

**IN THE SUPREME COURT OF OHIO**

THE OHIO ORGANIZING	:	Case No. 2021-1210
COLLABORATIVE, <i>et al.</i> ,	:	
	:	
<i>Petitioners,</i>	:	<b>APPORTIONMENT CASE</b>
	:	
v.	:	Filed pursuant to S.Ct.Prac.R. 14.03(A)
	:	and Section 9 of Article XI of the Ohio
OHIO REDISTRICTING	:	Constitution to challenge a plan of
COMMISSION, <i>et al.</i> ,	:	apportionment promulgated pursuant to
	:	Article XI.
<i>Respondents.</i>	:	
	:	

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**OBJECTIONS**

**OF PETITIONERS THE OHIO ORGANIZING COLLABORATIVE, ET AL.**

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**TABLE OF CONTENTS**

	<b>Page</b>
INTRODUCTION .....	1
OBJECTIONS.....	2
I.    The New Plan Fails to Comply with Ohio Constitution, Article XI, Section 6(A). ....	2
II.   The New Plan Fails to Comply with Ohio Constitution, Article XI, Section 6(B).....	10
CONCLUSION.....	12

## INTRODUCTION

The Ohio Redistricting Commission adopted a General Assembly redistricting plan in September 2021. On January 12, 2022, this Court held that the plan was unconstitutional under Section 6 of Article XI of the Ohio Constitution and directed the Commission to enact a new plan. But instead of returning to the proverbial drawing board with independent map drawers working for the entire Commission, the reconstituted Commission once again split into caucuses and delegated the map drawing to the same partisan actors. The Republican caucus map drawers used the unconstitutional plan as a template, tweaked it slightly, and presented a new plan that the Commission once again adopted along party lines. It remains unconstitutional. Regrettably, this Court should declare that the new plan adopted on January 22, 2022, is invalid and order the Commission to enact a new one that complies with the Ohio Constitution.

The new plan is unconstitutional for two reasons.

First, the Commission enacted the new plan primarily to favor Republicans and disfavor Democrats, in violation of Section 6(A) of Article XI. The Republican caucus map drawers, Ray DiRossi and Blake Springhetti, started with the same maps that this Court struck down as unconstitutional, identified districts that leaned slightly Republican, and then revised the lines just enough to create razor-thin Democratic-leaning districts—virtual toss-ups. Whereas the previous House map had five districts leaning in favor of one party by less than a 52-48 percent margin (three Democratic-leaning districts and two Republican-leaning ones), there are now fourteen of these districts, and *all* of them are districts that the Commission has counted as “Democratic leaning.” Thus, the plan functions as a one-way ratchet in favor of Republicans: Across a range of realistic election outcomes, Republican advantage can only grow, and never shrink. To illustrate, a two-percent swing in favor of the Republican Party across these districts

would yield Republicans fourteen additional seats, producing a Republican “wave.” In contrast, any similar vote swing in favor of Democrats would not yield *any* additional legislative seats. Such extreme asymmetry is not required by Ohio’s political geography or any other requirements of Article XI. The only reason to draw a map like this one is to confer a significant and durable advantage on Republican voters and disfavor Democratic voters.

Second, the Commission’s Senate map does not meet the proportionality standard set out in Section 6(B) of Article XI. The Senate map is unconstitutional on its face, based on the available evidence, because the Commission could have drawn a Senate map with a proportion of Senate districts that more closely corresponds with statewide voter preferences. Evidence shows that the Commission could have drawn a Senate map with 18 Republican-leaning seats and 15 Democratic-leaning seats. In particular, Senate maps submitted by Dr. Rodden and Bria Bennett et al. (No. 2021-1198) achieve this result while also complying with every other provision of Article XI. The Commission’s revised Senate map has 20 Republican-leaning seats and 13 Democratic-leaning seats—that is, 61 percent Republican-leaning seats and 39 percent Democratic-leaning seats. The Republican majority of the Commission thus enacted a Senate map that would still allow Republicans to have a veto-proof supermajority in the Senate—and one that does not correspond closely to the statewide preferences of the voters of Ohio.

## **OBJECTIONS**

### **I. The New Plan Fails to Comply with Ohio Constitution, Article XI, Section 6(A)**

Under Article XI, Section 6(A), the Commission must attempt to meet the standard that “[n]o general assembly district plan shall be drawn primarily to favor or disfavor a political party.” Section 6(A) was a prominent feature of the 2015 amendment to the Ohio Constitution. It contains key language that was missing from Article XI when this Court last addressed

redistricting in 2012. (Opinion ¶ 116) Section 6(A)'s language, by necessity, requires the Court to discern the map drawers' intent. (Opinion ¶ 116)

This Court held that the Commission's previously-adopted plan violated Section 6(A) because predominantly partisan intent was evident from multiple factors. All of those factors are still present.

*First*, the plan still exhibits a high degree of partisan asymmetry, a well-established political science measure of partisan bias. A plan is symmetrical if the number of seats won by a party when it receives a given percentage of the statewide vote is the same for each party. (Opinion ¶ 122; *see also* Affidavit of Michael Latner dated Oct. 22, 2021, ¶ 43) Conversely, a plan exhibits partisan asymmetry if one party would win more seats than the other party would win with the same share of votes. Last time around, Dr. Latner showed that Democratic candidates could be expected to win significantly fewer seats than Republican candidates would win with the same vote share. (Opinion ¶ 122)

The same is true again. As Dr. Latner shows in his affidavit attached to these objections, with 50 percent of the statewide vote, Democratic voters would expect to win approximately 43 percent of House seats and 42 percent of Senate seats. (Latner ¶¶ 30-32) By contrast, Republicans would expect to win 57 percent of House seats and 58 percent of Senate seats with 50 percent of the statewide vote. Comparing the revised plan with the plan that this Court found unconstitutional, Dr. Latner found that the revised House and Senate maps have levels of partisan asymmetry that are similar to the prior versions of those maps. (Latner ¶ 34) The fact that the plan's partisan asymmetry has not substantially changed from adopted plan to revised plan is



evidence that the Commission’s intent was not to treat voters equally; rather, its intent was to confer advantage on one party at the expense of another. (Latner ¶¶ 21, 34)

