

September 26, 2023

Ohio Redistricting Commission
The Ohio Statehouse
Senate Finance Hearing Room
Columbus, Ohio 43215

Re: Proposed remedial legislative maps in *Ohio Organizing Collaborative et al. v. Ohio Redistricting Comm., et al.*, Case No. 2021-1210.

Members of the Ohio Redistricting Commission:

This letter is submitted to the Ohio Redistricting Commission (“Commission”) on behalf of the Ohio Organizing Collaborative, Council on American Islamic Relations Ohio (CAIR OH), Ohio Environmental Council, Pierrette “Petee” Talley, Samuel Gresham Jr. Ahmad Aboukar, Mikayla Lee, Prentiss Haney, and Crystal Bryant, petitioners in *Ohio Organizing Collaborative, et al. v. Ohio Redistricting Comm., et al.*, Case No. 2021-1210 (“OOC petitioners”).

The Ohio Supreme Court issued an order on May 25, 2022 requiring the Commission reconstitute and convene and adopt a General Assembly district plan that complies with the Ohio Constitution including Article XI, Section 6(A) and (B) by June 3, 2022.¹ It is now September 26, 2023, 480 days since that deadline, and the Commission still has not complied. Moreover, it has been over 620 days since the Ohio Supreme Court first invalidated the Commission’s General Assembly district plan.² The Commission’s repeated failure to produce constitutional maps has denied Ohio voters fair representation in the 2022 election. This redraw now threatens the same for the 2024 election.

The OOC petitioners urge the Commission to change course and to adopt fair districts that reflect the political preferences of Ohio voters, and do not advantage one party over the other, as required by the Ohio Constitution. This means abandoning any intention to adopt the General Assembly district plan introduced by Sen. McColley and

¹ See *League of Women Voters et al. v. Ohio Redistricting Comm. et al.*, 168 Ohio St.3d 522, 2022-Ohio-1727.

² See *League of Women Voters et al. v. Ohio Redistricting Comm. et al.*, 167 Ohio St.3d 255, 2022-Ohio-65.

Rep. LaRe (“McColley/LaRe Plan”). Much like the prior plans adopted by the Commission, the McColley/LaRe Plan would deny Ohio voters the ability to shape their own government. Under these maps, Ohioans would continue to see a profound disconnect between themselves and their legislators.

It is dismaying that after ignoring an order of the Ohio Supreme Court for nearly 16 months, the Commission appears prepared to advance a plan that blatantly ignores constitutional command when viable alternative maps are readily available. Like the previous unconstitutional plans adopted by the Commission, the McColley/LaRe Plan was drafted with neither public input nor bipartisan dialogue. Furthermore, as demonstrated below, it also falls well short of the representational fairness requirements of the Ohio Constitution.

Instead, the Commission could turn elsewhere. For instance, the Commission has given no meaningful consideration to the plan drawn by independent experts. These two individuals were handpicked by members of this Commission to produce a lawful district plan, which they did, producing maps that have been available to the Commission since at least March 28, 2022.³ The Commission has also categorically refused to use citizen-generated maps submitted by the Ohio Citizens Redistricting Commission, which incorporate input from Ohioans across the state, as a starting point for fair maps.⁴

With these options readily available, there is no excuse for pursuing a plan that carves up Ohio communities to entrench partisan interests. Adopting the McColley/LaRe Plan would only further demonstrate the inadequacy of current safeguards and expose the flaws of the present redistricting process. It would render meaningless the Article XI partisan fairness requirement and once again deny Ohioans influence over the composition of the General Assembly. The alternative maps provide a powerful contrast, demonstrating that independent experts and Ohio citizens can succeed where this Commission has failed time and again. The Commission should look to these alternatives to preserve whatever integrity of the current redistricting process remains.

Background

a. *Legal Standards*

Article XI, Section 6(A) of the Ohio Constitution provides that “[n]o general assembly district plan shall be drawn primarily to favor or disfavor a political party.”⁵ The Ohio Supreme Court has considered a number of factors to determine whether or not a particular district plan runs afoul of this provision, including (1) the process leading to the adoption of the plan; (2) one-sided distribution of toss-up districts; and (3) asymmetry in

³ *League of Women Voters et al. v. Ohio Redistricting Comm. et al.*, 168 Ohio St.3d 374, 2022-Ohio-1235, at ¶18.

