusion over the exact nature of the private request, but otherwise adopted it without change by a 4-1 partisan vote. *Id.* at 677. The Board then adopted its proposed plan by the same margin. *Id.* at 680. Two days later, the Board held an "Emergency Meeting" to pass the portion of the substantive amendment it had tabled on September 28. Again following a script, *id.* at 471-73, the Board quickly passed that amendment by a 4-0 vote.

Reviewing these facts, there can be no question but that the apportionment plan Respondents adopted "result[ed] from deliberations in a meeting not open to the public." R.C. § 121.22(H). The plan Respondents adopted was largely conceived, shaped, and refined in private meetings between Respondents, the Board Secretaries, and outside Republican consultants, some back to back and some including a majority of the Board at one time. Such secrecy in conducting public business cannot be countenanced. Indeed, the Open Meeting Act's "very purpose is to prevent just the sort of activity that went on in this case—elected officials meeting secretly to deliberate on public issues without accountability to the public." *Cincinnati Post*, 76 Ohio St. 3d at 544, 668 N.E.2d 903. Given Respondent's extensive efforts to avoid the Act's requirements, allowing their behavior here would render the Act a nullity.

As Respondent Husted said at the Apportionment Board's first official meeting, but then failed to act on: "[O]penness and transparency are critical to ensuring Ohioans have confidence in the maps that are ultimately adopted and by extension in the legislators who will be elected to represent them in their districts in the next 10 years." LPL Aff. at 519-20. Because Respondents failed to respect these principles, it is up to this Court to ensure that Ohioans can have confidence in the map that is adopted and the legislators who will represent them.

2. The Court has Jurisdiction Over this Claim

Respondents apparently believe that the Court lacks jurisdiction over Relators' Open Meeting Act claim. See Answer of Respondents Kasich, Niehaus, and Yost at 40. The basis for this view is unclear, but in any event it is meritless. This Court has frequently considered original actions alleging violations of the Open Meeting Act. See, e.g., *State ex rel. Citizens for Open, Responsive & Accountable Govt. v. Register*, 116 Ohio St. 3d 88, 89, 876 N.E.2d 913 (2007); *State ex rel. The Fairfield Leader v. Ricketts*, 56 Ohio St. 3d 97, 98, 564 N.E.2d 486 (1990). There is no reason for the Court to take a different approach here, especially where Relators have raised a closely related claim under Article XI and this Court has original and exclusive jurisdiction over that claim under Article XI, Section 13. Both Relators' Article XI claim and their Open Meeting Act claim, if upheld, require invalidation of the apportionment plan adopted by Respondents. Nothing would be gained, and much would be lost, by requiring that these important questions be litigated in different courts and on different timelines.

IV. Conclusion

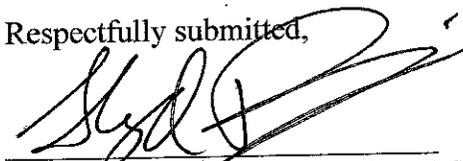
Article XI imposes strict limits on the options open to those charged with apportioning Ohio's General Assembly districts. While these limits make it more difficult for the Apportionment Board to engage in the sorts of partisan gerrymandering common in other states—and seen as a birthright by many politicians—that is the whole point of Article XI. *Bricker*, 139 Ohio St. at 509, 41 N.E.2d 377 (“The objective sought by the constitutional provisions was the prevention of gerrymandering.”).

The apportionment plan adopted by Respondents repeatedly and flagrantly violates Article XI. Even if the Court accepts Respondents' novel theory on non-contiguous subdivisions, House Districts 17, 18, 19, 22, 23, 24, 34, 36, 38, 48, 49, 55, 57, 58, 59, 60, 61, 69, 70, 78, 84, 91, 94, and 95 are all invalid for the reasons explained above, namely that they violate Article XI, Section 7(A) or 7(D), and/or split contiguous political subdivisions in violation of Sections 7(B) and (C). And if the Court correctly rejects Respondents' novel theory, then Districts 20, 21, 27, 28, 31, 35, 40, 41, 43, 45, and 71 are also invalid. Given the immense flaws

permeating the plan Respondents adopted, Relators ask the Court to invalidate Respondents' plan and take actions necessary to adopt a constitutional apportionment plan for Ohio (or direct the Apportionment Board as to a new plan to be adopted that complies with Article XI).

