

**IN THE
SUPREME COURT OF OHIO**

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

Relators,

v.

OHIO REDISTRICTING COMMISSION, *et al.*,

Respondents.

Case No. 2021-1193

Original Action Pursuant to Ohio Const.,
Art. XI

Apportionment Case

BRIA BENNETT, *et al.*,

Relators,

v.

OHIO REDISTRICTING COMMISSION, *et al.*,

Respondents.

Case No. 2021-1198

Original Action Pursuant to Ohio Const.,
Art. XI

Apportionment Case

THE OHIO ORGANIZING COLLABORATIVE, *et al.*,

Relators,

v.

OHIO REDISTRICTING COMMISSION, *et al.*,

Respondents.

Case No. 2021-1210

Original Action Pursuant to Ohio Const.,
Art. XI

Apportionment Case

**RESPONDENT THE OHIO REDISTRICTING COMMISSION'S RESPONSE TO
PETITIONERS' OBJECTIONS**

Freda J. Levenson (0045916)
Counsel of Record
ACLU OF OHIO FOUNDATION, INC.
4506 Chester Avenue
Cleveland, Ohio 44103
614.586.1972. x125
flevenson@acluohio.org

Dave Yost
Ohio Attorney General

Erik J. Clark (0078732)
Counsel of Record
Ashley T. Merino (0096853)
ORGAN LAW LLP

David J. Carey (0088787)
ACLU OF OHIO FOUNDATION, INC.
1108 City Park Avenue, Suite 203
Columbus, Ohio 43206
614.586.1972. x2004
dcarey@aclu.org

Alora Thomas (PHV 22010)
Julie A. Ebenstein (PHV 25423)
AMERICAN CIVIL LIBERTIES UNION
125 Broad Street
New York, New York 10004
212.519.7866.
athomas@aclu.org
jebenstein@aclu.org

Robert D. Fram (PHV 25414-2021)
Donald Brown (PHV 25480-2021)
Joshua Gonzalez (PHV 25424-2021)
David Denuyl (PHV 25452-2021)
COVINGTON & BURLING LLP
Salesforce Tower
415 Mission Street, Suite 5400
San Francisco, California 94105-2533
415.591.6000
rfram@cov.com
dwbrown@cov.com
jgonzalez@cov.com
ddenuyl@cov.com

Alexander Thomson (PHV 25462-2021)
COVINGTON & BURLING LLP
850 Tenth Street, NW
Washington, DC 20001-4956
202.662.6000
ajthomson@cov.com

Anupam Sharma (PHV 25418-2021)
James Hovard (PHV 25420-2021)
Yale Fu (PHV 25419-2021)
COVINGTON & BURLING LLP
3000 El Camino Real
5 Palo Alto, Square, 10th Floor
Palo Alto, California 94306-2112

1330 Dublin Road
Columbus, Ohio 43215
614.481.0900
614.481.0904 (facsimile)
ejclark@organlegal.com
amerino@organlegal.com

Special Counsel to Attorney General
Dave Yost

*Counsel for Respondent The Ohio
Redistricting Commission*

Dave Yost
Ohio Attorney General

Julie M. Pfeiffer (0069762)
Counsel of Record
Jonathan D. Blanton (0070035)
Deputy Attorney General
Michael A. Walton (0092201)
Michael J. Hendershot (0081842)
Deputy Solicitor
OFFICE OF THE OHIO ATTORNEY
GENERAL
30 E. Broad Street, 16th Floor
Columbus, Ohio 43215
614.466.2872
614.782.7592 (facsimile)
Julie.Pfeiffer@OhioAGO.gov
Michael.Walton@OhioAGO.gov
Michael.Hendershot@OhioAGO.gov
Jonathan.Blanton@ohioAGO.gov

David A. Lockshaw, Jr. (0082403)
Counsel of Record
Terrence O'Donnell (0074213)
Manuel D. Cardona (0098079)
DICKINSON WRIGHT, PLLC
180 East Broad Street, Suite 3400
Columbus, Ohio 43215
614.744.2570
844.670.6009 (facsimile)
dlockshaw@dickinson-wright.com
todonnell@dickinson-wright.com
mcardona@dickinson-wright.com

