

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

OHIO A. PHILIP RANDOLPH INSTITUTE, <i>et al.</i> ,)	
)	No. 1:18-cv-00357-TSB
Plaintiffs,)	
)	Judge Timothy S. Black
v.)	Judge Karen Nelson Moore
)	Judge Michael H. Watson
RYAN SMITH, Speaker of the Ohio House of)	
Representatives, <i>et al.</i> ,)	Magistrate Judge Karen L. Litkovitz
)	
Defendants.)	
)	

MOTION FOR LEAVE TO FILE AN AMICI CURIAE BRIEF IN SUPPORT OF DEFENDANTS, INSTANTER

The Boards of Commissioners of Geauga and Lake counties, by and through their respective undersigned counsel, respectfully request leave of this Court to file the amici curiae brief in support of defendants in this matter instanter. In support of their motion, the proposed amici curiae submit the attached memorandum of support. A copy of the proposed amici curiae brief is also attached hereto.

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MEMORANDUM IN SUPPORT OF MOTION FOR LEAVE TO FILE AN AMICI CURIAE BRIEF, INSTANTER

The proposed amici curiae, the Boards of Commissioners of Geauga and Lake counties, are the general administrative bodies for their respective county governments organized under the authority of the Ohio General Assembly granted by article X, section 1, of the Ohio Constitution, each consisting of three county elected officials. The Boards of Commissioners of Geauga and Lake counties passed resolutions on January 29, 2019, requesting that their respective county prosecutors seek leave of this Court to file an amici curiae brief in support of the defendants in this matter. The Board of Commissioners of Ashtabula County also passed a resolution in support of this motion and brief on the same date. Certified copies of all three resolutions are attached hereto and marked as Exhibits A through C.

A district court has broad discretion whether to permit amici curiae to participate in a pending case. *United States v. Michigan*, 940 F.2d 143, 165 (6th Cir. 1991). While there is no rule governing the participation of amici curiae in a district court, the courts have permitted a non-party to

participate as *amicus curiae* “upon a finding that the proffered information of *amicus* is timely, useful, or otherwise necessary to the administration of justice.” *United States v. Michigan*, 940 F.2d at 165 (citation omitted); *see also* *United States ex rel. Roby v. Boeing Co.*, 83 F. Supp. 2d 897, 900 (S.D. Ohio 1999) (motion granted where movant had an “important interest and a valuable perspective that is helpful to the Court on the issues presented in this case.”); *Ryan v. Commodity Futures Trading Comm’n*, 125 F.3d 1062, 1063 (7th Cir. 1997) (“An *amicus* brief should normally be allowed...when the *amicus* has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide.”). An *amicus curiae* brief “may provide important assistance to the court” even when the parties to the case are well-represented by counsel. *Neonatology Assocs., P.A. v. Commissioner of Internal Revenue*, 293 F.3d 128, 132 (3rd Cir. 2002).

The proposed *amici curiae* have important interests in this matter, unique perspectives, and information regarding the issues presented in this case that will be helpful to this Court. Ashtabula, Geauga, and Lake counties are located in the uppermost northeast corner of the State of Ohio and form the core counties of the current Fourteenth Congressional District (“District 14”). In this case, the plaintiffs request that this Court declare unconstitutional all sixteen current congressional districts, including District 14. Second Amended Complaint at 50, *Ohio A. Philip Randolph Inst. v. Smith*, No. 1:18-cv-00357-TSB (S.D. Ohio filed July 11, 2018). The proposed *amici curiae* believe that these two counties share certain common interests along with Ashtabula County, that District 14 as currently constituted adheres to traditional districting principles, and that these shared interests allow their congressional representative to better advocate on their behalf. The boards of commissioners are also the county taxing, budgeting, appropriating, and purchasing authorities for their counties, and thus are concerned with the fiscal impact upon their counties relating to federal

funding, regulation, and other programs. The proposed amici curiae are concerned, particularly in light of the proposed remedial map submitted by the plaintiffs, that any adopted remedial districting plan would sever these counties into separate congressional districts that will not represent these shared interests and concerns.

Furthermore, the administration of elections is one responsibility of county governments in Ohio, which is exercised by their county boards of elections. *See* OHIO REV. CODE ANN. §§ 3501.11. It is the responsibility of the county boards of commissioners to appropriate sufficient funds from the county treasury to provide for the necessary and proper expenses of its board of elections. OHIO REV. CODE ANN. §§ 3501.17. In this case, the plaintiffs in their prayer for relief seek an order from this Court enjoining the boards of elections of all Ohio counties, including Geauga and Lake, from performing their duties under state law with regard to conducting future congressional elections. *See* Second Amended Complaint at 51, *Ohio A. Philip Randolph Inst. v. Smith*, No. 1:18-cv-00357-TSB (S.D. Ohio filed July 11, 2018) (“Permanently enjoin Defendants, their agents, officers and employees, including *clerks in all Ohio counties*, from administering, preparing for, or moving forward with any future elections of Ohio U.S. congressional members in Districts 1, 2, 4, 5, 6, 7, 8, 10, 12, 14, 15, and 16;”) (emphasis added).

The undersigned counsel contacted counsel for plaintiffs, defendants, movants, and intervenors on February 4, 2019, seeking their consent to the filing. Counsel for intervenors responded that they have no objection. Counsel for Defendant Ohio Secretary of State responded taking no position on the filing. Counsel for Defendants House Speaker Larry Householder and Senate President Larry Obhof responded that they consent to the filing. As of the date and time of this filing, proposed amici curiae have received no other responses.

For foregoing reasons, the Boards of Commissioners of Geauga and Lake counties respectfully request that this Court grant them leave to file the attached proposed amici curiae brief.

