

IN THE SUPREME COURT OF OHIO

Ohio Organizing Collaborative, *et al.*,

*Relators,*

v.

Ohio Redistricting Commission, *et al.*,

*Respondents.*

Case No. 2021-1210

---

**OPPOSITION AND OBJECTIONS OF RESPONDENTS HUFFMAN AND CUPP TO  
RELATORS' MOTION TO COMPEL EXPEDITED DISCOVERY**

---

W. Stuart Dornette (0002955)

[dornette@taftlaw.com](mailto:dornette@taftlaw.com)

Beth A. Bryan (0082076)

[bryan@taftlaw.com](mailto:bryan@taftlaw.com)

Philip D. Williamson (0097174)

[pwilliamson@taftlaw.com](mailto:pwilliamson@taftlaw.com)

**TAFT STETTINUS & HOLLISTER LLP**

425 Walnut St., Suite 1800

Cincinnati, OH 45202-3957

Telephone: 513-381-2838

Phillip J. Strach (PHV 25444-2021)\*

[phillip.strach@nelsonmullins.com](mailto:phillip.strach@nelsonmullins.com)

Thomas A. Farr\*

[tom.farr@nelsonmullins.com](mailto:tom.farr@nelsonmullins.com)

John E. Branch, III\*

[john.branch@nelsonmullins.com](mailto:john.branch@nelsonmullins.com)

Alyssa M. Riggins (PHV 25441-2021)\*

[alyssa.riggins@nelsonmullins.com](mailto:alyssa.riggins@nelsonmullins.com)

**NELSON MULLINS RILEY &  
SCARBOROUGH LLP**

4140 Parklake Avenue, Suite 200

Raleigh, NC 27612

Telephone: 919-329-3800

*Counsel for Respondents Huffman and Cupp*

*\*PHV Motion Pending or Forthcoming*

**REED SMITH**

Peter M. Ellis (0070264)

M. Patrick Yingling\*

Natalie R. Salazar\*

10 South Wacker Drive, 40th Floor

Chicago, IL 60606

Telephone: 312-207-1000

[pellis@reedsmith.com](mailto:pellis@reedsmith.com)

Brian A. Sutherland (PHV 25406-2021)\*

101 Second Street, Suite 1800

San Francisco, CA 94105

Telephone: 415-543-8700

[bsutherland@reedsmith.com](mailto:bsutherland@reedsmith.com)

Ben R. Fliegel\*

355 South Grand Avenue, Suite 2900

Los Angeles, CA 90071

Telephone: 513-457-8000

[bfliegel@reedsmith.com](mailto:bfliegel@reedsmith.com)

**BRENNAN CENTER FOR JUSTICE  
AT NYU SCHOOL OF LAW**

Alicia L. Bannon (PHV 25408-2021)\*

Yurji Rudensky (PHV 25422-2021)\*

Michael Li (PHV 25430-2021)\*

Ethan Herenstein\*

120 Broadway, Suite 1750

New York, NY 10271

Telephone: 646-292-8310

[Alicia.bannon@nyu.edu](mailto:Alicia.bannon@nyu.edu)

*Counsel for Relators*

For the following reasons, Respondents Senate President Matt Huffman (“President Huffman”) and House Speaker Robert R. Cupp (“Speaker Cupp”) oppose Relators’ motion to compel expedited discovery.

## **INTRODUCTION**

The Ohio Redistricting Commission (“Commission”) adopted the general assembly district plan challenged in this action by a supermajority vote of 5 to 2 (“Final Plan”). Relators concede that the districts in the Final 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 alone justifies denying Relators’ extensive request for discovery. Just because Relators do not like the perceived political results of a neutrally drawn and otherwise constitutional general assembly map is no reason for this Court to allow Relators to unduly burden and disrupt the duties of the members of the Commission, all of whom have constitutional obligations beyond their work on the Commission.

Moreover, the Court already considered Relators same requests for discovery in their motion for scheduling order, which was denied as moot. The Court should reaffirm that ruling now.

## **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 Commission, in full compliance with these amendments, adopted the Final Plan by a supermajority vote of 5-2.

The process of creating and adopting the Final 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 a few minutes after midnight on September 16, 2021.

Three lawsuits followed. The case of *League of Women Voters of Ohio (“LWV”) et al. v. Ohio Redistricting Commission, et al.*, 2021-1193, was filed on September 23, 2021. The next day, the LWV Relators filed a motion for a scheduling order. On September 24, 2021, this Court directed Respondents to file a response to the LWV’s motion for a scheduling order on or before September 28, 2021.

On September 24, 2021, the Relators in *Bennett v. Ohio Redistricting Commission et al.*, No. 2021-1198, filed their complaint. The Bennett Relators filed a motion for discovery and scheduling order on September 27, 2021.