Respondents also adopted the apportionment plan in violation of the Open Meeting Act. Because the apportionment plan Respondents adopted "result[ed] from deliberations in a meeting not open to the public," it "is invalid," and Relators ask that the Court reject it. R.C. § 121.22(H).

Respectfully submitted,



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CERTIFICATE OF SERVICE

A copy of the merit brief and the appendix was served via e-mail this 23RD day of January

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APPENDIX

Ohio Const., Article XI.....	1-5
O.R.C. § 121.22	6-11
LPL Affidavit Doc. 000828	12

THE OHIO CONSTITUTION

(with amendments to 2010)

TABLE OF CONTENTS

Preamble	3
Article I: Bill of Rights	3
Article II: Legislative	6
Article III: Executive	16
Article IV: Judicial	20
Article V: Elective Franchise	24
Article VI: Education	25
Article VII: Public Institutions	27
Article VIII: Public Debt and Public Works	27
Article IX: Militia	61
Article X: County and Township Organizations	62
Article XI: Apportionment	64
Article XII: Finance and Taxation	67
Article XIII: Corporations	69
Article XIV: Ohio Livestock Care Standards Board	70
Article XV: Miscellaneous	71
Article XVI: Amendments	75
Article XVII: Elections	76
Article XVIII: Municipal Corporations	77
SCHEDULES 1851 CONSTITUTION	79
SCHEDULES 1912 CONSTITUTION	82

ARTICLE XI: APPORTIONMENT

REPEALED. WHAT OFFICERS MAY BE REMOVED.

§6 (1851, rep. 1933)

REPEALED. LOCAL TAXATION.

§7 (1851, rep. 1933)

ARTICLE XI: APPORTIONMENT

PERSONS RESPONSIBLE FOR APPORTIONMENT OF STATE FOR MEMBERS OF GENERAL ASSEMBLY.

§1 The governor, auditor of state, secretary of state, one person chosen by the speaker of the House of Representatives and the leader in the Senate of the political party of which the speaker is a member, and one person chosen by the legislative leaders in the two houses of the major political party of which the speaker is not a member shall be the persons responsible for the apportionment of this state for members of the general assembly.

Such persons, or a majority of their number, shall meet and establish in the manner prescribed in this Article the boundaries for each of ninety-nine House of Representative districts and thirty-three Senate districts. Such meeting shall convene on a date designated by the governor between August 1 and October 1 in the year one thousand nine hundred seventy-one and every tenth year thereafter. The governor shall give such persons two weeks advance notice of the date, time, and place of such meeting.

The governor shall cause the apportionment to be published no later than October 5 of the year in which it is made, in such manner as provided by law.

(1967)

RATIO OF REPRESENTATION IN HOUSE AND SENATE.

§2 The apportionment of this state for members of the General Assembly shall be made in the following manner: The whole population of the state, as determined by the federal decennial census or, if such is unavailable, such other basis as the General Assembly may direct, shall be divided by the number "ninety-nine" and the quotient shall be the ratio of representation in the House of Representatives for ten years next succeeding such apportionment. The whole popula-

tion of the state as determined by the federal decennial census or, if such is unavailable, such other basis as the General Assembly may direct, shall be divided by the number "thirty-three" and the quotient shall be the ratio of representation in the Senate for ten years next succeeding such apportionment.

(1967)

POPULATION OF EACH HOUSE OF REPRESENTATIVES DISTRICT.

§3 The population of each House of Representatives district shall be substantially equal to the ratio of representation in the House of Representatives, as provided in section 2 of this Article, and in no event shall any House of Representatives district contain a population of less than ninety-five per cent nor more than one hundred five per cent of the ratio of representation in the House of Representatives, except in those instances where reasonable effort is made to avoid dividing a county in accordance with section 9 of this Article.

(1967)

POPULATION IN EACH SENATE DISTRICT.

§4 The population of each Senate district shall be substantially equal to the ratio of representation in the Senate, as provided in section 2 of this Article, and in no event shall any Senate district contain a population of less than ninety-five per cent nor more than one hundred five per cent of the ratio of representation in the senate as determined pursuant to this Article.

(1967)

REPRESENTATION FOR EACH HOUSE AND SENATE DISTRICT.

§5 Each House of Representatives district shall be entitled to a single representative in each General Assembly. Every Senate district shall be entitled to a single senator in each General Assembly.

(1967)

CREATION OF DISTRICT BOUNDARIES; CHANGE AT END OF DECENNIAL PERIOD.