650.632.4700
650.632.4800 (facsimile)
asharma@cov.com
jhovard@cov.com
yfu@cov.com

*Counsel for Relators League of Women Voters
of Ohio, et al., in Case No. 2012-1193*

Donald J. McTigue (0022849)
Counsel of Record
Derek S. Clinger (0092075)
MCTIGUE & COLOMBO LLC
545 East Town Street
Columbus, Ohio 43215
614.263.7000
614.368.6961 (facsimile)
dmctigue@electionlawgroup.com
dclinger@electionlawgroup.com

Abha Khanna (PHV 2189-2021)
Ben Stafford (PHV 25433-2021)
ELIAS LAW GROUP
1700 Seventh Ave, Suite 2100
Seattle, Washington 98101
206.656.0176
206.656.0180 (facsimile)
akhanna@elias.law
bstafford@elias.law

Aria C. Branch (PHV 25435-2021)
Jyoti Jasrasaria (PHV 25401-2021)
Spencer W. Klein (PHV 25432-2021)
Harleen Gambhir (PHV 25587-2022)
Raisa Cramer (PHV 25880-2022)
ELIAS LAW GROUP
10 G St NE, Suite 600
Washington, DC 20002
202.968.4490
202.968.4498 (facsimile)
abbranch@elias.law
jjasrasaria@elias.law
sklein@elias.law
hgambhir@elias.law
rcramer@elias.law

Special Counsel to Attorney General
Dave Yost

*Counsel for Respondent Secretary of State
Frank LaRose*

John W. Zeiger (0010707)
Marion H. Little, Jr. (0042679)
Christopher J. Hogan (0079829)
ZEIGER, TIGGES & LITTLE LLP
3500 Huntington Center
41 South High Street
Columbus, Ohio 43215
614.365.9900
zeiger@litoio.com
little@litoio.com

*Counsel for Respondent Governor Mike
DeWine*

Brodi J. Conover (0092082)
Counsel of Record
BRICKER & ECKLER LLP
2 East Mulberry Street
Lebanon, Ohio 45036
513.670.6693
513.670.0999 (facsimile)
bconover@bricker.com

Anne Marie Sferra (0030855)
BRICKER & ECKLER LLP
100 South Third Street
Columbus, Ohio 43215
614.227.2300
614.227.2390 (facsimile)
asferra@bricker.com

*Counsel for Respondent Auditor of State
Keith Faber*

Phillip J. Strach (PHV 2544-2021)
Thomas A. Farr (PHV 25461)
John E. Branch, III (PHV 25460)
Alyssa M. Riggins (PHV 25441-2021)
Greg McGuire (PHV 25483-2021)

*Counsel for Relators Bria Bennett, et al., in
Case No. 2021-1198*

Peter M. Ellis (0070264)

Counsel of Record

M. Patrick Yingling (PHV 10145-2021)

REED SMITH LLP

10 South Wacker Drive, 40th Floor

Chicago, Illinois 60606

312.207.1000

312.207.6400 (facsimile)

pellis@reedsmith.com

mpyingling@reedsmith.com

nsalazar@reedsmith.com

Alicia L. Bannon (PHV 25409-2021)

Yurij Rudensky (PHV 25422-2021)

Michael Li (PHV 25430-2021)

Ethan Herenstein (PHV 25429-2021)

Harry Isaiah Black (PHV 2544-2021)

BRENNAN CENTER FOR JUSTICE

AT NYU SCHOOL OF LAW

120 Broadway, Suite 1750

New York, New York 10271

646.292.8310

212.463.7308 (facsimile)

alicia.bannon@nyu.edu

rudenskyy@brennan.law.nyu.edu

herensteine@brennan.law.nyu.edu

blackh@brennan.law.nyu.edu

Ben R. Fliegel (PHV 25411-2021)

REED SMITH LLP

355 South Grand Avenue, Suite 2900

Los Angeles, California 90071

213.457.8000

213.457.8080 (facsimile)

bfliegel@reedsmith.com

Brad A. Funari (PHV 3139-2021)

Danielle L. Stewart (0084086)