The persistent high degree of partisan asymmetry in the revised plan follows directly from DiRossi’s and Springhetti’s creation of a high number of toss-up districts, within the range of 48-52 percent for either party, that the Commission categorized as “Democratic-leaning.” As noted, the revised House map includes 14 toss-up districts: under the methodology deployed by the Commission, *all 14 of them* are counted as “Democratic-leaning.” (Latner ¶¶ 6, 10, 19) The estimated margin of victory in these toss-up districts is so small, however, that to call them “Democratic-leaning” is an overstatement, individually and in the aggregate, because the probability that voters will elect a Democratic candidate is *almost* the same as the probability that voters will elect a Republican candidate in these districts. (Latner ¶ 18) Nonetheless, these districts represent a third of all districts that the Commission deemed to favor Democrats. (Latner ¶ 6) Excluding toss-up districts, the House map includes 57 Republican districts and only 28 Democratic ones. (Latner ¶ 6)

If Democratic candidates win half of the 14 toss-up districts, as one would expect, on average, and *all* of the “safe”/non-toss-up Democratic-leaning districts, then they would win only 35 House seats out of 99 (Latner ¶ 18), which is no better than the performance they could reasonably expect under the unconstitutional plan, which similarly was likely to result in the election of Republican candidates in about 64.4 percent of all assembly districts (Opinion ¶ 105). By contrast, none of the districts counted as “Republican-leaning” are toss-up districts. (Latner ¶¶ 19, 20) In fact, if Republicans receive 56 percent of the statewide vote (an improvement of 2 percent from the proportionality benchmark), they can expect to win 71 House districts. (Latner ¶¶ 7, 20) Conversely, if the Democrats improve by the same 2 percent

statewide, they would see no seat increases, much less could they expect a 14-seat gain. (Latner ¶¶ 8, 20) It is also notable that several toss-up districts are adjacent to districts that contain two Democratic incumbents. (Latner ¶ 22) Overall, at least six House districts (17, 21, 26, 33, 38, 40) in the revised plan “double bunk” or place two Democratic incumbents in the same district. (*Id.*) As respondents Speaker Cupp and Senate President Huffman argued in their merit brief, “double bunking” is a tactic or method for favoring one political party’s voters at the expense of the other’s. Huffman Br. 41. All of this shows that the plan treats voters unequally, disfavoring Democratic voters and the Democratic party, in violation of Article XI, Section 6(A).

DiRossi and Springhetti did not attempt to meet the Section 6(A) standard. They used the unconstitutional maps as a starting point. (1/22/2022 Hearing at 15:04-24 [Springhetti] (“We were instructed to use the base map as a starting point because it was what was most familiar and it was something that was clear that complied with Sections 2, 3, 4, 5, and 7.”) This means that they began with a flawed foundation and then purported to make repairs. But instead of replacing the broken foundation, they merely slapped on what amounts to a coat of paint to cover up the structural flaws, *i.e.*, severe partisan asymmetry that systematically favors Republican voters over Democratic voters. (Latner ¶¶ 34-35)

After analyzing the Republican caucus plan and its asymmetry issues, Leader Elect Russo asked DiRossi to identify what steps he had taken to ensure compliance with this Court’s asymmetry analysis. (*See* Opinion ¶¶ 115-131 [holding that the adopted plan did not comply with Section 6(A) in part because of high degree of partisan asymmetry]) DiRossi, however, could not identify any steps he had taken. He responded that, after he moved a close Republican-leaning district to become a razor-thin Democratic-leaning district, he stopped and moved on to another district without further steps:

**Leader Elect Russo:** “It appears to me in the Democratic-leaning districts that you have put forth that there has been an intentional approach to drive as many as those close to 50 to technically say that you have created a Democratic-leaning district without actually in good faith creating as many Democratic-leaning districts that are possible due to the proportional requirement in the Constitution .... *Did you take steps* to also ensure that you were not getting too far in the partisan asymmetry bias[?]”

**Ray DiRossi:** “There are geography issues. I would use the Senate District 13 in northern Ohio, a district that as adopted by the committee was 50.87% Republican with two whole counties, not nearly an overwhelming Republican district. The geography is challenging there, with populations in the county and the surrounding counties. And to make that a Democratic-leaning district, which we were able to do, required splitting an additional county, but it was hours of work just to make that. It sounds very simple, but it is not. *Whether we ended at 49.2 or 49.8 or 49.9 or 48.2, when you finally get over the hurdle to go under 50, and everything else balances, and everything else matches, I would move on to another district.*”

(1/22/2022 Hearing at 1:40:05-1:42:33 (emphasis added))

This asymmetry problem resulting from DiRossi’s and Springhetti’s approach could not have been a surprise to them or the Commission itself. During the Commission’s January 20, 2022 meeting, two days before the plan was adopted, Chris Glassburn, the Democratic caucus map drawer, foreshadowed the asymmetry problem that would result from the Republican caucus

efforts to achieve nominal proportionality by creating a high number of razor-thin Democratic-leaning districts:

There is undoubtedly going to be competitive districts, and should be competitive districts through this State, but if we have repeated 50 percent plus one, over and over and over, there will become a point where the Court's concerns regarding asymmetry of districts, whereas one party has a disproportionate number of seats that are close to 50 percent versus the other party, will come into play. And so I just throw that out as a word of caution.

(1/20/2022 Hearing at 16:39-17:06)

Two days later, when the Republican caucus presented its plan, and Leader Elect Russo questioned all of the mapmakers regarding asymmetry, Glassburn affirmed that his previous note of caution had gone unheard:

The nature of Ohio is that we do have Democrats in certain areas and we have Republicans in other areas, and sometimes that political geography bumps up. And so, it is clear that there will be some more Democratic seats closer to that competitive mark than Republican seats, but there is a substantial difference between there being a dozen on one side and zero on the other versus having five or it could be as low as two or three on the Democratic side. The notion that when you do that aggregately across a dozen seats that that has no impact on the statewide is hard to reconcile with the Court's decision.