§6 District boundaries established pursuant to this Article shall not be changed until the ensuing federal decennial census and the ensuing apportionment or as provided in section 13 of this Article, notwithstanding the fact that boundaries of political subdivisions or city wards within the district may be changed during that time. District boundaries shall be created by using

ARTICLE XI: APPORTIONMENT

the boundaries of political subdivisions and city wards as they exist at the time of the federal decennial census on which the apportionment is based, or such other basis as the General Assembly has directed.

(1967)

REPEALED. PROVIDED ADDITIONAL SENATORS FOR DISTRICTS WITH A RATIO OF REPRESENTATION GREATER THAN ONE.

§6a

(1956, rep. 1967)

BOUNDARY LINES OF HOUSE OF REPRESENTATIVES DISTRICTS.

§7 (A) Every House of Representatives district shall be compact and composed of contiguous territory, and the boundary of each district shall be a single non-intersecting continuous line. To the extent consistent with the requirements of section 3 of this Article, the boundary lines of districts shall be so drawn as to delineate an area containing one or more whole counties.

(B) Where the requirements of section 3 of this Article cannot feasibly be attained by forming a district from a whole county or counties, such district shall be formed by combining the areas of governmental units giving preference in the order named to counties, townships, municipalities, and city wards.

(C) Where the requirements of section 3 of this Article cannot feasibly be attained by combining the areas of governmental units as prescribed in division (B) of this section, only one such unit may be divided between two districts, giving preference in the selection of a unit for division to a township, a city ward, a city, and a village in the order named.

(D) In making a new apportionment, district boundaries established by the preceding apportionment shall be adopted to the extent reasonably consistent with the requirements of section 3 of this Article.

(1967)

DETERMINATION OF NUMBER OF HOUSE OF REPRESENTATIVES DISTRICTS WITHIN EACH COUNTY.

§8 A county having at least one House of Representatives ratio of representation shall have as many House of Representatives districts wholly within the boundaries of the county as it has whole ratios of represen-

tation. Any fraction of the population in excess of a whole ratio shall be a part of only one adjoining House of Representatives district.

The number of whole ratios of representation for a county shall be determined by dividing the population of the county by the ratio of representation for the House of Representatives determined under section 2 of this Article.

(1967)

WHEN POPULATION OF COUNTY IS FRACTION OF RATIO OF REPRESENTATION.

§9 In those instances where the population of a county is not less than ninety percent nor more than one hundred ten percent of the ratio of representation in the House of Representatives, reasonable effort shall be made to create a House of Representatives district consisting of the whole county.

(1967)

DIVISION OF STATE INTO HOUSE DISTRICTS; STANDARDS.

§10 The standards prescribed in sections 3, 7, 8, and 9 of this Article shall govern the establishment of House of Representatives districts, which shall be created and numbered in the following order to the extent that such order is consistent with the foregoing standards:

(A) Each county containing population substantially equal to one ratio of representation in the House of Representatives, as provided in section 2 of this Article, but in no event less than ninety-five per cent of the ratio nor more than one hundred five per cent of the ratio shall be designated a representative district.

(B) Each county containing population between ninety and ninety-five percent of the ratio or between one hundred five and one hundred ten per cent of the ratio may be designated a representative district.

(C) Proceeding in succession from the largest to the smallest, each remaining county containing more than one whole ratio of representation shall be divided into House of Representatives districts. Any remaining territory within such county containing a fraction of one whole ratio of representation shall be included in one representative district by combining it with adjoining territory outside the county.

(D) The remaining territory of the state shall be combined into representative districts.

(1967)

ARTICLE XI: APPORTIONMENT

SENATE DISTRICTS; FORMATION.

§11 Senate districts shall be composed of three contiguous House of Representatives districts. A county having at least one whole Senate ratio of representation shall have as many Senate districts wholly within the boundaries of the county as it has whole Senate ratios of representation. Any fraction of the population in excess of a whole ratio shall be a part of only one adjoining Senate district. Counties having less than one Senate ratio of representation, but at least one House of Representatives ratio of representation shall be part of only one Senate district.

The number of whole ratios of representation for a county shall be determined by dividing the population of the county by the ratio of representation in the Senate determined under section 2 of this Article.

Senate districts shall be numbered from one through thirty-three and as provided in section 12 of this Article.

(1967)

TERM OF SENATORS ON CHANGE OF DISTRICT BOUNDARIES OF SENATE.