REED SMITH LLP

225 Fifth Avenue

Pittsburgh, Pennsylvania 15222

412.288.4583

NELSON MULLINS RILEY &
SCARBOROUGH LLP

4140 Parklake Avenue, Suite 200

Raleigh, North Carolina 27612

919.329.3800

919.329.3799 (facsimile)

phil.strach@nelsonmullins.com

tom.farr@nelsonmullins.com

john.branch@nelsonmullins.com

alyssa.riggins@nelsonmullins.com

greg.mcguire@nelsonmullins.com

W. Stuart Dornette (0002955)

Beth A. Bryan (0082076)

Philip D. Williamson (0097174)

TAFT STETTINIUS & HOLLISTER LLP

425 Walnut St., Suite 1800

Cincinnati, Ohio 45202-3957

513.381.2838

513.381.0205 (facsimile)

dornette@taftlaw.com

bryan@taftlaw.com

pwilliamson@taftlaw.com

*Counsel for Respondents Senator Rob
McColley and Representative Jeff LaRe.*

C. Benjamin Cooper (0093103)

Charles H. Cooper, Jr. (0037295)

Chelsea C. Weaver (0096850)

COOPER & ELLIOT, LLC

305 West Nationwide Boulevard

Columbus, Ohio 43215

614.481.6000

benc@cooperelliott.com

chipc@cooperelliott.com

chelseaw@cooperelliott.com

*Counsel for Respondents Senator Vernon
Sykes and House Minority Leader Allison
Russo*

412.288.3063 (facsimile)
bfunari@reedsmith.com
dstewart@reedsmith.com

Brian A. Sutherland (PHV 25406-2021)
REED SMITH LLP
101 Second Street, Suite 1800
San Francisco, California 94105
415.543.8700
415.391.8269 (facsimile)
bsutherland@reedsmith.com

*Counsel for Relators Ohio Organizing
Collaborative, et al., in Case No. 2021-1210*

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INTRODUCTION

When the Ohio Redistricting Commission (the “Commission”) on May 5, 2022, reapproved and resubmitted a General-Assembly district plan that it first adopted on February 24, 2022 (the “Third Plan”), the Commission was left with no viable alternative. As Secretary of State LaRose explained during the Commission’s May 5, 2022 meeting, August 2, 2022, is the latest date for Ohio to conduct a primary election for the offices of State Representative, State Senator, and political party State Central Committee member without altering the scheduled timeline to successfully administer a general election. The only way this scheduled timeline could be altered is by emergency legislation, and the leaders of the General Assembly have indicated that they do not have the votes to enact such legislation. Thus, by a vote of 4-3, the Commission approved a motion to use the Third Plan “only for use in the 2022 election,” thereby allowing remaining primary and general elections to go forward in 2022 without adopting the Third Plan for use in later elections.

Petitioners do not effectively refute this reality. And to allow this plan to proceed, this Court need not revisit its earlier decisions invalidating the Third Plan and other Commission-approved plans. Instead, the Commission respectfully requests that this Court defer a decision on Petitioners’ latest objections, allowing the Secretary of State and Ohio’s elections officials to use the Third Plan for the remaining primary and general elections in 2022. With such a deferral, this Court will retain jurisdiction over these matters going forward, allowing further litigation following the 2022 general election as may be necessary.

STATEMENT OF FACTS

Rather than repeat the Commission’s statements of facts in its response to Petitioners’ previous objections, the Commission incorporates those statements herein and provides additional updated facts.

On February 24, 2022, the Commission, by a 4-3 vote, adopted a newly revised General-Assembly district plan (the “Third Plan”). On March 16, 2022, this Court found the Third Plan violated Article XI, Section 6 of the Ohio Constitution. *See League of Women Voters of Ohio v. Ohio Redistricting Comm.*, Slip Opinion No. 2022-Ohio-789 (“*League III*”). On March 28, 2022, the Commission adopted a Fourth Plan, which, on April 14, 2022, this Court found also violated Article XI, Section 6 of the Ohio Constitution. *See League of Women Voters of Ohio v. Ohio Redistricting Comm.*, Slip Opinion No. 2022-Ohio-1235 (“*League IV*”). Following that latest decision, the Commission met on May 4, 2022, and again on May 5, 2022.