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Counsel for Lake County Board of Commissioners

Board of County Commissioners, Geauga County, Ohio

Date: January 29, 2019
Resolution: #19-015

**A RESOLUTION REQUESTING THE PROSECUTING ATTORNEY
TO FILE A BRIEF ON BEHALF OF GEAUGA COUNTY IN THE PENDING
ACTION IN FEDERAL COURT CHALLENGING OHIO'S
CURRENT CONGRESSIONAL DISTRICT BOUNDARIES**

WHEREAS, it is the desire of the Geauga County Commissioners that the Geauga County Prosecuting Attorney file a brief on behalf of Geauga County in the matter of *Ohio A. Philip Randolph Institute, et al. v. Ryan Smith, Speaker of the House of Representatives, et al.*, U.S. District Court for the Southern District of Ohio, Case No. 1:18CV00357; and

WHEREAS, the American Civil Liberties Union of Ohio (ACLU) has filed a lawsuit in the United States District Court for the Southern District of Ohio challenging Ohio's current congressional districts as unconstitutional on behalf of the League of Women Voters of Ohio and various Ohio electors; and

WHEREAS, the current congressional district map has existed since it was created following the 2010 census with Geauga County as a part of Ohio's fourteenth congressional district; and

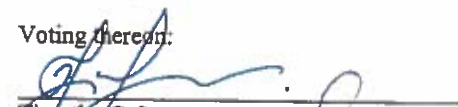

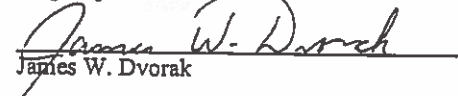
WHEREAS, on May 8, 2018 nearly 75% of Ohio voters and over 73% of Geauga County voters approved a constitutional amendment creating a bipartisan public process for the drawing of congressional districts to take effect after the 2020 census; and

WHEREAS, despite Ohio voters overwhelmingly approving a new bipartisan congressional restricting process, the ACLU continues to seek the creation of a new congressional district map to take effect for the 2020 election that would be created by unelected lifetime tenured judges as opposed to democratically elected public officials; and

WHEREAS, the ACLU has proposed a new congressional map that would split Geauga County into two separate congressional districts, one being centered in the City of Akron and the other being centered in the City of Canton which would serve to harm Geauga County residents by diminishing their influence with their elected congressional representative; and

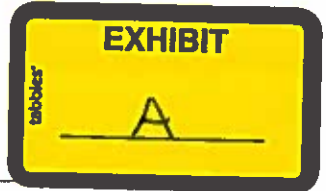
WHEREAS, as a result of the ACLU proposed congressional district map for the 2020 election and the subsequent redistricting that would occur following the 2020 census pursuant to Ohio's newly created bipartisan public process for drawing congressional districts, Geauga County residents would likely have four different congressional representatives in less than a six-year period which would serve to diminish Geauga County's influence in federal affairs; and

NOW, THEREFORE, BE IT RESOLVED, that the Board of County Commissioners does hereby request that the Geauga County Prosecuting Attorney file a brief opposing any change to the current congressional map for the 2020 election in the *Ohio A. Philip Randolph Institute, et al. v. Ryan Smith, Speaker of the House of Representatives, et al.*, U.S. District Court for the Southern District of Ohio, Case No. 1:18CV00357.

Voting thereon:	Vote
 Timothy C. Lennon	<u>yes</u>
 Ralph Spidalieri	<u>yes</u>
 James W. Dvorak	<u>yes</u>

I, Christine Blair, Clerk of the Board of County Commissioners Geauga County, Ohio certify that the forgoing is a true and correct copy of a Resolution adopted at a legally convened Board meeting held on January 29, 2019.


Christine Blair, Clerk



Commissioners' Office, Lake County
Painesville, OH, January 29, 2019

The Board of County Commissioners, in and for Lake County, Ohio, met this day in regular session with the following members present:

Commissioners: Cirino, Hamercheck and Young

Commissioner Cirino presented the following resolution and moved its adoption.

RESOLUTION REQUESTING THE PROSECUTING ATTORNEY TO FILE FOR LEAVE TO FILE AN AMICUS BRIEF ON BEHALF OF LAKE COUNTY IN THE PENDING ACTION IN FEDERAL COURT CHALLENGING OHIO'S CURRENT CONGRESSIONAL DISTRICT BOUNDARIES

WHEREAS, the Board of County Commissioners hereby finds and determines that all formal actions relative to the adoption of this resolution were taken in an open meeting of this Board of County Commissioners and of its committees, if any, which resulted in formal actions, were taken in meetings open to the public, in full compliance with applicable legal requirements, including Section 121.22 of the Revised Code; and

WHEREAS, there is a question of great Constitutional concern affecting the citizens of this county's right to vote, the Board of Lake County Commissioners request that the Prosecuting Attorney file a motion for leave to file an amicus brief on behalf of Lake County in the matter of *Ohio A. Phillip Randolph Institute, et al. v. Ryan Smith, Speaker of the Ohio House of Representatives, et al.*, U.S. District Court for the Southern District of Ohio Case, No. 1:18-cv-00357-TSB; and

WHEREAS, the American Civil Liberties Union of Ohio (ACLU) has filed a lawsuit in the United States District Court for the Southern District of Ohio challenging Ohio's current congressional districts as unconstitutional on behalf of the Ohio A. Phillip Randolph Institute and various Ohio electors; and

WHEREAS, the current congressional district map has existed since it was created following the 2010 census with Lake County as a part of Ohio's fourteenth congressional district; and

WHEREAS, on May 8, 2018 over 74% of Ohio voters and over 73% of Lake County voters approved a constitutional amendment creating a bipartisan public process for the drawing of congressional districts to take effect after the 2020 census; and

WHEREAS, despite Ohio voters overwhelmingly approving a new bipartisan congressional redistricting process, the ACLU continues to seek the creation of a new congressional district map to take effect for the 2020 election that would be created by unelected lifetime tenured judges as opposed to democratically elected public officials; and

WHEREAS, the ACLU has proposed a new congressional map that would split Lake County from Geauga County and combine Lake County with Ashtabula County, Trumbull County and part of Mahoning County, thereby ending decades of consistent, and mutual, congressional representation of Lake County, Geauga County, and Ashtabula County; and

WHEREAS, as a result of the ACLU's proposed congressional district map for the 2020 election and the subsequent redistricting that would occur following the 2020 census pursuant to Ohio's newly created bipartisan public process for drawing congressional districts, Lake County residents would likely have four different congressional representatives in less than a six-year period which would serve to diminish Lake County's influence in federal affairs.