(1/22/2022 Hearing at 1:39:00-59)

*Second*, the map-drawing process shows the Commission’s predominant partisan intent to favor Republicans. During the previous process, Senate President Huffman and House Speaker Cupp directed DiRossi and Springhetti to draft the maps for the Republican caucus, and the Commission (composed of a majority of Republicans) adopted the Republican caucus map on a party-line vote. (Opinion ¶ 118) The Court expressly addressed this process and explained that, “[t]his is not the process that Article XI contemplates” because “Section 1(C) provides that the commission ‘shall draft the proposed plan in the matter prescribed in’ Article XI, and Section 1(B)(2) allows the commission to hire its own staff to do so” and “despite this language, the commission itself did not engage in any map drawing or hire independent staff to do so.” (Opinion ¶ 119) Instead of following the Constitution, “the legislative caucuses of the two major political parties—i.e., the groups with the most self-interest in protecting their own members—drew maps for the commission to consider.” (Opinion ¶ 119)

The same is true again. The Commission as a whole did not draw the maps. (1/22/2022 Hearing at 1:31:24-47 [Sen. Sykes]) Nor did the Commission hire independent staff to do so. Instead, the Republican caucus again delegated map drawing to their Republican caucus employees, DiRossi and Springhetti. (1/22/2022 Hearing at 1:44-2:00 [Speaker Cupp] (“Ray DiRossi & Blake Springhetti, if you will come forward and explain the Republican maps”)) And the Democratic caucus delegated map drawing to their Democratic caucus employee, Glassburn. (1/20/2022 Hearing at 9:52-10:01 [Sen. Sykes] (“At this time, we’ll call on Chris Glassburn, our map drawer on the Democratic side, to present our counter.”)) Although the Commission members spoke generally about “working together” and making “compromises,” the Commission members did not direct their caucus staffers to work on a single plan to be presented to the Commission for adoption. Instead, just like before, the respective caucuses directed their

staffers to work on their own partisan plans. And, in the end, the Republicans on the Commission—who represent the majority—voted for the plan drawn by their Republican caucus staffers, despite its flaws, on a party-line vote.

Senator Sykes acknowledged this problem shortly before the Commission voted to adopt the revised plan, stating, “It was never our intention, the Democrats on this Commission, it was never our intention to produce a map because we were directed by the Court for *the Commission* to produce a map, not to have the Democratic map and a Republican map[.]” (1/22/2022 Hearing at 1:31:24-47 (emphasis added)) But Senate President Huffman responded that, despite the Ohio Constitution and this Court’s command, “the system in place is for both sides to have the assets they need to analyze these issues and put them forward, and to draw maps if they so choose.” (1/22/2022 Hearing at 1:37:14-27) In pushing back against Senator Sykes’ goal that the Commission should follow this Court’s direction, Senate President Huffman did not address the fact that this Court’s interpretation of the Ohio Constitution controls over any purported traditional way of doing things; nor did Senate President Huffman address the obvious partisan fairness problems associated with a majority Republican Commission voting in lock step to adopt maps drawn by their staffers.

The same point that this Court recognized previously as relevant to the Section 6(A) analysis is relevant again: “When a single party exclusively controls the redistricting process, ‘it should not be difficult to prove that the likely political consequences of the reapportionment were intended.’” (Opinion ¶ 120 [quoting *Davis v. Bandemer*, 478 U.S. 109, 129, 106 S.Ct. 2797, 92 L.Ed.2d 85 (1986) (plurality opinion), *abrogated on other grounds by Rucho v. Common Cause*, 139 S.Ct. 2484 (2019)])

*Third*, the Commission cannot explain the partisan skew by non-discriminatory factors because the record is clear that the Commission made discretionary choices. As discussed above, the map drawers chose to use the unconstitutional plan as a starting point, and acknowledged that they made no attempts to make any of the 14 razor-thin Democratic House districts they created any safer. And it is still true, as this Court stated previously, that “it is possible to draw a plan that is compliant with Article XI and that does not favor the majority party to the overwhelming extent that the adopted plan does.” (Opinion ¶ 128) As shown in Dr. Latner’s report, the asymmetry in the revised plan is substantially higher than what appears in alternative plans submitted to the Commission. (Latner ¶ 33) This includes Dr. Rodden’s plan, which fully complies with all of the technical requirements of Article XI, Section 3.

For these reasons, the new plan fails to comply with Ohio Constitution, Article XI, Section 6(A).

## **II. The New Plan Fails to Comply with Ohio Constitution, Article XI, Section 6(B).**

Under Article XI, Section 6(B), the Commission must attempt to draw a plan that corresponds to the statewide preferences of Ohio voters: “The statewide proportion of districts whose voters, based on statewide state and federal partisan general election results during the last ten years, favor each political party shall correspond closely to the statewide preferences of the voters of Ohio.”

The Commission’s Senate map does not meet this proportionality standard. To comply with Section 6(B)’s standard, based on past election results, the proportion of Republican- and Democratic-leaning districts should closely correspond with 54 percent and 46 percent of districts, respectively. (Opinion ¶ 108) Dr. Rodden’s revised plan shows that drawing a map with

18 Republican-leaning Senate districts and 15 Democratic-leaning Senate districts, *i.e.*, 55 percent Republican and 45 percent Democratic districts, was possible. (Affidavit of Dr. Jonathan Rodden dated January 25, 2022, ¶¶ 33, 40, & Table 2) The Commission, however, adopted a Senate map with 20 Republican-leaning seats and 13 Democratic-leaning seats, *i.e.*, 61 percent Republican and 39 percent Democratic. This is a difference of two seats, and the difference is crucial. By refusing to meet the Section 6(B) proportionality standard, the Commission drafted a Senate map under which Republicans likely would obtain a veto-proof supermajority in the Senate. *See* Ohio Constitution, Article II, Section 16 (providing that vote of 60 percent of members in each chamber required to override governor’s veto).

There was no legitimate reason why the Commission could not meet Section 6(B)’s proportionality standard. Petitioners have already submitted evidence “showing that the commission could have drawn a more proportional plan.” (Opinion ¶ 112) And respondents Speaker Cupp and Senate President Huffman conceded the point. (Opinion ¶ 113) The same is true again. Expert evidence shows that it is possible to achieve the proportional 18 to 15 result in the Senate. In particular, Senate maps submitted by Dr. Rodden achieve this result while also complying with every other provision of Article XI. (Rodden ¶¶ 33, 40, Table 2) *See also* 1/18/2022 Hearing at 15:00-25 [Leader Russo] (noting that the Commission has received many maps that meet the proportionality requirement of Section 6(B) as well as all other requirements of Article XI). Because drawing a Senate map that more closely corresponds with statewide voters’ preferences was possible, Section 6(B) required the Commission to adopt a plan that does so. (Opinion ¶ 88)



## CONCLUSION

For the reasons stated above, this Court should declare that the new General Assembly district plan adopted by the Commission is invalid, enjoin respondents from using the plan adopted by the Commission, order respondents to adopt a new plan in accordance with the Ohio Constitution, and retain jurisdiction should further relief be necessary.

