IN THE SUPREME COURT OF OHIO

Regina Adams, *et al.*, **Relators,** **v.** **Governor Mike DeWine, *et al.*,** **Respondents.**	**Case No. 2021-1428** Original Action Filed Pursuant to Ohio Constitution, Article XIX, Section 3(A)
League of Women Voters of Ohio, *et al.*, **Relators,** **v.** **Governor Mike DeWine, *et al.*,** **Respondents.**	**Case No. 2021-1449** Original Action Filed Pursuant to Ohio Constitution, Article XIX, Section 3(A)

RESPONSE TO MOTIONS TO AMEND

Robert D. Fram (PHV 25414-2021)*
Donald Brown (PHV 25480-2021)*
Joshua González (PHV 25424-2021)*
David Denuyl (PHV 25452-2021)*
Juliana Goldrosen (PHV 25193-2021)*
COVINGTON & BURLING
Salesforce Tower
415 Mission Street, Suite 5400
San Francisco, CA 94105-2533
(415) 591-6000
rfram@cov.com

James Smith*
Sarah Suwanda*
Alex Thomson (PHV 25462-2021)*
COVINGTON & BURLING
One CityCenter
850 Tenth Street, NW
Washington, DC 20001-4956
(202) 662-6000
jmsmith@cov.com

Dave Yost (0056290)
Bridget C. Coontz (0072919)
Julie M. Pfeiffer (0069762)
OHIO ATTORNEY GENERAL
30 E. Broad Street
Columbus, Ohio 43215
T: (614) 466-2872
F: (614) 728-7592

Counsel for Secretary of State LaRose,

Phillip J. Strach (PHV 25444-2022)*
phillip.strach@nelsonmullins.com
Thomas A. Farr (PHV 25461-2022)*
tom.farr@nelsonmullins.com
John E. Branch, III (PHV 25460-2022)*
john.branch@nelsonmullins.com
Alyssa M. Riggins (PHV 25441-2022)*
alyssa.riggins@nelsonmullins.com

Anupam Sharma (PHV 25418-2021)*
Yale Fu (PHV 25419-2021)*
COVINGTON & BURLING
3000 El Camino Real
5 Palo Alto Square, 10th Floor
Palo Alto, CA 94306-2112
(650) 632-4700
asharma@cov.com

Freda J. Levenson (0045916)
Counsel of Record
ACLU of Ohio Foundation, Inc. 4506 Chester Avenue
Cleveland, OH 44103
(614) 586-1972 x125 flevenson@acluohio.org
David J. Carey (0088787)
ACLU of Ohio Foundation, Inc. 1108 City Park Avenue, Suite 203 Columbus, OH 43206
(614) 586-1972 x2004 dcarey@acluohio.org

Julie A. Ebenstein (PHV 25423-2021)*
American Civil Liberties Union
125 Broad Street
New York, NY 10004
(212) 519-7866
jebenstein@aclu.org

Counsel for League of Women Voters of Ohio, et al.

Abha Khanna
Ben Stafford
ELIAS LAW GROUP LLP
1700 Seventh Ave, Suite 2100
Seattle, WA 98101
akhanna@elias.law
bstafford@elias.law
T: (206) 656-0176
F: (206) 656-0180

Aria C. Branch
Jyoti Jasrasaria
Spencer W. Klein

NELSON MULLINS RILEY & SCARBOROUGH LLP
4140 Parklake Avenue, Suite 200
Raleigh, NC 27612
Telephone: 919-329-3800

W. Stuart Dornette (0002955)
dornette@taftlaw.com
Beth A. Bryan (0082076)
bryan@taftlaw.com
Philip D. Williamson (0097174)
pwilliamson@taftlaw.com
TAFT STETTINUS & HOLLISTER LLP
425 Walnut St., Suite 1800
Cincinnati, OH 45202-3957
Telephone: 513-381-2838

Counsel for Respondents Huffman and Cupp
**Admitted Pro Hac Vice*

Harleen K. Gambhir
ELIAS LAW GROUP LLP
10 G St NE, Suite 600
Washington, DC 20002
abranch@elias.law
jjasrasaria@elias.law
sklein@elias.law
hgambhir@elias.law
T: (202) 968-4490
F: (202) 968-4498

Donald J. McTigue* (0022849)
*Counsel of Record
Derek S. Clinger (0092075)
MCTIGUE & COLOMBO LLC
545 East Town Street
Columbus, OH 43215
dmctigue@electionlawgroup.com
dclinger@electionlawgroup.com
T: (614) 263-7000
F: (614) 368-6961

Counsel for Adams, et al. Petitioners

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

INTRODUCTION

A mere seven days before the mailing of overseas absentee ballots, and almost ten days since the Ohio Redistricting Commission (the "Commission") adopted a congressional district plan (the "Second Plan"), *Adams* and *League of Women Voters of Ohio* ("LWVO") Petitioners seek the extraordinary relief of asking this Court to allow them to amend their complaint. They seek to do this in cases where the Commission was already dismissed as a party, and where a final judgment on the merits was entered. There is no support for such a request in law or in equity. Granting this relief will guarantee election chaos and confusion for congressional candidates and millions of Ohio voters and may cause Ohio to default on federally mandated election deadlines that could possibly result in the disenfranchisement of military voters overseas. Accordingly, the motions should be denied.

BACKGROUND

I. The Commission was already dismissed from this action and a final judgment was reached on the merits.

On November 22, 2021, *Adams* Petitioners filed their action challenging the congressional district plan first passed by the general assembly and signed into law by the governor ("First Plan"). On November 29, 2021, the Commission and all seven of its members, ("Commission Respondents") moved to dismiss the claims against them, given that the Commission Respondents were not involved in the passage of the First Plan. *Adams* Petitioners responded, arguing in part that the Commission Respondents were proper parties to the litigation because they could be involved in a remedial phase of the litigation. Nevertheless, the Court dismissed all Commission Respondents on December 3, 2021. *See 12/03/2021 Case Announcements #2, 2021-Ohio-4237. LWVO* Petitioners filed their action eight days after the *Adams* Petitioners on November 30, 2021. On December 2, 2021 Commission Respondents, again moved to dismiss themselves from that

action given that they were not involved in the passage of the First Plan. *LWVO* Petitioners also argued that the Commission Respondents were proper parties to the litigation because they could be involved in a remedial phase of the litigation. The Court *sua sponte* dismissed all Commission Respondents on December 6, 2021. *See* December 6, 2021 Case Announcements #2, 2021-Ohio-4267. Thus, Petitioners tried to keep the Commission and its members as proper parties to the lawsuits challenging the First Plan, and each time the Court dismissed the Commission and its members anyway. When the Court dismissed the Commission Respondents the Court no longer had jurisdiction over any of them with respect to the claims in this case. A final judgment against the remaining respondents was issued on January 14, 2022.

II. The Commission adopts a new plan.

Following this Court's invalidation of the First Plan, the general assembly did not pass a new remedial congressional district plan within the thirty days provided under Section 3 of Article XIX. Thus, that obligation passed to the Commission.

The Commission met on February 24, March 1, and March 2, 2022 to hear public testimony and to discuss adopting a new congressional district plan.[1] The Commission adopted a congressional district plan on March 2 (the "Second Plan"). The Second Plan is actively being implemented by the Secretary of State and all eighty-eight county boards of elections for use in the upcoming May 3, 2022 primary election.[2]

[1] Transcripts of these hearings were attached to Respondents' Response to Motion to Enforce as Exhibits 1-3 respectively.

[2] *See e.g.,* the directive to County Boards of Election issued by Secretary of State LaRose on March 2, 2022. (Exhibit 1) https://www.ohiosos.gov/media-center/press-releases/2022/2022-03-02b/ Further highlighting Petitioners' delay, this was issued two days before the *Adams* Petitioners Motion to Enforce was filed, and over a week before either the *Adams* or *LWVO* Petitioners moved to amend their complaints.