NOW, THEREFORE, BE IT RESOLVED, that the Board of County Commissioners does hereby request that the Lake County Prosecuting Attorney file a motion for leave to file an amicus brief opposing any changes to the current congressional map for the 2020 election in the matter of *Ohio A. Phillip Randolph Institute, et al. v. Ryan Smith, Speaker of the Ohio House of Representatives, et al.*, U.S. District Court for the Southern District of Ohio Case, Case No. 1:18-cv-00357-TSB.

BE IT FURTHER RESOLVED, that the Clerk of the Board is hereby directed to forward certified copies of this resolution to the Lake County Prosecutor's Office; the Geauga County Board of Commissioners and to the Ashtabula County Board of Commissioners.



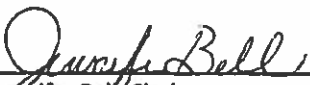
Commissioner Young seconded the resolution and the roll being called upon its adoption, the vote resulted as follows: "AYES": Commissioners: Cirino, Hamercheck and Young
"NAYS": None.

Resolution adopted,
Jennifer Bell, Clerk

CLERK'S CERTIFICATION

I, Jennifer Bell, duly appointed Clerk of the Board of County Commissioners, do hereby certify that this is a true and accurate copy of a resolution adopted by said Board on January 29, 2019, and recorded in the Commissioners' Journal, Volume 2019.

WITNESS my hand this twenty-ninth day of January, 2019, in Painesville, Ohio.



Jennifer Bell, Clerk
Board of Commissioners, In and
for Lake County, Ohio

RESOLUTION NUMBER 2019-68 REQUESTING THE PROSECUTING ATTORNEY TO JOINTLY WITH LAKE COUNTY OHIO AND GEAUGA COUNTY OHIO FILE FOR LEAVE TO FILE AN AMICUS BRIEF ON BEHALF OF ASHTABULA COUNTY IN THE PENDING ACTION IN FEDERAL COURT CHALLENGING OHIO'S CURRENT CONGRESSIONAL DISTRICT BOUNDARIES

The Board of County Commissioners of Ashtabula County, Ohio, met on the 29th day of January, 2019, in regular session at the offices of said Board in the Old Courthouse Building, 2nd Floor, 25 W. Jefferson St., Jefferson, Ohio, with the following members present: J. P. Ducro IV, Casey R. Kozlowski, Kathryn L. Whittington.

WHEREAS, there is a question of great Constitutional concern affecting the citizens of this county's right to vote, the Board of Ashtabula County Commissioners request that the Prosecuting Attorney jointly file a motion for leave to file an amicus brief on behalf of Ashtabula County in cooperation with Lake County Ohio and Geauga County Ohio in the matter of *Ohio A. Philip Randolph Institute, et al. v. Ryan Smith, Speaker of the Ohio House of Representatives, et al.*, U.S. District Court for the Southern District of Ohio Case, No. 1:18-cv-00357-TSB; and

WHEREAS, the American Civil Liberties Union of Ohio (ACLU) has filed a lawsuit in the United States District Court for the Southern District of Ohio challenging Ohio's current congressional districts as unconstitutional on behalf of the Ohio A. Philip Randolph Institute and various Ohio electors; and

WHEREAS, the current congressional district map has existed since it was created following the 2010 census with Ashtabula County as a part of Ohio's fourteenth congressional district; and

WHEREAS, on May 8, 2018 nearly 75% of Ohio voters and 70% of Ashtabula County voters approved a constitutional amendment creating a bipartisan public process for the drawing of congressional districts to take effect after the 2020 census; and

WHEREAS, despite Ohio voters overwhelmingly approving a new bipartisan congressional redistricting process, the ACLU continues to seek the creation of a new congressional district map to take effect for the 2020 election that would be created by unelected lifetime tenured judges as opposed to democratically elected public officials; and

WHEREAS, the ACLU has proposed a new congressional map that would split Ashtabula County from Geauga County and combine Ashtabula County with Lake County, Trumbull County and part of Mahoning County, thereby ending decades of consistent, and mutual, congressional representation of Ashtabula County, Geauga County, and Lake County; and

WHEREAS, as a result of the ACLU's proposed congressional district map for the 2020 election and the subsequent redistricting that would occur following the 2020 census pursuant to Ohio's newly created bipartisan public process for drawing congressional districts, Ashtabula County residents would likely have four different congressional representatives in less than a six-year period which would serve to diminish Ashtabula County's influence in federal affairs;

NOW, THEREFORE, BE IT RESOLVED, that the Board of County Commissioners does hereby request that the Ashtabula County Prosecuting Attorney file a motion for leave to file an amicus brief jointly with Lake County Ohio and Geauga County Ohio opposing any changes to the current congressional map for the 2020 election in the matter of *Ohio A. Philip Randolph Institute, et al. v. Ryan Smith, Speaker of the Ohio House of Representatives, et al.*, U.S. District Court for the Southern District of Ohio Case, Case No. 1:18-cv-00357-TSB.