During the May 5, 2022 meeting, House Minority Leader Russo proposed a motion to adopt the independent mapmakers’ maps as modified, presented to state and federal courts, and uploaded to the Commission’s website. The Commission voted 5-2 to defeat Leader Russo’s motion. Secretary of State LaRose read a prepared statement into the record, titled “Statement to the Ohio Redistricting Commission by Ohio Secretary of State Frank LaRose Regarding Logistical Realities of Administering a 2022 General Assembly Primary Election.” The statement is available on the Commission’s website and attached as Exhibit 1 to the Commission’s May 6, 2022 Notice of Resubmission of the Commission’s February 24, 2022 General-Assembly Plan (“May 6 Notice”).

Secretary LaRose’s statement explained that a primary election date has not yet been established for the offices of State Representative, State Senator, and political party State Central Committee member. (May 6 Notice, Ex. 1 at 1). “The Ohio General Assembly has the sole authority in the Ohio Revised Code ([R.C.] 3501.40) to set the time, place, and manner of a public election conducted in the State of Ohio.” (*Id.*). “The only other government entity that can supersede that authority is a federal court of law.” (*Id.*).

“A three-judge panel assigned to consider the Ohio General Assembly redistricting case, *Gonidakis et al. v. LaRose*, Case No. 2:22-CV-773 (S.D. Ohio), has ordered that if the State does not adopt a lawful district plan and set a primary election date before May 28,” the federal court “will order the primary be moved to August 2 and [the Third Plan] be used for only the 2022 election cycle. After that, Ohio will have to pass a new map that complies with federal and state law.” (*Id.* (quoting *Gonidakis*, April 20, 2022 Memorandum and Order, at 58).

Secretary LaRose explained that as of now, the “Ohio General Assembly has not set a primary election date for the abovementioned contests. Any action doing so would require an emergency clause to make the election date and its associated deadlines effective immediately.” (*Id.*). “The Speaker of the Ohio House and the President of the Ohio Senate have indicated publicly that they lack the required two-thirds vote in both chambers to enact emergency legislation for this purpose.” (*Id.*). Therefore, “the only remaining option to conduct a primary election to which Ohio voters are entitled is the prescribed action by the federal district court.” (*Id.*).

Secretary LaRose stated that his office “and the bipartisan Ohio Association of Elections Officials have repeatedly stated that because August 2, 2022, is already reserved for ‘special elections’ in Ohio law, it is the only date on which a statewide primary election can be conducted in advance of the scheduled [g]eneral [e]lection (November 8, 2022). August 2, 2022 is also the latest date by which Ohio can conduct a primary election without overlapping or altering the scheduled timeline to successfully administer a [g]eneral [e]lection.” (*Id.*). “This is also recognized by the three-judge panel in *Gonidakis* . . . and uncontested by any of the parties involved in that litigation.” (*Id.*).

Secretary LaRose further explained the statutory timeline leading up to an election. “Under Ohio law, elections are conducted over at least a 90-day period. “Eighty-nine days [stood] between [May 5, 2022, the date of Secretary LaRose’s statement] and August 2, 2022, putting Ohio within the traditional statutory window for administering its next election.” (*Id.*) “The federal panel majority in *Gonidakis* . . . stated clearly that for any new district plan to be utilized for an August 2, 2022 primary election—and to have the benefit of a full, 90-day election administration period—the Commission would need to adopt it by April 20, 2022.” (*Id.*) “Their opinion is based on testimony from my staff that the 88 county boards of election would collectively need at least two weeks to reprogram their computer systems to new House and Senate districts before the full, 90-day primary election period would begin, which would also do the least amount of damage to current Ohio election law.” (*Id.*) “To administer an August 2 primary election, the boards must meet a series of statutory and administrative deadlines to have the first ballots, known as Uniformed and Overseas Citizens Absentee Voting Act (‘UOCAVA’) ballots, prepared no later than June 17, 2022 (46 days before the election).” (*Id.*) To achieve this, Secretary LaRose stated that officials must meet the following statutory requirements:

- Certify candidates no later than **78 days before** the primary election. R.C. 3513.05.
- Hold protests against certified candidates no later than **74 days before** the primary election. R.C. 3513.05.
- Determine the validity or invalidity of the declaration of candidacy and petition. R.C. 3513.05.
- Receive write-in candidates’ declarations of intent for partisan offices no later than **72 days before** the primary election. R.C. 3513.041.
- Hold protests against write-in candidates no later than **67 days before** the primary election. R.C. 3513.041.