§12 At any time the boundaries of Senate districts are changed in any plan of apportionment made pursuant to any provision of this Article, a senator whose term will not expire within two years of the time the plan of apportionment is made shall represent, for the remainder of the term for which he was elected, the Senate district which contains the largest portion of the population of the district from which he was elected, and the district shall be given the number of the district from which the senator was elected. If more than one senator whose term will not so expire would represent the same district by following the provisions of this section, the persons responsible for apportionment, by a majority of their number, shall designate which senator shall represent the district and shall designate which district the other senator or senators shall represent for the balance of their term or terms.

(1967)

JURISDICTION OF SUPREME COURT, EFFECT OF DETERMINATION OF UNCONSTITUTIONALITY; APPORTIONMENT.

§13 The Supreme Court of Ohio shall have exclusive, original jurisdiction in all cases arising under this Article. In the event that any section of this constitution

relating to apportionment or any plan of apportionment made by the persons responsible for apportionment, by a majority of their number, is determined to be invalid by either the Supreme Court of Ohio, or the Supreme Court of the United States, then notwithstanding any other provisions of this constitution, the persons responsible for apportionment by a majority of their number shall ascertain and determine a plan of apportionment in conformity with such provisions of this constitution as are then valid, including establishing terms of office and election of members of the General Assembly from districts designated in the plan, to be used until the next regular apportionment in conformity with such provisions of this constitution as are then valid.

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

The governor shall give the persons responsible for apportionment two weeks advance written notice of the date, time, and place of any meeting held pursuant to this section.

(1967)

CONTINUATION OF PRESENT DISTRICT BOUNDARIES.

§14 The boundaries of House of Representatives districts and Senate districts from which representatives and senators were elected to the 107th General Assembly shall be the boundaries of House of Representatives and Senate districts until January 1, 1973, and representatives and senators elected in the general election in 1966 shall hold office for the terms to which they were elected. In the event all or any part of this apportionment plan is held invalid prior to the general election in the year 1970, the persons responsible for apportionment by a majority of their number shall ascertain and determine a plan of apportionment to be effective until January 1, 1973, in accordance with section 13 of this Article.

(1967)

ARTICLE XII: FINANCE AND TAXATION

SEVERABILITY PROVISION.

§15 The various provisions of this Article XI are intended to be severable, and the invalidity of one or more of such provisions shall not affect the validity of the remaining provisions.

(1967)

ARTICLE XII: FINANCE AND TAXATION

POLL TAXES PROHIBITED.

§1 No poll tax shall ever be levied in this state, or service required, which may be commuted in money or other thing of value.

(1851, am. 1912)

LIMITATION ON TAX RATE; EXEMPTION.

§2 No property, taxed according to value, shall be so taxed in excess of one per cent of its true value in money for all state and local purposes, but laws may be passed authorizing additional taxes to be levied outside of such limitation, either when approved by at least a majority of the electors of the taxing district voting on such proposition, or when provided for by the charter of a municipal corporation. Land and improvements thereon shall be taxed by uniform rule according to value, except that laws may be passed to reduce taxes by providing for a reduction in value of the homestead of permanently and totally disabled residents, residents sixty-five years of age and older, and residents sixty years of age or older who are surviving spouses of deceased residents who were sixty-five years of age or older or permanently and totally disabled and receiving a reduction in the value of their homestead at the time of death, provided the surviving spouse continues to reside in a qualifying homestead, and providing for income and other qualifications to obtain such reduction. Without limiting the general power, subject to the provisions of Article I of this constitution, to determine the subjects and methods of taxation or exemptions therefrom, general laws may be passed to exempt burying grounds, public school houses, houses used exclusively for public worship, institutions used exclusively for charitable purposes, and public property used exclusively for any public purpose, but all such laws shall be subject to alteration or repeal; and the value of all property so exempted

shall, from time to time, be ascertained and published as may be directed by law.

(1851, am. 1906, 1912, 1918,
1929, 1933, 1970, 1974, 1990)

*AUTHORITY TO CLASSIFY REAL ESTATE FOR TAXATION;
PROCEDURES.*

§2a (A) Except as expressly authorized in this section, land and improvements thereon shall, in all other respects, be taxed as provided in Section 36, of Article II and Section 2 of this article

(B) This section does not apply to any of the following:

(1) Taxes levied at whatever rate is required to produce a specified amount of tax money or an amount to pay debt charges;

(2) Taxes levied within the one per cent limitation imposed by Section 2 of this article;

(3) Taxes provided for by the charter of a municipal corporation.