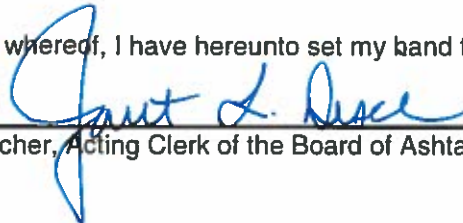


MOTION: Kozlowski moved the adoption, Whittington seconded. **DISCUSSION:** None
VOTE: Yeas: Whittington, Ducro, Kozlowski Nays: None Abstained: None Absent: None
Whereupon the resolution was declared passed unanimously.

CERTIFICATE

This is to certify that I, Janet Discher, as Acting Clerk of the Board of Commissioners of Ashtabula County, Ohio has compared the foregoing copy of the **RESOLUTION NUMBER 2019-68** with the original resolution now on file in this office, which was duly passed by the Board of Commissioners of said County of Ashtabula on the January 29, 2019; and that the same is a correct and true copy of said resolution.

In witness whereof, I have hereunto set my hand this 29th day of January, 2019.



Janet Discher, Acting Clerk of the Board of Ashtabula County Commissioners'

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Defendants.)	
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**BRIEF OF AMICI CURIAE GEAUGA AND LAKE COUNTIES IN SUPPORT OF
DEFENDANTS**

Amici curiae, the Boards of Commissioners of Geauga and Lake counties, by and through their respective undersigned counsel, respectfully submit this amici curiae brief in support of defendants in this matter. In this case, the plaintiffs request that this Court declare unconstitutional all sixteen current congressional districts, including the Fourteenth Congressional District (“District 14”). Second Amended Complaint at 50, Ohio A. Philip Randolph Inst. v. Smith, No. 1:18-cv-00357-TSB (S.D. Ohio filed July 11, 2018). Ashtabula, Geauga, and Lake counties, in their entirety, lie within District 14. It is the position of amici curiae that District 14 as currently drawn, in which all three counties lie, does not violate the First Amendment, the Fourteenth Amendment, or Article I of the U.S. Constitution, and amici curiae respectfully request that this Court so declare. In the alternative, should this Court declare unconstitutional the 2011 congressional districting plan, amici curiae respectfully request that this Court, in any remedial districting plan, preserve these three counties as the core of their congressional district.

ARGUMENT

Amici curiae, the Boards of Commissioners of Geauga and Lake counties, submit to this Court that these two counties and their residents share certain common interests along with those of Ashtabula County. District 14, as currently drawn, adheres to traditional districting principles, thus reflecting those shared common interests, which allows their congressional representative to better advocate on their behalf. In contrast, the plaintiffs' proposed remedial districting plan does not adhere to traditional districting principles with respect to these counties.

Traditional Districting Principles

Discussion of traditional districting principles is present in the judiciary's review of partisan gerrymandering claims. When the Court in *Vieth v. Jubelirer*, 541 U.S. 267 (2004), a plurality decision, considered whether partisan gerrymandering claims are justiciable, five justices were unwilling to conclude that such claims were nonjusticiable. Justice Kennedy's concurrence with the plurality opinion left open the possibility that judicially manageable standards could be identified in future cases thus making such claims justiciable. *Id.* at 1792-93 (Kennedy, J., concurring). In that case, traditional districting principles were an integral component of the test proposed by Justice Souter in his dissent. *Id.* at 347-50 (Souter, J., dissenting).

In this case and similar cases, the plaintiffs have stressed the importance of traditional districting principles in creating districting plans. *See, e.g.*, Second Amended Complaint at 48, Ohio A. Philip Randolph Inst. v. Smith, No. 1:18-cv-00357-TSB (S.D. Ohio filed July 11, 2018); Amended Complaint at ¶¶ 3, 68, *Common Cause v. Rucho*, 318 F.Supp.3d 777 (M.D.N.C. 2018) (No. 1:16-CV-1164), 2017 WL 6887476, *jurisdiction postponed*, 2019 WL 98539 (U.S. Jan. 8, 2019) (No. 18-422); Petitioner's Opening Brief at 58, *League of Women Voters of Pa. v.*

Commonwealth, 175 A.3d 282 (Pa. 2018), *cert. denied*, 139 S.Ct. 445 (2018) (No. 159 MDA 2017), 2018 WL 722927.

The U.S. Supreme Court has stated that the traditional districting principles of “compactness, contiguity, maintaining integrity of political subdivisions, and, potentially, compliance with the Voting Rights Act [of 1965]” are legitimate considerations justifying deviations from perfect equality of population. *Rucho*, 318 F.Supp.3d at 871 (citing *Harris v. Ariz. Indep. Redistricting Comm'n*, 136 S.Ct. 1301, 1306 (2017) (quoting *Shaw*, 509 U.S. at 647)).

In *Rucho* and *League of Women Voters of Pa.*, both the district court and the Pennsylvania Supreme Court relied on testimony from the plaintiffs’ expert witnesses reporting their findings after conducting computer analyses that used algorithms based on certain legal requirements and traditional districting principles, such as population equality, contiguity, maximizing compactness, compliance with the Voting Rights Act of 1965, minimization of counties split between districts, and minimization of municipalities split between districts. *League of Women Voters of Pa.*, 178 A.3d at 770; *Rucho*, 318 F.Supp.3d at 870-78 (citing *Harris*, 136 S.Ct. at 1306); Bernard Grofman and Jonathan R. Cervas, *Can State Courts Cure Partisan Gerrymandering: Lessons from League of Women Voters v. Commonwealth of Pennsylvania*, 17 ELECTION L.J. 4, 270-71 (2018).

In *Rucho*, the district court found compelling empirical evidence that legitimate redistricting objectives could not explain the challenged plan based on comparative analyses by petitioners’ expert, Dr. Jonathan Mattingly of Duke University, employing a computer simulation using the criteria recognized by the U.S. Supreme Court in *Harris*. *Rucho*, 318 F.Supp.3d at 870-74 (citing *Harris*, 136 S.Ct. at 1306).