Dated: January 25, 2022

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3. I have previously submitted an affidavit and expert report to this Court concerning the compliance of the General Assembly district plan adopted by the Ohio Redistricting Commission on September 16, 2021 (the “Original Plan”). I now submit a subsequent affidavit and report to assess the revised General Assembly district plan adopted by the Ohio Redistricting Commission on January 22, 2022 (the “Revised Plan”).<sup>1</sup>

4. Specifically, I have been asked to analyze the Revised Plan for compliance with Article XI of the Ohio Constitution. To conduct this analysis, I rely on total population data from the 2010 and 2020 Decennial Census and 2016-2020 election data from the Voting and Election Science Team (VEST) datahub.<sup>2</sup> These data, including shapefile data, are publicly available through several repositories and mapping projects.<sup>3</sup> I have also reviewed several other plans for comparison, including the Democratic caucus plan, the Ohio Citizens’ Redistricting Commission plan, and a plan submitted by Ms. Bria Bennett, one of the named petitioners in *Bennett, et al. v. Ohio Redistricting Commission, et al.*, No. 2021-1198, which was prepared by Dr. Jonathan Rodden. All of these plans are available for download on the Ohio Redistricting Commission website.<sup>4</sup>

5. I am receiving compensation for my study and testimony at an hourly rate of \$250 per hour. My compensation is in no way dependent on the outcome of the dispute.

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<sup>1</sup> These plans both include maps for the state House and Senate. References below to these individual maps will retain this nomenclature, e.g. “Original House” and “Revised Senate.”

<sup>2</sup> <https://dataverse.harvard.edu/dataverse/electionscience>.

<sup>3</sup> I obtained data from the following:

Redistricting Data Hub: <https://redistrictingdatahub.org/data/about-our-data/#pl>.

Dave’s Redistricting App: <https://davesredistricting.org/>.

<sup>4</sup> <https://www.redistricting.ohio.gov/maps>

## SUMMARY OF MY OPINIONS

6. The Revised Plan continues to run afoul of principles of proportionality, though in different ways than the Original Plan. Nominally, the Revised Plan creates 57 Republican-leaning House districts and 42 Democratic-leaning House districts. However, this summary statistic is misleading because a full third of the seats that favor Democrats are true toss-ups. In other words, 14 out of the 42 Democratic-leaning districts have been drawn to be 52 percent or less Democratic, while there are *zero* Republican-leaning districts that fall into this toss-up category.

7. This means even very slight shifts in the electorate in favor of Republicans would be expected to wipe out a third of the Democratic House caucus and produce extreme disproportionality. With 56 percent of the statewide vote, Republicans would be expected to carry 71 House districts. Notably, equivalent shifts among voters in favor of Democrats would not yield *any* additional seats, much less the extreme gains that Republicans would see.

8. With respect to the Senate, the Revised Plan creates approximately 13 Democratic-leaning seats and 20 Republican-leaning districts, for respective seat shares of 39 and 61 percent. This configuration of districts is reasonably expected to sustain a veto-proof supermajority in the Senate.

9. The Revised Plan also continues to systemically disfavor Democratic voters and produces significant asymmetry. The Revised Plan does little to improve on the significant asymmetry of the Original Plan, which is a direct outgrowth of what appears to be a minimalist approach to meeting proportionality standards in Section 6(B).

10. Viable comparison plans submitted to the Commission, including ones by the Ohio Citizens' Redistricting Commission, Ms. Bria Bennett, and the Democratic caucus create

at least 42 Democratic-leaning House districts and 14 Democratic-leaning Senate districts and would not produce extreme disproportionality under likely election scenarios. These comparison plans also achieve substantially greater partisan symmetry in both the House and Senate.

## ANALYSIS AND OPINIONS

### **I. The Proportion of Districts in the Revised Plan That Favor Each Political Party Does Not Correspond with the Statewide Preferences of the Voters of Ohio**

11. To conduct the proportionality analysis, I employed the same methodology and used the same data sources as those I employed in my earlier affidavit and expert report.

12. Once again, I proceeded in four steps. First, I calculated the statewide preferences of the voters of Ohio, based on available statewide state and federal partisan general election results during the last ten years. Second, I calculated the statewide proportion of districts whose voters favor each political party, based on the same set of statewide elections. I did this for the House and the Senate maps in the Revised Plan and compared these findings to the Original Plan and to alternative plans submitted to the Commission. Then, to determine whether the two figures “closely correspond” to each other, I calculate the difference between those two figures. Finally, I compare that difference both to the previous General Assembly maps and to other maps submitted to the Commission.

13. In my original analysis, I determined that, under a proportionate map, 54 seats (54.1 percent) should favor Republicans and 45 seats (45.9 percent) should favor Democrats. I also determined that a district favored a political party whenever that party had an average two-party vote share above 50 percent and included districts that could be considered toss-ups where a party had a vote share above 50 percent but below 52 percent. This approach allowed me to allocate all districts in the proportionality analysis to one party or the other, which made for

convenient comparison. Because each party under the Original Plan would have roughly the same number of toss-ups (three for Democrats and two for Republicans), there was no need to create a third category for such districts.

14. Here, I have once again provided an analysis using this methodology that uses 50 percent as a bright-line marker for allocating districts. However, I note that the Commission’s Revised Plan produces a large and unexpected number of toss-up districts that are all tallied for Democrats under this methodology. To account for this aberration and to guard against biasing my analysis in favor of finding greater disproportionality or asymmetry, districts with 0.005 percent or less difference between party vote shares are allocated to the Democratic Party.

15. When all districts are allocated to one party or the other, the revised House district map yields 42 Democratic-leaning districts and 57 Republican-leaning districts, for respective seat shares of 42 percent and 58 percent. Using this allocation method, the revised House district map improves on the disproportionality of the original House district map and performs comparably to the comparison plans, though the Democratic caucus and Bennett/Rodden plans are more proportionate. See Table 1.

