

**In the  
Supreme Court of Ohio**

<b>LEAGUE OF WOMEN VOTERS OF OHIO, et al.,</b>	:	
	:	
<i>Relators,</i>	:	<b>Case No. 2021-1193</b>
	:	
<b>v.</b>	:	<b>Original Action Pursuant to</b>
	:	<b>Ohio Const., Art. XI</b>
<b>OHIO REDISTRICTING COMMISSION, et al.,</b>	:	
	:	<b>Apportionment Case</b>
<i>Respondents.</i>	:	
<hr style="border: 0.5px solid black;"/>		
<b>BRIA BENNETT, et al.,</b>	:	
	:	
<i>Relators,</i>	:	<b>Case No. 2021-1198</b>
	:	
<b>v.</b>	:	<b>Original Action Pursuant to</b>
	:	<b>Ohio Const., Art. XI</b>
<b>OHIO REDISTRICTING COMMISSION, et al.,</b>	:	
	:	<b>Apportionment Case</b>
<i>Respondents.</i>	:	
<hr style="border: 0.5px solid black;"/>		
<b>OHIO ORGANIZING COLLABORATIVE, et al.,</b>	:	
	:	
<i>Relators,</i>	:	<b>Case No. 2021-1210</b>
	:	
<b>v.</b>	:	<b>Original Action Pursuant to</b>
	:	<b>Ohio Const., Art. XI</b>
<b>OHIO REDISTRICTING COMMISSION, et al.,</b>	:	
	:	<b>Apportionment Case</b>
<i>Respondents.</i>	:	

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**MOTION FOR LIMITED INTERVENTION BY ATTORNEY GENERAL &  
MOTION TO CONVERT “RESPONSE” TO AMICI BRIEF**

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DAVE YOST  
Ohio Attorney General  
CHARLES MILLER\* (0073844)  
Counsel to the Attorney General  
SHAWN BUSKEN (0083585)  
Director of Outside Counsel  
*\*Counsel of Record*

30 East Broad Street, 17th Floor  
Columbus, Ohio 43215  
513.607.0406  
Charles.Miller@OhioAGO.gov

*Counsel for Limited Intervenor  
Attorney General Dave Yost*

Dave Yost  
Ohio Attorney General

Erik J. Clark\* (0078732)  
*\*Counsel of Record*  
Ashley T. 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*

Dave Yost  
Ohio Attorney General

Bridget C. Coontz (0072919)  
*\*Counsel of Record*  
Julie M. Pfeiffer (006762)  
Michael A. Walton (0092201)  
Michael J. Hendershot (0081842)  
OFFICE OF THE OHIO ATTORNEY  
GENERAL  
30 E. Broad Street, 16th Floor

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

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

T. 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)  
Joshua Gonzalez (PHV 25424-2021)  
Juliana Goldrosen (PHV 25193-2021)  
David Denuyl (PHV 25452-2021)  
Donald Brown (PHV 25480-2021)  
COVINGTON & BURLING LLP

Salesforce Tower  
415 Mission Street, Suite 5400  
San Francisco, California 94105-2533  
415.591.6000  
rfram@cov.com  
JGonzalez@cov.com  
jgoldrosen@cov.com  
ddenuyl@cov.com  
dwbrown@cov.com

Megan C. Keenan (PHV 25410-2021)  
Laura B. Bender (PHV 25192-2021)  
Alexander Thomson (PHV 25462-2021)  
COVINGTON & BURLING LLP  
850 Tenth Street, NW  
Washington, DC 20001-4956  
202.662.6000  
mkeenanan@cov.com  
jmsmith@cov.com  
bbender@cov.com  
ajthomson@cov.com

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

Columbus, Ohio 43215  
614.466.2872  
614.782.7592 (facsimile)  
Bridget.Coontz@OhioAGO.gov  
Julie.Pfeiffer@OhioAGO.gov  
Michael.Walton@OhioAGO.gov  
Michael.Hendershot@OhioAGO.gov

*Counsel for Respondents Ohio Governor  
DeWine, Ohio Secretary of State LaRose,  
and Ohio Auditor Faber*

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

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)  
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

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

Aria C. Branch (PHV 25435-2021)  
Jyoti Jasrasaria (PHV 25401-2021)  
Spencer W. Klein (PHV 25432-2021)  
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

Abha Khanna (PHV 2189-2021)  
William B. 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

*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)  
Natalie R. Salazar  
REED SMITH LLP

*Counsel for Respondents Matt Huffman,  
President of the Ohio Senate, and Robert R.  
Cupp, Speaker of the Ohio House of  
Representatives*

Minority Leader Allison Russo (*pro se*)  
Allison.russo@ohiohouse.gov  
Rep24@ohiohouse.gov