- The Secretary of State must certify to boards of elections the form of official ballots no later than **70 days before** the primary election. R.C. 3513.05.
- Board of elections of the most populous county in a multi-county district must certify names of all candidates to the other county boards of elections in the district no later than **70 days before** primary election. R.C. 3513.05.

(*Id.* at 1-2). Accordingly, “Boards of elections need at least two weeks to reprogram voter registration and tabulation systems to accommodate a new map, which as of [May 5, 2022] takes us to at least May 19.” (*Id.* at 2). “At that point, the boards would already be in violation of state law unless the General Assembly changes the statutory deadlines. Additionally, [the Secretary of State’s] office would not instruct the boards to deprogram [the Third Plan] before May 28, risking that the new map could be invalidated with no immediate options to administer a primary election.” (*Id.*). “This administrative delay also reduces or nearly eliminates the required process election officials must complete to conduct testing on all voting equipment, proof ballots, test ballots, recruit poll workers, and order absentee and Election Day ballots.” (*Id.*).

Speaker LaRose provided the following summary:

- The last date a new map could have been ordered and implemented without altering current statutory deadlines that precede an August 2, 2022 primary election was April 20, 2022.
- The General Assembly has not set a new primary date, and its leaders have publicly stated they do not have the votes to pass emergency legislation to do so.
- All but two of Ohio’s 88 county boards of elections have fully programmed the [Third Plan] adopted by the Ohio Redistricting Commission.
- A majority of the federal panel considering *Gonidakis, et al. v. LaRose* recognized that [the Third Plan] has ‘administrative advantages’ of implementation that no other map produced by the Commission to date presents, including a largely completed candidate certification process that also would not require the revisiting of filing deadlines and residency provisions.

(*Id.*). Accordingly, Secretary Larose concluded, the Third Plan “*is the only viable option to effectively administer a primary election on August 2, 2022.*” (*Id.*). “If on May 28, 2022, the federal court orders that Ohio use [the Third Plan] and sets the primary election date on August 2, 2022, my office will issue a directive to the boards of elections implementing that order and providing detailed instructions on the administration of a successful primary election.” (*Id.*).

After he finished reading his written statement into the record, Secretary LaRose added that “once Map 3 was adopted by this commission, our office dutifully followed the law with all of the timelines laid out in the law, including, administering directives to the boards of elections that told them to accept and review candidate petitions, [and] allow for the protest period to begin.” (*See* Commission May 5, 2022 Hearing Transcript at 7, *available at* <https://www.redistricting.ohio.gov/assets/organizations/redistricting-commission/events/commission-meeting-may-5-2022-316/transcript-1642.pdf>). “It also informed candidates how to utilize their rights . . . should they wish to move and even issuing the form of the ballot as well as posting a federal write in ballot absentee notice which is required under federal law.” (*Id.* at 7-8). “All of those things occurred prior to [this Court’s] invalidation [of the Third Plan].” (*Id.* at 8). So effectively, . . . the Ohio Supreme Court pressed pause on all of those elections administration processes if the federal court on the 28th of May were to overturn the ruling of the Ohio Supreme Court, essentially validating the [Third Plan].” (*Id.*). “Our office is fully prepared to press play again on all of those processes which need to continue. That, simply stated, is why [the Third Plan] is the most viable option from the elections administration standpoint.” (*Id.*).

Following Secretary LaRose’s statement, Senator McColley, “for all the reasons we’ve discussed here today and those enumerated by Secretary LaRose’s statement,” moved

that the Commission resubmit the [Third Plan] only for use in the 2022 election, and the statement to the Redistricting Commission by Ohio Secretary of State LaRose to the Secretary of State's office no later than 9 a.m. [May 6, 2022] in response to the Ohio Supreme Court's order dated April 14, 2022. And after filing with the Secretary's office, counsel for the Redistricting Commission shall file the [Third Plan] and the statement to the Redistricting Commission by . . . Ohio Secretary of State LaRose with the Ohio Supreme Court not later than 12 p.m. tomorrow in response to the Ohio Supreme Court's order dated April 14, 2020.

