

IN THE SUPREME COURT OF OHIO

THE OHIO ORGANIZING	:	Case No. 2021-1210
COLLABORATIVE, <i>et al.</i> ,	:	
	:	
<i>Relators,</i>	:	APPORTIONMENT CASE
	:	
v.	:	Filed pursuant to S.Ct.Prac.R. 14.03(A)
	:	and Section 9 of Article XI of the Ohio
OHIO REDISTRICTING	:	Constitution to challenge a plan of
COMMISSION, <i>et al.</i> ,	:	apportionment promulgated pursuant to
	:	Article XI.
<i>Respondents.</i>	:	
	:	

MOTION FOR ORAL ARGUMENT

OF RELATORS THE OHIO ORGANIZING COLLABORATIVE, ET AL.

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MOTION FOR ORAL ARGUMENT
OF RELATORS THE OHIO ORGANIZING COLLABORATIVE, ET AL.

Pursuant to S.Ct.Prac.R. 14.03(C)(2) and 17.02(A), relators The Ohio Organizing Collaborative, *et al.* hereby move for an order setting this case for oral argument on the merits. As set forth more fully below, this case presents claims under the Ohio Constitution that are not presented in the other two apportionment cases filed contemporaneously with this one, case nos. 2021-1193 and 2021-1198. Those claims and this case involve a matter of great public importance, complex issues of law or fact, and substantial constitutional issues.

In support of this motion, relators attach a memorandum below, stating with particularity the grounds on which this motion is based.

Wherefore, relators respectfully request that this Court enter an order setting this case for oral argument on the merits.

October 29, 2021

Respectfully submitted,

By: /s/ Brian A. Sutherland

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MEMORANDUM IN SUPPORT

This is an apportionment case, filed pursuant to S.Ct.Prac.R. 14.03(A) and Article XI, Section 9, of the Ohio Constitution. This Court has discretion to order oral argument in apportionment cases. *See* S.Ct.Prac.R. 14.03(C) (“The Supreme Court may *** order oral argument before the court.”); *see also* S.Ct.Prac.R. 17.02(A).

In determining whether to exercise its discretion to order oral argument, this Court typically considers whether the case involves:

- (1) a matter of great public importance,
- (2) complex issues of law or fact,
- (3) a substantial constitutional issue, or
- (4) a conflict among courts of appeals.

State ex rel. Davis v. Pub. Emps. Retirement Bd., 111 Ohio St.3d 118, 2006-Ohio-5339, 855 N.E.2d 444, ¶ 15.

The Court should grant oral argument because, as explained below, this case involves a matter of great public importance and complex issues of law or fact and presents substantial constitutional issues.

I. This Case Involves a Matter of Great Public Importance

This case undisputedly presents a matter of great public importance because this Court will address, for the first time, amendments to the Ohio Constitution that voters passed by an overwhelming majority in 2015. Those amendments affect every voter and every candidate for state office in the State of Ohio and every association that advocates on behalf of policy positions in the General Assembly. This is because the 2015 amendments govern the adoption of a General Assembly district plan. A fair and constitutional district plan enables Ohioans to vote on equal terms and elect a General Assembly that reflects the values of the State as a whole; a

gerrymandered plan enables a minority of voters to derive unequal and disproportionate protection and benefits from the government.

In 2012, this Court held oral argument in connection with the last challenge to a redistricting plan in this Court. *See Wilson v. Kasich*, 134 Ohio St.3d 221, 2012-Ohio-5367, 981 N.E.2d 814, ¶ 8. And it has scheduled oral argument for December 8, 2021, in another apportionment case filed this year, *League of Women Voters of Ohio v. Ohio Redistricting Commission*, No. 2021-1193. *See* 09/29/2021 Case Announcements #2, 2021-Ohio-3424. In its September 29, 2021 rulings, the Court did not schedule oral argument in the other apportionment cases, *i.e.*, this case and case no. 2021-1198.

