

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

**MICHAEL GONIDAKIS, et al.,**

Plaintiffs,

v.

**FRANK LAROSE,**

Defendant, and

**LEAGUE OF WOMEN VOTERS OF OHIO  
and A. PHILIP RANDOLPH INSTITUTE  
OF OHIO,**

Intervenor-Defendants.

Chief Judge Algenon L. Marbley

Case No. 2:22-cv-773

---

**INTERVENOR-DEFENDANTS' MOTION FOR STAY PENDING THE OUTCOME OF  
THE STATE REDISTRICTING PROCESS<sup>1</sup>**

---

Intervenor-Defendants respectfully move for a stay of this action, on federal deferral grounds, until such time when Ohio's redistricting proceedings have concluded. It would be inappropriate for *this* Court to hear this case at the present time, given the *ongoing* state redistricting and corresponding litigation pending before the Ohio Supreme Court. Based on principles of federalism, comity, and judicial efficiency, Intervenor-Defendants urge this Court to defer its adjudication of Plaintiffs' premature claims. A memorandum in support of this motion is filed herewith.

---

<sup>1</sup> Intervenor-Defendants submit this motion understanding that the Court has not yet granted their motion to intervene. Given that time is of the essence in this matter, however, this motion is respectfully submitted so that the Court can rule on it promptly should intervention be granted.

WHEREFORE, Intervenor-Defendants respectfully request that this Court grant their motion to stay the proceedings.

Robert D. Fram  
COVINGTON & BURLING, LLP  
Salesforce Tower  
415 Mission Street, Suite 5400  
San Francisco, CA 94105-2533  
(415) 591-6000  
rfram@cov.com

Sarah Suwanda  
COVINGTON & BURLING, LLP  
One CityCenter  
850 Tenth Street, NW  
Washington, DC 20001-4956  
(202) 662-6000  
ssuwanda@cov.com

\* *Pro hac vice* application forthcoming

Respectfully submitted,

/s/ Freda J. Levenson  
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

Alora Thomas\*  
Julie A. Ebenstein\*  
AMERICAN CIVIL LIBERTIES UNION  
125 Broad Street  
New York, NY 10004  
(212) 519-7866  
athomas@aclu.org  
jebenstein@aclu.org

*Counsel for Intervenor-Defendants*

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

**MICHAEL GONIDAKIS, et al.,**

Plaintiffs,

v.

**FRANK LAROSE,**

Defendant, and

**LEAGUE OF WOMEN VOTERS OF OHIO  
and A. PHILIP RANDOLPH INSTITUTE  
OF OHIO,**

Intervenor-Defendants.

Chief Judge Algenon L. Marbley

Case No. 2:22-cv-773

---

**INTERVENOR-DEFENDANTS' MEMORANDUM IN SUPPORT OF THEIR MOTION  
FOR STAY PENDING THE OUTCOME OF THE STATE REDISTRICTING PROCESS**

---

## I. INTRODUCTION

Through this lawsuit, Plaintiffs ask a federal court to interrupt an ongoing redistricting process that is being carried out by the Ohio Redistricting Commission (the “Commission”) under the supervision of the Ohio Supreme Court. They do so notwithstanding a longstanding practice for federal courts to decline to act under these very circumstances. Worse, they ask this Court to enact a General Assembly district plan that the Ohio Supreme Court invalidated under Article XI of the Ohio Constitution. This Court should decline Plaintiffs’ improper invitation and stay these proceedings.

The simple fact is that despite claiming “impasse” on February 17, 2022, within days the Commission reversed course. On February 22, 2022, members of the Commission,<sup>2</sup> including Governor DeWine, affirmed that the Commission has “an obligation to follow the Constitution,” “an obligation to follow the court orders,” and “an obligation to produce a map.”<sup>3</sup> The next day, on February 23, 2022, the Commission confirmed its about-face in writing. It did so in its response to the Ohio Supreme Court’s order to show cause as to why the Commission’s members should not be held in contempt due to its alleged “impasse” on February 17, 2022. In that submission, the Commission reiterated its position from the day before, stating that “the Commission is *presently continuing its efforts to pass a compliant map.*” See The Ohio Redistricting Comm’ns Resp. to Order to Show Cause Pursuant to Ct.’s 2/18/22 Order, at 1, *League of Women Voters of Ohio v. Ohio Redistricting Comm’n*, No. 2021-1193 (Ohio Feb. 23, 2022) (emphasis added).

---

<sup>2</sup> Currently, the Commission is comprised of the following members: Speaker of the House Robert R. Cupp (Co-Chair), Senator Vernon Sykes (Co-Chair), Senate President Matt Huffman, House Minority Leader C. Allison Russo, Governor Mike DeWine, Auditor Keith Faber, and Secretary of State Frank LaRose.

<sup>3</sup> Ex. A (Tr. of Feb. 22, 2022 Ohio Redistricting Comm’n Hr’g), at 00:05:08.

To this day, the Ohio Supreme Court remains actively engaged. On February 24, following the Commission and individual Commissioners' responses to the Ohio Supreme Court's order to show cause, it directed the individual members of the Commission to appear in person at a hearing on March 1, 2022, at 10:00 am.

Plaintiffs' premature malapportionment claims—predicated on a not-yet-complete state-redistricting process—do not justify federal intrusion upon Ohio's ongoing redistricting deliberations. To the contrary, the U.S. Supreme Court has ruled that federal intervention is improper when reapportionment (also known as redistricting) is before a state court, as it is here. *Grove v. Emison*, 507 U.S. 25, 33 (1993) (“In the reapportionment context, the Court has required federal judges to defer consideration of disputes involving redistricting where the State, through its legislative *or* judicial branch, has begun to address that highly political task itself.”). In accordance with *Grove*, this Court should stay this lawsuit until the redistricting process and corresponding state-court litigation has been resolved.

## **II. FACTUAL BACKGROUND**

### **A. The Ohio Constitution expressly vests exclusive and original jurisdiction over partisan gerrymandering claims in the Ohio Supreme Court.**

In 2011, the Ohio General Assembly enacted a heavily gerrymandered plan that allowed Republicans to control far more seats than their statewide vote share. *See League of Women Voters of Ohio v. Ohio Redistricting Comm'n*, --- N.E.3d ----, 2022-Ohio-65, 2022 WL 110261, ¶ 179 (Ohio Jan. 12, 2022) (Brunner, J., concurring). Following that enactment, a group of Ohio voters challenged Ohio's legislative plan on the basis of partisan unfairness, to which the Ohio Supreme Court held that it lacked the power to act because the Ohio Constitution, in 2011, did not explicitly require political neutrality. *Wilson v. Kasich*, 981 N.E.2d 814, 820 (Ohio 2012).

In response, on November 3, 2015, Ohio voters, by an overwhelming margin of 71.5% to 28.5%, amended the Ohio Constitution by adding express constitutional commands that legislative plans not be drawn “to favor or disfavor a political party,” and that the distribution of seats “shall correspond closely to the statewide preferences of the voters of Ohio.” Ohio Const. art. XI, §§ 6(A)–(B). The express purpose of the constitutional amendment was to “[e]nd the partisan process for drawing Ohio House and Senate districts, and replace it with a bipartisan process with the goal of having district boundaries that are more compact and politically competitive.” Ohio Sec’y of State, Issue 1 Ballot Language (Nov. 2015), <https://bit.ly/3ElgrPY>.