⁴ See submission from Ohio Citizens Redistricting Commission to the Commission submitted on Thursday, September 21, 2023, available at <https://www.redistricting.ohio.gov/maps/view-maps>.

⁵ Ohio Const. Art. XI, Sec. 6(A).

likely outcomes for the two parties under similar electoral conditions.⁶ This is particularly true when a remedial district plan “has not materially changed” from prior, unconstitutional maps.⁷

Article XI, Section 6(B) of the Ohio Constitution requires the Commission to draw a district plan where districts “whose voters, based on statewide state and federal partisan general election results during the last ten years, favor each political party [corresponds] closely to the statewide preferences of the voters of Ohio.”⁸ This analysis proceeds in two steps: (1) the statewide preferences of Ohioans are calculated by aggregating partisan statewide elections from the prior decade using available data; and (2) that partisan index is then used to determine that likely partisan performance of each district. Critically, districts that have a narrow lean—where each party is expected to win between 52 and 48 percent of the vote—are considered toss-ups and must either be distributed evenly between the two parties or must be considered separately when determining whether districts correspond closely to the statewide preference of Ohio voters.⁹

b. Data and Methodology

The Ohio Constitution does not contemplate a redistricting of legislative maps in 2023. Indeed, the current redraw is the product of the Commission’s continued failure to produce a constitutional plan and is part of the court-ordered remedial process that was meant to occur before the 2022 election. Thus, the partisan statewide elections from 2012-2020 arguably continue to control the Article XI, Section 6(B) analysis. However, the 2022 election has, of course, occurred and those results are available.

The analyses included in this submission use available election data from 2016-2020 to gauge Article XI, Section 6(B) compliance and from 2016-2022 to ensure the latest electoral outcomes are also considered.¹⁰ In the nine partisan statewide elections from 2016-2020,¹¹ Republican candidates received 53.2 percent of the vote and Democratic

⁶ *League of Women Voters of Ohio v. Ohio Redistricting Comm.*, 168, Ohio St.3d 374, 2022-Ohio-1235, at ¶¶37-55.

⁷ *Id.* at ¶55.

⁸ Ohio Const. Art. XI, Sec. 6(B).

⁹ See *League of Women Voters et al. v. Ohio Redistricting Commission et al.*, 168 Ohio St.3d 28, 2022-Ohio-342, 195 N.E.3d 974, at ¶62 (reasoning that toss-up districts that fall into the 52-48 range must be either excluded from the proportionality analysis or must be allocated proportionally between the two parties). If the toss-up districts are allocated to each party, then the denominator is 99 for the Ohio House and 33 for the Ohio Senate when calculating seat share. If the toss-up districts are excluded, then the denominator is formed by subtracting the toss-up districts from 99 for the Ohio House and 33 for the Ohio Senate.

¹⁰ Though the OOC petitioners use of 2016-2022 election results in this submission, they do not take a position on whether Section 6(B) requires updating the elections considered.

¹¹ These elections include: (1) President 2016; (2) U.S. Senate 2016; (3) U.S. Senate 2018; (4) Governor 2018; (5) Attorney General 2018; (6) Auditor 2018; (7) Secretary of State 2018; (8) Treasurer 2018; and (9) President 2020.

candidates received 46.8 percent.¹² In the 18 partisan statewide elections from 2016-2022,¹³ Republican candidates received 55.5 percent of the vote and Democratic candidates received 44.5 percent.

Unfortunately, the lack of useable election data from 2012 and 2014 limits the OOC petitioners' ability to perform these analyses with results from all relevant elections. However, the conclusions should not be materially affected. Both the 2016-2020 and the 2016-2022 elections results are within one percentage point of the 2012-2020 and the 2014-2022 results respectively.¹⁴ Accordingly, the determination of disproportionality should not change substantially using the more limited set of elections with available data.

Analysis

a. McColley/LaRe Plan

The McColley/LaRe Plan continues the Commission's pattern of advancing district maps that violate Section 6(B). It is yet another plan that disregards the Ohio Constitution's command that districts be drawn to correspond closely to the preferences of Ohio voters. This plan produces disproportionality that is at least as significant as prior unconstitutional plans advanced by the Commission.