(Id.). The Commission voted 4-3 to approve Senator McColley's motion, with no member of the Democratic party voting to approve the motion. *(Id.* at 11). Leader Russo then read a Minority Report into the record. *(Id.* at 12-13). The report is available on the Commission's website and attached as Exhibit 2 to the Commission's May 6, 2022 Notice of Resubmission of the Commission's February 24, 2022 General-Assembly Plan.

ARGUMENT

As set forth above, Secretary LaRose explained that the Third Plan is the only the only viable option to effectively administer a primary election on August 2, 2022, which is the latest date by which Ohio can conduct a primary election without overlapping or altering the scheduled timeline to successfully administer a general election. The last date a new map could have been ordered and implemented without altering current statutory deadlines that precede an August 2, 2022 primary election was April 20, 2022, six days after this Court issued its latest decision on any General-Assembly redistricting plan. Meanwhile, the Speaker of the Ohio House and the President of the Ohio Senate have indicated publicly that they lack the required two-thirds vote in both chambers to enact emergency legislation to set a primary date and alter statutory deadlines. Further, all but two of Ohio's 88 county boards of elections have fully programmed the Third Plan adopted by the Ohio Redistricting Commission. Accordingly, if Ohio is to conduct primary and general elections in 2022, the Third Plan is the only option. Petitioners do not effectively refute this reality.

To be sure, this Court invalidated the Third Plan in *League III*. And while the Commission has argued that this Court should uphold previous Commission-adopted plans, including the Third Plan, the Court need not revisit or reconsider its prior decisions at this time. Rather, to allow the 2022 primary and general elections to take place, this Court could simply defer its decision on these matters until after the 2022 general election, thereby retaining jurisdiction going forward.

Moreover, the Court should reject Petitioners' various suggested remedies that go beyond determining whether the Third Plan satisfies the Ohio Constitution. The only plan in front of this Court now is the Third Plan adopted by the Commission on February 24, 2022, which the Commission reapproved and resubmitted to the Secretary of State on May 5, 2022. The Ohio Constitution expressly states that "[n]o court shall order, in any circumstance, the implementation or enforcement of any [G]eneral-[A]ssembly district plan that has not been approved by the [C]ommission." Ohio Const., Art. XI, § 9(D)(1). It further expressly states that "[n]o court shall order the [C]ommission to adopt a particular [G]eneral-[A]ssembly district plan or to draw a particular district." *Id.* § 9(D)(2). The express language of the Ohio Constitution precludes this Court from ordering the adoption of any particular plan that the Commission itself has not approved.

In short, given that August 2, 2022 is the latest possible date for a primary election in Ohio, and given the General Assembly's inability to alter statutory deadlines in advance of this date, the only way to conduct primary and general elections in Ohio for the offices of State Representative, State Senator, and political party State Central Committee member is to allow the use of the Third Plan for these 2022 elections.

CONCLUSION

Accordingly, for the above reasons, the Ohio Redistricting Commission respectfully requests that the Court defer a decision on Petitioners' latest objections, allowing the Secretary of State and Ohio's elections officials to use the Third Plan for the remaining primary and general elections in 2022. With such a deferral, this Court will retain jurisdiction over these matters going forward, allowing further litigation following the 2022 general election as may be necessary.