Notably, Article XI of the Ohio Constitution, as amended, gives the Ohio Supreme Court a central role in supervising the enactment of any legislative plan. It provides the Ohio Supreme Court with exclusive and original jurisdiction over all actions arising under Article XI, and grants it the authority to invalidate “any general assembly district plan made by the Ohio redistricting commission.” Ohio Const. art. XI, §§ 9(A)–(B); *League of Women Voters of Ohio*, 2022 WL 110261, ¶ 69. Moreover, in the event that the Ohio Supreme Court finds a plan to be constitutionally defective, it has the express authority to order the Commission to “convene, and ascertain and determine a general assembly district plan in conformity with such provisions of this constitution as are then valid.” Ohio Const. art. XI, § 9(B).

**B. Ohio’s redistricting process—and the corresponding state-court litigation—remains ongoing.**

**1. The Ohio Supreme Court invalidated two district plans enacted by the Commission.**

Shortly after midnight on September 16, 2021, the Commission voted along strict party lines to enact a General Assembly district plan to be in effect for the next four years. A week later, on September 23, 2021, Intervenor-Defendants filed a complaint (as petitioners) in the Ohio Supreme Court, alleging that the Commission’s district plan violated Article XI of the Ohio

Constitution. Specifically, Intervenor-Defendants alleged that the Commission violated Sections 6(A) and 6(B) of Article XI by enacting a plan that (i) primarily favored the Republican Party, and (ii) failed to correspond closely to the statewide preferences of the voters of Ohio. *See* Compl. ¶ 91, *League of Women Voters of Ohio*, No. 2021-1193 (Ohio Sept. 23, 2021).<sup>4</sup>

Following expedited discovery, full merits briefing, and oral argument, the Ohio Supreme Court, on January 12, 2022, struck down the Commission’s plan. In so doing, it carefully examined (and affirmed) its authority to remedy a partisan gerrymander, *League of Women Voters of Ohio*, 2022 WL 110261, ¶¶ 64–75, ordered the Commission to reconvene to adopt a new plan within ten days of the Court’s decision, and expressly retained jurisdiction to review the constitutionally compliant plan once adopted by the Commission, *id.* ¶ 137.

On January 22, 2022, the Commission adopted a revised plan, to which Intervenor-Defendants, three days later, lodged objections, explaining that the revised plan violated Article XI, Sections 6(A) and 6(B). *See* Pet’rs’ Obj. to Ohio Redistricting Comm’n’s Revised Map, *League of Women Voters of Ohio*, No. 2021-1193 (Ohio Jan. 25, 2022).<sup>5</sup>

Roughly two weeks later, on February 7, 2022, the Ohio Supreme Court sustained Intervenor-Defendants’ objections and once again struck down the Commission’s plan for “violat[ing] Article XI, Sections 6(A) and 6(B) of the Ohio Constitution.” *League of Women Voters of Ohio v. Ohio Redistricting Comm’n.*, --- N.E.3d ----, 2022-Ohio-342, 2022 WL 354619, ¶ 3 (Ohio Feb. 7, 2022). The Ohio Supreme Court then ordered the Commission to adopt a new plan “no later than February 17, 2022,” to be filed “by 9:00 a.m. on February 18,

---

<sup>4</sup> The *League of Women Voters* Petitioners’ complaint is publicly available on the Ohio Supreme Court’s docket, [https://www.supremecourt.ohio.gov/pdf\\_viewer/pdf\\_viewer.aspx?pdf=910299.pdf](https://www.supremecourt.ohio.gov/pdf_viewer/pdf_viewer.aspx?pdf=910299.pdf).

<sup>5</sup> Petitioners’ filing of objections is publicly available on the Ohio Supreme Court’s docket, [https://www.supremecourt.ohio.gov/pdf\\_viewer/pdf\\_viewer.aspx?pdf=918621.pdf](https://www.supremecourt.ohio.gov/pdf_viewer/pdf_viewer.aspx?pdf=918621.pdf).

2022.” *Id.* ¶ 68. Once again, the Ohio Supreme Court, expressly retained jurisdiction for the purpose of reviewing the forthcoming plan. *Id.*

**2. The Commission failed to enact a plan by the court-ordered February 17, 2022 deadline.**

It was not until the eve of the Ohio Supreme Court’s February 17 deadline that the Commission finally convened for the first time. And it did not enact any plan. It failed to do so in spite of Governor DeWine’s statement, at the February 17 hearing, that “[w]e have an obligation to follow the Ohio Constitution. We have an obligation to follow the Court order. Whether we like it or not, whether we agree with it or not. And . . . *we have an obligation to produce a map.*”<sup>6</sup> Following that meeting, the majority Commission members filed a conclusory “Notice of Impasse” with the Ohio Supreme Court on February 18, 2022. *See* Notice of Impasse of Ohio Redistricting Comm’n, *League of Women Voters of Ohio*, No. 2021-1193 (Ohio Feb. 18, 2022).

In response, that same day, the Ohio Supreme Court, *sua sponte*, ordered the Commission to show cause why its members should not be held in contempt. *See* 02/18/2022 Case Announcements #2, *League of Women Voters of Ohio v. Ohio Redistricting Comm’n*, 2022-Ohio-498 (Ohio Feb. 18, 2022).

**3. The Commission reversed course and publicly committed to continue the redistricting process.**

Four days after the Court’s order to show cause, the Commission, on February 22, 2022, convened. In that meeting, Governor DeWine repeated his prior statements from the February 17 hearing, exhorting the Commission to follow “the Constitution,” “court orders,” and “the rule

---

<sup>6</sup> Ex. B (Part 2 of Tr. of Feb. 17, 2022 Ohio Redistricting Comm’n Hr’g), at 00:21:02 (emphasis added).



of law,” and explaining that “produc[ing] a map . . . is what we have an obligation to do.”<sup>7</sup> Senate President Huffman echoed Governor DeWine’s statement, and Auditor Faber subsequently moved to reconvene the Commission on February 23 or 24, 2022 to discuss proposed General Assembly plans—including the Rodden III Plan submitted by Intervenor-Defendants as petitioners in the state action.<sup>8</sup> The Commission then scheduled hearings on proposed plans for February 23 and 24 of this week.<sup>9</sup>

On February 23, 2022, the Commission confirmed in writing that it was working towards passing a plan. In its response to the Ohio Supreme Court’s order to show cause, it declared that “the Commission is presently continuing its efforts to pass a compliant map.” *See Ohio Redistricting Comm’n’s Resp. to Order to Show Cause Pursuant to Ct.’s 2/18/22 Order*, at 1, *League of Women Voters of Ohio*, No. 2021-1193 (Ohio Feb. 23, 2022). It highlighted that the Commission was acting urgently to continue its work, stating that it “is meeting today [February 23, 2022] and again tomorrow [February 24, 2022], and a new plan could be approved in the coming days.” *Id.* at 1. The Commission emphasized that it had “not stopped attempting to adopt a new compliant plan,” and stated “that the best approach is to allow this work to continue in the coming days.” *Id.* at 15.

The position of the Commissioners could not have been clearer. The responses filed by Commissioners in their individual capacities only emphasized the ongoing nature of the Commission’s work.

---

<sup>7</sup> Ex. A (Tr. of Feb. 22, 2022 Ohio Redistricting Comm’n Hr’g), at 00:05:08.

<sup>8</sup> *Id.* at 00:06:10, 00:06:18.

<sup>9</sup> *Id.* at 00:06:18, 00:07:43.

