

**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

Original Action Pursuant to Ohio Const.,
Art. XI

Apportionment Case

BRIA BENNETT, *et al.*,

Relators,

v.

OHIO REDISTRICTING COMMISSION, *et al.*,

Respondents.

Case No. 2021-1198

Original Action Pursuant to Ohio Const.,
Art. XI

Apportionment Case

THE OHIO ORGANIZING COLLABORATIVE, *et al.*,

Relators,

v.

OHIO REDISTRICTING COMMISSION, *et al.*,

Respondents.

Case No. 2021-1210

Original Action Pursuant to Ohio Const.,
Art. XI

Apportionment Case

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INTRODUCTION

On December 13, 2021, this Court ordered the parties in this matter to address the following issue: “What impact, if any, does Article XI, Section 8(C)(1) of the Ohio Constitution have on the Supreme Court of Ohio’s authority to grant the relief requested by relators when the Ohio Redistricting Commission [the “Commission”] adopted the district plan by a simple majority vote of the commission?” As explained herein, Section 8(C)(1) neither expands nor limits the Court’s remedial authority, which is set forth solely in Section 9(D). As Section 9(D)(3)(c) establishes, if a plan is enacted under Section 8(C), the Court must use a specific test to determine whether it should invalidate a plan—a test that requires a significant threshold violation of Section 2, 3, 4, 5, or 7 of Article XI that materially affects the ability of the plan to achieve proportionality under Section 6(B) before this Court is authorized to invalidate any plan. Relators allege no violation of Section 2, 3, 4, 5, or 7. Finally, Section 8(C)(1) impacts this Court’s analysis because it provides its own automatic remedy for plans that fail to achieve sufficient minority-member support. Such a plan lasts only four years (or six years if it replaces a four-year plan) instead of 10 years for a plan with sufficient minority-member support. This automatic remedy is a strong incentive to enact plans with bipartisan support. It is a non-judicial consequence that further confirms that, as Section 9(D) establishes, this Court is not authorized to invalidate plans based on alleged violations of Section 6 standing alone.

ARGUMENT

As set forth in Respondents’ original merit briefs, Section 9(D) is the sole grant of remedial power to this Court for violations of Article XI of the Ohio Constitution. Specifically, Section 9(D) establishes that this Court’s is not authorized to disturb a Commission-enacted general-assembly plan unless the Court finds one or more violations of Sections 2, 3, 4, 5, and/or 7 of Article XI. Ohio Const. art. XI, § 9(D)(3).

Section 8(C), including section 8(C)(1) specifically, neither expands nor limits this Court's remedial power as set forth in Section 9(D). Nonetheless, Section 9(D) does establish that Section 8(C) is relevant to the Court's remedial analysis. The test for whether to invalidate a plan or order amendments to it is different depending on whether the plan was adopted under Section 8(C). If the plan at issue is *not* adopted under Section 8(C), and violations of Section 2, 3, 4, 5, or 7 require amending fewer than six House districts and fewer than two Senate districts, then the Court must order the Commission to amend the plan to correct the violations. Ohio Const. art. XI, § 9(D)(3)(a). If the plan at issue is *not* adopted under Section 8(C), and if the violations require amending six or more House districts and/or two or more Senate districts, then the Court shall declare the plan invalid and order the Commission to adopt a new plan. Ohio Const. art. XI, § 9(D)(3)(b). On the other hand, if the plan *is* adopted under Section 8(C), then Section 9(D)(3)(c) requires the Court to order the Commission to adopt a new plan if it finds *both* of the following:

- (i) The plan significantly violates those requirements [i.e., Sections 2, 3, 4, 5, or 7] in a manner that materially affects the ability of the plan to contain districts whose voters favor political parties in an overall proportion that corresponds closely to the statewide political party preferences of the voters of Ohio, as described in [Section 6(B)] of this article.
- (ii) 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 does not correspond closely to the statewide preferences of the voters of Ohio.

Ohio Const. art. XI, § 9(D)(3)(c).

Thus, Section 8(C) does have an impact on the Court's remedial authority, but only indirectly through Section 9(D). In a case such as this, where the plan was adopted under Section 8(C), the Court must proceed under Section 9(D)(3)(c), engaging in the two-pronged analysis relating to Section 6(B)'s proportionality standard. Even then, however, the Court must

find that the plan “significantly violates” Sections 2, 3, 4, 5, or 7, and that, among other things, the significant violation of “those requirements”—not any alleged violation of Section 6(B) standing alone—“materially affects” the ability of the plan to achieve Section 6(B) proportionality.