**TABLE 1**

**Proportionality in Revised, Original, and Alternative House Plans**

PLAN	R VOTE SHARE	R SEATS	R SEAT SHARE	DIFFERENCE
<i>Original House</i>	54%	64	65%	11%
Revised House	54%	57	58%	4%
OCRC House	54%	57	58%	4%
Democratic House	54%	56	57%	3%
Bennett/Rodden House	54%	56	57%	3%

16. The proportionality of the revised Senate district map does not correspond as closely to the statewide preferences of Ohio voters as each of the comparison plans. The new plan yields approximately 13 Democratic leaning seats and 20 Republican leaning districts, for respective seat shares of 39 and 61 percent. The comparison plans all create Senate districts that are more proportional and the Bennett/Rodden plan produces near perfect proportionality. See Table 2.

TABLE 2

**Proportionality in Revised, Original, and Alternative Senate Plans**

PLAN	R VOTE SHARE	R SEATS	R SEAT SHARE	DIFFERENCE
<i>Original Senate</i>	54%	24	73%	19%
Revised Senate	54%	20	61%	7%
OCRC Senate	54%	19	58%	4%
Democratic Senate	54%	19	58%	4%
Bennett/Rodden Senate	54%	18	55%	1%

17. The difference between 20 Republican leaning districts and 19 or 18 Republican leaning districts is significant given that 20 Senate districts is the threshold for a supermajority in that chamber.

18. As noted above, a feature of the revised House map is the significant and unexpected number of districts that lean Democratic by razor-thin margins. Districts within the range of 48-52 percent for either party are generally considered highly competitive or toss-up

districts.<sup>5</sup> If the “lean” of the districts is unbiased, or randomly distributed between the two parties, it is reasonable to expect the parties to split these districts roughly 50/50 over the course of elections due to ebbs and flows in voter support.

19. The revised House map contains 14 toss-up districts, which is an unusually large number for a 99-district legislative chamber.<sup>6</sup> For comparison, the original House map had five toss-ups and the comparison plans all feature nine or fewer. More importantly, all of the 14 toss-up districts in the revised House map have a Democratic lean, a feature that makes the revised House map stand out in comparison to all others. This means that a proportionality metric that treats the 50 percent mark as a bright line will view the revised House map as significantly more proportional than how it will likely perform in any given election.

20. As a result of these toss-up districts, a two-percent swing in favor of the Republican Party statewide under the revised House map will produce 14 additional Republican seats and a Republican supermajority in the House. But, a similar vote swing in favor of Democrats will not even yield *any* additional seats given the revised House map has no equivalent toss up Republican districts. See Table 3.

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<sup>5</sup> The Princeton Gerrymandering Project considers vote shares between 46.5-53.5 to be “competitive”: <https://gerrymander.princeton.edu/redistricting-report-card-methodology>.

Other sources consider elections within a 5-point margin to be competitive: <https://www.washingtonpost.com/politics/2021/11/23/gerrymandering-redistricting-competitive-house-districts/>.

On the predictability of close elections, see Justin Grimmer, et.al., “Are Close Elections Random?” <https://web.stanford.edu/~jgrimmer/CEF.pdf>

<sup>6</sup> Under a normal distribution, about 7 percent of districts would fall into this “toss-up” range.



TABLE 3

### House Swing Analysis in Toss-Up Districts (48-52%)

PLAN	D/R LEAN (TOTAL)	2% D SWING	2% R SWING
<i>Original House</i>	3/2 (5)	2	3
Revised House	14/0 (14)	0	14
OCRC House	2/1 (3)	1	2
Democratic House	7/2 (9)	2	7
Bennett/Rodden House	2/1 (3)	1	2

21. The sheer number of toss up districts and the precision of their partisan composition suggests the Commission intended to use toss up districts that are nominally Democratic to create an illusion of increased proportionality without producing a map that would produce proportionate outcomes. That this was a deliberate choice by the Commission is underscored by the persistent asymmetry and failure of the Revised Plan to meet partisan fairness, which is discussed further below.

22. It is also notable that several toss-up districts are adjacent to districts that contain two Democratic incumbents. Overall, at least six House districts (17, 21, 26, 33, 38, 40) in the Revised Plan “double bunk” or place two Democratic incumbents in the same district. Such factors are important for assessing the likely performance of the plan. More generally, any proportionality determination of the Revised Plan cannot omit the fact that one-third of Democratic leaning House districts will not perform reliably in any given election and that *no* such districts exist for Republicans.

23. The Senate map does not have an unusually high number of toss-up districts, However, as discussed above, the Senate map does not correspond closely to the statewide preferences of Ohio voters and performs worse on proportionality than the comparison plans. See Table 4.

**TABLE 4**

**Senate Swing Analysis in Toss-Up Districts (48-52%)**

PLAN	D/R LEAN (TOTAL)	2% D SWING	2% R SWING
<i>Original Senate</i>	0/2 (2)	2	0
Revised Senate	3/2 (5)	2	3
OCRC Senate	2/1 (3)	1	2
Democratic Senate	2/1 (3)	1	2
Bennett/Rodden Senate	3/0 (3)	0	3

**II. The Revised Plan Favors Republican Voters and Disfavors Democratic Voters**

24. To conduct the partisan fairness analysis, I used the same statistical and comparative partisan symmetry analysis as in my prior affidavit and expert report.

25. First, I determined the degree to which the Revised Plan exhibits asymmetry in the allocation of seats to votes between the parties. Second, I compared asymmetries across the three above-mentioned comparison plans. Such comparison is helpful because it demonstrates that the Commission could have introduced and adopted a less biased remedial plan.

26. Partisan symmetry is a broadly accepted metric used by political scientists to measure partisan bias.<sup>7</sup> The principle of partisan symmetry requires that a districting system award the same number of seats to each party's candidates for the same share of statewide votes they receive. The question posed by a partisan symmetry analysis, in other words, is how many more (or fewer) seats does one party get for some share of the statewide vote as compared to what another party gets for that same statewide vote share.