- Both the Speaker and President stated that they “anticipate that the Commission will be in a position to vote on a new plan *this week*.”<sup>10</sup>
- Auditor Faber and Secretary LaRose confirmed that they “do not believe that the Ohio Redistricting is at an impasse,” noting that “Auditor Faber pushed for, and the co-chairs agreed, that while the Commission is reconstituted to work on passing a Congressional redistricting plan it will also continue to work toward passing a General Assembly redistricting plan.”<sup>11</sup>
- Governor DeWine reiterated his strong view that the Commission must produce a plan.<sup>12</sup>

**C. Plaintiffs’ case is based upon demonstrably inaccurate premises and seeks the enactment of an invalidated plan.**

Plaintiffs jumped the gun. On February 18, 2022 they sought a federal interruption of the ongoing redistricting efforts of the Commission and the Ohio Supreme Court. They allege that the “current state legislative districts (or lack thereof) violate the U.S. Constitution.” Pls.’ Am. Compl. ¶ 6. But their complaint is based on two inaccurate premises.

First, they prematurely declare that there is a “lack” of current districts—wholly ignoring the *reality* that the redistricting process remains ongoing and subject to the Ohio Supreme Court’s active supervision. *Id.* ¶ 5. Alternatively, Plaintiffs assert that the state legislative plan that was drawn in 2011 remains the “current” plan, *id.*—even as the Commission endeavors to pass a new plan as early as this week.

---

<sup>10</sup> Resp. to Feb. 18, 2022 Show Cause Order of Ohio Senate Pres. Matt Huffman and Ohio House Speaker Robert R. Cupp, at 1, *League of Women Voters of Ohio*, No. 2021-1193 (Ohio Feb. 23, 2022) (emphasis added).

<sup>11</sup> Sec’y of State Frank LaRose and Auditor Keith Faber’s Resp. to Order to Show Cause Pursuant to Ct.’s 2/18/22 Order, at 8–9, *League of Women Voters of Ohio*, No. 2021-1193 (Ohio Feb. 23, 2022).

<sup>12</sup> Gov. Mike DeWine’s Resp. to Order to Show Cause Pursuant to Ct.’s 2/18/22 Order, at 1, *League of Women Voters of Ohio*, No. 2021-1193 (Ohio Feb. 23, 2022).

Under these inaccurate premises, Plaintiffs brazenly ask this Court to “adopt the Second Plan previously adopted by the Redistricting Commission.” *Id.* ¶ 6. Put simply, Plaintiffs seek an end run in federal court around the ongoing state-redistricting process by asking this Court to reinstate the very plan that the Ohio Supreme Court invalidated as unconstitutional on February 7, 2022, even as the Commission currently works to enact a new one.

### III. ARGUMENT

The Supreme Court expressly requires “federal judges to defer consideration of disputes involving redistricting where the State, through its legislative *or* judicial branch, has begun to address that highly political task itself.” *Grove*, 507 U.S. at 33. That holding is dispositive here, where the Commission continues to take up its state-constitutional task of enacting a valid district plan *and* the Ohio Supreme Court continues to oversee that redistricting process.

And even if the Commission were to reach an actual impasse—which it assuredly has not at this point—deferral would still be appropriate. The Ohio Constitution expressly vests the power to oversee redistricting in the Ohio Supreme Court, *see* Ohio Const. art. XI, § 9, and deferral by the federal court is required in the face of a state *judiciary’s* supervision of redistricting, *see Grove*, 507 U.S. at 33; *see also Scott v. Germano*, 381 US. 407, 409 (1965) (“The power of the *judiciary of a State* to require valid reapportionment or to formulate a valid redistricting plan has not only been recognized by this Court but appropriate action by the States in such cases has been specifically encouraged.”) (emphasis added). Accordingly, Intervenor-Defendants respectfully submit that a stay of these proceedings is warranted.

#### A. **The Commission has not reached an impasse, and therefore must be allowed to complete its redistricting.**

“[T]he Constitution leaves with the States primary responsibility for apportionment of their . . . state legislative districts.” *Grove*, 507 U.S. at 34; *see also Chapman v. Meier*, 420 U.S.

1, 27 (1975) (“We say once again what has been said on many occasions: reapportionment is primarily the duty and responsibility of the State through its legislature or other body, rather than of a federal court.”). “Absent evidence that these state branches will fail timely to perform that duty, a federal court must neither affirmatively obstruct state reapportionment nor permit federal litigation to be used to impede it.” *Grove*, 507 U.S. at 34.

There is no evidence that the State is failing to perform its duty. Days after the Commission failed to enact a plan on February 17, 2022, the Commission, on February 22, 2022, convened and appeared to walk back its claims of “impasse.” Notably, Governor DeWine made the following remarks:

I want to return, if we could, to the issue of legislative district lines and want to repeat what I said at our last session. And that is that *we have an obligation to follow the Constitution. We have an obligation to follow the court orders, the two court orders. And finally, we have an obligation to produce a map.* This is, I think, a question of following the law, the rule of law, respect for law and I again would want to state that that’s where we should head. It’s my understanding that we have some progress being made on that, but . . . I just want to state again publicly, this is what we have an obligation to do. *We have an obligation to produce a map and we need to do that forthwith.*

Ex. A (Tr. of Feb. 22, 2022 Ohio Redistricting Comm’n Hr’g), at 00:05:08 (emphases added).

As set forth above, the other Commissioners and the Commission as a whole heeded Governor DeWine’s admonition. The Commission reversed course, and has committed to seeing the redistricting process through. The Commission’s February 23, 2022 response to the Ohio Supreme Court’s order to show cause made this point in unequivocal terms. In its filing, the Commission emphasized that it has “not stopped attempting to adopt a new compliant plan,” and “that the best approach is to allow this work to continue in the coming days.” *See Ohio Redistricting Comm’n’s Resp. to Order to Show Cause Pursuant to Ct.’s 2/18/22 Order*, at 15, *League of Women Voters of Ohio*, No. 2021-1193 (Ohio Feb. 23, 2022).

There is no doubt that the Commission is continuing its work as mandated by the Ohio Constitution. The plain text of Article XI, which governs Ohio’s redistricting, defines the role that the Commission must play. And under Ohio law, members of the Commission “are charged with drawing a plan that inures to the benefit of not just one political party, not just one constituency, but of Ohio as a whole.” *League of Women Voters of Ohio*, 2022 WL 354619, ¶ 48.

Recent events make clear that the Commission is not yet done. To the contrary, the Commissioners have agreed to go back to the drawing board. Given the Commission’s ongoing efforts to enact a new plan, *Grove* and its progeny require deferral by this Court. Indeed, the iterative process in which the Commission is engaging is precisely the sort of state-driven redistricting that the Supreme Court instructed federal courts neither to obstruct nor impede. *See Grove*, 507 U.S. at 34; *see also Rice v. Smith*, 988 F. Supp. 1437, 1439 (M.D. Ala. 1997) (“[I]n the reapportionment context, when parallel State proceedings exist, the decision to refrain from hearing the litigant’s claims should be the routine course.”). Accordingly, the Court should stay this case until the Commission completes its redistricting process.

**B. Even if the Commission fails to enact a district plan, *Grove* requires this Court to defer to the Ohio Supreme Court’s active adjudication over the redistricting process.**

Should the Commission fail to enact a district plan, the Ohio Supreme Court’s active oversight of the Commission’s efforts would still warrant deferral by this Court. Not only does the Ohio Constitution vest original jurisdiction in the Ohio Supreme Court, *see* Ohio Const. art. XI, § 9, but the U.S. Supreme Court has expressly held that respect for state redistricting processes extends to state courts, not just state legislatures. Specifically, the Court recognized that federal judges must “defer consideration of disputes involving redistricting where the State, through its legislative *or judicial branch*, has begun to address that highly political task itself.”