On September 27, 2021, the Relators in *Ohio Organizing Collaborative (“OOC”) et al. v. Ohio Redistricting Commission et al.*, No. 2021-1210, filed their complaint. The OOC Relators filed a motion for scheduling order on September 27, 2021.

All the Relators in the three cases asked for identical scheduling orders that included requests for expedited discovery. All the Relators also asked the Court to expedite responses for expert disclosures, responses to interrogatories and requests for production of documents, deposition discovery, as well as the submission of evidence and briefs.

Moreover, all the Relators asked for extremely burdensome discovery, especially considered in the context of this expedited action. The LWV Relators propounded seven

Interrogatories each to Respondents Huffman and Cupp seeking the identities of individuals involved in redistricting, descriptions of their roles, and four additional onerous interrogatories seeking information regarding Respondents' knowledge and interpretation of the Ohio Constitution. They also served fifteen Requests for Production of Documents to Respondents Huffman and Cupp seeking "[a]ll communications" relating to drawing general assembly district maps and redistricting generally with dozens of individuals and dozens of entities and their numerous agents. These include, but are not limited to national political parties, any current or former members of the Ohio General Assembly (and their staff), and any current or former U.S. House of Representative or Senator (and their staff and any individuals associated with their PACs). Importantly none of these requests are limited to a relevant time period, and as written, require responses for decades worth of redistricting information. As Respondents Huffman and Cupp have been sued in their official capacities, this requires a search of records dating back to decades of their predecessors.

The Bennett Relators served seven interrogatories each to Respondents Huffman and Cupp. These seek the identities of all individuals involved in drafting any Ohio General Assembly map considered by the Commission, all communications and data any mapdrawer had, and the identities and methods of those involved in drafting the Section 8(c)(2) statement. The Interrogatories also seek the identities of every person who attended any of the state's numerous public hearings. These were served despite the fact that all plans submitted to the Commission were uploaded to a public portal, and Respondents have no background knowledge or information regarding the drafting of the vast majority of plans submitted to the Commission. The Bennett Relators also served four Requests for Production of Documents seeking all documents, all communications, and all data

viewed, during the drawing of plans submitted on September 9, and September 15, 2021, and any documents and communications related to the Section 8(c)(2) statement.

The OOC also propounded discovery requests. They served nine interrogatories each to Respondents Huffman and Cupp. Many of the interrogatories seek inappropriate information regarding Respondents' knowledge and interpretation of the Ohio Constitution. Moreover, the OOC Relators served thirteen Requests for Production of Documents to the Ohio Redistricting Commission that Respondents Huffman and Cupp would need to participate in responding to. These requests are very onerous seeking, for example, "[a]ll communications regarding redistricting in Ohio" without regard to the type of redistricting or the relevant time period, and all communications with dozens of entities and individuals. These include, but are not limited to national political parties, any current or former members of the Ohio General Assembly (and their staff), and any current or former U.S. House of Representative or Senator (and their staff and any individuals associated with their PACs). Importantly, none of these requests are limited to a relevant time period, and as written, require responses for decades worth of redistricting information. As Respondents Huffman and Cupp have been sued in their official capacities, this requires a search of records dating back decades of their predecessors.

In the instant motion, Relators also seek depositions of Speaker Cupp and President Huffman, as well as Ray DiRossi, a State Senate staffer involved in the mapdrawing process. Relators do not propose any limitations on these depositions such as limits on topics to be examined or the length of time. They seek to take these depositions in a very compressed timeframe.<sup>1</sup>

---

<sup>1</sup> On October 4, Relators served Respondents Huffman and Cupp with notices of deposition. Also on October 4, Relators served Mr. DiRossi with a subpoena to sit for a deposition. For all the

Speaker Cupp and President Huffman filed their oppositions to all Relators' discovery plan motions on September 28, 2021. In those oppositions, Speaker Cupp and President Huffman argued that this case primarily involves a legal issue regarding Section 6 of Article XI of the Ohio Constitution and that any discovery beyond the expert disclosures already anticipated by the parties would be unhelpful to this Court's resolution of this case.

On September 29, 2021, the Court, *sua sponte*, entered an order establishing a schedule for further proceedings in this case pursuant to S.Ct.Prac.R. 14.03(B). The Court established deadlines for the filing of evidence (October 22, 2021); Relators' Brief (October 29, 2021); Respondents' Brief (November 5, 2021); and Relators' Reply Brief (November 10, 2021).

The Court also ordered that it would not consider any request for an extension or stipulations for extension. In all three cases, the Court denied the Relators' motions in favor of the procedure established in its own *sua sponte* order. None of the orders provided for any form of discovery and did not provide for any discovery that would be expedited under any applicable Ohio rules of procedure.