In *League of Women Voters of Pa.*, the court relied on similar expert testimony in finding that the challenged plan violated the state constitution. *League of Women Voters of Pa.*, 178 A.3d at 818-821. In adopting a remedial districting plan in a subsequent proceeding, the court described the adopted plan as being “composed of congressional districts which follow the traditional redistricting criteria of compactness, contiguity, equality of population, and respect for the integrity of political subdivisions.” *League of Women Voters of Pa. v. Commonwealth*, 181 A.3d 1083 (Pa. 2018).

In addition to the legal requirements of equality of population and non-discrimination, many states have adopted traditional districting principles for their districting process. National Conference of State Legislatures, *Redistricting Criteria*, Jan. 21, 2019, <http://www.ncsl.org/research/redistricting/redistricting-criteria.aspx> (last visited Jan. 25, 2019). Among those principles are (1) compactness, (2), contiguity, (3) preservation of counties or other political subdivisions, (4) preservation of communities of interest, (5) preservation of cores of prior districts (i.e., preserving continuity of representation), (6) and avoiding pairing incumbents. *Id.* Plaintiff League of Women Voters of Ohio advocates the use of similar formal principles along with other fairness criteria, such as competitiveness and representational fairness. LEAGUE OF WOMEN VOTERS OF OHIO, PREDICTABLE RESULTS: A REPORT FROM THE LEAGUE OF WOMEN VOTERS OF OHIO COMPARING 2011 GERRYMANDERING TO THE 2012, 2014, AND 2016 ELECTION RESULTS 15-16, <https://my.lwv.org/ohio/news/publications> (last visited Jan. 22, 2019).

Recently, Ohio voters made their voices heard on this issue. Passed by nearly seventy-five percent of Ohio voters and effective on January 1, 2021, State Issue 1 added to the state constitution both formal and fairness districting criteria for congressional elections, including (1) a prohibition on primarily favoring or disfavoring a political party, (2) preservation of political subdivisions giving

priority to county boundaries, and (3) compactness. OHIO CONST. amend. XIX, §§ 1(C)(3)(a)-(c), 1(F)(3)(a)-(d). In April 2018, the co-presidents of the League of Women Voters of Greater Cleveland stated that their organization was choosing to promote the ballot initiative rather than bringing a lawsuit. Op-Ed, Marcia Goldberg & Susan Murnane, *League of Women Voters Urges Yes on Issue 1 for Ohio Redistricting Reform*, PLAIN DEALER, April 29, 2018.

Although it is not a precondition to establish a constitutional violation, a plaintiff may provide an alternative or hypothetical plan that better conforms to traditional districting principles to show that the challenged districting plan dilutes a particular plaintiff's vote on the basis of invidious partisanship. *Rucho*, 318 F.Supp.3d at 900-01 (citing *Gill v. Whitford*, 137 S.Ct. 1916, 1831 (2018)); *Cooper v. Harris*, 137 S.Ct. 1455, 1478-82 (2017); *Easley v. Cromartie*, 532 U.S. 234, 258 (2001)). In this case, the plaintiffs have provided a proposed remedial districting plan created by their expert, William S. Cooper. Plaintiffs' Proposed Remedial Map, Ohio A. Philip Randolph Inst. v. Smith, No. 1:18-cv-00357-TSB (S.D. Ohio filed Sept. 28, 2018). Amici curiae question whether this map better conforms to traditional districting principles with respect to District 14 as compared to the current map.

Compactness

Currently, District 14 is compact, consisting mostly of the three uppermost northeast counties of Ohio. District 14 encompasses all of Ashtabula County, Lake County, and Geauga County, with portions of Trumbull County, Cuyahoga County, and Summit County. In contrast, the plaintiffs' proposed redistricting of Lake County and Ashtabula County, which both border Lake Erie, would now be in District 13, which would also include Youngstown, Ohio. This proposed oddly drawn, upside down L-shaped new district is not compact and creates the jigsaw pieces of which the

plaintiffs complain. Likewise, the plaintiffs' proposed District 14 and District 16 split Geauga County in two and create a new District 14 resembling an odd-shaped J stretching south across five counties, and a new District 16 resembling an odd-shaped P. Thus, it becomes unclear whether the plaintiffs disfavor jigsaw pieces or the plaintiffs just disfavor jigsaw pieces that the plaintiffs did not create. District 14, as currently drawn, is compact and should not be divided as the plaintiffs propose.

Preservation of Cores of Prior Districts

The counties of Ashtabula, Geauga, and Lake are the core of District 14 representing the uppermost northeast corner of Ohio, and any districting plan should preserve its integrity. The plaintiffs' proposed remedial map splits that core and divides the counties into separate districts in which the influence of voters in this region will be weakened. It does so by placing Lake County and Ashtabula County into District 13 with Trumbull County and a portion of Mahoning County, placing part of Geauga County with Portage County, Stark County, Wayne County, and a portion of Holmes County, and placing the other portion of Geauga County in District 16 with Summit County and a portion of Cuyahoga County. The plaintiffs' proposed redistricting of oddly shaped districts rips northeast Ohio asunder.

Excepting the decade following the 1990 census, the greater parts of Ashtabula, Lake, and Geauga counties have shared representation in Congress since January 3, 1953. Frank LaRose, Ohio Secretary of State, *U.S. Congressional Districts 2012-2022 in Ohio* (2018); Ken Blackwell, Ohio Secretary of State, *Ohio Congressional Districts, 2002-2012*; Bob Taft, Ohio Secretary of State, *Ohio District Maps* (1992); Kenneth C. Martis, *The Historical Atlas of Political Parties in the United States Congress, 1789-1989*, at 207-241 (1989); Sherrod Brown, Ohio Secretary of State, *District Maps of Ohio* (1983); Ted W. Brown, Ohio Secretary of State, *Maps of Ohio Showing*

Congressional, Senatorial, Representatives and Judicial Districts (1978). These three counties are also part of the jurisdiction of the Eleventh District Court of Appeals of Ohio. Frank LaRose, Ohio Secretary of State, *Ohio Court of Appeals Districts* (2018).

