

IN THE SUPREME COURT OF OHIO

Bria Bennett, et al.,

Relators,

v.

Ohio Redistricting Commission, et al.,

Respondents.

Case No. 2021-1198

Original Action Filed Pursuant to Ohio
Constitution, Article XI, Section 9(A)

*[Apportionment Case Pursuant to S. Ct. Prac. R.
14.03]*

**RELATORS' MOTION FOR APPOINTMENT OF A MASTER COMMISSIONER FOR
THE PURPOSE OF OVERSEEING DISCOVERY**

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Relators hereby move this Court pursuant to S.Ct.Prac.R. 14.03(C)(1) to appoint a master commissioner to preside over discovery and resolve any discovery disputes that may arise in this matter. A memorandum in support is attached.

Respectfully submitted,

/s Derek S. Clinger

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MEMORANDUM IN SUPPORT

This is an apportionment case challenging the Ohio Redistricting Commission's new apportionment plan for Ohio's House and Senate districts. The Court has original and exclusive jurisdiction over such a proceeding pursuant to Article XI, Section 9 of the Ohio Constitution, and the procedure is governed by the Court's Rule of Practice for Apportionment Cases set forth in S.Ct.Prac.R. 14.03. And under S.Ct.Prac.R. 14.03(C)(1), this Court "may refer apportionment cases to a master commissioner for any purpose, including resolution of discovery disputes..." For the reasons set forth below, Relators respectfully request that this Court appoint a Master Commissioner to preside over discovery and resolve any discovery disputes that may arise.

BACKGROUND

Following an amendment to the Ohio Constitution approved by the voters of Ohio in 2015, the Ohio Redistricting Commission was required to attempt to draw a general assembly district plan in which no district is "drawn primarily to favor or disfavor a political party" and in which the statewide proportion of districts whose voters favor each political party must correspond closely to the statewide preferences of the voters of Ohio. *See* Ohio Constitution, Article XI, Section 6(A)-(B).¹ The Commission was also required to include a written statement with its approved plan that explained how it attempted to comply with these requirements. *See* Ohio Constitution, Article XI, Section 8(C)(2).²

¹ Article XI, Section 6 provides in relevant part: "The Ohio redistricting commission shall attempt to draw a general assembly district plan that meets all of the following standards: (A) No general assembly district plan shall be drawn primarily to favor or disfavor a political party. (B) The statewide proportion of districts whose voters, based on statewide state and federal partisan general election results during the last ten years, favor each political party shall correspond closely to the statewide preferences of the voters of Ohio...."

² Article XI, Section 8(C)(2) provides: "A final general assembly district plan adopted under division (C)(1)(a) or (b) of this section shall include a statement explaining what the commission

The Ohio Redistricting Commission adopted its new general assembly district plan in the early morning of September 16, 2021—after the September 15 deadline set forth in the Ohio Constitution. *See* Verif. Compl. ¶ 111-113. It was apparent from the adopted general assembly district plan and the written statement included with the adopted plan that the Commission Members who approved the plan did not attempt to comply with the requirements set forth set forth in Article XI, Sections 6(A) and 6(B) of the Ohio Constitution. *See id.* ¶ 118-145. Further, several of the Commission Members who voted to approve the plan even conceded that they felt that the plan did not comply with these constitutional requirements. *See id.* ¶ 114-117. Accordingly, Relators filed the instant challenge on September 24, 2021.³

Due to the need to resolve this matter before the General Assembly candidate filing deadline in February 2022, Relators filed a motion on September 27, 2021 in which they requested an expedited scheduling order that would still allow the parties time to engage in discovery. The next day, Relators served their first set of discovery requests on the Respondents to determine what attempts, if any, they made to comply with the constitutional requirements set forth in Sections 6(A) and 6(B) of Article XI of the Ohio Constitution. And on September 29, 2021, this Court issued an order that, among other deadlines, requires the parties to file any evidence they intend to present no later than October 22, 2021. *See 09/29/2021 Case Announcements #2, 2021-Ohio-3424.*

determined to be the statewide preferences of the voters of Ohio and the manner in which the statewide proportion of districts in the plan whose voters, based on statewide state and federal partisan general election results during the last ten years, favor each political party corresponds closely to those preferences, as described in division (B) of Section 6 of this article. At the time the plan is adopted, a member of the commission who does not vote in favor of the plan may submit a declaration of the member's opinion concerning the statement included with the plan.”