Ohio House District Disproportionality (2016-2020 Election Results)

Using the 2016-2020 election results, the McColley/LaRe Plan produces the following results for the Ohio House map:

- 59 Republican districts
- 30 Democratic districts
- 10 toss-up districts

That means with 53.2 percent of the vote, Republicans win 66.3 percent of the districts (+13.1 percent), while the Democrats' 46.8 percent translates to 33.7 percent of the districts (-13.1 percent).¹⁵ Allocating the toss up districts based on their lean produces the following results:

¹² These numbers were obtained by adding together the votes that Republican and Democratic candidates for statewide office received in each partisan statewide election. These numbers were taken from the Ohio Secretary of State's website, available here: <https://www.ohiosos.gov/elections/election-results-and-data/>.

¹³ The additional 2022 elections include: (1) U.S. Senate 2022; (2) Governor 2022; (3) Attorney General 2022; (4) Auditor 2022; (5) Secretary of State 2022; (6) Treasurer 2022; (7) Chief Justice of the Ohio Supreme Court; (8) Associate Justice of the Ohio Supreme Court; and (9) Associate Justice of the Ohio Supreme Court.

¹⁴ The 2012-2020 index produces a 54.1 percent Republican to 45.9 percent Democratic split, which is close to the 2016-2020 53.2 percent Republican to 46.8 percent Democratic split. Likewise, the 2014-2022 index produces a 56.4 percent Republican to 43.6 percent Democratic split, which is close to the 2016-2022 55.5 percent Republican to 44.5 percent Democratic split.

¹⁵ The denominator here is 89 to account for the 10 toss-up districts.

- 62 Republican districts
- 37 Democratic districts

That means that with 53.2 percent of the vote, Republicans win 63 percent of the districts (+9.8 percent), while the Democrats' 46.8 percent of the vote translates to 37 percent of the districts (-9.8 percent). Thus, whether toss-up districts are factored in or not, the McColley/LaRe Plan produces at least a 20-point disproportionality gap¹⁶ in favor of Republicans under 2016-2020 election results.

Ohio House District Disproportionality (2016-2022 Election Results)

Using the 2016-2022 election results, the McColley/LaRe Plan produces the following results for the Ohio House map:

- 61 Republican districts
- 26 Democratic districts
- 12 toss-up districts

That means with 55.5 percent of the vote, Republicans win 70.1 percent of the districts (+14.6 percent), while the Democrats' 44.5 percent translates to 29.9 percent of the districts (-14.6 percent).¹⁷ Allocating the toss-up districts based on their lean produces the following results:

- 67 Republican districts
- 32 Democratic districts

That means that with 55.5 percent of the vote, Republicans win 67.7 percent of the districts (+12.2 percent), while the Democrats' 44.5 percent of the vote translates to 32.3 percent of the districts (-12.2 percent). Thus, whether toss-up districts are factored in or not, the McColley/LaRe Plan produces at least a 24-point disproportionality gap in favor of Republicans under 2016-2022 election results.

Ohio Senate District Disproportionality (2016-2020 Election Results)

Using the 2016-2020 election results, the McColley/LaRe Plan produces the following results for the Ohio Senate map:

- 21 Republican districts
- 9 Democratic districts
- 3 toss-up districts

That means with 53.2 percent of the vote, Republicans win 63.6 percent of the districts (+10.4 percent), while the Democrats' 46.8 percent of the vote translates to only 27.2

¹⁶ The disproportionality gap is the difference between the percentage that each party is over- or underrepresented under each set of election results.

¹⁷ The denominator here is 87 to account for the 12 toss-up districts.

percent of the districts (-19.6 percent).¹⁸ Allocating the toss-up districts produces the following results:

- 23 Republican districts
- 10 Democratic districts

That means with 53.2 percent of the vote, Republicans win 69.7 percent of the districts (+16.5 percent), while the Democrats' 46.8 percent of the vote translates to 30.3 percent of the districts (-16.5 percent). Thus, whether toss-up districts are factored in or not, the McColley/LaRe Plan produces more than a 30-point disproportionality gap in favor of Republicans under 2016-2020 election results.