27. Scientifically, accepted measures of partisan symmetry follow logically from the principle that an electoral system should treat the parties and their voters equally and that the party that wins the most votes should win the most seats.<sup>8</sup> As before, I estimate symmetry in two ways: (1) a simple numeric formula ( $S$ ) that can be calculated by hand,<sup>9</sup> and (2) a computational model of symmetry with statistical confidence intervals. The computational symmetry models estimate symmetry in the seats-votes function across a range of vote shares, which in this case is between 45 and 55 percent, while  $S$  measures symmetry in the distribution of support for parties across the districts that each party wins.

28. To calculate the simple measure of symmetry,  $S$ , I take the districts that are 5 percent above or below the statewide average of party support and determine what proportion of those districts favor Democrats and what proportion favor Republicans. That is, a plan's bias under  $S$  equals the proportion of seats with Democratic vote share above five percent of the Democratic average minus the proportion of seats with Republican vote share above five percent of the Republican average. Put simply,  $S$  tells you whether a districting plan creates

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<sup>7</sup> Barry Burden and Corwin Smidt, "Evaluating Legislative Districts Using Measures of Partisan Bias and Simulations," *Sage Open*, 10, 4, 2020; <https://doi.org/10.1177/2158244020981054>; Anthony J McGann, Charles Anthony Smith, Michael Latner, Alex Keena, "A Discernable and Manageable Standard for Partisan Gerrymandering" *Election Law Journal*, 14, 4, 2015; John F. Nagle. "Measures of Partisan Bias for Legislating Fair Elections", *Election Law Journal*: 2015. pp. 346-360. <http://doi.org/10.1089/elj.2015.0311>.

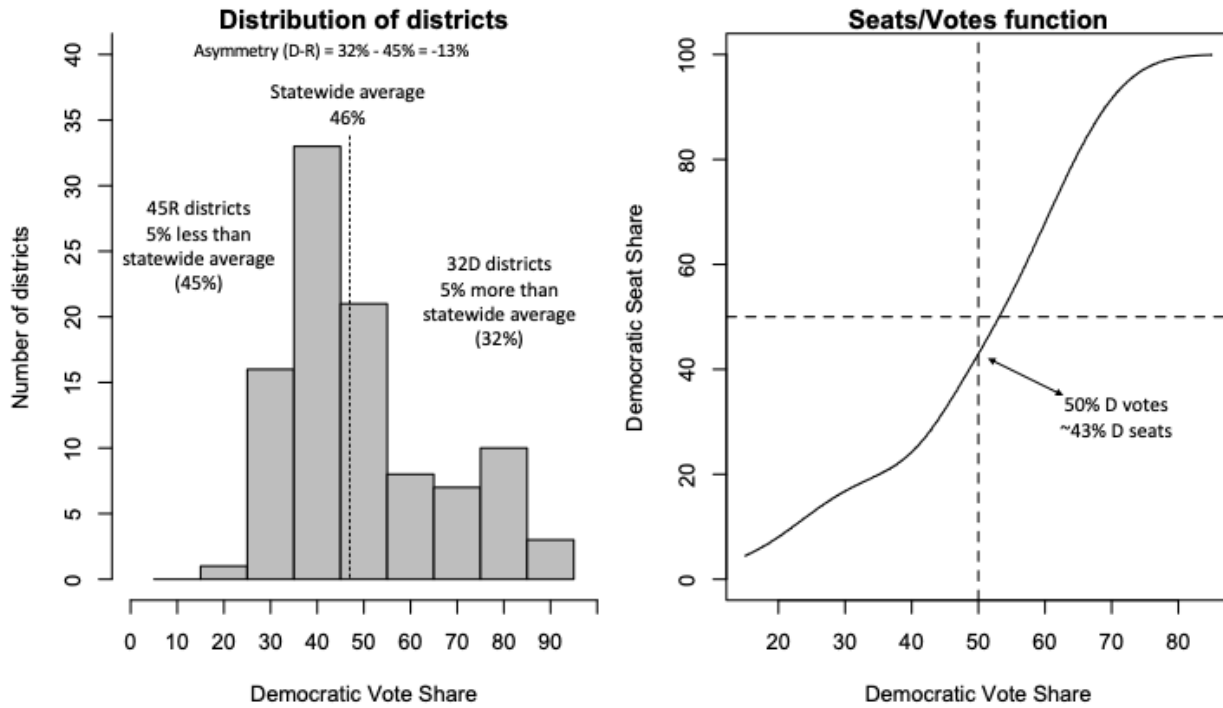
<sup>8</sup> McGann, et.al., "A Discernable and Manageable Standard for Partisan Gerrymandering".

<sup>9</sup> This metric was first developed by Anthony McGann, during the writing of *Gerrymandering the States*, p. 30.

more Republican or Democratic leaning districts relative to the party's statewide average. A negative value for  $S$  means Republicans are advantaged while a positive value means Democrats are advantaged. In this report, simple  $S$  symmetry is charted graphically in the form of histograms. A symmetrical plan would show similar distributions of districts on either side of the vertical line denoting the average vote share; an asymmetrical plan would give the favored party more districts past the line denoting the average vote share for the party.