Dated: May 9, 2022

Respectfully submitted,

Dave Yost
Ohio Attorney General

/s Erik J. Clark
Erik J. Clark (0078732)
Counsel of Record
Ashley Merino (0096853)
ORGAN LAW LLP
1330 Dublin Road
Columbus, Ohio 43215
614.481.0900
614.481.0904 (facsimile)
ejclark@organlegal.com
amerino@organlegal.com

Special Counsel to Attorney General Dave
Yost

*Counsel for Respondent The Ohio
Redistricting Commission*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on May 9, 2022, a copy of the foregoing, including its appendix, was served by electronic mail upon the following:

Freda J. Levenson, Esq.
Counsel of Record
ACLU OF OHIO FOUNDATION, INC.
4506 Chester Avenue
Cleveland, Ohio 44103
614.586.1972. x125
flevenson@acluohio.org

David J. Carey, Esq.
ACLU OF OHIO FOUNDATION, INC.
1108 City Park Avenue, Suite 203
Columbus, Ohio 43206
614.586.1972. x2004
dcarey@aclu.org

Alora Thomas, Esq.
Julie A. Ebenstein, Esq.
AMERICAN CIVIL LIBERTIES UNION
125 Broad Street
New York, New York 10004
212.519.7866.
athomas@aclu.org
jebenstein@aclu.org

Robert D. Fram, Esq.
Joshua Gonzalez, Esq.
David Denuyl, Esq.
Donald Brown, Esq.
COVINGTON & BURLING LLP
415 Mission Street, Suite 5400
San Francisco, California 94105-2533
415.591.6000
rfram@cov.com
jgonzalez@cov.com
ddenuyl@cov.com
dwbrown@cov.com

Megan C. Keenan, Esq.
L. Brady Bender, Esq.
Alexander Thomson, Esq.

Julie M. Pfeiffer, Esq.
Counsel of Record
Jonathan D. Blanton, Esq.
Michael A. Walton, Esq.
Michael J. Hendershot, Esq.
OFFICE OF THE OHIO ATTORNEY
GENERAL
30 E. Broad Street, 16th Floor
Columbus, Ohio 43215
614.466.2872
614.782.7592 (facsimile)
Julie.Pfeiffer@OhioAGO.gov
Michael.Walton@OhioAGO.gov
Michael.Hendershot@OhioAGO.gov
Jonathan.Blanton@ohioAGO.gov

David A. Lockshaw, Jr., Esq.
Counsel of Record
Terrence O'Donnell, Esq.
Manuel D. Cardona, Esq.
DICKINSON WRIGHT, PLLC
180 East Broad Street, Suite 3400
Columbus, Ohio 43215
614.744.2570
844.670.6009 (facsimile)
dlockshaw@dickinson-wright.com
todonnell@dickinson-wright.com
mcardona@dickinson-wright.com

Special Counsel to Attorney General
Dave Yost

Counsel for Respondent Secretary of State
Frank LaRose

John W. Zeiger, Esq.
Marion H. Little, Jr., Esq.
Christopher J. Hogan, Esq.
ZEIGER, TIGGES & LITTLE LLP
3500 Huntington Center

COVINGTON & BURLING LLP
One CityCenter
850 Tenth Street, NW
Washington, DC 20001-4956
202.662.6000
mkeen@cov.com
bbender@cov.com
ajthomson@cov.com

Anupam Sharma, Esq.
James Hovard, Esq.
Yiye Fu, Esq.
COVINGTON & BURLING LLP
3000 El Camino Real
5 Palo Alto, Square, 10th Floor
Palo Alto, California 94306-2112
650.632.4700
asharma@cov.com
jhovard@cov.com
yfu@cov.com

Counsel for Relators League of Women Voters of Ohio, et al., in Case No. 2021-1193

Donald J. McTigue, Esq.
Counsel of Record
Derek S. Clinger, Esq.
MCTIGUE & COLOMBO LLC
545 East Town Street
Columbus, Ohio 43215
614.263.7000
614.368.6961 (facsimile)
dmctigue@electionlawgroup.com
dclinger@electionlawgroup.com

Aria C. Branch, Esq.
Jyoti Jasrasaria, Esq.
Spencer W. Klein, Esq.
Harleen Gambhir, Esq.
Raisa Cramer, Esq.
ELIAS LAW GROUP
10 G St NE, Suite 600
Washington, DC 20002
202.968.4490
202.968.4498 (facsimile)
abran@elias.law

41 South High Street
Columbus, Ohio 43215
614.365.9900
zeiger@lito.io
little@lito.io

Counsel for Respondent Governor Mike DeWine

Brodi J. Conover, Esq.
Counsel of Record
BRICKER & ECKLER LLP
2 East Mulberry Street
Lebanon, Ohio 45036
513.670.6693
513.670.0999 (facsimile)
bconover@bricker.com