### **ARGUMENT**

Relators' motion should be denied because this Court has already resolved these issues when it denied Relators' motion for scheduling order in this case. The order was entered pursuant to S.Ct.Prac.R. 14.03(B). This order establishes the evidence and other materials that will be considered by the Court in resolving this case but does not provide for discovery, much less the expedited discovery requested by Relators.

---

reasons stated herein, the Court should enter a protective order precluding these depositions from occurring.

The Court's *sua sponte* order of September 29, 2021 clearly denied Relators request to conduct discovery in this case and outlined the only materials that the Court will consider in reaching a decision. Respondents Cupp and Huffman have pointed out that the issues in this case are primarily legal and can be evaluated with, at most, expert testimony that has already been prepared or is in the process of being prepared. Relators offered no justification to the Court for the extensive discovery they are requesting in light of the clear (and identical) legal issues presented by the three complaints. Relators also did not rebut Respondents' argument that their claims under Section 6 are not even actionable and do not warrant extensive discovery as a result. In its September 29 order, this Court declined to order expedited discovery and should reaffirm that ruling now.

The issues presented in this case simply do not warrant the extremely comprehensive and burdensome discovery sought by Relators. Because Relators do not allege that the Final Plan violates any of the mandatory requirements of Sections 2, 3, 4, 5, or 7 of Article XI, any issues regarding Section 6 are irrelevant. Indeed, Section 9(D)(3)(c) of Article XI makes it clear that the Court does not have the authority to order a remedy related to Section 6 unless the Court finds that one of the mandatory requirements has been violated. *See* Article XI, Section 9(D)(3)(c) (in considering a 4-year map the Court must find that the "plan significantly violates those requirements [of Sections 2, 3, 4, 5, or 7]" before it can order the Commission to adopt a new plan). Relators make no allegations about compliance with Sections 2, 3, 4, 5, or 7. Therefore, they are requesting discovery on an issue that this Court should not reach. That alone justifies the denial of discovery and requiring the parties to submit the case on the existing record.

A reaffirmance by this Court that discovery is not permitted under these circumstances would be supported by the text and history of Rule 14.03. For instance, it is notable that Rule

14.01 dealing with petition challenges specifically references the Ohio Rules of Civil Procedure as well as specific forms of discovery such as “depositions, interrogatories, requests for production of documents, and subpoenas.” S.Ct.Prac.R. 14.01(C)(2). No such language appears in Rule 14.03 which specifically deals with apportionment cases. This is not surprising as this rule was added after this Court’s ruling in *Wilson v. Kasich* in 2012, in which several Justices of this Court noted that apportionment cases primarily involve the review of the plan itself, not the subjective thoughts or statements of the mapdrawers. *See Wilson v. Kasich*, 134 Ohio St.3d 221, 2012-Ohio-5367, at ¶31.

Next, the expedited discovery requested by Relators is unnecessary. First, the offices of Speaker Cupp and President Huffman have already responded to multiple voluminous requests for public records related to redistricting from the ACLU of Ohio, counsel for the Relators in one of these cases. Relators’ motion for scheduling order in Case No. 2021-1193 detailed the extensive public records requests and the resultant responses. Through these responses, Relators already have access to thousands of pages of documents related to the general assembly redistricting. In addition to these documents, Relators may access the website of the Ohio Redistricting Commission which contains an abundance of information about the process and the Commission meetings. Indeed, Relators have already submitted transcripts of the Commission meetings. Moreover, the Relators in all three actions attached a total of four expert reports to their initial complaints. These reports analyze ad nauseum the alleged political leanings of districts in the Commission maps and numerous non-Commission maps. Plainly these experts have access to a wealth of data and information which allowed them to prepare these extensive reports. In light of all of the information already available to Relators and given the very narrow window of time allowed by the Court to compile evidence, further discovery is inappropriate and disruptive.



Finally, the discovery requested by Relators would be highly disruptive to the constitutional obligations of Speaker Cupp and President Huffman in light of their ongoing duties and their roles on the Commission as it relates to congressional redistricting. The Commission's deadline to adopt congressional districts is the end of this month, October. This and other constitutional deadlines regarding congressional districts mean that respondents are actively working to ensure that Ohio has legal congressional districts in place. Their duties overlap with this Court's deadline of October 22 to file evidence. The expedited discovery sought by Relators would require these Ohio constitutional officers to spend numerous days responding to written discovery requests, preparing for depositions, and then being deposed.

But to what end? The so-called evidence from the Commission members is irrelevant to the final legal determination this Court is confronted with in this case. The Relators have not alleged that the Final Plan violates any mandatory requirement of the Ohio Constitution. They simply allege that the Final Plan does not comply enough with their understanding of the aspirational standards in Section 6.