Under the plaintiffs' proposed remedial plan, Geauga County, with a population estimated in 2018 to be 93,918, would be split. *See* U.S. Census Bureau, QuickFacts, <https://www.census.gov/quickfacts/fact/table/US/PST045218> (last visited Jan. 22, 2019). The eastern part of Geauga County would be placed in the new District 14, which would be dominated by Stark County with an estimated population of 372,542. *See id.* Residing in that district would be an incumbent representative from Holmes County. This is in stark contrast to Geauga County's current incumbent representative who resides in Geauga County. The western part of Geauga County would be placed in the new District 16, which would be dominated by Summit County with an estimated population of 541,228. *See id.* Similarly, Lake and Ashtabula counties would be placed in the new District 13, including Youngstown. The district would include the residence of an incumbent representative from Trumbull County. The proposed remedial districting plan makes Summit County whole at the expense of Geauga County and to the harm of voters in District 14.

Furthermore, the implementation of another districting plan merely for the 117th United States Congress elected in 2020 would further disrupt continuity of representation. Voters would be choosing representatives on the basis of three different district maps in three consecutive congressional elections in the short period of six years. It would make it more likely that these voters would be represented by three different members of Congress. Many of these voters would not even have the opportunity to re-elect incumbents, if they so desired.

Preserving County Boundaries

It is clear that Ohio voters as well as voters in Geauga, Lake and Ashtabula counties value the importance of maintaining county boundaries. Voters in the State of Ohio overwhelmingly supported State Issue 1 in 2018, creating a bipartisan, public process for drawing congressional districts. See Frank LaRose, Ohio Secretary of State, *Summary-Level Official Results for 2018 Primary Election – Statewide Issues*, <https://www.sos.state.oh.us/elections/election-results-and-data/2018-official-elections-results/> (last visited Feb. 1, 2019). At the May 2018 election, 74.89 percent of Ohio voters approved of the measure with 73.67 percent approval in Geauga County, 73.43 percent approval in Lake County, and 70.01 percent approval in Ashtabula County. *Id.* As adopted, five of the eight requirements for congressional redistricting under State Issue 1 support the principle of maintaining county boundaries. OHIO CONST. art. XIX, § 2 (B)(4)-(8). Ohioans, and the overwhelming majority of voters of Geauga, Lake, and Ashtabula counties, have emphasized the importance of county boundaries when creating districts. When considering the adoption of any remedial map in this case, the amici curae ask this Court to consider this traditional redistricting principle and Ohio's desire to maintain county boundaries, particularly as it pertains to District 14.

Preserving Communities of Interest

A community of interest is a defined territory with certain common economic, social, or cultural interests. Karin MacDonald & Bruce E. Cain, *Community of Interest Methodology and Public Testimony*, 3 U.C. IRVINE L. REV. 609, 613 (2013). Unlike other formal standards like contiguity that are more easily measured, identifying communities of interest is more difficult since their boundaries and interests are more subjective. *Id.* at 612. They do not necessarily coincide neatly with government jurisdictions. *Id.* Instead, it is a perception by local residents that they share

politically relevant social, cultural, and economic interests. *Id.* The importance of communities of interest in good redistricting stems from the delegate model of representation. *Id.* at 613. In the delegate model of representation, the representative's function is to advocate for the majority interests and preferences of his or her constituents within a territorial jurisdiction, and having a district composed of a closer-knit community of interest improves representation. *Id.*

Since identifying communities of interest is necessarily more subjective, purely quantitative measures identifying communities of interests cannot supplant qualitative public testimony. *Id.* at 611. This is why some scholars have advocated for the expanding role of public comment or testimony in the redistricting process. *Id.* at 610-11 ("Given that a finite number of commission members cannot possibly reflect all the nuanced, varied interests that arise in a large state redistricting, public input is critical to providing line-drawing guidance"). In this brief, amici curiae submit to this Court information and perspective to show that a community of interest exists among Ashtabula, Geauga, and Lake counties.

Ashtabula, Geauga, and Lake counties have deep historical ties. All three counties were carved out of the former Connecticut Western Reserve. HISTORY OF GEAUGA AND LAKE COUNTIES, OHIO, WITH ILLUSTRATIONS AND BIOGRAPHICAL SKETCHES OF ITS PIONEERS AND MOST PROMINENT MEN 22 (Williams Brothers, eds., 1878). In 1840, Lake County was formed mostly from seven townships split from Geauga County and one from Cuyahoga County. *Id.* Ashtabula County was organized out of part of Geauga County in 1810. *Id.*

Basic statistical tools already exist to help identify communities of interest. *Cf.* Jason Moreira, *Regionalism, Federalism, and the Paradox of Local Democracy: Reclaiming State Power in Pursuant of Regional Equity*, 67 RUTGERS U. L. REV. 501, 538-39 (2015) (proposing the use of

geographic metrics such as Core Based Statistical Areas (CBSAs) and Combined Statistical Areas (CSAs) in the regionalization context to identify “true regions – that is, real, territorially defined economic units”). The U.S. Office of Management and Budget (OMB) defines a CBSA (i.e., both Metropolitan Statistical Areas (MeSAs) and Micropolitan Statistical Areas (MiSAs)) as a geographic area of the United States with at least one core of 10,000 or more population plus adjacent territory that has a high degree of social and economic integration with the core as measured by commuting ties. 75 Fed. Reg. 37,249 (June 28, 2018). The general concept underlying MeSAs and MiSAs is the identification of core areas with a substantial population nucleus combined with adjacent communities having a high degree of economic and social integration with that core. U.S. Census Bureau, Metropolitan and Micropolitan, <https://www.census.gov/programs-surveys/metro-micro/about.html> (last visited Jan. 22, 2019). Therefore, there is some conceptual overlap with identifying communities of interest having commonality in economic, social, or cultural interests. *See MacDonald & Cain, supra*, at 613.