Ohio Senate District Disproportionality (2016-2022 Election Results)

Using the 2016-2022 election results, the McColley/LaRe Plan produces the following results for the Ohio Senate map:

- 23 Republican districts
- 8 Democratic districts
- 2 toss-up districts

That means with 55.5 percent of the vote, Republicans win 74.2 percent of the districts (+18.7 percent), while the Democrats' 44.5 percent of the vote translates to 25.8 percent of the districts (-18.7 percent).¹⁹ Allocating the toss-up districts produces the following results:

- 24 Republican districts
- 9 Democratic districts

That means with 55.5 percent of the vote, Republicans win 72.7 percent of the districts (+17.2 percent), while the Democrats' 44.5 percent of the vote translates to 27.3 percent of the districts (-17.2 percent). Thus, whether toss-up districts are factored in or not, the McColley/LaRe Plan produces at least a 34-point disproportionality gap in favor of Republicans under 2016-2020 election results.

Intent to Favor Republicans and Disfavor Democrats

That the disproportionality of the McColley/LaRe Plan is on par or exceeds the disproportionality of prior plans produced by the Commission speaks to the Commission's intent to give Republicans a durable advantage. The process used to produce the McColley/LaRe Plan was entirely secretive and provided neither the OOC petitioners nor the public any input. Though the OOC petitioners have not conducted an asymmetry analysis for this plan, considering the extreme disproportionality of districts it is likely to be substantial. And, while the distribution of toss-up districts is less skewed than in prior

¹⁸ The denominator here is 30 to account for the three toss-up districts.

¹⁹ The denominator here is 31 to account for the two toss-up districts.

plans, there are more safe Republican districts as a baseline matter. Accordingly, strong circumstantial evidence suggests that the Commission intends to continue to advantage Republicans and further disfavor Democrats.

b. Corrected Independent Map-Drawer Plan

The Corrected Independent Map-Drawer Plan (“IMD Plan”) that Ms. Bria Bennett submitted on behalf of the Bennett petitioners, the League of Women Voters petitioners, and the OOC petitioners contains maps that fully comply with all the requirements of the Ohio Constitution. Previously, the Commission indicated that a short remedial timeline made it impractical to consider the plan created by independent experts. Considering how long the Commission has had to remedy the constitutional violation since the Ohio Supreme Court’s last order, that explanation can no longer be taken at face value.

This plan provides for nearly perfect proportionality under the 2016-2020 election results and performs significantly better than the McColley/LaRe Plan when 2022 election results are included.

Ohio House District Disproportionality (2016-2020 Election Results)

Using the 2016-2020 election results, the IMD Plan produces the following results for the Ohio House map:

- 52 Republican districts
- 42 Democratic districts
- 5 toss-up districts

That means with 53.2 percent of the vote, Republicans win 55.3 percent of the districts (+2.1 percent), while the Democrats’ 46.8 percent translates to 44.7 percent of the districts (-2.1 percent).²⁰ Allocating the toss up districts based on their lean produces the following results:

- 54 Republican districts
- 45 Democratic districts

That means that with 53.2 percent of the vote, Republicans win 54.5 percent of the districts (+1.3 percent), while the Democrats’ 46.8 percent of the vote translates to 45.5 percent of the districts (-1.1 percent). Thus, whether toss-up districts are factored in or not, the IMD Plan produces at most a four-point disproportionality gap in favor of Republicans under 2016-2020 election results. This is one-fourth of the minimum disproportionality gap produced by the McColley/LaRe Plan using the 2016-2020 election results.

²⁰ The denominator here is 94 to account for the five toss-up districts.

Ohio House District Disproportionality (2016-2022 Election Results)

Using the 2016-2022 election results, the IMD Plan produces the following results for the Ohio House map:

- 55 Republican districts
- 30 Democratic districts
- 14 toss-up districts

That means with 55.5 percent of the vote, Republicans win 64.7 percent of the districts (+9.2 percent), while the Democrats' 44.5 percent translates to 35.3 percent of the districts (-9.2 percent).²¹ Allocating the toss-up districts based on their lean produces the following results:

- 59 Republican districts
- 40 Democratic districts

That means that with 55.5 percent of the vote, Republicans win 59.6 percent of the districts (+4.1 percent), while the Democrats' 44.5 percent of the vote translates to 40.4 percent of the districts (-4.1 percent). Thus, when toss-up districts are factored in, the IMD Plan produces about an eight-point disproportionality gap in favor of Republicans under 2016-2022 election results. And, when toss-up districts are not factored in, the IMD Plan produces about an 18-point disproportionality gap in favor of Republicans. Even the higher of these is about half the disproportionality gap that the McColley/LaRe Plan produces using the 2016-2022 election results.