III. Petitioners dilly-dally when every day counts in running elections.

Instead of promptly filing a new complaint, Petitioners instead filed a bizarre "motion to enforce" the Court's order against the Commission regarding the First Plan even though the Commission was never a party to that order. As discussed more fully in Respondents' Response to Petitioners Motion to Enforce, such a motion is entirely improper. *See also State ex rel. Welt v. Doherty*, ___N.E. 3d____, 2021 WL 4155982, 2021-Ohio-3124 ¶19 (holding that "in general, when a trial court unconditionally dismisses a case or a case [has] been voluntarily dismissed under Civ. R. 41(A)(1), the trial court patently and unambiguously lacks jurisdiction to proceed, and a writ of prohibition will issue to prevent the exercise of jurisdiction."); *State ex rel. Fogle v. Steiner*, 74 Ohio St.3d 158, 164, 656 N.E.2d 1288,1295 (1995) (holding that the domestic relations court lacked jurisdiction over an issue of custody of children after the parents voluntarily dismissed the underlying divorce proceeding). *Adams* Petitioners filed their Motion to Enforce two days after the passage of the Second Plan and the *LWVO* Petitioners inexplicably held their Motion to Enforce until the close of business five days later. Meanwhile, the March 4, 2022 deadline for congressional candidates to file their petitions under the Second Plan came and went.

Then, just as the ill-timed motions to enforce were ripe for decision by the Court, Petitioners delayed a decision even further by filing the instant motions to amend their complaints to add the Commission as a party. These motions seek to amend a lawsuit that addresses an entirely different congressional plan, passed by different actors, by different methods, and under a different provision of Article XIX. Importantly, these motions to amend came almost ten days after the passage of the Second Plan, and almost 60 days since the final judgment in these actions.

Petitioners have now turned this closed matter into a procedural circus that has cost this Court and the people of Ohio valuable time. Ohio's primary is set for May 3 – less than 50 days

from today. Importantly, Ohio must mail overseas absentee ballots in a mere three days, by March 18, 2022. And moving these deadlines is not a matter of amending state law. The Federal Uniformed Overseas Citizens Absentee Voting Act of 1986 requires that ballots be transmitted to overseas military personnel no later than 45 days before a federal election, unless the Presidential designee grants the State of Ohio a waiver from doing so. 52 U.S.C. § 20302(a) (formerly 42 U.S.C. §§ 1973ff(1)-(7), as amended by Pub. L. No. 111-84, subtitle H, 575-589, 123 Stat. 2190, 2318-2335 (2009)). Importantly, the Department of Defense has already denied Ohio's request to extend this deadline. *See* Exhibit 2[3]. However, through the extraordinary efforts of the Secretary of State and the general assembly late last week, the Secretary of State is able to continue to work with his federal counterparts in an attempt to obtain a short extension to prepare and mail these ballots. *See* Exhibit 3.[4] However, as of the time of this filing, no such agreement has been reached, and the deadline remains this Friday, March 18. (*Id.*).

ARGUMENT

I. Petitioners Must File a New Lawsuit to Challenge the Second Plan.

The Ohio Rules of Civil Procedure and all applicable case law is clear: Petitioners here must file a new suit to challenge the Second Plan. Petitioners seek to amend their complaints, but there is nothing left to amend—the original cases are over. This Court issued a final judgment on the First Plan on January 14, 2022. No one appealed this order to the United States Supreme Court or sought reconsideration by this Court. And in this order, the Court did not retain jurisdiction over these cases. 2022-Ohio-89, ¶ 102 ("We hold that the General Assembly did not comply with Article XIX, Sections 1(C)(3)(a) and (b) of the Ohio Constitution in passing the congressional-

[3] https://www.msn.com/en-us/news/politics/feds-deny-ohios-request-to-delay-sending-military-ballots-as-primary-chaos-continues/ar-AAUEhzo?ocid=uxbndlbing
[4] https://www.ohiosos.gov/globalassets/elections/directives/2022/dir2022-29.pdf

district plan. We therefore declare the plan invalid and we order the General Assembly to pass a new congressional-district plan, as Article XIX, Section 3(B)(1) requires, that complies in full with Article XIX of the Ohio Constitution and is not dictated by partisan considerations."). This is unlike *League of Women Voters of Ohio v. Ohio Redistricting Comm'n,* where this Court expressly retained jurisdiction and provided a briefing schedule for objections to any new adopted remedial plans. 2022-Ohio-65, ¶ 139 ("We further order the commission to adopt a new plan within ten days of this judgment, **and we retain jurisdiction for the purpose of reviewing the new plan adopted by the commission. Petitioners shall file any objections to the new plan within three days of the plan's adoption.**") (emphasis added).

It is clear that the *Adams* final judgment lacks the express language contained in the *League of Women Voters* legislative case regarding intent to retain jurisdiction. Any sort of post-dismissal relief like Petitioners seek in various pleadings can only be entertained where the court's dismissal order contains a "clear indication that the trial court intends to retain jurisdiction…" *See Infinite Sec. Sols., L.L.C. v. Karam Properties, II, Ltd.*, 143 Ohio St. 3d 346, 353, 37 N.E.3d 1211, 1219, 2015-Ohio-1101, ¶ 30. Given the absence of a clear indication that the Court intended to retain jurisdiction, the cases Petitioners seek to file their amended complaints in are over, and cannot be resuscitated.

Petitioners' attempt to use Ohio Rule of Civil Procedure 15 under these circumstances does not make sense. If a party could revive final actions with the simple filing of an amended complaint instead of filing a new suit with new service of process to bring a party before the court, litigants could revive cases long declared final, even where evidence and witnesses are no longer available. Litigants could also, as Petitioners seek to do here, file amended complaints as a means to get around jurisdictional pre-requisites of service or due process in discovery. Litigants could, for

example, dispense with issuing a new summons and properly serving it under the state rules of civil procedure. They could also try to use an amended complaint to short-circuit additional discovery on their new claims (a tactic being employed by the Petitioners here). This could raise larger concerns of equal protection under the federal or state constitutions. Such a result would be untenable as no one would ever have the assurance of a true "final" judgment.

But, courts do not view Ohio Civ. R. 15 the same way Petitioners do. *See Applied Constr. Technologies, Inc. v. Beaux Chateaux Dev. Co*., 8th Dist. No. 73876, 1998 Ohio App. LEXIS 4230, 1998 WL 598772 (Sept. 10, 1998) ("A party cannot add new parties to an action after a final judgment has been rendered to litigate a separate cause of action. A judgment is final when entered and once final, complete."); *Davet v. Sensenbrenner*, 2012 WL 6518372, 2012-Ohio-5898, ¶ 18 (Ohio Ct. App. 2012) ([a]lthough leave of court [to file an amended complaint] may be given when justice so requires, in this case, the trial court had granted summary judgment."); *Karnofel v. Kmart Corp*., 2007 WL 4496809, 2007-Ohio-6939, ¶ 35 (Ohio Ct. App. 2007) (affirming trial court's denial of plaintiffs' second leave to amend her complaint, which she filed nearly four months after the trial court entered final judgment in favor of defendants, because the trial court "correctly determined that it was without jurisdiction to consider [plaintiffs] motion to amend her complaint.").

Nor do the cases cited by Petitioners support their position that they can file an amended complaint in a case where a final judgment has issued. In fact, not one of the cases that Petitioners cite in support of their Rule 15 arguments involve a court granting a motion to amend *after* a final adjudication on the merits:

- *Darby v. A-Best Prods. Co.*, 102 Ohio St. 3d 410, 2004-Ohio-3720, 811 N.E.2d 1117, ¶¶ 1-8: Before reaching a decision on the merits, the trial court denied the plaintiff's motion to amend to add additional parties. This Court affirmed that decision, as the federal act at issue preempted state law to limit which parties could be liable. *Id.* at ¶¶ 36–37.