(C) Notwithstanding Section 2 of this article, laws may be passed that provide all of the following:

(1) Land and improvements thereon in each taxing district shall be placed into one of two classes solely for the purpose of separately reducing the taxes charged against all land and improvements in each of the two classes as provided in division (C)(2) of this section. The classes shall be:

(a) Residential and agricultural land and improvements;

(b) All other land and improvements.

(2) With respect to each voted tax authorized to be levied by each taxing district, the amount of taxes imposed by such tax against all land and improvements thereon in each class shall be reduced in order that the amount charged for collection against all land and improvements in that class in the current year, exclusive of land and improvements not taxed by the district in both the preceding year and in the current year and those not taxed in that class in the preceding year, equals the amount charged for collection against such land and improvements in the preceding year.

(D) Laws may be passed to provide that the reductions made under this section in the amounts of taxes charged for the current expenses of cities, townships, school districts, counties, or other taxing districts are



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Current through Legislation passed by the 129th Ohio General Assembly
and filed with the Secretary of State through file 55
*** Annotations current through December 5, 2011 ***

TITLE 1. STATE GOVERNMENT
CHAPTER 121. STATE DEPARTMENTS

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ORC Ann. 121.22 (2011)

§ 121.22. Meetings of public bodies to be public; exceptions

(A) This section shall be liberally construed to require public officials to take official action and to conduct all deliberations upon official business only in open meetings unless the subject matter is specifically excepted by law.

(B) As used in this section:

(1) "Public body" means any of the following:

(a) Any board, commission, committee, council, or similar decision-making body of a state agency, institution, or authority, and any legislative authority or board, commission, committee, council, agency, authority, or similar decision-making body of any county, township, municipal corporation, school district, or other political subdivision or local public institution;

(b) Any committee or subcommittee of a body described in division (B)(1)(a) of this section;

(c) A court of jurisdiction of a sanitary district organized wholly for the purpose of providing a water supply for domestic, municipal, and public use when meeting for the purpose of the appointment, removal, or reappointment of a member of the board of directors of such a district pursuant to *section 6115.10 of the Revised Code*, if applicable, or for any other matter related to such a district other than litigation involving the district. As used in division (B)(1)(c) of this section, "court of jurisdiction" has the same meaning as "court" in *section 6115.01 of the Revised Code*.

(2) "Meeting" means any prearranged discussion of the public business of the public body by a majority of its members.

(3) "Regulated individual" means either of the following:

(a) A student in a state or local public educational institution;

(b) A person who is, voluntarily or involuntarily, an inmate, patient, or resident of a state or local institution because of criminal behavior, mental illness or retardation, disease, disability, age, or other condition requiring custodial care.

(4) "Public office" has the same meaning as in *section 149.011 of the Revised Code*.

(C) All meetings of any public body are declared to be public meetings open to the public at all times. A member of a public body shall be present in person at a meeting open to the public to be considered present or to vote at the meeting and for purposes of determining whether a quorum is present at the meeting.

The minutes of a regular or special meeting of any public body shall be promptly prepared, filed, and maintained and shall be open to public inspection. The minutes need only reflect the general subject matter of discussions in executive sessions authorized under division (G) or (J) of this section.

(D) This section does not apply to any of the following:

(1) A grand jury;

(2) An audit conference conducted by the auditor of state or independent certified public accountants with officials of the public office that is the subject of the audit;

(3) The adult parole authority when its hearings are conducted at a correctional institution for the sole purpose of interviewing inmates to determine parole or pardon;

(4) The organized crime investigations commission established under *section 177.01 of the Revised Code*;

(5) Meetings of a child fatality review board established under *section 307.621 of the Revised Code* and meetings conducted pursuant to *sections 5153.171 to 5153.173 of the Revised Code*;

(6) The state medical board when determining whether to suspend a certificate without a prior hearing pursuant to division (G) of either *section 4730.25* or *4731.22 of the Revised Code*;

(7) The board of nursing when determining whether to suspend a license or certificate without a prior hearing pursuant to division (B) of *section 4723.281 of the Revised Code*;

(8) The state board of pharmacy when determining whether to suspend a license without a prior hearing pursuant to division (D) of *section 4729.16 of the Revised Code*;

(9) The state chiropractic board when determining whether to suspend a license without a hearing pursuant to *section 4734.37 of the Revised Code*;

(10) The executive committee of the emergency response commission when determining whether to issue an enforcement order or request that a civil action, civil penalty action, or criminal action be brought to enforce Chapter 3750. of the Revised Code;

(11) The board of directors of the nonprofit corporation formed under *section 187.01 of the Revised Code* or any committee thereof, and the board of directors of any subsidiary of that corporation or a committee thereof;

(12) An audit conference conducted by the audit staff of the department of job and family services with officials of the public office that is the subject of that audit under *section 5101.37 of the Revised Code*.