Rather than establish any remedial authority for Article XI violations, Section 8(C) establishes the duration of a plan enacted by a simple majority vote without minority-party support. If a plan is enacted *with* the support of at least two minority-party members, then the plan remains in effect essentially for 10 years. Ohio Const. art. XI, § 8(B) (such plan “shall remain effective until the next year ending in the numeral one, except as provided in Section 9 of this article.”). If a plan is enacted by a simple majority *without* the support of at least two minority-party members, then the plan shall remain in effect essentially for four years. Ohio Const. art. XI, § 8(C)(1)(a) (such a plan “shall remain effective until two general elections for the house of representatives have occurred under the plan.”). Then, after that four-year plan expires, if the next plan is likewise approved by a simple majority without the support of at least two minority-party members, that second plan will remain in effect essentially for the remaining six years following the original four-year plan. Ohio Const. art. XI, § 8(C)(1)(b) (such a plan “shall remain effective until a year ending in the numeral one, except as provided in Section 9 of this article.”). Thus, rather than establish this Court’s remedial authority, Sections 8(B) and 8(C) set forth the duration of plans based on whether they receive sufficient minority-member support.

It is notable that Sections 8(B) and 8(C) mention Section 9 itself. Specifically, Sections 8(B) and Section C(1)(B) establish a 10-year or six-year duration, respectively, “except as provided in Section 9 of this article.” But Section 8(C)(1)(a), applicable to the map at issue in these cases, establishes a four-year duration without adding the phrase “except as provided in

Section 9 of this article.” Despite this difference in language, the language of Section 9(D)(3)(c)—the controlling provision specifically addressing this Court’s remedial power—allows this Court to invalidate a four-year map if a threshold significant violation of Section 2, 3, 4, 5, or 7 materially affects the map’s proportionality under Section 6(B). Section 9(D)(3)(c) applies any time this Court is “considering a plan adopted under division (C) of Section 8.” This language does not distinguish between four-year plans adopted under Section 8(C)(1)(a) and six-year plans adopted under Section 8(C)(1)(b). Rather, it applies to any map enacted under Section 8(C) generally. Thus, as Respondents set forth in their original merit briefs, this Court is not completely without power to consider Section 6(B) proportionality. It may consider Section 6(B) proportionality when reviewing a four-year (or six-year) map, but only if it *first* finds a threshold “significant” violation of Sections 2, 3, 4, 5, or 7. As explained in Respondents’ original merit briefs, Relators are wrong to assert that other provisions in Article XI, such as Section 9(B) or perhaps Section 6 itself, expand this Court’s remedial power beyond that set forth in the remedy provision of Section 9(D). The same is true for Section 8(C)(1). It does not alter the remedial power set forth in Section 9(D).

Beyond this technical explanation of the interplay between Sections 8(C)(1) and Section 9, Section 8(C)(1) has another impact on this Court’s analysis of Relators’ claims. Specifically, Section 8(C)(1) in essence establishes its *own* automatic non-judicial remedy for any map that does not achieve sufficient minority-party support. If minority-party members of the Commission believe that a proposed map is not sufficiently proportional to statewide voter preference, they will undoubtedly withhold their support, as they did in these cases. This comes with the significant consequence that even if the Commission enacts the map by a simple majority, the map will last only four years. Four years later, majority-party members may find

themselves in the minority, and the next map may be enacted by a simple majority over their objection. This strong incentive is at the heart of the reform that Ohioans enacted in amending Article XI. Rather than authorizing Court involvement in cases alleging Section-6 violations standing alone, the Ohio Constitution incentivizes the majority party to attempt to achieve bipartisan support. If it cannot, its enacted map will last a fraction of the time it otherwise would. Accordingly, Section 8(C)(1) confirms that Section 6 is not without consequence, another reason this Court should not read into Section 9, or any other provision, any remedial authority that exceeds the plain text of Section 9(D).

CONCLUSION

For the reasons set forth in Respondents' original merit briefs and the reasons stated above, Respondent The Ohio Redistricting Commission respectfully requests that the Court dismiss the complaints in all three above-captioned cases with prejudice.

Dated: December 17, 2021

Respectfully submitted,

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