- *Turner v. Cent. Loc. Sch. Dist.*, 85 Ohio St.3d 95, 99, 706 N.E.2d 1261, 1264 (1999): This Court reversed the trial court's granting of plaintiff's motion to amend as the amendment was prejudicial and untimely—after a trial date was set and two years and ten months after litigation had commenced. The motion to amend was made before the trial court entered a final judgment on the merits. *See id.*
- *Peterson v. Teodosio*, 34 Ohio St.2d 161, 174–75, 297 N.E.2d 113, 115 (1973): This Court overruled the trial court's refusal to permit filing of an amended complaint after granting a motion for judgment on the pleadings. The motion to amend was still made *before* the trial court entered a final judgment on the merits. *Id.*
- *Franciscan Communities, Inc. v. Rice*, 2021-Ohio-1729, 2021 WL 2013017, ¶ 49 (May 20, 2021 8th Dist.): Unpublished case where the Eighth District Court of Appeals affirmed the trial court's denial of the plaintiff's fourth motion to amend before reaching a decision on the merits. Despite the motion's technical timeliness, "the existing defendants had already served three sets of answers, counterclaims and crossclaims[,]" a partial motion to dismiss had been decided, and other significant discovery had occurred making it prejudicial to add new parties. *Id.* at ¶ 31 ("Although the rule allows for 'liberal' amendment of pleadings, there is no 'unconditional' or 'absolute' right to amend a complaint more than once or after the time period specified in Civ. R. 15(A) has passed." (citation omitted)).
- *Monroe v. Forum Health*, 2014-Ohio-3974, 2014-Ohio-3974, ¶ 34 (Sept. 15, 2014 11th Dist.): Unpublished decision where the Eleventh District Court of Appeals affirmed the trial court's denial of plaintiffs' motion to amend before summary judgment. The spoliation claim plaintiffs tried to add was subject to res judicata and should have been appealed in a prior, separate medical malpractice action. *Id.* at ¶¶ 38–41.
- *Christ v. Konski*, 181 Ohio App.3d 682, 685, 2009-Ohio-1460, 910 N.E.2d 520, 523, ¶¶ 16–18 (6th Dist.): The Sixth District Court of Appeals reversed the trial court's decision vacating its prior order granting plaintiff's motion for leave to amend. The amendment was proper when the involvement of a new party was discovered during discovery and before adjudication on the merits.
- *Calex Corp. v. United Steelworkers of America*, 137 Ohio App.3d 74, 79–80, 738 N.E.2d 51, 54–55 (7th Dist. 2000): The Seventh District Court of Appeals affirmed the trial court's decision allowing an amendment to the complaint to add a new cause of action for behavior after the filing of the complaint. In so doing, the court noted that amendment or supplementation are improper in certain circumstances, "such as an attempt to revive an extinguished cause of action, or to bring in a distinct new cause of action under the subterfuge of a supplemental complaint." *Id.* The motion to amend was made before the trial court entered a final judgment on the merits. *See id.*
- *Schaill v. District of Columbia*, 909 F.3d 1177, 1182–84 (D.C. Cir. 2018): Though the case had been fully dismissed due to lack of standing, the United States Court of Appeals for the District of Columbia held that the second amended complaint fell within the curable defect exception to the federal issue preclusion doctrine, which allows "relitigation of jurisdictional dismissals when a material occurrence subsequent to the original dismissal remedies the original deficiency"—wholly dissimilar to the case here, where there is no

prior jurisdictional dismissal, the Court has fully reached the merits on the prior plans, and federal law does not apply.

The precedent is clear that Petitioners cannot file an amended complaint in a suit where final judgment has already been reached. They must file a new suit. This Court should follow this well-settled precedent and decline to grant Petitioners' motions to amend their complaints.

II. Any Pronouncements by the Court in this Case Regarding the Second Plan would be Purely Advisory.

As discussed *supra* and in more detail in Respondents' Response to Petitioners' Motion to Enforce, once the Court dismissed the Commission Respondents from the underlying actions, the Court lacked jurisdiction over the Commission and all of its members. When the Court entered its January 14 order, that order entered final judgment against Respondents Huffman, Cupp and LaRose, and enjoined Secretary of State LaRose from administering elections under the First Plan. Unquestionably, the Court's January 14 Order bound Senate President Huffman, in his official capacity as President of the Ohio Senate, Speaker Cupp in his official capacity as Speaker of the Ohio House, and Secretary LaRose, in his official capacity as Secretary of State. The order did not bind any of these three individuals in their official capacities as a Commission member; and the order did not, and cannot, bind a non-party.

But the general assembly did not draw the Second Plan at issue in Petitioners' proposed amended complaints. Nor are the same provisions of Article XIX at issue in the original action, at issue in the proposed amended complaints. The provision of Article XIX applicable in this case right now is Section 3, which pertains to the remedial process after a congressional district plan is invalidated by this Court. Petitioners direct their proposed amended complaints at the Commission, but when a congressional plan is invalidated the remedial process begins with the general assembly and not the Commission. This Court cannot invalidate the Second Plan in a case where the only remaining parties are parties that did not adopt the plan. At most it could issue an

opinion advising the remaining parties and the Commission how it would rule in a lawsuit properly challenging the Second Plan. If a proper lawsuit against the Second Plan were to succeed, then the remedial process would again start with the general assembly. The only other thing this Court could do in this case would be to forecast how it might rule in the event the general assembly again did not pass a plan and the process shifted again over to the Commission. These, however, would be nothing more than advisory opinions speculating on possible future events.

But this Court does not give advisory opinions. *State ex rel. Sawyer v. Cendroski*, 118 Ohio St. 3d 50, 2008-Ohio-1771885 N.E.2d 938, ¶ 10 (quotation omitted). Furthermore, the Court has repeatedly applied this rule in election cases. *See State ex rel. Todd v. Felger*, 116 Ohio St. 3d, 2007-Ohio-6053, 877 N.E.2d 673, ¶ 13 (*citing State ex rel. Essig v. Blackwell*, 103 Ohio St. 3d 481, 2004-Ohio-5586, 817 N.E.2d 5, ¶ 34); *see also In re Contested Election on Nov. 7, 1995*, 76 Ohio St. 3d 234, 236, 667 N.E.2d 362 (1996) (per curiam) ("It is well settled that we will not indulge in advisory opinions." (internal citation omitted). For example, this Court recently held in *State ex rel. Rhoads v. Hamilton County Board of Elections*, 165 Ohio St. 3d 562, 2021-Ohio-3209, ___ N.E.2d ___, ¶ 26, that it did not need to interpret ballot language for a proposed amendment to the Cincinnati city charter to determine how to fill vacancies on the city council, as "[a]dopting either party's argument would amount to [the Court] providing an advisory opinion as to the meaning of the proposed amendment's language." Such an opinion in this case would be truly extraordinary because it would be previewing a court ruling in an as-of-yet filed case, violating decades of precedent regarding when it is appropriate for a Court to take up a matter.

III. Petitioners' Motion Must be Denied Based on Laches.

Petitioners' procedural maneuverings are unreasonable, especially given the extraordinary relief they seek within just a couple days of the administration of the May 3 primary election.

Petitioners could have filed a new suit the day after the Second Plan was filed, or certainly in the time it took Petitioners to prepare their "Motions to Enforce." Instead, for whatever reason, possibly to avoid additional discovery into what has now become obvious – their experts' flawed and conflicting methodology, Petitioners first filed their specious motions to enforce a court order against a non-party, and then 5-7 days later moved to amend their complaint in a case where final judgment had been issued two months earlier. Respondents are now responding to those motions on March 15—thirteen days since the Second Plan was adopted. While thirteen days may seem like a short period of time, when dealing with time-sensitive issues like the statewide administration of a primary election that will begin in a few days, thirteen days is an eternity.

This Court has "consistently required relators in election cases to act with the utmost diligence." *Blankenship v. Blackwell*, 103 Ohio St.3d 567, 2004-Ohio-5596, 817 N.E.2d 382, ¶ 19. "Laches may bar an action for relief in an election-related matter if the persons seeking this relief fail to act with the requisite diligence." *Smith v. Scioto Cty. Bd. of Elections*, 123 Ohio St.3d 467, 2009-Ohio-5866, 918 N.E.2d 131, ¶ 11. *See also State ex rel. Demaline v. Cuyahoga Cty. Bd. of Elections,* 2000-Ohio-108, 90 Ohio St.3d 523, 526–527, 740 N.E.2d 242, *citing State ex rel. Landis v. Morrow Cty. Bd. of Elections,* 2000-Ohio 295, 88 Ohio St.3d 187, 189, 724 N.E.2d 775 (holding that laches barred relators' mandamus action seeking to revise ballot language for proposed ordinance) ("'[W]e have held that a delay as brief as **nine days** can preclude our consideration of the merits of an expedited election case.'") (emphasis added); *State ex rel. Newell v. Tuscarawas Cty. Bd. of Elections*, 2001-Ohio-1806, 93 Ohio St. 3d 592, 595, 757 N.E.2d 1135, 1138 (holding that laches barred writ of prohibition seeking to prevent county board of elections and secretary of state from submitting proposed repeal of levies for school district) ("He waited twenty days after the petitions were filed on August 21 to file his September 10 protest, and he then waited another

fourteen days following the board's September 27 decision to file this action for extraordinary relief.")