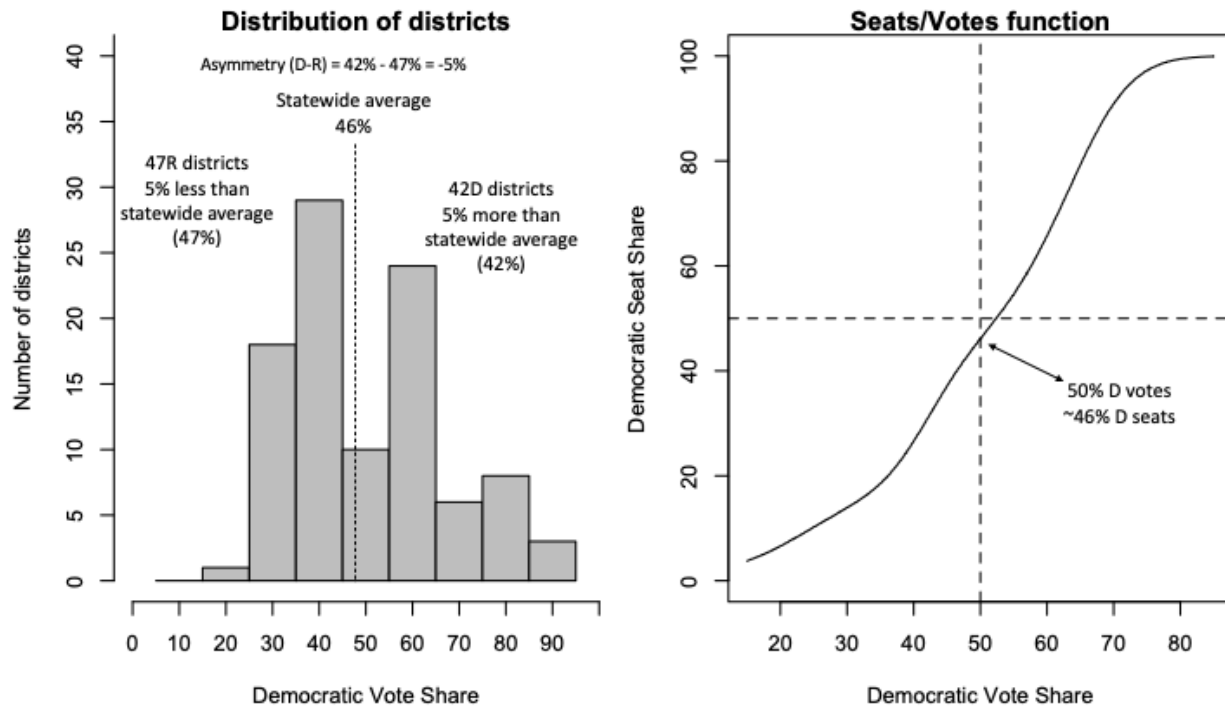
29. For the computational models, I calculate partisan symmetry for the plans, but instead of assuming uniform vote swing across districts, I impute random "noise" (up to five points) in 1,000 simulations of district vote distributions to reflect the idiosyncrasies and perturbations that occur in real elections over time. The procedure also allows me to calculate confidence intervals to provide estimates of statistical significance. In this report, the computational model is charted as a seats/votes S-curve function.

30. Figure 1 below displays a histogram of the allocation of seats for the Revised House plan, as well as the estimated seats/votes function. The histogram illustrates the skew in the allocation of seats, where more Democratic seats are won in overwhelmingly Democratic districts (80 percent vote share and above) with virtually no corollary Republican districts. This results in more wasted votes for Democrats. As a result, under the revised House plan, Democratic voters would only expect to win approximately 43 percent of House seats with 50 percent of statewide votes, as shown in the seats/votes function. By contrast, Republicans would expect to win approximately 57 percent of House seats with 50 percent of the statewide vote. Relative to their statewide vote share, Republicans have more safe districts (45) than Democrats (32) which means their voters are allocated more efficiently under the Revised House plan.



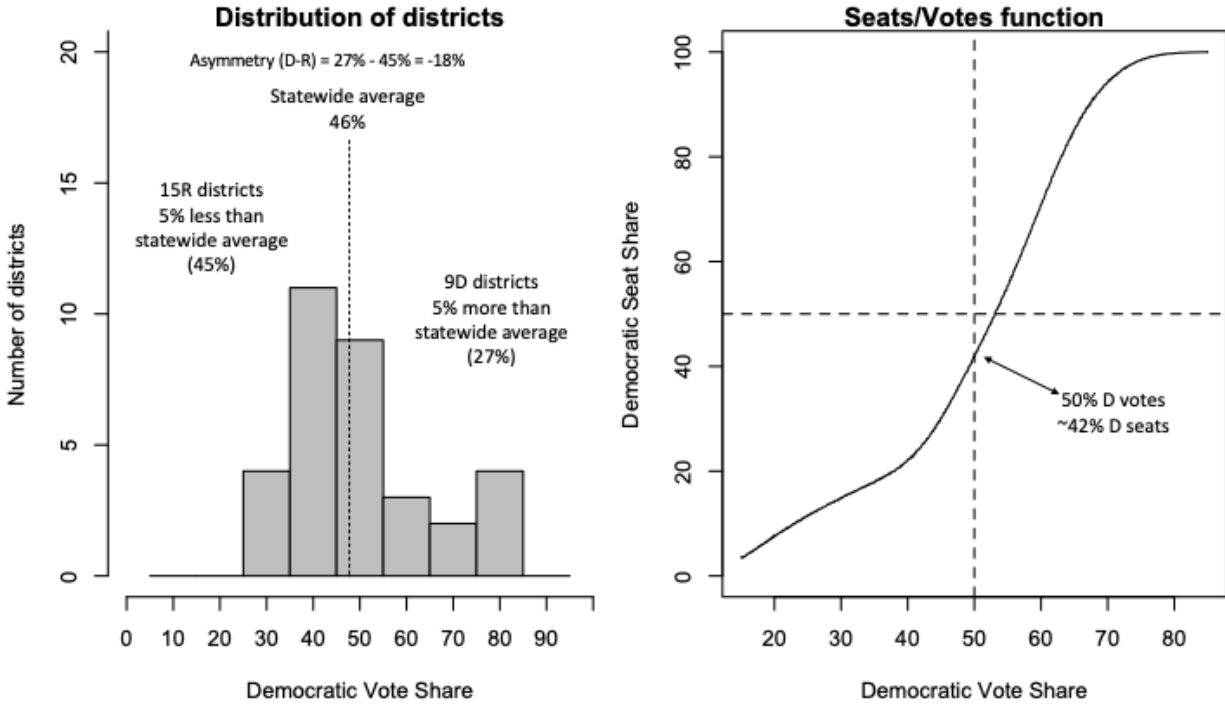
**Figure 1: Revised House Map Asymmetry**

31. Figure 2 demonstrates that the OCRC comparison House map produces a more symmetrical histogram and seats/votes curve. Under the OCRC proposal, there are fewer toss up districts and more parity between the parties producing a far lower asymmetry score.