(E) The controlling board, the development financing advisory council, the industrial technology and enterprise advisory council, the tax credit authority, or the minority development financing advisory board, when meeting to consider granting assistance pursuant to Chapter 122. or 166. of the Revised Code, in order to protect the interest of the applicant or the possible investment of public funds, by unanimous vote of all board, council, or authority members present, may close the meeting during consideration of the following information confidentially received by the authority, council, or board from the applicant:

- (1) Marketing plans;
- (2) Specific business strategy;
- (3) Production techniques and trade secrets;
- (4) Financial projections;

(5) Personal financial statements of the applicant or members of the applicant's immediate family, including, but not limited to, tax records or other similar information not open to public inspection.

The vote by the authority, council, or board to accept or reject the application, as well as all proceedings of the authority, council, or board not subject to this division, shall be open to the public and governed by this section.

(F) Every public body, by rule, shall establish a reasonable method whereby any person may determine the time and place of all regularly scheduled meetings and the time, place, and purpose of all special meetings. A public body shall not hold a special meeting unless it gives at least twenty-four hours' advance notice to the news media that have requested notification, except in the event of an emergency requiring immediate official action. In the event of an emergency, the member or members calling the meeting shall notify the news media that have requested notification immediately of the time, place, and purpose of the meeting.

The rule shall provide that any person, upon request and payment of a reasonable fee, may obtain reasonable advance notification of all meetings at which any specific type of public business is to be discussed. Provisions for advance notification may include, but are not limited to, mailing the agenda of meetings to all subscribers on a mailing list or mailing notices in self-addressed, stamped envelopes provided by the person.

(G) Except as provided in division (J) of this section, the members of a public body may hold an executive session only after a majority of a quorum of the public body determines, by a roll call vote, to hold an executive session and only at a regular or special meeting for the sole purpose of the consideration of any of the following matters:

(1) To consider the appointment, employment, dismissal, discipline, promotion, demotion, or compensation of a public employee or official, or the investigation of charges or complaints against a public employee, official, licensee, or regulated individual, unless the public employee, official, licensee, or regulated individual requests a public hearing. Except as otherwise provided by law, no public body shall hold an executive session for the discipline of an elected official for conduct re-

lated to the performance of the elected official's official duties or for the elected official's removal from office. If a public body holds an executive session pursuant to division (G)(1) of this section, the motion and vote to hold that executive session shall state which one or more of the approved purposes listed in division (G)(1) of this section are the purposes for which the executive session is to be held, but need not include the name of any person to be considered at the meeting.

(2) To consider the purchase of property for public purposes, or for the sale of property at competitive bidding, if premature disclosure of information would give an unfair competitive or bargaining advantage to a person whose personal, private interest is adverse to the general public interest. No member of a public body shall use division (G)(2) of this section as a subterfuge for providing covert information to prospective buyers or sellers. A purchase or sale of public property is void if the seller or buyer of the public property has received covert information from a member of a public body that has not been disclosed to the general public in sufficient time for other prospective buyers and sellers to prepare and submit offers.

If the minutes of the public body show that all meetings and deliberations of the public body have been conducted in compliance with this section, any instrument executed by the public body purporting to convey, lease, or otherwise dispose of any right, title, or interest in any public property shall be conclusively presumed to have been executed in compliance with this section insofar as title or other interest of any bona fide purchasers, lessees, or transferees of the property is concerned.

(3) Conferences with an attorney for the public body concerning disputes involving the public body that are the subject of pending or imminent court action;

(4) Preparing for, conducting, or reviewing negotiations or bargaining sessions with public employees concerning their compensation or other terms and conditions of their employment;

(5) Matters required to be kept confidential by federal law or regulations or state statutes;

(6) Details relative to the security arrangements and emergency response protocols for a public body or a public office, if disclosure of the matters discussed could reasonably be expected to jeopardize the security of the public body or public office;

(7) In the case of a county hospital operated pursuant to Chapter 339. of the Revised Code, a joint township hospital operated pursuant to Chapter 513. of the Revised Code, or a municipal hospital operated pursuant to Chapter 749. of the Revised Code, to consider trade secrets, as defined in *section 1333.61 of the Revised Code*.