Furthermore, the elements of laches are met here. "The elements of laches are (1) unreasonable delay or lapse of time in asserting a right, (2) absence of an excuse for the delay, (3) knowledge, actual or constructive, of the injury or wrong, and (4) prejudice to the other party." *Blankenship v. Blackwell*, 2004-Ohio-5596, ¶ 19, 103 Ohio St. 3d 567, 571, 817 N.E.2d 382, 386.

Petitioners knew they intended to challenge the Second Plan in some form. Indeed, the *Adams* Petitioners filed their motion to enforce two days after the Second Plan was adopted. Rather than file a new lawsuit and proceed as expeditiously as the Court would permit, both *Adams* and *LWVO* Petitioners first filed their motions to enforce a court order and then later moved to amend their original complaints. *Adams* Petitioners waited to file their motion to amend seven days since filing their motion to enforce, and three days after the motion was fully briefed and ripe for review. *LWVO* petitioners waited to file their motion to amend five days since filing their motion to enforce, and one day after that motion was fully briefed and ripe for review.

There is no excuse for such a delay. Petitioners have had ample time to prepare a complaint, as shown by the fact that each filed a proposed amended complaint on March 11. Moreover, each Petitioner's motion to enforce was accompanied by at least two expert reports, so it is clear they had the evidence prepared well in advance of filing the motions to amend the complaint. That Petitioners failed to act even though they had the ability to do so is nobody's fault but their own. Respondents and the people of Ohio continue to be prejudiced by Petitioners' delay tactics. Specifically, with each day that Petitioners continue this procedural circus, election day is one day closer. As articulated by Justice Kavanaugh in *Merrill v. Milligan,* 142 S. Ct. 879, 880 (2022) (Kavanaugh, J., concurring in grant of applications for stays) elections are difficult to

administer even under normal circumstances, and Petitioners' delay continues to prejudice candidates and election officials as overseas absentee ballots will be mailed out this Friday, March 18, 2022.[5] Accordingly, laches is a sufficient basis to deny the motions to amend.

IV. The Congressional Election Cycle is Underway and this Court Should Defer any Action on the Second Plan Until After the 2022 Election.

The pending motions before the Court in these cases are not sufficient for this Court to take any action regarding the Second Plan. However, even if the Petitioners finally get around to filing a proper lawsuit regarding the Second Plan, any action by this Court should be deferred until after the 2022 election.

In a normal election cycle, "[r]unning elections state-wide is extraordinarily complicated and difficult." *Merrill v. Milligan*, 142 S. Ct. at 880 (Kavanaugh, J., concurring). Elections officials must navigate "significant logistical challenges" that require "enormous advance preparations." *Id.* But, admittedly, the 2022 election cycle has been far from a "normal" cycle in Ohio. In addition to the challenge of needing to draw new districts and conduct elections under these new districts, this is the first redistricting cycle conducted under Ohio's new constitutional provisions. Navigating these new provisions has proven difficult, with different interpretations of the new constitutional amendments, and changes to Ohio's political geography over the last decade making the difficult work of drawing new congressional districts even more challenging. Exacerbating this already challenging scenario, the Covid-19 pandemic delayed the results of the 2020 census and, in turn, Ohio's redistricting efforts. In fact, due to these converging factors, the Second Plan was adopted only days before the close of Ohio's filing period for the May primary. That filing period has now passed, and campaigns are now in full gear.

[5] *See* Exhibit 3, https://www.ohiosos.gov/globalassets/elections/directives/2022/dir2022-29.pdf

In 2006, the United States Supreme Court held in *Purcell v. Gonzalez*, "[c]ourt orders affecting elections, especially conflicting orders, can themselves result in voter confusion and consequent incentive to remain away from the polls. As an election draws closer, that risk will increase." 549 U.S. 1, 4-5 (2006) (per curiam).

In the wake of this seminal opinion, the United States Supreme Court has consistently admonished courts not to alter state election laws and processes in the period close to an election *Andino v. Middleton*, 141 S. Ct. 9, 10 (2020) (Kavanaugh, J., concurring in grant of stay application) see *also Milligan*, 142 S. Ct. at 879; *Merrill v. People First of Ala.*, 141 S. Ct. 25 (2020); *Merrill v. People First of Ala.*, 141 S. Ct. 190 (2020); *Clarno v. People Not Politicians*, 141 S. Ct. 206 (2020); *Little v. Reclaim Idaho*, 140 S. Ct. 2616 (2020); *Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 140 S. Ct. 1205 (2020) (per curiam); *Democratic Nat'l Comm. v. Wisc. State Legislature*, 141 S. Ct. 28 (2020) (declining to vacate stay); *Benisek v. Lamone*, 138 S. Ct. 1942 (2018) (per curiam); *Veasey v. Perry*, 574 U.S. 951 (2014).

The 2022 election cycle already underway is no exception. As recent as a month ago, the United States Supreme Court in *Milligan* issued a stay of the district court's order that enjoined the use of Alabama's congressional redistricting plan. In his concurring opinion, Justice Kavanaugh invoked the *Purcell* doctrine for the proposition that courts "should not enjoin a state's election laws in the period close to an election." 142 S. Ct. at 879-880. This is because "filing deadlines need to be met", and candidates need to "be sure what district they need to file for" or even determine "which district they live in." *Id.* Three weeks after the *Milligan* opinion was issued, the Georgia district court in *Alpha Phi Alpha Fraternity, Inc., v. Raffensperger,* followed suit, declining to enjoin the State's redistricting plan due to the *Purcell* doctrine. ___F.Supp.3d___, 2022 WL 633312, 1:21-cv-05337(N.D. Ga. Feb. 28, 2022). Later that same week, Judge

McAllister who is assigned to the New York state court challenge to the state Senate and Congressional redistricting plans also indicated that the 2022 elections will proceed under the current redistricting plans on March 3, 2022. *See* Exhibits 4 and 5.[6] And just last week, the United States Supreme Court denied a stay application that, if granted, would have resulted in different congressional districts in North Carolina after the close of their March 4 filing deadline and ahead of North Carolina's May 17 primary. *Moore v. Harper,* No. 21A455*,* 595 U.S. ____ (Kavanaugh, J. concurring). Importantly, in each of these states, any further changes to congressional districts have already been stayed, notwithstanding that each of those states' impending primary will occur *after* Ohio's.

Courts in Ohio have also routinely abided by the *Purcell* doctrine to not meddle with state election laws in a period close to an election. *See Ohio Democratic Party v. LaRose,* 2020-Ohio-4664, ¶ 82, 159 N.E.3d 852, 879 (reversing lower court's grant of preliminary injunction on new election law because "issuing an injunction close to an election increases the harm to the boards of elections and, as a result, the general public by placing the security and administration of the election at risk."); *League of Women Voters of Ohio v. LaRose*, 489 F. Supp. 3d 719, 740 (S.D. Ohio 2020) (noting that the Supreme Court has "repeatedly emphasized" that courts should not alter election rules "on the eve of an election.") *citing Kishore v. Whitmer,* No. 20-1661, 972 F.3d 745, 751, 2020 U.S. App. LEXIS, at *11 (6th Cir. Aug. 24, 2020); *Boustani v. Husted*, No. 1:06CV2065, 2012 WL 5414454, at *3 (N.D. Ohio Nov. 6, 2012) (declining to grant Plaintiffs relief requiring posting of election notices because court orders on the eve of an election "can themselves result in voter confusion").[7]

[6] https://www.nytimes.com/2022/03/03/nyregion/ny-judge-redistricting-maps.html ; https://news.yahoo.com/ny-elections-maps-amid-redistricting-192447324.html

[7] Other state courts routinely apply the *Purcell* doctrine as well. *See e.g. In re Khanoyan,* 637 S.W.3d 762, 764 (Tex. Jan. 6 2022) (detailing the precedent of Federal and Texas Courts in support of refusal to interfere

This precedent is designed to prevent 11th hour judicial intervention, which risks impinging upon an individual's right with the "most fundamental significance under our constitutional structure"—the right to vote. *Burdick v. Takushi*, 504 U.S. 428, 433 (1992); *see also Purcell*, 549 U.S. at 4-5. Additionally, when a Court makes changes close to the election, these changes "can themselves result in voter confusion and consequent incentive to remain away from the polls." *Purcell*, 549 U.S. at 4-5. Late intervention can also impose significant burdens on state and local elections staff, as well as unfairly impact candidates or political parties. *Milligan*, 142 S. Ct. at 881 (Kavanaugh, J., concurring in grant of applications for stays).