*Grove*, 507 U.S. at 33 (emphasis added). In reiterating the federal courts’ need to defer, the Supreme Court made clear that “state courts have a significant role in redistricting.” *Id.*; *see also Germano*, 381 U.S. at 409 (“The power of the *judiciary of a State* to require valid reapportionment or to formulate a valid redistricting plan has not only been recognized by this Court but appropriate action by the States in such cases has been specifically encouraged.”) (emphasis added).

These principles apply with particular force here, where (i) Section 9 of the Ohio Constitution gives the Ohio Supreme Court a robust role in supervising the work of the Commission in the redistricting process; (ii) Section 6 the Ohio Constitution provides the Ohio Supreme Court with specific standards under which it is to review unconstitutional partisan gerrymander; and (iii) Ohio’s current redistricting process remains under the active supervision of the Ohio Supreme Court.

The Ohio Supreme Court’s exercise of authority under the Ohio Constitution is very much in evidence here. It has repeatedly demonstrated that it is committed to resolving the pending redistricting conflict and securing a new, constitutionally compliant plan. In the first instance, the Ohio Supreme Court allowed the parties in the state-court proceeding to engage in expedited discovery and entertained full merits briefing, evidence submission, and oral argument, before issuing a 56-page opinion on January 12, 2022, striking down the Commission’s first-enacted plan. *See League of Women Voters of Ohio*, 2022 WL 110261.

Following the enactment of a revised plan on January 22, 2022, the Supreme Court then waded through the parties’ expedited briefing on the revised plan for a second time. It then (on February 7, 2022) invalidated the second plan enacted by the Commission—issuing a carefully crafted opinion that ordered the Commission to enact a plan within ten days. When the

Commission failed to comply with the Court’s February 7 order and temporarily declared an “impasse,” the Ohio Supreme Court immediately issued an order to show cause why the Commission should not be held in contempt. And following receipt of the responses of the Commission and individual Commissioners to the order to show cause, the Ohio Supreme Court directed all of the individual members of the Commission to appear in person at a court hearing on March 1, 2022. *2/24/2022 Case Announcements #3, League of Women Voters of Ohio v. Ohio Redistricting Comm’n*, 2022-Ohio-518 (Ohio Feb. 24, 2022).

The Ohio Supreme Court’s supervision clearly has had a material effect. Just five days after initially declaring an “impasse,” the Commission stated that it is indeed working on a new plan, emphasizing the importance of allowing that work to continue, and began holding hearings.

Under these circumstances, Plaintiffs cannot plausibly deny that the enactment of a constitutional plan is ongoing, and also that it is squarely before the Ohio Supreme Court. Accordingly, *Grove*’s holding that “federal judges” must “defer consideration of disputes involving redistricting where the State, through its . . . *judicial branch* . . . has begun to address that highly political task itself,” 507 U.S. at 33, is dispositive here.

#### **IV. CONCLUSION**

For the aforementioned reasons, Intervenor-Defendants respectfully request that this Court stay these proceedings, until such time as is appropriate based on the resolution of the state-court proceedings presently before the Ohio Supreme Court.

Robert D. Fram  
COVINGTON & BURLING, LLP  
Salesforce Tower  
415 Mission Street, Suite 5400  
San Francisco, CA 94105-2533  
(415) 591-6000  
rfram@cov.com

Sarah Suwanda  
COVINGTON & BURLING, LLP  
One CityCenter  
850 Tenth Street, NW  
Washington, DC 20001-4956  
(202) 662-6000  
ssuwanda@cov.com

\* *Pro hac vice* application forthcoming

Respectfully submitted,

/s/ Freda J. Levenson  
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

Alora Thomas\*  
Julie A. Ebenstein\*  
AMERICAN CIVIL LIBERTIES UNION  
125 Broad Street  
New York, NY 10004  
(212) 519-7866  
athomas@aclu.org  
jebenstein@aclu.org

*Counsel for Intervenor-Defendants*



**CERTIFICATE OF SERVICE**

I, Freda J. Levenson, hereby certify that on this 24th day of February, 2022, I electronically filed the foregoing with the Clerk of Court for the United States District Court for the Southern District of Ohio, Eastern Division via the ECF system, which will send notification of such filing to all counsel of record.

/s/ Freda J. Levenson  
Freda J. Levenson (0045916)  
*Counsel for Intervenor-Defendants*

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

**MICHAEL GONIDAKIS, et al.,**

Plaintiffs,

v.

**FRANK LAROSE,**

Defendant, and

**LEAGUE OF WOMEN VOTERS OF OHIO  
and A. PHILIP RANDOLPH INSTITUTE  
OF OHIO,**

Intervenor-Defendants.

Chief Judge Algenon L. Marbley

Case No. 2:22-cv-773

---

**DECLARATION OF FREDA J. LEVENSON IN SUPPORT OF  
INTERVENOR-DEFENDANTS' MOTION TO STAY**

---

I, Freda J. Levenson, having been duly sworn and cautioned according to law, hereby state that I am over the age of eighteen years and am competent to testify as to the facts set forth below based on my personal knowledge and having personally examined all records referenced in this declaration, and further state as follows:

1. I am one of the counsel for Proposed Intervenor-Defendants in the above-captioned case.
2. Exhibit A is a true and correct copy of the transcript of the February 22, 2022 Ohio Redistricting Commission (the "Commission") hearing, which is publicly available on the Commission's website, <https://redistricting.ohio.gov/meetings>.
3. Exhibit B is a true and correct copy of Part 2 of the transcript of the February 17, 2022 Ohio Redistricting Commission hearing, which is publicly available on the Commission's website, <https://redistricting.ohio.gov/meetings>.

I declare the above to be true under penalty of perjury of the laws of the United States of America.

Respectfully submitted,

/s/ Freda J. Levenson

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

*Counsel for Intervenor-Defendants*

#### **CERTIFICATE OF SERVICE**

I, Freda J. Levenson, hereby certify that on this 24th day of February, 2022, I electronically filed the foregoing with the Clerk of Court for the United States District Court for the Southern District of Ohio, Eastern Division via the ECF system, which will send notification of such filing to all counsel of record.

/s/ Freda J. Levenson

Freda J. Levenson (0045916)

*Counsel for Intervenor-Defendants*

# **EXHIBIT A**

## **Redistricting 2.22.2022 MASTER CC-480-20220222-125443.mp4**

**Co-Chair Speaker Bob Cupp** [00:00:01] Staff to please call the roll.

**Staff** [00:00:05] Speaker Co-Chair Cupp.

**Co-Chair Speaker Bob Cupp** [00:00:07] Present.

**Staff** [00:00:08] Senator Co-Chair Sykes.

**Co-Chair Sen. Vernon Sykes** [00:00:09] Present.

**Staff** [00:00:10] Governor DeWine.

**Governor Mike DeWine** [00:00:10] Here.

**Staff** [00:00:12] Auditor Faber.

**Auditor Keith Faber** [00:00:12] Here.

**Staff** [00:00:13] President Huffman.

**Senate President Matt Huffman** [00:00:14] Here.

**Staff** [00:00:15] Secretary LaRose.

**Sec. of State Frank LaRose** [00:00:16] Here.

**Staff** [00:00:17] And Leader Russo.

**House Minority Leader Allison Russo** [00:00:17] Here.

**Staff** [00:00:19] Mr. Co-Chair, a quorum is present.

**Co-Chair Speaker Bob Cupp** [00:00:21] We do have a quorum, so we will meet as a full commission. In your folders are the minutes from the previous meeting of the Commission on February 17th, 2022. Is there a motion to accept the minutes?