If a public body holds an executive session to consider any of the matters listed in divisions (G)(2) to (7) of this section, the motion and vote to hold that executive session shall state which one or more of the approved matters listed in those divisions are to be considered at the executive session.

A public body specified in division (B)(1)(c) of this section shall not hold an executive session when meeting for the purposes specified in that division.

(H) A resolution, rule, or formal action of any kind is invalid unless adopted in an open meeting of the public body. A resolution, rule, or formal action adopted in an open meeting that results from deliberations in a meeting not open to the public is invalid unless the deliberations were for a purpose specifically authorized in division (G) or (J) of this section and conducted at an executive session held in compliance with this section. A resolution, rule, or formal action adopted in an open

meeting is invalid if the public body that adopted the resolution, rule, or formal action violated division (F) of this section.

(I) (1) Any person may bring an action to enforce this section. An action under division (I)(1) of this section shall be brought within two years after the date of the alleged violation or threatened violation. Upon proof of a violation or threatened violation of this section in an action brought by any person, the court of common pleas shall issue an injunction to compel the members of the public body to comply with its provisions.

(2) (a) If the court of common pleas issues an injunction pursuant to division (I)(1) of this section, the court shall order the public body that it enjoins to pay a civil forfeiture of five hundred dollars to the party that sought the injunction and shall award to that party all court costs and, subject to reduction as described in division (I)(2) of this section, reasonable attorney's fees. The court, in its discretion, may reduce an award of attorney's fees to the party that sought the injunction or not award attorney's fees to that party if the court determines both of the following:

(i) That, based on the ordinary application of statutory law and case law as it existed at the time of violation or threatened violation that was the basis of the injunction, a well-informed public body reasonably would believe that the public body was not violating or threatening to violate this section;

(ii) That a well-informed public body reasonably would believe that the conduct or threatened conduct that was the basis of the injunction would serve the public policy that underlies the authority that is asserted as permitting that conduct or threatened conduct.

(b) If the court of common pleas does not issue an injunction pursuant to division (I)(1) of this section and the court determines at that time that the bringing of the action was frivolous conduct, as defined in division (A) of *section 2323.51 of the Revised Code*, the court shall award to the public body all court costs and reasonable attorney's fees, as determined by the court.

(3) Irreparable harm and prejudice to the party that sought the injunction shall be conclusively and irrebuttably presumed upon proof of a violation or threatened violation of this section.

(4) A member of a public body who knowingly violates an injunction issued pursuant to division (I)(1) of this section may be removed from office by an action brought in the court of common pleas for that purpose by the prosecuting attorney or the attorney general.

(J) (1) Pursuant to division (C) of *section 5901.09 of the Revised Code*, a veterans service commission shall hold an executive session for one or more of the following purposes unless an applicant requests a public hearing:

(a) Interviewing an applicant for financial assistance under *sections 5901.01 to 5901.15 of the Revised Code*;

(b) Discussing applications, statements, and other documents described in division (B) of *section 5901.09 of the Revised Code*;

(c) Reviewing matters relating to an applicant's request for financial assistance under *sections 5901.01 to 5901.15 of the Revised Code*.

(2) A veterans service commission shall not exclude an applicant for, recipient of, or former recipient of financial assistance under *sections 5901.01 to 5901.15 of the Revised Code*, and shall not exclude representatives selected by the applicant, recipient, or former recipient, from a meeting

that the commission conducts as an executive session that pertains to the applicant's, recipient's, or former recipient's application for financial assistance.

(3) A veterans service commission shall vote on the grant or denial of financial assistance under *sections 5901.01 to 5901.15 of the Revised Code* only in an open meeting of the commission. The minutes of the meeting shall indicate the name, address, and occupation of the applicant, whether the assistance was granted or denied, the amount of the assistance if assistance is granted, and the votes for and against the granting of assistance.