Petitioners ask this Court to eschew this well-reasoned precedent and create election chaos in Ohio. Even if Petitioners had properly brought a new lawsuit to challenge the Second Plan, the fact of the matter is that the election is already upon us. Even assuming *arguendo* the Court had the power to simply substitute its own congressional plan for the Commissions' plan, which it does not, Petitioners' suggested relief would take weeks, if not months, to adjudicate. And Petitioners demand this relief despite the fact that the State is less than 50 days away from the May 3 primary election, and a few days before the start of overseas absentee voting. (Exhibit 1 to Response to Petitioners' Motions to Enforce, 2.24.21 Transcript at 45:14-46:13).[8]

in imminent election through mandamus); *Alliance for Retired Americans v. Secretary of State*, 240 A.3d 45, 54 (Me. 2020) (denying injunctive relief while holding that a court should not alter election rules close to an election in order to "avoid judicially created confusion"); *Singh v. Murphy*, Doc. No. A-0323-20T4, 2020 WL 6154223, at *14-15 (N.J. App. Div. 2020) (declining to grant an injunction based in *Purcell*); *League of United Latin American Citizens of Iowa v. Pate*, 950 N.W.2d 204, 216 (Iowa 2020) (same).

[8] The Federal Uniformed Overseas Citizens Absentee Voting Act of 1986 also requires that ballots be transmitted to overseas military personnel no later than 45 days before a federal election. 52 U.S.C. § 20302(a) (formerly 42 U.S.C. §§ 1973ff(1)-(7), as amended by Pub. L. No. 111-84, subtitle H, 575-589, 123 Stat. 2190, 2318-2335 (2009)). This means that ballots must be transmitted to overseas military personnel by March 18, 2022 – three days from today—a deadline that the Federal Government has already declined to extend once.

This is the sort of relief the *Purcell* doctrine encourages courts to decline on the eve of an election. And this is true even if the Court believes the underlying congressional district plan may be constitutionally circumspect, which, as shown in Respondents' responses opposing Petitioners' motions to enforce, is not the case with the Second Plan. *See Milligan*, 142 S. Ct. 879, 880 (2022) (Kavanaugh, J., concurring in grant of applications for stays of enforcement where lower court found VRA violations in Alabama's Congressional redistricting plan); *Covington*, 316 F.R.D. at 177 aff'd, 137 S. Ct. 2211, 198 L. Ed. 2d 655 (refusing to enjoin election 2.5 months away despite holding certain North Carolina legislative districts were racial gerrymanders because "such a remedy would cause significant and undue disruption to North Carolina's election process and create considerable confusion, inconvenience, and uncertainty among voters, candidates, and election officials."); *Raffensperger*, 2022 WL 633312 (noting that the Court's denial of the preliminary injunction on the basis of the *Purcell* doctrine "should not be viewed as an indication of how the Court will ultimately rule on the merits at trial"); *Upham v. Seamon*, 456 U.S. 37, 44, 102 S. Ct. 1518, 1522, 71 L. Ed. 2d 725 (1982) (holding that even though there was error by the lower court the interim plan should be used because the filing date for candidates had "come and gone" and the primary was looming.) Therefore, even assuming *arguendo* the Court were inclined to believe Petitioners' arguments that the Second Plan violates Article XIX, Sections 1(C)(3)(a) or (b), which it does not, the Court should allow the 2022 elections to go forward under the Second Plan while adjudicating the merits of Petitioners' claims, if Petitioners ultimately bring a new lawsuit.

If Petitioners' expansive requested relief is granted at this 11th hour, the prejudice to voters, and especially absentee and overseas voters will be immense. This is exactly the "increased risk" of confusion the Supreme Court warned about in *Purcell. See also Democratic Nat'l Comm. v.*

Wisc. State Legislature, 141 S. Ct. 28, 42 (2020) (*DNC*) (Kagan, J., dissenting) ("Last-minute changes to election processes may baffle and discourage voters…). This, in addition to jeopardizing state and local election officials' ability to prepare for and administer the May 3 primary election. This Court should follow *Purcell* and its progeny and decline to create election chaos in Ohio.

CONCLUSION

For the foregoing reasons, Respondents request that Petitioners' Motions to Amend be denied.

Respectfully submitted this the 15th day of March, 2022.

By:
/s/ Phillip J. Strach
Phillip J. Strach (PHV 2022-25444)
phillip.strach@nelsonmullins.com
Thomas A. Farr (PHV 2022-25461)
tom.farr@nelsonmullins.com
John E. Branch, III (PHV 2022-25460)
john.branch@nelsonmullins.com
Alyssa M. Riggins (PHV 2022-2544)
alyssa.riggins@nelsonmullins.com
NELSON MULLINS RILEY &
SCARBOROUGH LLP
4140 Parklake Avenue, Suite 200
Raleigh, NC 27612
Telephone: (919) 329-3800

W. Stuart Dornette (0002955)
Beth A. Bryan (0082076)
Philip D. Williamson (0097174)
TAFT STETTINIUS & HOLLISTER LLP
425 Walnut Street, Suite 1800
Cincinnati, OH 45202-3957
Telephone: (513) 381-2838
dornette@taftlaw.com
bryan@taftlaw.com
pwilliamson@taftlaw.com

Counsel for Respondents Huffman and Cupp

CERTIFICATE OF SERVICE

I hereby certify that on this the 15th day of March, 2022, I have served the foregoing document by email:

Bridget C. Coontz (0072919)
Julie M. Pfeiffer (0069762)
OHIO ATTORNEY GENERAL
30 E. Broad Street
Columbus, Ohio 43215
T: (614) 466-2872
F: (614) 728-7592

Counsel for Secretary of State LaRose,

Chris Tavenor (0096642)
ctavenor@theoec.org
Counsel for Amicus Ohio Environmental Counsel

Abha Khanna
Ben Stafford
ELIAS LAW GROUP LLP
1700 Seventh Ave, Suite 2100
Seattle, WA 98101
akhanna@elias.law
bstafford@elias.law
T: (206) 656-0176
F: (206) 656-0180

Aria C. Branch
Jyoti Jasrasaria
Spencer W. Klein
Harleen K. Gambhir
ELIAS LAW GROUP LLP
10 G St NE, Suite 600
Washington, DC 20002
abranch@elias.law
jjasrasaria@elias.law
sklein@elias.law
hgambhir@elias.law
T: (202) 968-4490
F: (202) 968-4498

Robert D. Fram
Donald Brown
David Denuyl
Juliana Goldrosen
Joshua Gonzalez
rfram@cov.com

James Smith
Sarah Suwanda
Alex Thomson
jmsmith@cov.com

Anupam Sharma
Yale Fu
asharma@cov.com

Freda J. Levenson (0045916)
flevenson@acluohio.org
David J. Carey (0088797)
dcarey@acluohio.org
Julie A. Ebenstein
jebenstein@aclu.org

Counsel for League of Women Voters of Ohio Petitioners

Donald J. McTigue* (0022849)
*Counsel of Record
Derek S. Clinger (0092075)
MCTIGUE & COLOMBO LLC
545 East Town Street
Columbus, OH 43215
dmctigue@electionlawgroup.com
dclinger@electionlawgroup.com
T: (614) 263-7000
F: (614) 368-6961

Counsel for Adams, et al. Petitioners

/s/ Phillip J. Strach
(PHV 2022-25444)

Exhibit 1

MEDIA CENTER

3/2/2022

LAROSE ISSUES DIRECTIVE TO COUNTY BOARDS TO INCLUDE CONGRESSIONAL CANDIDATES ON MAY 3RD PRIMARY BALLOT PURSUANT TO THE REDISTRICTING COMMISSION'S APPROVAL OF NEW CONGRESSIONAL MAPS

Today, Ohio Secretary of State Frank LaRose directed Ohio's 88 county boards of elections to begin taking the necessary steps to place candidates for the U.S. House of Representatives on the May 3rd primary ballot. The order is pursuant to today's Ohio Redistricting Commission's passage of a four-year map for Ohio Congressional districts. On Saturday, the Secretary issued a similar directive to the Boards instructing them to include candidates for the Ohio General Assembly on the primary ballot.