Anne Marie Sferra, Esq.
BRICKER & ECKLER LLP
100 South Third Street
Columbus, Ohio 43215
614.227.2300
614.227.2390 (facsimile)
asferra@bricker.com

Counsel for Respondent Auditor of State Keith Faber

Phillip J. Strach, Esq.
Thomas A. Farr, Esq.
John E. Branch, III, Esq.
Alyssa M. Riggins, Esq.
Greg McGuire, Esq.
NELSON MULLINS RILEY &
SCARBOROUGH LLP
4140 Parklake Avenue, Suite 200
Raleigh, North Carolina 27612
919.329.3800
919.329.3799 (facsimile)
phil.strach@nelsonmullins.com
tom.farr@nelsonmullins.com
john.branch@nelsonmullins.com
alyssa.riggins@nelsonmullins.com
greg.mcguire@nelsonmullins.com

jjasrasaria@elias.law
sklein@elias.law
hgambhir@elias.law
rcramer@elias.law

Abha Khanna, Esq.
William B. Stafford, Esq.
ELIAS LAW GROUP
1700 Seventh Ave, Suite 2100
Seattle, Washington 98101
206.656.0176
206.656.0180 (facsimile)
akhanna@elias.law
bstafford@elias.law

Counsel for Relators Bria Bennett, et al., in Case No. 2021-1198

Peter M. Ellis, Esq.
Counsel of Record
M. Patrick Yingling, Esq.
Natalie R. Salazar, Esq.
REED SMITH LLP
10 South Wacker Drive, 40th Floor
Chicago, Illinois 60606
312.207.1000
312.207.6400 (facsimile)
pellis@reedsmith.com
mpyingling@reedsmith.com
nsalazar@reedsmith.com

Alicia L. Bannon, Esq.
Yurij Rudensky, Esq.
Michael Li, Esq.
Ethan Herenstein, Esq.
BRENNAN CENTER FOR JUSTICE
AT NYU SCHOOL OF LAW
120 Broadway, Suite 1750
New York, New York 10271
646.292.8310
212.463.7308 (facsimile)
alicia.bannon@nyu.edu
rudenskyy@brennan.law.nyu.edu
herensteine@brennan.law.nyu.edu

Ben R. Fliegel, Esq.

W. Stuart Dornette, Esq.
Beth A. Bryan, Esq.
Philip D. Williamson, Esq.
TAFT STETTINIUS & HOLLISTER LLP
425 Walnut St., Suite 1800
Cincinnati, Ohio 45202-3957
513.381.2838
513.381.0205 (facsimile)
dornette@taftlaw.com
bryan@taftlaw.com
pwilliamson@taftlaw.com

Counsel for Respondents Senator Rob McColley and Representative Jeff LaRe

C. Benjamin Cooper, Esq.
Charles H. Cooper, Esq.
Chelsea C. Weaver, Esq.
COOPER & ELLIOT, LLC
305 West Nationwide Boulevard
Columbus, Ohio 43215
614.481.6000
benc@cooperelliott.com
chipc@cooperelliott.com
chelseaw@cooperelliott.com

Counsel for Respondents Senator Vernon Sykes and House Minority Leader Allison Russo

REED SMITH LLP
355 South Grand Avenue, Suite 2900
Los Angeles, California 90071
213.457.8000
213.457.8080 (facsimile)
bfliegel@reedsmith.com

Brad A. Funari, Esq.
Danielle L. Stewart, Esq.
REED SMITH LLP
225 Fifth Avenue
Pittsburgh, Pennsylvania 15222
412.288.4583
412.288.3063 (facsimile)
bfunari@reedsmith.com
dstewart@reedsmith.com

Brian A. Sutherland, Esq.
REED SMITH LLP
101 Second Street, Suite 1800
San Francisco, California 94105
415.543.8700
415.391.8269 (facsimile)
bsutherland@reedsmith.com

*Counsel for Relators Ohio Organizing
Collaborative, et al., in Case No. 2021-1210*

/s Erik J. Clark
*One of the Attorneys for Respondent The
Ohio Redistricting Commission*