HISTORY:

125 v 534 (Eff 1-31-54); 126 v 303 (Eff 9-30-55); 129 v 582 (Eff 1-10-61); 136 v S 74 (Eff 11-28-75); 138 v H 440 (Eff 3-13-81); 140 v S 227 (Eff 7-14-83); 141 v H 201 (Eff 7-1-85); 141 v S 279 (Eff 7-24-86); 141 v S 74 (Eff 9-3-86); 141 v H 769 (Eff 3-17-87); 142 v H 529 (Eff 6-14-88); 142 v S 150 (Eff 6-29-88); 142 v S 367 (Eff 12-14-88); 144 v S 326 (Eff 4-16-93); 145 v H 111 (Eff 2-9-94); 145 v S 238 (Eff 4-19-94); 145 v H 571 (Eff 10-6-94); 146 v H 98 (Eff 11-9-95); 146 v H 670 (Eff 12-2-96); 147 v H 26 (Eff 5-6-98); 147 v H 606 (Eff 3-9-99); 148 v S 55 (Eff 10-26-99); 148 v H 448, § 1 (Eff 10-5-2000); 148 v S 111 (Eff 12-24-2000); 148 v H 448, § 3 (Eff 12-24-2000); 148 v S 172, §§ 1, 3 (Eff 2-12-2001); 148 v H 506 (Eff 4-10-2001); 149 v S 184. Eff 5-15-2002; 150 v S 222, § 1, eff. 4-27-05; 152 v H 194, § 1, eff. 2-12-08; 2011 HB 1, § 1, eff. Feb. 18, 2011; 2011 HB 153, § 101.01, eff. Sept. 29, 2011.

NOTES:

Section Notes

The provisions of § 3 of 2011 HB 1 read as follows:

SECTION 3. The Supreme Court of Ohio shall have exclusive, original jurisdiction over any claim asserting that any one or more sections of the Revised Code amended or enacted by this act, or any portion of one or more of those sections, or any rule adopted under one or more of those sections, violates any provision of the Ohio Constitution; and over any claim asserting that any action taken pursuant to those sections by the Governor or the nonprofit corporation formed under *section 187.01 of the Revised Code* violates any provision of the Ohio Constitution or any provision of the Revised Code. Any such claim shall be filed as otherwise required by the Court's rules of practice not later than the sixtieth day after the effective date of this act. If any claim over which the Supreme Court is granted exclusive, original jurisdiction by this section is filed in any lower court, the claim shall be dismissed by the court on the ground that the court lacks jurisdiction to review it.

EFFECT OF AMENDMENTS

The 2011 amendment added (D)(12); and made a related change.

The 2011 amendment added (D)(11).

152 v H 194, effective February 12, 2008, in (G)(7), inserted "a joint township hospital operated pursuant to Chapter 513. of the Revised Code".

2011 Final House and Senate Map

Split Counties (House Map)

39

Ashtabula	Greene (must)	Muskingum
Auglaize	Hamilton (border)	Perry
Belmont	Holmes	Pickaway
Butler (must)	Lake (border)	Portage (must)
Clark (must)	Lawrence	Ross
Clermont (must)	Licking (must)	Seneca
Cuyahoga (border)	Logan	Shelby
Darke	Lorain (must)	Stark (must)
Delaware (must)	Lucas (must)	Summit (must)
Fairfield (must)	Mahoning (border)	Trumbull (must)
Franklin (border)	Marion	Vinton
Fulton	Medina (must)	Warren (must)
Geauga	Montgomery (must)	Washington

Split Counties (Senate Map)

19

Auglaize	Hamilton (must)	Muskingum
Butler (must)	Holmes	Pickaway
Cuyahoga (must)	Lake	Stark (must)
Darke	Lawrence	Summit (must)
Fulton	Logan	Vinton
Franklin (must)	Lucas (must)	
Geauga	Montgomery (must)	

Contiguous Split Subdivisions

Split Political Subdivisions (House Map)

- Cincinnati (Hamilton / Wards 25 on precincts)
- Columbus (Franklin / Ward 22, 31, 45, 81)
- Cleveland (Cuyahoga / Wards 2, 10 & 15)
- Akron (Summit / Wards 2 on precincts)
- Dayton (Montgomery / Ward 3 on precincts)
- Middletown (Butler / Wards 3 on precincts)
- Cuyahoga Falls (Summit County / Ward)
- Austintown Township (Mahoning on precincts)

- Marionetta (Washington on ward)
- Brunswick (Medina / Ward 1)
- Mentor (Lake on wards)
- Plain Township (Stark on precincts)
- Massillon (Stark / Wards 6)
- Toledo (Lucas / Ward 7 on precincts)
- North Ridgeville (Lorain)

Split Political Subdivisions (Senate Map)

- Cincinnati (Hamilton)
- Columbus (Franklin)
- Cleveland (Cuyahoga)
- Dayton (Montgomery)

- Middletown (Butler)
- Mentor (Lake)
- Massillon (Stark)