"I recognize the tremendous challenges facing our county boards of elections given the incredibly short timeline and the myriad preparations and procedures that must be satisfied before the May 3rd Primary Election," said Secretary LaRose. "However, only the General Assembly can set an election date, and they have made it abundantly clear that the 2022 primary is to be held May 3rd. Accordingly, today's directive instructs our county boards to immediately begin preparing for a single primary date for all statewide, Congressional, and State House and State Senate candidates to appear on a unified ballot. While accomplishing this will be difficult, I am confident that our tested, professional county boards will do everything within their power to execute on what we have all been instructed to do."

Today, Secretary LaRose provided the county boards of elections with the new Congressional district data necessary to fulfill that directive, along with instructions to do the following:

- Take immediate action to reprogram their voter registration system by incorporating the updated Congressional district boundaries; and
- Follow updated procedures for filing and signature validity for Congressional races.

MEDIA CONTACT

Rob Nichols
RNichols@OhioSoS.gov
330.760.7582

The directive also provides clear guidance for candidates who wish to file petitions to run for the U.S. House. Those candidates may file in the most populous county of the district they seek to represent, as established by Senate Bill 258. If the most populous county has changed after passage of the new district plan by the Ohio Redistricting Commission, the board of elections where the candidate previously filed will transfer the filing documents to the new most populous county board of elections in the new district. Conversely, the directive also notes that any U.S. House candidate who has not yet filed their petition, must now file it with the most populous county board of elections in their newly created district, and must do so by 4:00 p.m. on March 4, 2022.

To help our county boards of elections respond to the current array of challenges, earlier today, the Ohio General Assembly appropriated $9 million to better support additional election administration costs resulting from the condensed election timeline. The appropriation was approved in response to a specific request from the Secretary. Secretary LaRose thanked legislative legislative leaders and described the categories of ways in which the funding will be used in a press release that can be read here.

Ohioans can view the new Congressional districts for 2022-2026 by clicking here.

Exhibit 2

Feds deny Ohio's request to delay sending military ballots as primary chaos continues

Jessie Balmert, Cincinnati Enquirer - Mar 8

The U.S. Department of Defense denied Ohio's request to delay sending ballots to military and overseas voters amid the chaos of trying to hold a primary without finalized statehouse and congressional maps.

© Andrew Welsh-Huggins, AP

Ohio Secretary of State Frank LaRose, right, talks about state legislative maps as a member of the Ohio Redistricting Commission. His request to delay sending military ballots because of redistricting uncertainty was denied.

Ohio Secretary of State Frank LaRose had asked federal officials to relieve some pressure on election officials already overwhelmed by missed deadlines and an extremely tight turnaround to hold a complete May 3rd primary – without certainty that the most recent maps will be the final ones.

Under federal law, these ballots must be sent 45 days before the primary. In Ohio, that means sending ballots for a May 3rd primary on March 18. LaRose's goal was to send those ballots by April 5 instead.

But the Department of Defense denied Ohio's request Friday. A federal official reviewing the waiver agreed that Ohio was in a bind because of lawsuits challenging maps and lawmakers' unwillingness to move the primary.

The Ohio Supreme Court has ruled on the matter

The Ohio Supreme Court has already rejected state House and Senate map proposals twice and a congressional map once. The process of drawing districts, which LaRose is a part of as a member of the Ohio Redistricting Commission, has been bogged down by partisanship and delays.

However, the official said LaRose didn't have an alternative plan that would provide those voters "sufficient time to receive, mark and return their ballots in time to be counted."

LaRose said, in a statement, that he would work with Ohio lawmakers and federal officials to find "a workable solution that meets the needs of our military members." In the 2018 primary election, 1,074 military and overseas ballots were counted.

Related video: Ohio bill ending conceal carry permit mandate heads to governor (WLWT Cincinnati)

"After serving overseas myself, I can remember getting that ballot in the mail and the special connection it gave me to home," said LaRose, an Army veteran and current member of the Army Reserve. "The legislature has made it clear that the primary election will take place on May 3rd, so I'm going to do everything in my power to ensure our military men and women can make their voices heard."

But it's not clear what that "workable solution" would be. On Wednesday, Republican lawmakers in the Ohio House rejected an attempt from Democrats to move the primary to June 21. Moving the primary would require support from two-thirds of lawmakers in each chamber for the change to take effect immediately – votes that simply aren't there right now.

Democratic and voting rights groups suing over Ohio's maps have asked the Ohio Supreme Court to take action, perhaps even blocking the May 3rd primary if lawmakers won't move it.

Alternatives to the May 3rd primary are messy and possibly expensive. LaRose proposed moving the entire primary to June or later. The second option is holding two primaries – one for statewide and local elections unaffected by maps on May 3 – and another later election for congressional, statehouse and other races.

LaRose estimated that a second primary could cost Ohio between $20 million and $25 million. On Wednesday, lawmakers approved $9 million to help local election officials with overtime and staffing costs associated with setting up a May 3rd primary.

If Ohio doesn't send military and overseas ballots 45 days before the primary, the U.S. attorney general could sue the state. That happened in Arizona in 2018 and Illinois in 2015 when the states didn't hit their deadline to send ballots for special elections.

Read the denial here:

Jessie Balmert is a reporter for the USA TODAY Network Ohio Bureau, which serves the Akron Beacon Journal, Cincinnati Enquirer, Columbus Dispatch and 18 other affiliated news organizations across Ohio.

Get more political analysis by listening to the Ohio Politics Explained podcast

This article originally appeared on Cincinnati Enquirer: Feds deny Ohio's request to delay sending military ballots as primary chaos continues

Exhibit 3

Frank LaRose
Ohio Secretary of State

DIRECTIVE 2022-29
March 11, 2022

To: All County Boards of Elections
Directors, Deputy Directors, and Members

Re: Legislation Regarding Uniformed and Overseas Citizens' Absentee Ballots and Ballot Transmission Instructions

SUMMARY

On March 10, 2022, the Ohio Senate concurred in House amendments to Substitute Senate Bill 11 ("S.B. 11") to modify procedures for uniformed services and overseas citizens' absentee ("UOCAVA") voting in the 2022 primary election. Governor DeWine signed the bill into law today. The temporary provisions related to the 2022 primary election adjust the state deadline to print and send UOCAVA ballots; extend the time for UOCAVA ballots to be returned; require the Secretary of State to take steps to expedite the delivery and return of UOCAVA ballots; and appropriate $200,000 to implement the bill's requirements. This Directive provides an overview of the temporary law in S.B. 11 and instructions for issuing UOCAVA ballots.

INSTRUCTIONS

Boards of elections must not print ballots until after the March 17, 2022 protest deadline for the offices of U.S. House, Ohio House, Ohio Senate, and State Central Committee. However, boards may begin to program and proof ballots as soon as candidates are certified to appear on the ballot. The most populous board of elections of a district must immediately notify less populous county boards of elections as soon as a protest is resolved against a candidate.

I. TEMPORARY LAW REGARDING BALLOTS FOR UOCAVA VOTERS

S.B. 11 makes the following changes to the administration of the May 3, 2022 Primary Election:

- Requires UOCAVA ballots to be ready for use **no later than Tuesday, April 5, 2022** (the first day after the close of voter registration before the election), instead of March 18, 2022.[1]
- Allows UOCAVA ballots to be counted if returned by mail and received at the office of the board of elections by the 20th day after the election, instead of the 10th day, unless the identification envelope is signed after the close of polls on Election Day.[2]

[1] S.B. 11, Section 5(A).
[2] S.B. 11, Section 5(B).

- Extends the amount of time a person may mail a UOCAVA ballot for return to their county board of elections from 12:01 a.m. at the place where the voter completes their ballot[3] to any time prior to the close of polls on Election Day.[4]
- Requires the Secretary of State to take steps to expedite the delivery and return of uniformed services and overseas absent voter's ballots.[5]
- Permits the Secretary of State to adjust the deadlines for boards of elections to conduct the canvass of the election returns, to accommodate the delayed ballot return deadline.[6]

As stated above, S.B. 11 requires UOCAVA ballots to be ready for use ***no later than*** **Tuesday, April 5, 2022.** A board of elections should transmit UOCAVA ballots as soon as possible to voters who submitted an absentee ballot application if the following condition applies:

- No protest is filed against any candidate for U.S. House, Ohio House, Ohio Senate, and State Central Committee, or the protests have been resolved.