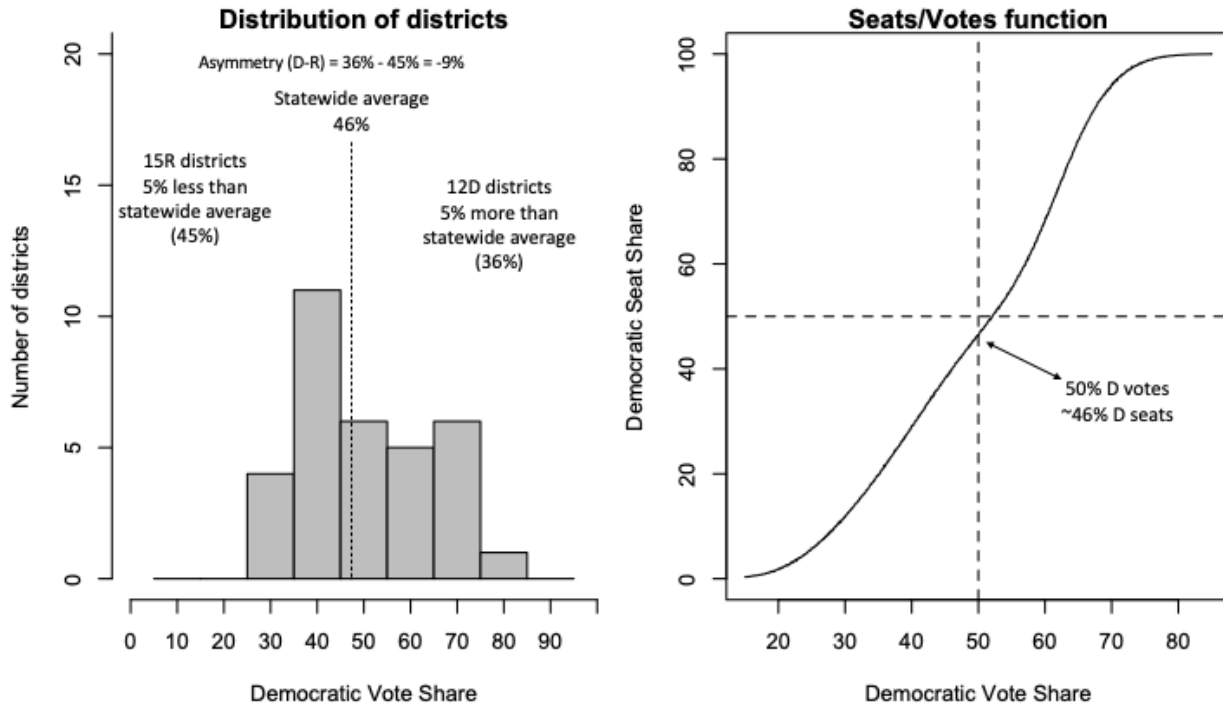
**Figure 2: OCRC House Map Asymmetry**

32. Figure 3 shows a similar pattern in the revised Senate map. There are 15 Republican seats well beyond the statewide average compared to just 9 seats where Democrats earn more than their statewide average vote share. That provides an approximately 18 percent seat advantage to Republicans across the range of likely outcomes. The computational model estimates that with 50 percent of the statewide vote, Democrats would win only about 42 percent of Senate seats. By contrast, Republicans would expect to win 58 percent of Senate seats with 50 percent of the statewide vote.



**Figure 3: Revised Senate Map Asymmetry**

33. Figure 4 charting the asymmetry in the OCRC senate map again shows that greater symmetry was possible.



**Figure 4: OCRC Senate Map Asymmetry**

34. Most importantly, the asymmetry in both the revised House and Senate maps is only a marginal improvement from the Original Plan and lags far behind all other comparison plans. See Tables 5 and 6. Given the approach the Commission took toward proportionality, it is unsurprising that the asymmetry of the Revised Plan is nearly double that of the comparison plans submitted to the Commission. Indeed, an unbiased, proportional plan where both parties have roughly the same proportion of safe districts and competitive districts are allocated in a way that roughly mirrors the statewide share of partisan support, is by definition a symmetric plan. Instead, the Commission intentionally created a large number of highly competitive but Democratic-leaning districts, while keeping more Republican voters in safer districts. That decision is a major source of the observed asymmetry.



TABLE 5

### Asymmetry in Revised, Original, and Alternative House Plans

PLAN	SIMPLE S	ASYMMETRY	(95% CONFIDENCE)
<i>Original House</i>	-15	-15.4	(5.9)
Revised House	-13	-13.9	(5.8)
OCRC House	-6	-7.9	(5.5)
Democratic House	-10	-8.8	(5.1)
Bennett/Rodden House	-5	-8.3	(5.3)

TABLE 6

### Asymmetry in Revised, Original, and Alternative Senate Plans

PLAN	SIMPLE S	ASYMMETRY	(95% CONFIDENCE)
<i>Original Senate</i>	-15	-17.3	(10.5)
Revised Senate	-18	-15.7	(10.5)
OCRC Senate	-9	-7.1	(9.2)
Democratic Senate	-9	-7.2	(9.8)
Bennett/Rodden Senate	-9	-6.2	(10.0)

35. My conclusion with respect to the Revised Plan echoes my earlier conclusions of the Original Plan. Disproportionality continues to be an issue in the revised Senate map and also the House map if a functional approach that considers the toss-up nature of many districts counted as Democratic-leaning is considered. Further, both the revised House and Senate maps are substantially biased in favor of Republican voters, as demonstrated by the persistent significant asymmetries in partisan support across districts that is not meaningfully different

than in those in the Original Plan. A minority of Republican voters will still be able to elect a majority of the General Assembly. By the same token, the Revised Plan greatly disadvantages and burdens Democratic voters, as they cannot obtain the same level of political power as Republicans, even with the same number of votes. An analysis of comparison plans makes clear that the Commission could have produced a less biased plan. In short, the Commission’s remedial plan continues to disfavor Democrats.

*Michael S. Latner*

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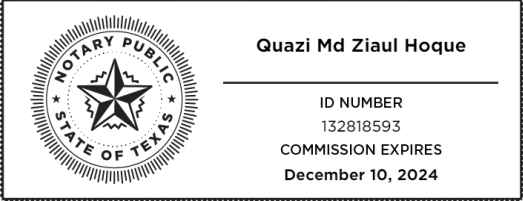
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County of Dallas

Sworn to and subscribed before me on the 25th day of January, 2022 by Michael S. Latner

*Quazi Md Ziaul Hoque*

(Signature of Notary)

Quazi Md Ziaul Hoque



Notarized online using audio-video communication

## CERTIFICATE OF SERVICE

I, Danielle L. Stewart, hereby certify that on January 25, 2022, I caused a true and correct copy of the foregoing Objections of Petitioners The Ohio Organizing Collaborative, et al. to be served by email upon the counsel listed below:

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