The U.S. Census Bureau created state maps for the 2012 Economic Census showing outlines of the counties and CSAs, MeSAs, and MiSAs. *See* U.S. Census Bureau, 2012 Economic Census Reference Maps: Ohio (2012), <https://www.census.gov/programs-surveys/economic-census/guidance-geographies/about-maps.html> (last visited Jan. 22, 2019). According to those maps, Lake, Geauga, and Ashtabula counties are all within the Cleveland-Akron-Canton CSA. U.S. Census Bureau, Ohio - Core Based Statistical Areas (CBSAs) and Counties (Feb. 2013), https://www2.census.gov/geo/maps/econ/ec2012/state/EC2012_0400000US39M.pdf?#. Furthermore, Geauga and Lake counties are both within the Cleveland-Elyria CBSA/MeSA while Ashtabula County by itself is a CBSA/MiSA. *Id.* The plaintiffs' proposed remedial map places Lake

and Ashtabula counties together with Trumbull County and parts of Mahoning County, which are both part of the Youngstown-Warren CSA and Youngstown-Warren-Boardman CBSA/MeSA. *Id.* It also splits Geauga County and combines it into one district with the Canton-Massillon, Akron, and Wooster CBSAs and in the other district with the Akron CBSA/MeSA. *Id.* Therefore, the current districting plan better maintains this region as an economic unit than the plaintiffs' proposed remedial districting plan.

District 14, as currently drawn, better represents the interests of Ashtabula, Geauga, and Lake counties, which allows their congressional representative to effectively advocate on behalf of these counties. District 14 has been an important resource for these counties in addressing regional issues. On March 28, 2018, FirstEnergy Solutions announced plans to close three of its nuclear power plants, including the Perry Nuclear Power Plant in Lake County. Andrew Cass, *Perry Nuclear Power Plant: Efforts to Save Facility Entering New Phase*, THE NEWS-HERALD, Mar. 29, 2018 [hereinafter *New Phase*]. The Perry plant is scheduled to be decommissioned in 2021. *Id.* FirstEnergy Solutions has filed for Chapter 11 bankruptcy in the U.S. Bankruptcy Court in the Northern District of Ohio. Andrew Cass, *FirstEnergy Solutions Filed for Bankruptcy*, THE MORNING JOURNAL, April 1, 2018.

The plant closure would be an economic blow to the local and regional communities as well as the nearly eight hundred families relying on the plant for employment. *See New Phase, supra*; James Ewinger, *Lake County Officials Continue Drive to Save Perry Nuclear Plant*, THE PLAIN DEALER, Oct. 28, 2017 [hereinafter *Officials Continue Drive*]; Andrew Cass, *Federal, Local Officials Stress County-wide Economic Impact Perry Plant Closure Would Have*, THE NEWS-HERALD, Oct. 28, 2017 [hereinafter *Economic Impact*]. About five hundred of the plant's employees live in Lake County while the rest live in Ashtabula and Geauga counties. Op-Ed, *Future for Perry*

Nuclear Power Plant Hinges on Final Legislative Push, NEWS-HERALD, Jan. 19, 2019. Perry is the single largest taxpayer in Lake County providing tens of millions of dollars of tax revenue annually. Op-Ed, Jack Thompson, *Looming Nuclear Plant Closures Will Hurt Ohio Schools and Communities*, THE PLAIN DEALER, Dec. 5, 2018 [hereinafter *Looming*]; *Officials Continue Drive*, *supra*. Perry Schools rely on tax revenue from the plant. *See Economic Impact*, *supra*. A recent devaluation of the plant has already decreased tax revenue in Lake County by millions of dollars and another devaluation is expected. Andrew Cass, *Perry Schools Will Lose Over \$2 Million with FirstEnergy Property Tax Devaluation*, THE NEWS-HERALD, Oct. 18, 2017; *Looming*, *supra*.

President of the Lake County Board of Commissioners, Jerry Cirino, has had discussions about the plant closure with Department of Energy officials. *Economic Impact*, *supra*. Representative Joyce has supported and been involved with these efforts. *See id.* Commissioner Cirino and Representative Joyce have also had discussions with officials from the Federal Energy Regulatory Commission and the White House. As this important matter continues to develop over the next few years, these counties would be better served by continued advocacy on their behalf provided through District 14.

Having a special connection to Lake Erie, District 14's representative has helped secure important federal assistance for these counties. Recently, Representative Joyce helped the Lake County Department of Utilities obtain \$3.4 million in funds from the U.S. Army Corps of Engineers to build a break wall along the Lake Erie shore to protect the Lake County Raw Water Pump Station. Chad Felton, *\$3.4 Million Contract to Protect Lake County Pump Station Awarded to Eastlake Company*, THE NEWS-HERALD, Nov. 16, 2018. Representative Joyce has also successfully advocated for funding to restore and protect Lake Erie through the Environmental Protection Agency's Great

Lakes Restoration Initiative. Andrew Cass, *Great Lakes Remain a Political Battleground*, THE NEWS-HERALD, June 8, 2017; Andrew Cass, *U.S. Reps Make Case for Full Great Lakes Restoration Funding*, THE NEWS-HERALD, Mar. 20, 2018; Andrew Cass, *Full Funding for Great Lakes Restoration Program Included in Spending Bill*, THE NEWS-HERALD, Mar. 22, 2018.