An upcoming directive for the unofficial and official canvasses for the 2022 primary election will include adjusted deadlines for completion of the canvasses.

II. INSTRUCTIONS FOR EXPEDITED MAILING OF UOCAVA BALLOTS

S.B. 11 requires expedited delivery and return of UOCAVA ballots. If the UOCAVA voter did not indicate a preference for delivery or indicated mail as their preferred delivery method, a board of elections must contact the voter, explain the time constraints for return of the ballot, and offer expedited delivery via email or fax. Boards must use the voter's telephone number, even if it is an international number, and email address, if available, to contact them. A board may accept a voter's change in delivery preference by phone or email, rather than requiring the voter to submit a new Federal Post Card Application ("FPCA") or other form of absentee ballot application. If the UOCAVA voter still prefers to receive their ballot by mail, the board must follow the instructions below to expedite delivery.

For expedited shipping through the United States Postal Service ("USPS"), the board must utilize an existing service (e.g., Pitney Bowes, Neopost, etc.) or create and/or utilize a Click-N-Ship account to create a mailing label with the appropriate postage type for that voter's return ballot. For expedited shipping through a private carrier (e.g., FedEx, DHL, UPS, etc.), a board of elections must create an account on the carrier's website, if an account is not already established. Boards of elections must use the account to create prepaid shipping labels for the expedited return of the ballot from the voter. Boards must select the ***quickest and earliest version of shipping possible for ballot return***. Boards must diligently create, proof, and address mailing and return labels to ensure the ballot is promptly delivered to the voter and returned timely to the board of elections.

A. DELIVERY OF THE UOCAVA BALLOT

Boards must use the UOCAVA absentee ballot instructions (Form 12-K, updated March 11, 2022) and print the instructions on standard letter-sized paper if mailing the absentee ballot to the

[3] R.C. 3511.09.
[4] S.B. 11, Section 5(B).
[5] S.B. 11, Section 5(C).
[6] S.B. 11, Section 5(D).

UOCAVA voter. Boards must also use the delivery and return envelopes specifically for UOCAVA voters. Our Office recommends printing the instructions in color to allow the contents to stand out. To reflect the temporary changes in law, the following forms have been updated:

- UOCAVA Absentee Ballot Instructions (Form 12-K);
- Return Envelope for UOCAVA Ballot (Form 285); and
- Envelope for Delivery of UOCAVA Ballot (Form 286).

Boards must follow the instructions set forth below when mailing UOCAVA absentee ballots:

- For **uniformed services voters, eligible spouses, and dependents**:
  - For **any APO/FPO/DPO address**, use the United States Postal Service ("USPS") Priority Mail service to deliver the ballot. For help with addressing APO/FPO/DPO mail, please visit this USPS article.
  - For a **domestic mailing address**, use the United States Postal Service ("USPS") Priority Express Mail service to deliver the ballot.
  - For a **mailing address outside of the United States**, use the USPS Priority Mail International service to deliver the ballot. Ensure that the voter's address is correct.
- For **non-military overseas voters**, use a private carrier (*e.g.*, FedEx, UPS, or DHL) or USPS Priority Mail Express International service, whichever provides for the fastest delivery to that overseas voters' specific location.

B. RETURN OF THE UOCAVA BALLOT

Each board of elections that transmits a UOCAVA ballot to a voter must take the following steps to enable an expedited return of the ballot:

- For **uniformed services voters, eligible spouses, and dependents**:
  - For any voter with an **APO/FPO/DPO address**, prepare and provide a USPS label to the voter. If the voter requests to receive their ballot by email, a .pdf of the label must be one of the attachments to the email. The .pdf can be created and downloaded on the USPS "Click-N-Ship" site. When selecting a method for mailing, utilize the quickest, earliest time for Priority Mail. Boards must include "United States of America" when inserting the board's address into the label.
  - For a **domestic mailing address**, prepare and provide a USPS label to the voter. If the voter requests to receive their ballot by email, a .pdf of the label must be one of the attachments to the email. The .pdf can be created and downloaded on the USPS "Click-N-Ship" site. When selecting a method for mailing, utilize the quickest, earliest time for Priority Mail Express.
  - For a **mailing address outside of the United States**, prepare and provide a USPS label to the voter. If the voter requests to receive their ballot by email, a .pdf of the label must be one of the attachments to the email. The .pdf can be created and downloaded on the USPS "Click-N-Ship" site. When selecting a method for mailing, utilize the quickest, earliest time for Priority Mail Express International. Boards must include "United States of America" when inserting the board's address into the label.

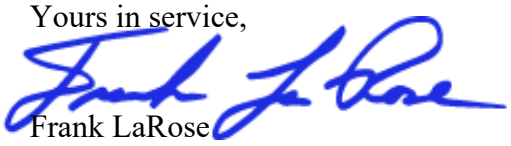
- For **non-military overseas voters**, setup and use an account with a private carrier to prepare a label containing the board's account number. This prepared label must be provided electronically or by mail, if the ballot is delivered by mail. Boards should use information available on websites or contact the delivery service directly to determine the best and fasted shipping service for the delivery of the ballot to the board of elections. Boards must include "United States of America" when inserting the board's address into the label.

C. STATE FUNDING FOR EXPEDITED MAILING OF UOCAVA BALLOTS

Boards of elections may use their grant allocation from S.B. 9 and the new appropriation of funds in S.B. 11 to pay the costs for expedited delivery and return of UOCAVA ballots. Our Office will soon issue additional guidance regarding the S.B. 11 funds.

More information regarding the logistics of expedited mailing for UOCAVA ballots will be provided as soon as possible. If you have any questions concerning this Directive, please contact the Secretary of State's elections counsel at (614) 728-8789.

Yours in service,



Frank LaRose
Ohio Secretary of State

Exhibit 4

Democrats Win Early Victory in Court Fight Over District Maps

A judge's stance was good news for Democrats, who drew the maps that Republicans say are gerrymandered, but the case will proceed.

By Nicholas Fandos

March 3, 2022

A New York State judge indicated on Thursday that he would allow this year's midterm elections to proceed using the state's newly drawn district lines that heavily favor Democrats — rebuffing Republican requests to delay the election process while he considers whether the maps are an unconstitutional gerrymander.

In a preliminary hearing in Steuben County Supreme Court, Justice Patrick F. McAllister, a Republican, said that even if he ultimately ruled that the maps were unconstitutional, it was "highly unlikely" that replacements could be ratified in a timely manner ahead of primaries in June and Election Day in November. That, in turn, would risk leaving the state without proper representation in Congress.

"I do not intend at this time to suspend the election process," the judge said. "I believe the more prudent course would be to allow the current election process to proceed and then, if necessary, allow an election process next year if new maps need to be drawn."

Justice McAllister's conclusion delivered a sharp setback to state Republicans, who sued last month to try to stop the new congressional and State Senate lines drafted by the Democrat-controlled State Legislature from taking effect this year. The Republicans believe their party is well positioned to retake control of the House of Representatives in November, but every seat could count.

The fresh New York boundaries would make that harder, giving Democrats an advantage in 22 of the state's 26 congressional districts, while potentially cutting the current number of Republican House members from New York in half and effectively eating into gains won by redistricting measures in other states. Analysts have suggested the new State Senate lines could be just as favorable to Democrats, helping the party maintain its supermajority in Albany.

What to Know About Redistricting

- **Redistricting, Explained:** Here are some answers to your most pressing questions about the process that is reshaping American politics.
- **Understand Gerrymandering:** Can you gerrymander your party to power? Try to draw your own districts in this imaginary state.
- **Analysis:** For years, the congressional map favored Republicans over Democrats. But in 2022, the map is poised to be surprisingly fair.
- **Killing Competition:** The number of competitive districts is dropping, as both parties use redistricting to draw themselves into safe seats.

Legal analysts who study redistricting said that Justice McAllister or an appeals court could still conceivably rethink his approach, but a court-ordered delay to this year's elections was an increasingly unlikely scenario, now that candidates have begun collecting petitions to get on the June primary ballot.