**Co-Chair Sen. Vernon Sykes** [00:00:42] So moved.

**Co-Chair Speaker Bob Cupp** [00:00:43] It's been moved, and is there a second. The house - moved and seconded. Are there any corrections, additions, deletions or objections to the motion, to the motion to approve the minutes? Hearing none, the minutes are accepted without objection. At this time, this is the, the first meeting of the commission that is undertaking the task of drawing congressional district maps. This is the first time this constitutional provision has been utilized. The General Assembly has passed a congressional district map. The Supreme Court has reviewed the same and found it to be wanting in some constitutional elements. The General Assembly did not have time remaining in order to adopt a congressional district map that could be in effect for the primary election because it would take 90 days for such a bill to go into effect, which would be past the primary date. The Redistricting Commission's map, once approved, can go into effect immediately, so that provided the opportunity to try to maintain our May 3rd primary

date. So this is now, as I had mentioned the first time that this provision of the Ohio Constitution has been utilized since it is a new provision. And this is the first time that the redistricting commission has met to consider adopting or drafting and adopting congressional district maps. So I think the Co-Chair and I want to state on the record that we have asked our staffs to begin working together to take a look at drafting a constitutionally compliant congressional district map. There are a number of maps that are available that elements could be pulled for if appropriate. And so we're asking that the process be set in motion. Are there other members that wish to make any comments at this time? All right, the next item then would be scheduling public hearings. The Co-Chairs will be working together to schedule public hearings on congressional districts. We would anticipate doing that in a fairly prompt and expeditious manner and notice from that will be forthcoming. [indecipherable] Yeah, I think that's good. [indecipherable.]

**Co-Chair Sen. Vernon Sykes** [00:04:04] Mr. Co-Chair, I just want to make a note to, in scheduling of the public hearings, we will be inviting individuals and organizations to submit plans that they've already submitted. So it will be a somewhat limited list of those persons who have submitted full plans to the, to the Commission, to help us address or receive some additional suggestions and recommendations how we can comply with the Constitution. And also since we have a court order, how we can comply with the court order as well. So it will be a limited public hearing to those who have submitted maps.

**Co-Chair Speaker Bob Cupp** [00:04:52] That is correct. Is there any further business to come before the Commission?

**Governor Mike DeWine** [00:05:02] Mr. Chairman?

**Co-Chair Speaker Bob Cupp** [00:05:05] Governor DeWine.

**Governor Mike DeWine** [00:05:08] Mr. Chairman, thank you, I want to return, if we could, to the issue of legislative district lines and want to repeat what I said at our last session. And that is that we have an obligation to follow the Constitution. We have an obligation to follow the court orders, the two court orders. And finally, we have an obligation to produce a map. This is, I think, a question of following the law, the rule of law, respect for law and I again would want to state that that's where we should head. It's my understanding that we have some progress being made on that, but I think it's, I just want to state again publicly, this is what we we have an obligation to do. We have an obligation to produce a map and we need to do that forthwith.

**Co-Chair Speaker Bob Cupp** [00:06:09] Senator Huffman.

**Senate President Matt Huffman** [00:06:10] I echo the Governor's comments.

**Co-Chair Speaker Bob Cupp** [00:06:16] Any - Auditor favor?

**Auditor Keith Faber** [00:06:18] As do I. I would go further and make a motion that this body reconvene either tomorrow, I believe four o'clock would be a time that we would be available, or Thursday morning, 9:00 a.m. or thereabouts. And I guess my motion would give the Co-Chairs some discretion to check with everybody's calendars and see what we can do, for the purposes of either discussing a map that I believe may be being discussed and/or prepared, or at the alternative, the Roden 3 [?] map.

**Sec. of State Frank LaRose** [00:06:49] I would second the Auditor's motion.

**Co-Chair Speaker Bob Cupp** [00:06:52] All right. Is that limited to a General Assembly map, or are we talking about also a public hearing on the congressional?

**Auditor Keith Faber** [00:07:00] I'm talking about General Assembly maps.

**Co-Chair Sen. Vernon Sykes** [00:07:11] Can we stand at ease?

**At Ease** [00:07:13] [The Commission is at ease]

**Co-Chair Speaker Bob Cupp** [00:07:18] Auditor Faber, if we might take your motion as a request and we will attempt to schedule a meeting of the commission tomorrow afternoon for a dual purpose to begin hearing on the congressional map, the two hearings that are required, as well as to report on any progress that may be made on a General Assembly district map.

**Auditor Keith Faber** [00:07:43] Can we also- Mr Speaker, and to the other vice chair, I would propose that, because I know that there is some discussions going on on a legislative maps, I would propose that we also schedule a meeting for Thursday. And again, I leave you guys to coordinate calendars because I know all of us have a very busy, busy schedule. Some things can be moved, some things can't. But I would, I just think it's important that we move forward on discussing either A or B or C or D, but I would propose that we schedule those meetings to do that.

**House Minority Leader Allison Russo** [00:08:24] Mr. Chair.

**Co-Chair Speaker Bob Cupp** [00:08:27] Leader Russo.

**House Minority Leader Allison Russo** [00:08:28] Thank you. I would also, there's been mention of discussions, ongoing discussions about potential proposed maps for the state legislative districts. I would note that the minority members of the commission have not so far been involved in if there have been any recent discussions. So I would ask that commissioners make their staff available for us to have those discussions that have not yet taken place, if there are indeed additional legislative maps that the commission would like to put forward either tomorrow or Thursday in regard to the state legislative maps.

**Co-Chair Speaker Bob Cupp** [00:09:09] All right, any further business? If not, the commission will stand adjourned, and we will meet again on Wednesday and Thursday.

# **EXHIBIT B**



## Ohio Redistricting Commission - 2-17-2022 - part 2

<http://ohiochannel.org/video/ohio-redistricting-commission-2-17-2022-part-2>

**Co-chair Senator Vernon Sykes** [00:00:01] Meeting back to order. Is there anyone that wanted to make comments?

**Auditor of State Keith Faber** [00:00:22] Mr. Chair, before I make comments, I would propose a motion to amend the rules of the commission.

**Co-chair Senator Vernon Sykes** [00:00:32] Is there a second?

**Auditor of State Keith Faber** [00:00:34] Well, I need to say what the motion is for first.

**Co-chair Senator Vernon Sykes** [00:00:38] All right. You may.

**Auditor of State Keith Faber** [00:00:40] You may want a second it when you hear what a great amendment it is, Mr. co-chair.

**Co-chair Senator Vernon Sykes** [00:00:47] Alright.

**Auditor of State Keith Faber** [00:00:47] Mr. Chairman, I'd like to propose that the Commission modify the rules to allow a meeting of the Commission to be called upon the request of any three commission members where possible, with 24 hours notice. Specifically, I would move to amend Rule five of the Ohio Redistricting Commission rules, calling for meetings it should now read, then, "after an initial meeting of the redistricting commission, any of the three members of the commission may call for a meeting of the Commission upon a request by three members of the Commission for a meeting. The co-chairs shall promptly provide notice of the meeting pursuant to Rule two within 24 hours when feasible, at a location determined by the co-chairs." Effectively, what this amendment would do is amending the calling of meetings to allow not only the co-chairs to call meetings, but meetings to be called upon the agreement of any three of the members.

**Secretary of State Frank LaRose** [00:01:36] Second.

**Co-chair Senator Vernon Sykes** [00:01:46] Auditor Faber, the motion has been seconded. More comments. One question would you be in agreement that at least a members of both parties should be part of the three?