Ohio Senate District Disproportionality (2016-2020 Election Results)

Using the 2016-2020 election results, the IMD Plan produces the following results for the Ohio Senate map:

- 18 Republican districts
- 13 Democratic districts
- 2 toss-up districts

That means with 53.2 percent of the vote, Republicans win 58.1 percent of the districts (+4.9 percent), while the Democrats' 46.8 percent of the vote translates to 41.9 percent of the districts (-4.9 percent).²² Allocating the toss-up districts produces the following results:

- 18 Republican districts
- 15 Democratic districts

²¹ The denominator here is 85 to account for the 14 toss-up districts.

²² The denominator here is 31 to account for the two toss-up districts.

That means with 53.2 percent of the vote, Republicans win 54.5 percent of the districts (+1.3 percent), while the Democrats' 46.8 percent of the vote translates to 45.5 percent of the districts (-1.3 percent). Thus, when toss-up districts are factored in, the IMD Plan produces less than a three-point disproportionality gap in favor of Republicans under 2016-2020 election results. And, when toss-up districts are not factored in, the IMD Plan produces less than a 10-point disproportionality gap in favor of Republicans. Even the higher of these is less than one-third of the disproportionality gap that the McColley/LaRe Plan produces under 2016-2020 election results.

Ohio Senate District Disproportionality (2016-2022 Election Results)

Using the 2016-2022 election results, the IMD Plan produces the following results for the Ohio Senate map:

- 18 Republican districts
- 10 Democratic districts
- 5 toss-up districts

That means with 55.5 percent of the vote, Republicans win 64.3 percent of the districts (+8.8 percent), while the Democrats' 44.5 percent of the vote translates to 35.7 percent of the districts (-8.8 percent).²³ Allocating the toss-up districts produces the following results:

- 20 Republican districts
- 13 Democratic districts

That means with 55.5 percent of the vote, Republicans win 60.6 percent of the districts (+5.1 percent), while the Democrats' 44.5 percent of the vote translates to 39.4 percent of the districts (-5.1 percent). Thus, when toss-up districts are factored in, the IMD Plan produces about a 10-point disproportionality gap in favor of Republicans under 2016-2022 election results. And, when toss-up districts are not factored in, the IMD Plan produces less than an 18-point disproportionality gap in favor of Republicans. Even the higher of these is about half of what the McColley/LaRe Plan produces under 2016-2022 election results.

Further, it is notable that the independent experts produced the IMD Plan did not have the benefit of 2022 election results. They nonetheless produced a plan that performs significantly better than the McColley/LaRe Plan no matter which set of election results are used. Even under 2016-2022 results, the IMD Plan's disproportionality gaps are significantly smaller, and the plan contains 4-8 additional Democratic districts in the Ohio House and 2-4 additional Democratic districts in the Ohio Senate than the McColley/LaRe Plan.²⁴ These differences render the McColley/LaRe Plan woefully deficient.

²³ The denominator here is 28 to account for the 5 toss-up districts.

²⁴ When toss-up districts are excluded, the IMD Plan provides four additional safe Democratic districts in the House and two, in the Senate. When toss-up districts are allocated that increases to eight and four districts in each respective chamber.

Conclusion

Less than two weeks ago, the members of the Commission took an oath to uphold the Ohio Constitution, including the representational fairness provisions contained in Article XI, Section 6. There is still time for members of the Commission to honor that pledge and to adopt a General Assembly district plan that complies with both the letter and the spirit of the Ohio Constitution. This requires abandoning the McColley/LaRe Plan and turning instead to one of the viable alternatives the Commission has at its disposal.

Respectfully,

A handwritten signature in black ink, appearing to read "Yuri Rudensky". The signature is written in a cursive style with a large, stylized initial "Y".

Yurij Rudensky
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