"If I were a candidate, I think the smart bet is that the maps we have today are the maps that are going to be used in November," said Michael Li, senior counsel for the Democracy Program at the Brennan Center for Justice. "There doesn't seem to be the will to change them for this cycle."

Still, Republicans left the hearing room in Bath, N.Y., on Thursday with some reasons for optimism.

Justice McAllister rejected motions to dismiss the case and indicated that he was open to arguments that the maps had violated language added to the New York Constitution in 2014 that barred mapmakers from drawing lines to benefit one political party or candidate.

The judge also ordered Democrats to hand over a raft of documents by March 12 that might shed light on how the Democratic drafters settled on the lines, and he told both sides to appear a few days later to argue over the merits of the Republicans' challenge.

“The important thing here is that the court rejected all of the efforts by the State Legislature and the attorney general to dismiss the case,” said John J. Faso, a former congressman from New York who is serving as a spokesman for the Republican challengers — a group of New York residents backed by deep-pocketed national Republican groups.

How U.S. Redistricting Works

What is redistricting? It’s the redrawing of the boundaries of congressional and state legislative districts. It happens every 10 years, after the census, to reflect changes in population.

Mr. Faso said that the Republican lawyers would continue to argue that there was enough time to draw new maps for use in this year’s elections. “You can’t really allow an election to take place if the lines are declared unconstitutional, and there is time for a remedy,” he said.

Democratic leaders have not disputed that the maps may produce gains for their party. But they say that those gains would result not from their mapmakers’ partisan motives but from the realities of population shifts that have made an already blue state much bluer since the last redistricting cycle in 2012.

Redistricting experts have called New York’s new maps a political gerrymander. But proving that beyond a reasonable doubt in court, where judges tend to show deference to lawmakers, may be difficult. Justice McAllister called it a “high bar” on Thursday.

If the maps are tossed out, New Yorkers could be asked to vote in three consecutive years for House members and state senators — in regularly scheduled elections in 2022 and 2024, as well as a special election in 2023.

Lawyers for the Democrats vowed to immediately appeal the judge’s order to hand over documents quickly, which could further complicate the proceeding. Under special rules used to speed up the case, Justice McAllister must render a verdict by April 4.

Luis Ferré-Sadurní contributed reporting.

Exhibit 5

LIVE UPDATES: EU leaders travel to Kyiv to support Ukraine; almost 3 million people have fled the country

Poughkeepsie Journal

NY elections will use new maps this year amid redistricting lawsuit: Judge

The Associated Press

March 3, 2022 · 2 min read

ALBANY – New York's 2022 federal and state elections will proceed as a state court weighs the constitutionality of congressional and state Senate district maps passed by the Democratic-led Legislature this year but accused by a group of voters as being biased, a state judge said Thursday.

The judge heard arguments in the town of Bath in Steuben County over a lawsuit launched by the voters in Republican-friendly communities who want to block the maps.

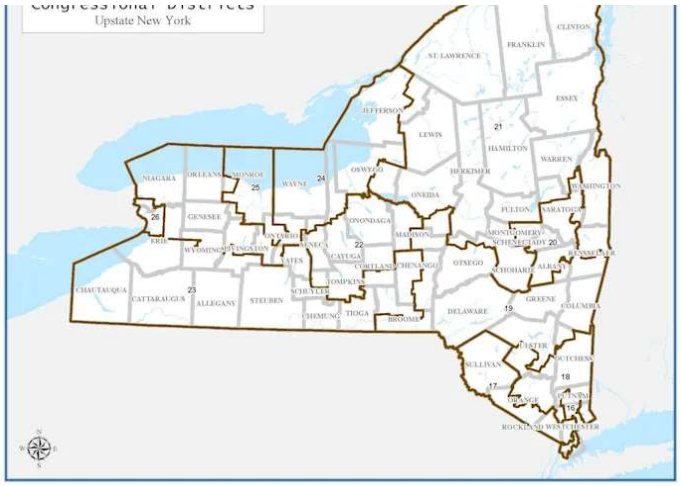
Steuben County Judge Patrick McAllister said he isn't inclined to halt New York's election process by striking

TRENDING

'Russia is the global enemy': Fallout from Ukraine invasion could last for years
Yahoo News · 6 min read

Tiananmen Square protester killed in his New York law office
Associated Press · 2 min read

Zelensky mourns death of Brent Renaud, U.S. journalist killed in Ukraine



Proposed 2022 NYS Congressional Population Report

Changes: NY's redistricting maps would help Democrats gain ground in national midterms. Here's how.

Maps: Dozens of Hudson Valley towns to get new Congress members in 2023 with redrawn district lines

Shift: How Claudia Tenney shakes up the landscape of NY's new 23rd District

“Even If I find the maps violated the Constitution and must be redrawn, it is highly unlikely that a new viable map could be drawn and be in place within a few weeks or even a couple of months,” he said. “Therefore, striking these maps would more likely than not leave New York state without any duly elected congressional delegates.”

He also suggested that he could call for new elections next year if he decides to toss the maps.

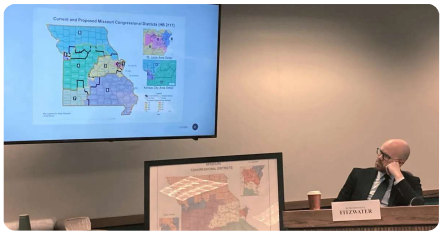
McAllister said the voters have an “extremely high” bar to prove that the Legislature drew the maps in violation of the Constitution.

Lawyers for the voters are pointing to analyses by nonpartisan groups nationwide, including the Brennan Center for Justice, that have cited New York’s new congressional maps as one of the nation’s most biased.

Emerging From Ukraine War: China

The New York Times · 8 min read

POPULAR

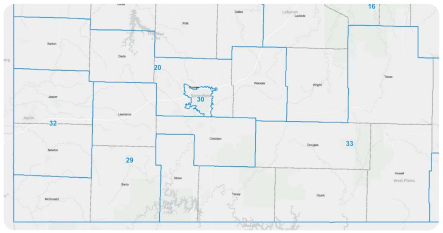


Democratic-backed suit challenges lack of Missouri House map

Associated Press

Stream Halo in 2022

Ad • paramountplus.com



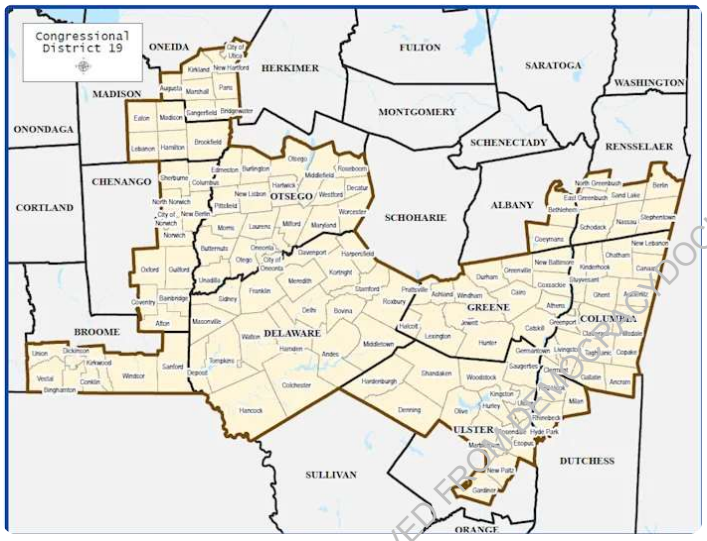
Springfield, southwest Missouri see changed state Senate districts under tentative new map

Springfield News-Leader

Democrats have also argued the state Senate's map undoes decades of gerrymandering by Senate Republicans.

The judge said both sides will bring in expert witnesses on March 14 to figure out "where the truth lies."

"Until I have heard this testimony, I'm not in a position to know whether to strike down these maps or uphold these maps," he said.



The proposed New York 19th Congressional District.

New York voters in 2014 amended the state's constitution to outright ban drawing maps "for the purpose of favoring or disfavoring incumbents or other particular candidates or political parties."

But with federal courts reluctant to step in on gerrymandering, it remains to be seen how state courts will handle complaints about partisan gerrymandering.

The maps will expand Democrats' power for years in a state where the party already dominates: Democrats will have a majority of registered voters in 22 of the 26 congressional districts the state will have in 2023. Republicans, who now hold eight of New York's 27 seats in Congress, would only have an advantage in the remaining four districts.