**Auditor of State Keith Faber** [00:02:03] No, Mr. Chairman, I understand the rationale for that. The co-chairs can continue to call meetings and we have a bipartisan way to do that. The reality is there may be a circumstance that would that the majority would need to meet without regard to the partisanship of the issues. And our view is that you ought to be able to have three members of this commission call for a meeting. You still are required to have a quorum and you're still required to follow the other procedures.

**Auditor of State Keith Faber** [00:02:36] Are there any other questions or comments? Will the secretary call the roll.

**Clerk** [00:02:46] Co-Chair Speaker Cupp.

**Co-chair Speaker Cupp** [00:02:48] Yes.

**Clerk** [00:02:49] Co-Chair Senator Sykes.

**Co-chair Senator Vernon Sykes** [00:02:50] Yes,.

**Clerk** [00:02:52] Governor DeWine.

**Governor Mike DeWine** [00:02:54] yes.

**Clerk** [00:02:54] Auditor Faber

**Auditor of State Keith Faber** [00:02:54] Yes.

**Clerk** [00:02:55] President Huffman.

**Senate President Matt Huffman** [00:02:56] Yes.

**Clerk** [00:02:57] Secretary LaRose.

**Secretary of State Frank LaRose** [00:02:58] Yes.

**Clerk** [00:02:59] Leader Russo

**House Minority Leader Allison Russo** [00:03:00] No.

**Co-chair Senator Vernon Sykes** [00:03:05] Six one, the the rules are so amended. Are there any other comments? Auditor Faber.

**Auditor of State Keith Faber** [00:03:18] Thank you, Mr. Vice, our co-chair. I just want to start out by having a discussion generally of where I think we find ourselves in this process. And I think we can start out and I will. I would pass this up to the members. There are two maps, if I could get those passed out. That I think are relevant. I'll ask staff to go ahead and put the larger issues up for the for the staff. The first map that's being erected is a map that came directly out of the minority opinion in the Supreme Court, it's a graphic that I think is beneficial for us all to consider. To understand the dynamic, actually, that's the second one, if you would do the other one first. Thank you. It's important that we take a look at this, this is a map that reflects the Red and Blue Precinct level data based on the last election cycle. I think this map alone dictates the problem that you have when you try and draw proportional maps to effectively do 45 Democrat House seats into these areas. It also signifies what a lot of us have talked about the fact that Ohioans tend to live around people who think and vote like them. The second map? Is also an important reference point that we all need to think about, and this is a map that says if we take every single county that Joe Biden won in the last election and gave every single seat, every single seat in that county to the Democrats, the Democrats would have 39 seats. That would be the most egregiously gerrymandered maps. And frankly, I don't think anybody has even suggested that. However, it starts to explain the problem. I think we would all agree that there must, for example, be two Republican seats in Hamilton County. Given the communities in the way they vote, there must be at least two seats in Montgomery County for Republicans. Unless you're willing to crack voters of Dayton and dilute their voting power, which we have heard we should avoid doing, if at all possible. That means there are about 35 Democratic seats in those counties. Yes, you can find Democrat seats, other places. You can find potentially two more seats in Lorain, one each in Trumbull Stark in Mahoning County. That brings us to about 40 seats. So where else do you get the five

seats? The invalidated map found one in Geauga and Portage counties. The Democrat maps have made attempts to gain another three seats. And as referenced earlier, we have some concerns about whether that map pass constitutional muster. There's an argument, I believe, that supports that they violated, at the very least, sections 6A and 6C. I think they're arguably also violated Sections two and section three of of the other articles. I brought these objections up over and over again. When the maps were released that grouped downtown Columbus with Pickaway County. I mentioned that that was egregiously partisan. To ease my concerns, they grouped Ottawa County in with downtown Toledo. The current map had no shortage of instances of grouping unlike communities together purely for partisan advantage. A few of which left my staff and they were relayed these comments to the Democratic commission members. Yet no changes were made. In the end, this is the problem. The problem is how do you hit the proportional number and how do you hit that number without gerrymandering seats for one party or the other in violation of the other sections of the Constitution? To me, this is where the impasse that we currently sit in lies. Where is the number? How do you do that without cracking and packing in an area that clearly leads us to a potential violation? As I said before, we have tried to meet with the various members of this commission, Republican and Democrat on a number of occasions. Early on in the process I thought we were making very good - this is back in September, very good progress towards a compromise. At that point, as I said in my deposition, it appeared both sides wanted litigation instead of a solution. We heard today that maybe the Democrats would consider a version of the original Sykes and Sykes proposal. If that's the case, then I'm all for it. The reality is that would be a 58 20 map, a map that was rejected based on the number seeking the ratio, as has previously been discussed. As we go through this process and have gone through this process. I simply am concern that we are sitting here arguing whether or not the Democrats should be allocated three more seats based on the one that the majority of the Supreme Court ruled unconstitutional out of 99. That amounts to two point three percent or thereabouts of the total seats. Put another way. Let me correct my math. Three out of 99 is essentially two point three percent, five out of one hundred and thirty two is three point seven percent. Put another way. We're a few percentage points away from perfect proportionality. The Constitution instructs this commission to closely correspond with that proportionality, and I would argue that the ratio that we're hitting is closely corresponding. We've heard from experts saying that Ohio's political geography gives Republicans a three to five percent advantage in seats based on the maps that you're seeing here. The reality is when you follow the provisions of the Constitution that prohibit unnecessary splitting of counties, cities and townships, you are left with a situation where republicans have a slight advantage over those those type of circumstances. I would argue that we are probably even beating that three to five percent number that has been testified before in this lawsuit and also, also before this committee. To do otherwise, to ignore this, essentially means we're tempted to gerrymander the state. That doesn't amount to a majority, but will amount to the silencing of many voters who get placed in districts that are fundamentally stacked against them for no other reason than a partisan gain to draw a Democrat seat. I think that's wrong. I think one of the things we had in mind when we drafted this constitutional amendment. Yes, an amendment that I sat in the room and helped draft. It appears that other others read the constitutional amendment differently than we anticipated. But that's their right. However, some people are arguing that Democrats deserve X number of seats and Republicans deserve Y number of seats? Simply put, I don't think either party deserves a damn thing. The way to salute, solve that problem is to draw competitive seats. I think voters in Ohio deserve to be represented by people that share their views. Let them decide who they are, who those views are by electing people in competitive seats where you can. I think we've seen maps in a few occasions that would do almost that, but none of the maps, none of the maps that we've seen that does any of that hits this magic. Fifty four

to 48 ratio or an 18 to 15 proportion. If we are able to recognize this and move forward with an understanding that we need to draw maps that as closely as we can correspond to these things. I think there's room. However, as of now, I don't think there's a recognition of this. I don't think that there has been a recognition of the reality of where Ohioans live. And then Ohioans tend to live around people who think and vote like them and therefore should be entitled to representation that represents them in that capacity. I don't see what good the offers have been. And unless people are willing to come to the table to continue this process, I think we're going to have a tough time reaching an outcome. With that, Mr. Chairman, I would encourage us to continue to be vigilant and certainly as we move into the congressional map process that we continue to be mindful of each other's positions. But let's work on solutions, not just political positions. Thank you.

**Co-chair Senator Vernon Sykes** [00:11:49] Auditor, thank you for your statement. Others have statements they'd like to make? Mr. President.

