

IN THE SUPREME COURT OF OHIO

League of Women Voters of Ohio, *et al.*,

Relators,

v.

Ohio Redistricting Commission, *et al.*,

Respondents.

Case No. 2021-1193

RESPONSE OF RESPONDENTS MATT HUFFMAN, PRESIDENT OF THE OHIO SENATE, AND ROBERT R. CUPP, SPEAKER OF THE OHIO HOUSE OF REPRESENTATIVES, TO RELATORS' MOTION FOR SCHEDULING ORDER

INTRODUCTION

The Ohio Redistricting Commission adopted the general assembly district plan challenged in this action by a supermajority vote of 5 to 2. Relators concede that the districts in that plan fully comply with all of the mandatory districting requirements of the Ohio Constitution overwhelmingly approved by Ohio voters in 2015. The mandatory districting requirements of the Ohio Constitution limit so-called gerrymandering by forcing map drawers to follow neutral criteria and keeping communities whole by respecting municipal and other neutral state boundaries. Relators concede that the Commission strictly complied with these neutral limitations. That should end the matter. Just because Relators do not like the perceived political results of a neutrally drawn general assembly map is no reason for this Court to entertain this action.

BACKGROUND

On November 3, 2015, Ohio voters approved amendments to Article XI of the Ohio Constitution to establish detailed new criteria for legislative districts. The Ohio Redistricting Commission ("Commission"), in full compliance with these amendments, adopted a final general assembly district plan by a supermajority vote of 5-2.

The process of creating and adopting the general assembly district plan was significantly impacted by the decision of the Census Bureau to delay the release of census data until August 12, 2021 - nearly five months later than required by federal law. Notwithstanding this significant delay, the Commission was still able to conduct thirteen public hearings, introduce a proposed general assembly district plan on September 9, 2021, and adopt the final plan just after midnight on September 16, 2021.

ARGUMENT

Respondents Cupp and Huffman strongly dispute the claims of the Relators that the Commission's final general assembly district plan violates any aspect of Article XI, that the plan is a "brazen manipulation of district lines," that the plan was "drawn primarily to favor or disfavor a political party," that Republicans are "locked in" to elect supermajorities, or that the plan fails to "correspond closely" to the statewide preferences of the voters of Ohio. Relators Complaint at 4.

Accordingly, Respondents Cupp and Huffman intend to file a motion to dismiss this action. This action is patently improper because it relies solely on Section 6 of Article XI of the Ohio Constitution, a section which is not actionable unless the legislative map at issue violates the mandatory requirements of Sections 2, 3, 4, 5, and 7 of that Article. Because there is no plausible theory upon which Relators can prevail in this action based on their own allegations, this Court should stay all discovery and set a briefing schedule on Respondents' motion to dismiss to begin with filing the motion and supporting brief no later than October 11.

In the event that the Court determines to allow some discovery, the Court should significantly restrict the discovery methods allowed. While Section 6 is not actionable on its face, any discovery focused on that section should be limited to expert testimony regarding the aspirational goals included in that Section. Relators focus on the alleged partisan leanings of the

districts in the introduced and enacted maps. Expert witnesses can provide the Court data and testimony regarding the partisan leanings of these maps. If the Court limits discovery to expert reports and testimony, Respondents Cupp and Huffman suggest a discovery deadline of November 1, 2021 for such discovery.

In the event the Court determines to allow other discovery methods, such as document requests, interrogatories, and fact witness depositions, then the Court should expand the time period for discovery by at least one month beyond the deadline suggested by Relators. The Commission and Respondents Huffman and Cupp are currently preparing for the construction of Congressional districts under the Ohio Constitution. While Respondents intend to fully comply with this Court's orders in this case involving legislative districts, Respondents respectfully request that this action should not unduly interfere with their constitutional duties to adopt Congressional districts. Some of the fact witnesses that may be involved in this action will also be engaged in the Congressional redistricting process. Accordingly, if the Court allows discovery beyond expert witness discovery, the Court should impose a discovery deadline of no earlier than November 30. Following whatever discovery period the Court determines, Speaker Cupp and President Huffman are prepared to file evidence, submit briefs, and appear for oral argument on a schedule convenient to the Court.

CONCLUSION

For the foregoing reasons, Respondents request that the Court modify the Respondents' proposed scheduling order as outlined above.

Respectfully submitted this 28th day of September 2021.

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Pro Hac Vice Motions Forthcoming

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of September, 2021, a copy of this Response will be served electronically and by United States mail, addressed to the following persons:

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