Oral argument is warranted in *this* case, however, because The Ohio Organizing Collaborative relators assert constitutional claims that the other relator groups do not present. The League of Women Voters of Ohio relators (No. 2021-1193) assert two causes of action, both of them based on violation of Section 6, Article XI. The Bennett relators (No. 2021-1198) also assert two causes of action based on violation of Section 6, Article XI. Unlike these two relator groups, The Ohio Organizing Collaborative relators assert causes of action under Section 3(B)(2) of Article XI, which requires compliance with the Ohio Constitution, including its Bill of Rights. *See* Complaint ¶¶ 71-80, *Ohio Organizing Collaborative v. Ohio Redistricting Commission*, No. 2021-1210. These constitutional claims are separate and distinct from a “Section 6” claim (which relators here also assert, *see id.* ¶¶ 81-84). As set out in detail in our merits brief, submitted herewith, relators here contend that the adopted plan violates Article I, Sections 2, 3, and 11 of the Ohio Constitution, and that the 2015 amendments to Article XI create new judicial remedies for these violations. The other relator groups are not in a position to advocate these contentions before this Court at oral argument because they did not make them.

Because The Ohio Organizing Collaborative asserts constitutional claims that the other relator groups do not assert, oral argument in *this* case need not and will not duplicate the arguments in *League of Women Voters of Ohio*. Rather, the parties to this case may focus on the legal issues that are particular to constitutional claims arising under Section 3(B)(2), Article XI, and the fundamental Bill of Rights that Article XI incorporates and enforces. And just as the question whether the adopted plan violates Section 6 of Article XI is a matter of great public importance, so is the question whether the adopted plan violates Section 3(B)(2) of Article XI and the Ohio Bill of Rights.

II. This Case Involves Complex Issues of Law and Fact

The law and science of “partisan gerrymandering” has been evolving over the last decade in state and federal courts. While condemning partisan gerrymandering, the United States Supreme Court ultimately concluded that challenges to a State’s redistricting plan under the *federal* constitution are not justiciable. *See Rucho v. Common Cause*, __ U.S. __, 139 S.Ct. 2484, 2502, 204 L.Ed.2d 931 (2019). It has left that subject to the States. *See id.* at 2507-08. In the last decade, state courts have interpreted their *own* constitutions to determine whether a redistricting plan violates unique state protections and rights. *See Common Cause v. Lewis*, N.C.Super. No. 18 CVS 014001, 2019 WL 4569584 (Sep. 3, 2019); *League of Women Voters v. Commonwealth*, 645 Pa. 1, 178 A.3d 737 (2018); *League of Women Voters of Florida v. Detzner*, 172 So.3d 363 (2015). Applying *Ohio’s* fundamental Bill of Rights under this Court’s unique Article XI jurisdiction will require resolution of complex issues of law, as the federal experience and experience in other States demonstrates.

III. This Case Presents Substantial Constitutional Issues

Relators here contend that partisan gerrymandering violates Ohioans’ right to vote on equal terms, assemble, and associate with one another to advance political ideas and expression.

Thus, this case presents the question whether the General Assembly district plan substantially burdens multiple fundamental constitutional rights for millions of voters. As noted, state courts recently have sustained similar challenges to redistricting plans under their own constitutions. And before the United States Supreme Court determined, in its 5-4 ruling in *Rucho, supra*, that it would leave judicial enforcement of partisan gerrymandering claims exclusively to the States, other federal courts had accepted comparable arguments in relation to other district plans. *See Common Cause v. Rucho*, 318 F.Supp.3d 777 (M.D.N.C. 2018); *Benisek v. Lamone*, 348 F.Supp.3d 493 (D.Md. 2018); *Whitford v. Gill*, 218 F.Supp.3d 837 (W.D.Wis. 2016). As in other States, claims under the *Ohio* Constitution face no such “justiciability” bar because of Article XI, and whether the adopted plan infringes upon the fundamental constitutional rights of millions of Ohio voters is unquestionably a substantial question. Accordingly, relators here respectfully request an oral argument at which the undersigned may address questions concerning The Ohio Organizing Collaborative’s constitutional claims under Section 3(B)(2) of Article XI.

CONCLUSION

For the foregoing reasons, relators respectfully request that this Court set oral argument in this case for December 8, 2021, or on another date convenient to the Court.

October 29, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Danielle L. Stewart, hereby certify that on October 29, 2021, I caused a true and correct copy of the foregoing Motion for Oral Argument to be served by email upon the counsel listed below:

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