**Senate President Matt Huffman** [00:11:56] Thank you, Senator. Ladies and gentlemen, just about midnight, September 15th, 2021, a majority of this commission adopted a new four year district plan for the Ohio House and the Ohio Senate that complied with all the requirements of sections two, three, four, five and seven of Article 11 of the Ohio Constitution. None of the petitioners who filed the lawsuits challenging the first General Assembly district plan alleged the plan contained any violations of Sections two, three, four or five or seven of Article 11. The petitioners lawsuits challenging the first General Assembly district plan focused on their allegations that the plan violated Section 6A and 6B of Article 11. On January 12th, 2022, approximately four months after the passage of the map, four member majority of the Ohio Supreme Court ruled the petitioners could bring their Section 6 claims without having to first allege and prove that the plan contained any violations of Sections two, three, four or five or seven. In the same opinion, the majority ruled that the first General District Assembly District plan violated both Section six A and B and ordered the commission to adopt a new general district a plan within ten days by January 22nd. The majority's opinion also directed the members of the commission to work towards adopting a new plan in a more collaborative, bipartisan fashion. Thereafter, the commission began in good faith to take steps to comply with the majority's ruling. The Republican House and Senate map drawers immediately began meeting with their Democratic counterparts. The map draws collectively followed Senator Sykes' suggestion that one way to comply with the majority's opinion was to focus on particular regions of the state, rather than trying to draft a completely new statewide plan from a blank slate. Regional map drafts were exchanged between the Republican and Democratic map drawers. The commission notes that it's difficult, if not impossible, to draw a hundred and thirty two General Assembly districts in 10 days without any form of a base map to work from and from the receipt of census data on August 12th, 2021 to the date of its adoption, the first General Assembly District plan took over a month to develop and adopt. Remember from August 12 to approximately September 15. On January 22nd, 2022, 10 days after Jan. 12, a majority of the commission adopted another four year district plan for the General Assembly. We'll call that the second General Assembly district plan. The General Assembly District Plan had 57 Republican leaning seats in the House, a reduction of five from the 1st General District Plan and eight from its current membership, or a total of 11 percent reduction, and 20 Republican leaning seats in the Senate, a reduction of three from the first General Assembly plan and five from its current membership, or a 20% reduction. As the commission majority stated in its January 22 Section 8 C 2 statement that was adopted by the Commission. This corresponds closely to the fifty four percent Republican and 40 percent Democratic. Strict proportionality of past statewide election results in Ohio. And as the commission majority explained in that statement, neither the

Ohio Constitution nor the decision of the Supreme Court requires adoption of a plan meaning strict proportionality, only that it closely correspond with it. So on February 7th, 2022, the same four member majority of the Supreme Court invalidated the second General Assembly district plan, holding that the new plan also violated Section 6A and 6B, B being the proportionality section, which, as we noted, was within just three seats in the House and two seats in the Senate of the strict proportionality rule. The majority appended did not provide guidance as to the precise meaning of correspond closely. Whether 57 corresponded closely to 54 or 20 corresponded close to the 18. Instead, the upon opinion criticized a new concept partisan asymmetry in the second General Assembly district plan based on districts that were fifty to fifty one percent leaning democratic. Even though that concept of term is not found in Article 11 of the Ohio Constitution or as far as I know, any other state law. The opinion did not identify how many such districts are legally permissible in a General Assembly district plan, or what percentage of Democratic leaning districts would satisfy the standards under Section six of Article 11 of the Ohio Constitution. The majority ordered that the commission reconvene and adopt an entirely new General Assembly district plan by February 17th, today, and that such plan be filed with the court by nine o'clock on February 18th, 2022. Want to note that the the system that is set up in the Constitution is based on at least 60 days for the drawing of a General Assembly map? This was part of the plan when this was adopted in 2015 by federal law. The census data is supposed to be available by April 1st. Now we understand there is a problem with that this year, but it takes approximately 90 days to put that into the census block data and we would have it by, typically in any typical year, by July 1st, and that's what happened in 2011. The commission has 60 days to draw bipartisan bipartisan plan under the Constitution and if unable to 15 days to draw a plan that is not bipartisan by Sept. 15. It's what happened this year under a lot of work and long hours by map drawers. We, as as I mentioned, got the date of August 12th this year, and we're still able to draw a plan by September 15th, so it's constitutionally anticipated that it should take 60 days from scratch to draw a map. In this case, the Supreme Court gave the commission 10 days to start with a completely new map and a significant mathematical problem with the concept of partisan asymmetry. No General Assembly district plan has been presented to the commission to date that achieves a strictly proportional 54-46 result without committing significant other violations of the Ohio Constitution. While the Ohio Supreme Court has correctly refrained from ordering the commission to draw a particular district, a particular General Assembly district plan pursuant to Section 9D of the count -- of Article 11. The court has declined to define correspond closely and the majority opinion regarding the second General Assembly District Plan does not address it in its order regarding the first General Assembly district plan. However, the court did identify the plans submitted by Dr. Roddan as constitutional, even though that plan contained 57 Republican leaning House districts and multiple fifty to fifty one percent Democratic leaning districts. In its order regarding the second General Assembly district plan, the court suggested that it may be possible to draw a plan that more closely corresponds to the statewide preferences, but they're not defined how close would be constitutional? Under these circumstances, I don't believe the commission is able to ascertain a General Assembly district plan in conformity with the provisions of the Ohio Constitution and Ohio State law, nor with the Federal Constitution or federal state law. And as I mentioned today, we have to be cognisant of significant federal constitutional decisions and the federal constitution, especially as it relates to racial gerrymandering, which clearly, in my opinion, the redistricting plan submitted tonight by the Democrats does that. And I would suggest to inquiring members of the media, many of whom are here tonight, that they inquire of some candidates, African-American Democratic candidates who may be interested in running. They'll probably want to speak off the record or on background lest they be punished by some of their Democratic members of their party. Ask them what they think of the democratic map that was presented here today.

They may be willing to speak to you. They may be not willing to speak. They have spoken to me confidentially, however. So that's my statement. I appreciate the indulgence of the commission and allowing me to make that. Thank you, Mr. Chairman.

**Co-chair Senator Vernon Sykes** [00:20:54] Thank you, Mr. President. Are there any other comments to be made?

**Governor Mike DeWine** [00:21:02] Thank you, Mr. Chairman. Let me try to summarize where I think we are and also what I think our obligation is, and some of this is very elementary, but sometimes it's helpful to state the obvious. We have an obligation to follow the Ohio Constitution. We have an obligation to follow the court order. Whether we like it or not, whether we agree with it or not. And three, we have an obligation to produce a map. Now, I believe that the evidence we've seen shows that it's not possible to simultaneously follow all the provisions of the court order and the Constitution at the same time. An example. The court indicated said that in drawing a map, we should start from scratch, or that in so many words. When we talk to the people who are actually doing the map, they tell us that it's really not possible to do it that way within a 10 day period of time. That is just an example. But I don't think we have the luxury of saying we're just quitting and we're stopping. I think we have an obligation to attempt to follow as much of these orders as we can and to send a map to the court. There are things I think that can be improved. My colleague pointed out the term that the symmetry is really not in the Constitution, but this is what the court has said. Again that is an area that we might and I think we could actually improve and get closer to what the court's decision is. So I believe we have an obligation to send a new map to the court. Do the best that we can. As has been pointed out by several of my colleagues, the truth is, we have not seen a map that's been produced that after it's been analyzed, follows the Constitution. Some of that may have been purported to do that. But when you dug into them and looked at them carefully, it was clear they were not. I think it's also clear based upon the Senate president said, state auditor said in looking at the Democrat map, that that map clearly is not constitutional. We have passed a map and the Supreme Court has said, what they said it was not adequate. We passed the second map and the Supreme Court said the same thing again, but added different language. If we leave here without getting a map. We are giving the court absolutely nothing to react to. No one said this is easy. But I believe that we can. If giving the map makers specific instructions, we can come up with a map that fits better with the Constitution as well as the court order. I think that's our obligation. We have an obligation to follow the constitution, we have an obligation to follow the court order and and we have an obligation to produce a map. Thank you, Mr. Chair.