In their motions, all of the Relators argue that discovery is needed on the Commission's "attempt" to comply with Section 6. That is a red herring. The Commission adopted a statement required by the Ohio Constitution on this issue. The expert witnesses in this case will surely submit large evidence on that issue. There is no other discovery that is needed on that issue. Furthermore, the copious amounts of additional discovery sought by Relators on this issue is not only unnecessary, but will prejudice Respondents' ability to present their case on the merits.

Relators may argue that they need to know the mental impressions or internal communications of certain Commission members regarding the Final Plan adopted by the Commission and the attempt to comply with Section 6. This is incorrect. The mental impressions

and private communications of commission members are irrelevant. *See Incorporated Village of Hicksville v. Blakeslee*, 103 Ohio St. 508, 518 (1921); *Plain Local Sch. District Bd. of Educ. v. DeWine*, 464 F. Supp. 3d 915, 920-23 (2020).

Finally, the OOC Relators argue that they have brought claims different from the LWV Relators and Bennett Relators. Those claims should not affect the discovery issue in this case. Those claims are raised under Article I, Sections 2, 3, and 11 of the Ohio Constitution. But those are general provisions that do not control over the specific rules regarding General Assembly redistricting. Article XI specifically covers General Assembly redistricting and, therefore, that article precludes any theoretical claims from being made under other general provisions in the Ohio Constitution. “Special constitutional provisions relating to a subject will control general provisions in which, but for such special provisions, the subject might be regarded as embraced.” *State ex re. Maxcy v. Saferin*, 155 Ohio St. 3d 496, 2018-Ohio-4035, at ¶ 10 (quoting *Akron v. Roth*, 88 Ohio St. 456, 461, (1913)) (holding the more-specific constitutional provisions in Article XVIII, Sections 8 and 9 of the Ohio Constitution control amendments to city charters, not Article II, Section 1f).

## CONCLUSION

For the foregoing reasons, Respondents move that Relators’ motion for expedited discovery be denied.

Respectfully submitted this the 6<sup>th</sup> day of October, 2021

By:

/s/ Phillip J. Strach

Phillip J. Strach(PHV 2021-25444)†

phillip.strach@nelsonmullins.com

Thomas A. Farr(PHV 2021-25461)\*

tom.farr@nelsonmullins.com

John E. Branch, III(PHV 2021-25460)\*

john.branch@nelsonmullins.com

Alyssa M. Riggins(PHV 2021-2544)†  
alyssa.riggins@nelsonmullins.com  
NELSON MULLINS RILEY &  
SCARBOROUGH LLP  
4140 Parklake Avenue, Suite 200  
Raleigh, NC 27612  
Telephone: (919) 329-3800  
†Pro Hac Motion Pending  
\*Pro Hac Motion Forthcoming

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

*Special Counsel to Attorney General Dave Yost  
Counsel for Respondents Senate President Matt  
Huffman and House Speaker Robert Cupp*

## CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of October, 2021, I have served the foregoing document by email:

Peter M. Ellis  
[pellis@reedsmith.com](mailto:pellis@reedsmith.com)  
M. Patrick Yingling  
[MPYingling@ReedSmith.com](mailto:MPYingling@ReedSmith.com)  
Natalie R. Salazar  
[NSalazar@reedsmith.com](mailto:NSalazar@reedsmith.com)  
Brian A. Sutherland  
[bsutherland@reedsmith.com](mailto:bsutherland@reedsmith.com)  
Ben R. Fliegel\*  
[bfliegel@reedsmith.com](mailto:bfliegel@reedsmith.com)

Alicia L. Bannon  
[Alicia.bannon@nyu.edu](mailto:Alicia.bannon@nyu.edu)  
Yurji Rudensky  
[rudenskyy@brennan.law.nyu.edu](mailto:rudenskyy@brennan.law.nyu.edu)  
Ethan Herenstein  
[herensteine@brennan.law.nyu.edu](mailto:herensteine@brennan.law.nyu.edu)

*Attorneys for Relators*

Erik Clark  
[ejclark@organlegal.com](mailto:ejclark@organlegal.com)  
Ashley Merino  
[amerino@organlegal.com](mailto:amerino@organlegal.com)

*Counsel for Respondent Ohio Redistricting Commission*

Bridget Coontz  
[Bridget.Coontz@ohioAGO.gov](mailto:Bridget.Coontz@ohioAGO.gov)  
Julie Pfeiffer  
[Julie.Pfeiffer@ohioAGO.gov](mailto:Julie.Pfeiffer@ohioAGO.gov)

*Counsel for Respondents Ohio Governor Mike DeWine, Ohio Secretary of State Frank LaRose, and Ohio Auditor Keith Faber*

/s/Alyssa M. Riggins

---

Alyssa M. Riggins