There is a community of interest between Ashtabula, Geauga, and Lake counties consisting of shared politically relevant social, cultural, and economic interests. District 14, as currently drawn, better represents those interests than the districts drawn in the plaintiff's proposed remedial map.

Timing

The timing of the plaintiffs' claims adds to the complexity of the issue and, in particular, the amici curae's concerns with the plaintiffs' proposed remedial map. If adopted, the core of District 14 would undergo significant change for the 2020 election cycle, and newly adopted districts would again, presumably, change in the 2022 election cycle.

The Ohio General Assembly enacted H.B. 369, including Ohio's current congressional districts, on December 14, 2011, and it was signed into law by Governor Kasich on December 15, 2011. 2011 Sub.H.B. No. 369. As H.B. 369 was passed as an emergency measure, it was passed with bipartisan support by more than a two-thirds majority of Democrats and Republicans in both houses of the Ohio General Assembly. Ohio General Assembly, *Unofficial Votes for House Bill 369*, http://archives.legislature.state.oh.us/votes.cfm?ID=129_HB_369 (last visited Feb. 4, 2019). Over the last seven years, Ohio used the current map to conduct the 2012, 2014, and 2016 elections, as well as the 2018 primary election, prior to the plaintiffs' initial complaint being filed on May 23, 2018. As it stands today, Ohio would have one more election in 2020 under the current map.

While the amici curiae understand that this Court found that the plaintiffs' suit was not barred

by laches, the amici curiae ask this Court to still consider the timing of the plaintiffs' suit when contemplating the adoption of the plaintiffs' remedial map or any other remedial map. *See* Order Denying Motion to Dismiss at 17, Ohio A. Philip Randolph Inst. v. Smith, No. 1:18-cv-00357-TSB (S.D. Ohio filed Aug. 15, 2018). In district specific elections, like a congressional election, the impact of changes to the defined districts is significant. As the Court in *Vieth* recognized, "If the districts change, the candidates change, their strengths and weaknesses change, their campaigns change, their ability to raise money changes, the issues change – everything changes." *Vieth*, supra, at 289 (quoting Daniel H. Lowenstein & Jonathan Steinberg, *The Quest for Legislative Districting in the Public Interest: Elusive or Illusory?*, 33 UCLA L. REV. 1, 59-60 (1985)). It follows that district changes not only impact political parties and candidates, but also impact the communities and voters who have grown accustomed to existing districts and representatives.

The plaintiffs' proposed remedial map seeks to change all of the districts in Ohio and, in particular, to obliterate District 14 as it exists today. As stated above, Lake, Geauga, and Ashtabula counties have shared congressional representation since 1953, except for the decade following the 1990 census. The implementation of another districting plan merely for the Congress elected in 2020 would further disrupt continuity of representation. Voters would be choosing representatives on the basis of three different district maps in three consecutive congressional elections in the short period of six years. It would make it much more likely that these voters would be represented by three different members of Congress. Many of these voters would not even have the opportunity to re-elect incumbents, if they so desired. For these reasons, the amici curiae ask this Court to consider the impact that plaintiffs' delay will have on voters and their communities when contemplating the adoption of any remedial map for the 2020 election cycle.

CONCLUSION

“[T]he rights of qualified voters, *regardless of their political persuasion*, to cast their votes effectively ... rank[s] among our most precious of freedoms. *Williams v. Rhodes*, 393 U.S. 23, 30 (1968) (emphasis added). As it relates to Geauga and Lake counties, the current districting plan better conforms to traditional districting principles than the plaintiffs’ proposed remedial plan. For the foregoing reasons, amici curiae, the Boards of Commissioners of Geauga and Lake counties, request that this Court declare that District 14, as currently drawn, does not violate the First Amendment, Fourteenth Amendment, or Article I of the U.S. Constitution. In the alternative, should this Court declare unconstitutional the 2011 congressional districting plan, amici curiae respectfully request that this Court in any remedial districting plan preserve these counties as the core of their congressional district.

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Certificate of Service

The undersigned counsel hereby certify that true and correct copies of the foregoing Motion for Leave to File an Amici Curiae Brief in Support of Defendants, Instanter, Memorandum in Support of Motion for Leave to File an Amici Curiae Brief, Instanter, and Brief of Amici Curiae Geauga and Lake Counties in Support of Defendants were filed via the Court's ECF system and delivered electronically or by U.S. regular mail pursuant to S.D. Ohio Civ. R. 5.2 and Fed. R. Civ. P. 5 upon all parties or counsel of record in this case on this 6th day of February, 2019.

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**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

OHIO A. PHILIP RANDOLPH INSTITUTE, <i>et al.</i> ,))	
)	No. 1:18-cv-00357-TSB
Plaintiffs,)	
)	Judge Timothy S. Black
v.)	Judge Karen Nelson Moore
)	Judge Michael H. Watson
RYAN SMITH, Speaker of the Ohio House of))	
Representatives, <i>et al.</i> ,)	Magistrate Judge Karen L. Litkovitz
)	
Defendants.)	
)	
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ORDER

Before this Court is the Motion for Leave to File an Amici Curiae Brief in Support of Defendants, Instanter, filed by proposed amici curiae, the Boards of Commissioners of Geauga and Lake counties. The Court finds that movants have an “important interest and a valuable perspective that is helpful to the Court on the issues presented in this case.” *See United States ex rel. Roby v. Boeing Co.*, 83 F. Supp. 2d 897, 900 (S.D. Ohio 1999). For the foregoing reasons, we GRANT the proposed amici curiae leave to file instanter the amici curiae brief in support of defendants in this matter .

ENTERED: _____

United States District Court Judge

Signed for and on behalf of the panel:

HONORABLE KAREN NELSON MOORE
United States Circuit Judge

HONORABLE TIMOTHY S. BLACK
United States District Judge

HONORABLE MICHAEL H. WATSON
United States District Judge