**Co-chair Senator Vernon Sykes** [00:25:36] Thank you, governor. Secretary LaRose.

**Secretary of State Frank LaRose** [00:25:45] Thank you, Mr. Co-Chair. And then unfortunately, as a practical matter, it would appear at least at this point, that this body is at an impasse. The map makers, the majority map makers. And let's be clear, the majority map makers work for the speaker and for the president. The majority map makers are telling us that they don't believe that we can constitutionally do what the court majority has asked us to do. This is one of those classic cases of what we want versus what we can accomplish. Those who are looking to cast blame and score political points will perhaps represent that the situation we're in is simply because of a lack of will. I don't believe that that's the case. On the other side of this conversation, though, are requirements that we have to comply with. We simply can't ignore one part of the Constitution to comply with another. Experts with the experience and technology to determine what a constitutional map looks like, tell us that they can't satisfy the demands that the court has placed on us.

And again, it's a question of what we want to accomplish versus what we we can accomplish. I, of course, wear two hats in this capacity, and right now I'm putting on my hat as Ohio's chief elections officer and thinking about the varied challenges that we face as it pertains to conducting an election. Our county boards of elections are less than one month away from being required by federal law to to mail primary election ballots to the brave men and women serving in our military, my brothers and sisters who are serving overseas. Just a couple weeks after that, voters will begin showing up at their early voting locations, expecting to be able to cast a ballot. This very morning, I spoke to all 88 of our county boards of Elections, and I told them that we're going to do everything we can to convey the urgency of this situation. So that's what I'm doing right now. That's what I've done repeatedly in this room and in other venues, expressed the urgency of this situation. The challenge that the boards of elections are facing cannot be understated. Their constituents, the voters of Ohio, they expect, and they deserve secure, accessible and accurate elections. That's what we accomplished in the face of unprecedented challenges in 2020. That's what Ohio elections officials repeatedly rise to the challenge and accomplish. But now we, as Ohio's bipartisan elections officials, are headed towards a brand new challenge. This challenge is not one that can be met with creativity and grit and tenacity, like the 2020 presidential election challenges were. Instead, this one is simply dictated by logistical deadlines, hard logistical deadlines, and we are on the verge of starting to miss those deadlines. We can't just flip a switch and hold a primary. You all know that, but I think that for a long time, elections officials have made this work look easy. And so some have maybe come to the conclusion that just one morning you turn on the lights in the gymnasium and they start voting. But of course, we all know that there's a lot, a lot of work work that's required by both state and federal law that has to be done before that can happen. Absentee ballots can't be printed until we know where the candidates are running. Voting machines can't be programed and tested for security until districts are finalized. In fact, these things can't even be done for several weeks until after maps are passed. My job here is to vote for what I believe satisfies the Constitution and just as importantly, to make sure that this commission knows what is at stake. So let me be impeccably clear about something. With just four weeks until ballots are required to be sent to our men and women in uniform and their families overseas, and with much to be done in preparation. We are dangerously close to possibly violating federal law. We need finality. We need to decide quickly between approving a map that the court can find acceptable or the Legislature wrestling with the tough challenges of deciding to change the date of the primary. There's just, there's no in-between. Thank you so much, Mr. Co-Chair.

**Co-chair Senator Vernon Sykes** [00:29:48] Leader.

**House Minority Leader Allison Russo** [00:29:52] Thank you, Mr. Chair. First, let me be very clear that, you know, I will disagree with some of the majority commission members who have spoken so far. This is a matter of what we can accomplish and what we are choosing not to get done. Meeting proportionality as required by the Constitution is not gerrymandering. It is possible for us to draw constitutional maps and for us to work together as the court has directed us to do. Democratic members of this commission provided maps to other members of this commission many days ago. In fact, they were posted publicly and provided to the court weeks ago. There has been plenty of time to provide feedback and if there is disagreement. About the constitutional issues to make those changes and adjustments, and in fact, we have shown very much a willingness to do that. But in the last 10 days, there has been no willingness from the majority members to have those conversations. In fact, our proposal that was just rejected by the commission has created constitutional state legislative maps. Doing nothing, and it seems to me that that is what this commission is choosing to do today, the majority members on this

commission, doing nothing and as the governor laid out, our job is to follow the Constitution, follow the court order and produce a map. Today, the deadline that the court has given to us, this commission is doing none of those things by not putting forward a proposal of maps. This is a direct assault on our democracy and Ohio voters, and if we do not respect the legitimacy of the courts, then we are disrespecting the rule of law. Senator Sykes and I have done our duty and unfortunately we will be back here again in this room until we all fulfill our obligation to enact constitutional maps. Thank you, Mr. Chair.

**Co-chair Senator Vernon Sykes** [00:32:21] Thank you, leader. It's been suggested that we use racial gerrymandering in drawing districts just because we are accused of that just didn't make it so. And I want to make it clear that this is a baseless accusation, and we did not use race as a predominant factor in drawing the lines. We use the state constitution guidelines, the federal constitution and all the laws, applicable laws and relevant laws to draft these these districts. You know, I've been here in the Legislature based on you all's support for 30 years and I've noticed, observed, recognized something is that the majority has the responsibility and the authority to rule, to decide, you know, they got the numbers. But in spite of the fact that you have super majorities in the House and in the Senate. All the statewide. The congressional delegation. This commission and the Ohio Supreme Court. You've been unable and unwilling to comply with our highest directive, and that is to comply with the Constitution. And I'm grateful that we have, you know, another branch of government, the Supreme Court, and we are dependent upon them to hold us accountable to the Constitution. Meeting the court's order is not impossible. The court itself has found evidence that it can be done. It is not enough for the commission to simply say that is impossible. Our map, as well as other maps submitted to the redistricting commission, show that there's not only one pathway to comply, but there's several pathways that can be used to comply with the constitutional provisions. Neither Ohio's political geography, the line drawing requirements of Article 11, nor any other constitutional directive prevent us from drawing maps that closely correspond to the statewide preferences of the voters. The only thing that's preventing us from meeting the court's order is an apparent lack of will. It is not gerrymandering to draw maps that meet proportionality. It's just the opposite, proportionality is the criteria and the guide to prevent us from gerrymandering. The court has directed us. If there is a pathway for proportionality, then we must adopt this, and we've demonstrated in this meeting today in a presentation of our map that you can meet that proportionality requirement. And this commission should be adopting a plan. The majority really is failing, and they're derelict in their duty and responsibility to the citizens of the state, and we're hopeful that that will soon change. Are there any other comments?

**Co-chair Speaker Cupp** [00:36:32] As a cochairman, I would just ask for purposes of this meeting whether anyone else has a map to present today. Appears not and would appear presently that this redistricting commission is in an impasse.

**Co-chair Senator Vernon Sykes** [00:36:52] Are there any of the comments to be made? Are there any further business to be brought before the commission? If not, the commission?

**Co-chair Speaker Cupp** [00:37:03] I do have one thing I'd ask the member is because this commission will have to take up congressional redistricting for the first time. We haven't done that before. And so the cochairman Sykes and I will be contacting each of you and your schedulers to see when we can meet, hopefully in the first part of next week because as the secretary of state has said, time is slipping away in order to conduct an election on the set date.



**Co-chair Senator Vernon Sykes** [00:37:30] The meeting is adjourned.