³ To date, two other challenges to the same apportionment plans have been filed in this Court. *See League of Women Voters of Ohio v. Ohio Redistricting Commission*, Case No. 2021-1193; *Ohio Organizing Collaborative v. Ohio Redistricting Commission*, Case No. 2021-1210 (“Other Reapportionment Challenges”).

On October 1, 2021, Relators' counsel held a joint meet-and-confer conference with counsel for certain Respondents and counsel for relators in the Other Reapportionment Challenges. While the parties resolved to work together cooperatively to resolve discovery issues and reach agreement where possible, it is evident from the meet-and-confer that the parties have fundamental disputes about the nature and scope of discovery. These disputes include whether any Respondent may be deposed, or whether Respondents will respond to any written discovery, as well as the nature and scope of any third-party discovery.

LAW & ARGUMENT

Relators respectfully request that the Court appoint a Master Commissioner in this action to resolve any discovery disputes that may arise if such disputes cannot be worked out among the parties' counsel. The Court has the authority to approve such a request pursuant to S.Ct.Prac.R. 14.03(C)(1), which provides that the Court "may refer apportionment cases to a master commissioner for any purpose, including resolution of discovery disputes." Indeed, the Court has referred similar original actions to a master commissioner for this very purpose. *See Ohio Mfrs. Assn. v. Ohioans for Drug Price Relief Act*, Case No. 2016-0313, 04/06/2016 Case Announcements #2, 2016-Ohio-1455 (appointing a master commissioner for purposes of overseeing discovery and conducting an evidentiary hearing, if necessary, in a challenge to statewide initiative petition governed by S.Ct.Prac.R. 14.01).

As set forth above, Relators seek discovery to determine what attempts, if any, were made by the Ohio Redistricting Commission to comply with the requirements forth in Article XI, Sections 6(A) and 6(B) of the Ohio Constitution. Although the written statement included with the adopted plan claims that such an attempt was made, this statement is belied by the approved plan itself, as well as by public statements from several of the Members of the Ohio Redistricting

Commission who voted to approve the plan. Discovery is therefore necessary to further examine whether any attempts to comply with Article XI, Sections 6(A) and 6(B) were indeed made by the Commission.

Again, Relators already served their first set of discovery requests upon the Respondents. Some Respondents have indicated that they will not respond to these requests as set forth. And while Relators' counsel will make a good-faith effort to work out discovery disputes with the Respondents' counsel, it is already clear that some disputes are fundamental and will be unresolvable. Accordingly, Relators request that the Court appoint a Master Commissioner so that a Master Commissioner is more readily available to resolve disputes before the October 22nd deadline for filing evidence.

Furthermore, the Respondent Ohio Redistricting Commission has indicated a preference for resolving any discovery disputes before a Master Commissioner. *See* Ohio Redistricting Comm.'s September 28, 2021 Memo in Response to the Relators' Motion for Scheduling Order at *2 ("Counsel for the parties are capable of working together to ensure that discovery is complete in advance of submission of evidence to this Court. Indeed, as Relators suggest, to the extent unresolvable discovery disputes arise as this case proceeds, a Master Commissioner could be appointed to resolve those disputes in a timely fashion to keep the case on schedule.").

In sum, appointing a Master Commissioner to preside over discovery in this case will allow the parties to more quickly address and resolve any discovery disputes and to present the evidence in accordance with the Court's scheduling order.

CONCLUSION

For the foregoing reasons, Relators respectfully request this Court appoint a Master Commissioner to preside over discovery in this case and resolve any discovery disputes.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing was sent via email this 4th day of October, 2021 to the following:

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