Senator Vernon Sykes (*pro se*)  
sd28@ohiosenate.gov

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)  
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 (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  
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*

## MOTION

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

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

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

### LIMITED STATEMENT OF RELEVANT FACTS

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

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

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



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

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

### **ARGUMENT**

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

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

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

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

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

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

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

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

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

Dated: January 31, 2022

Respectfully submitted,

DAVE YOST  
Ohio Attorney General

/s/Charles M. Miller  
CHARLES MILLER\* (0073844)  
Counsel to the Attorney General  
\*Counsel of Record  
SHAWN BUSKEN (0083585)  
Director of Outside Counsel  
30 East Broad Street, 17th Floor  
Columbus, Ohio 43215  
513.607.0406  
Charles.Miller@OhioAGO.gov

*Counsel for Limited Intervenor  
Attorney General Dave Yost*

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that on January 31, 2022, a copy of the foregoing was served by electronic mail upon the following:

Freda J. Levenson\*

*\*Counsel of Record*

ACLU OF OHIO FOUNDATION, INC.  
4506 Chester Avenue  
Cleveland, Ohio 44103  
614.586.1972. x125  
flevenson@acluohio.org

David J. Carey

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

Alora Thomas

Julie A. Ebenstein

AMERICAN CIVIL LIBERTIES UNION  
125 Broad Street  
New York, New York 10004  
212.519.7866.  
athomas@aclu.org  
jebenstein@aclu.org

Robert D. Fram

Joshua Gonzalez

Juliana Goldrosen

David Denuyl

Donald Brown

COVINGTON & BURLING LLP  
415 Mission Street, Suite 5400  
San Francisco, California 94105-2533  
rfram@cov.com

Erik J. Clark\*

*\*Counsel of Record*

Ashley T. Merino  
ORGAN LAW LLP  
1330 Dublin Road  
Columbus, Ohio 43215  
614.481.0900  
614.481.0904 (facsimile)  
ejclark@organlegal.com  
amerino@organlegal.com

Bridget C. Coontz\*

*\*Counsel of Record*

Julie M. Pfeiffer  
Michael A. Walton  
Michael J. Hendershot  
OFFICE OF THE OHIO ATTORNEY  
GENERAL  
30 E. Broad Street, 16th Floor  
Columbus, Ohio 43215  
614.466.2872  
614.782.7592 (facsimile)  
Bridget.Coontz@OhioAGO.gov  
Julie.Pfeiffer@OhioAGO.gov  
Michael.Walton@OhioAGO.gov  
Michael.Henderson@OhioAGO.gov

*Counsel for Respondents Ohio Governor  
DeWine, Ohio Secretary of State LaRose,  
and Ohio Auditor Faber*

JGonzalez@cov.com  
jgoldrosen@cov.com  
ddenuy@cov.com  
dwbrown@cov.com

Megan C. Keenan  
James Smith  
L. Brady Bender  
Alexander Thomson  
COVINGTON & BURLING LLP  
One CityCenter  
850 Tenth Street, NW  
Washington, DC 20001-4956  
202.662.6000  
mkeen@cov.com  
jmsmith@cov.com  
bbender@cov.com  
ajthomson@cov.com

Anupam Sharma  
James Hovard  
Yiye Fu  
COVINGTON & BURLING LLP  
3000 El Camino Real  
5 Palo Alto, Square, 10<sup>th</sup> 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  
*Counsel of Record*  
Derek S. Clinger  
MCTIGUE & COLOMBO LLC

W. Stuart Dornette  
Beth A. Bryan  
Philip D. Williamson  
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

Phillip J. Strach  
Thomas A. Farr  
John E. Branch, III  
Alyssa M. Riggins  
Greg McGuire  
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

*Counsel for Respondents Matt Huffman,  
President of the Ohio Senate, and Robert R.  
Cupp, Speaker of the Ohio House of  
Representatives*

545 East Town Street  
Columbus, Ohio 43215  
614.263.7000  
614.368.6961 (facsimile)  
dmctigue@electionlawgroup.com  
dclinger@electionlawgroup.com

Aria C. Branch  
Jyoti Jasrasaria  
Spencer W. Klein  
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

Abha Khanna  
William B. Stafford  
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\*  
\**Counsel of Record*  
M. Patrick Yingling  
Natalie R. Salazar  
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  
Yurij Rudensky  
Michael Li  
Ethan Herenstein  
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  
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  
Danielle L. Stewart  
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  
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*

Minority Leader Allison Russo  
Allison.russo@ohiohouse.gov  
Rep24@ohiohouse.gov

Senator Vernon Sykes  
sd28@ohiosenate.gov

/s/ Charles Miller

Charles M. Miller