

IN THE SUPREME COURT OF OHIO

Bria Bennett, et al.,

Petitioners,

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]

**PETITIONERS' MOTION TO REQUIRE RESPONDENTS TO EXPLAIN THEIR
FAILURE TO COMPLY WITH THE COURT'S FEBRUARY 7, 2022 ORDER**

Abha Khanna (PHV 2189-2021)
Ben Stafford (PHV 25433-2021)
ELIAS LAW GROUP LLP
1700 Seventh Ave, Suite 2100
Seattle, WA 98101
T: (206) 656-0176
F: (206) 656-0180
akhanna@elias.law
bstafford@elias.law

Jyoti Jasrasaria (PHV 25401-2021)
Spencer W. Klein (PHV 25432-2021)
ELIAS LAW GROUP LLP
10 G St NE, Suite 600
Washington, DC 20002
T: (202) 968-4490
F: (202) 968-4498
jjasrasaria@elias.law
sklein@elias.law

Donald J. McTigue* (0022849)
*Counsel of Record
Derek S. Clinger (0092075)
MCTIGUE COLOMBO & CLINGER LLC
545 East Town Street
Columbus, OH 43215
T: (614) 263-7000
F: (614) 368-6961
dmctigue@electionlawgroup.com

Erik J. Clark (0078732)
Ashley Merino (0096853)
ORGAN LAW LLP
1330 Dublin Road
Columbus, OH 43215
T: (614) 481-0900
F: (614) 481-0904
ejclark@organlegal.com
amerino@organlegal.com

*Counsel for Respondent Ohio Redistricting
Commission*

Dave Yost
OHIO ATTORNEY GENERAL
Bridget C. Coontz (0072919)
Julie M. Pfeiffer (0069762)
Michael Walton (0092201)
OFFICE OF THE OHIO ATTORNEY
GENERAL
30 E. Broad Street, 16th Floor
Columbus, OH 43215
T: (614) 466-2872
F: (614) 728-7592
Bridget.Coontz@OhioAGO.gov
Julie.Pfeiffer@OhioAGO.gov
Michael.Walton@OhioAGO.gov

dclinger@electionlawgroup.com

Counsel for Petitioners

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

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

Phillip J. Strach
Thomas A. Farr
John E. Branch, III
Alyssa M. Riggins
NELSON MULLINS RILEY &
SCARBOROUGH LLP
4140 Parklake Ave., Suite 200
Raleigh, NC 27612
phil.strach@nelsonmullins.com
tom.farr@nelsonmullins.com
john.branch@nelsonmullins.com
alyssa.riggins@nelsonmullins.com
T: (919) 329-3812

Counsel for Respondents Senate President Matt Huffman and House Speaker Robert Cupp

RETRIEVED FROM DEMOCRACY DOCKET.COM

On February 7, 2022, this Court ordered the Ohio Redistricting Commission (the “Commission”) “to draft and adopt an entirely new General Assembly–district plan that conforms with the Ohio Constitution, including Article XI, Sections 6(A) and 6(B).” *League of Women Voters of Ohio v. Ohio Redistricting Comm.*, Slip Opinion No. 2022-Ohio-342, ¶ 67. The Court instructed the Commission to adopt a new plan “no later than February 17, 2022, and to file a copy of that plan with this court by 9:00 a.m. on February 18, 2022.” *Id.* ¶ 68.

During the ten days that this Court’s order granted the Commission to redraw its maps, the Republican majority on the Commission did not take *any* affirmative steps to pass a state legislative plan. They did not introduce any plans or solicit any public feedback. Indeed, for the first eight days following the Court’s order, the Republican majority did not even *announce* a Commission meeting to discuss new proposals. And when the Commission finally did make an announcement just about 48 hours before the Court’s deadline, it scheduled just one Commission meeting—on the afternoon of the Court’s deadline.

Senator Vernon Sykes and House Minority Leader Allison Russo proposed a plan for the Commission’s consideration on February 9, *see* First Affidavit of Derek S. Clinger (“Clinger Aff.”) ¶ 3-4, and reiterated that they were “available at any time to begin the Commission’s deliberations and initiate the map-drawing process,” BENNETT_004-005 (February 9, 2022 Letter to Speaker Cupp from Senator Sykes). They proposed an updated plan with minor changes on February 16. *See* Clinger Aff. ¶ 5-6.

Moreover, on February 15, the *Bennett* and *LWV* Petitioners submitted an updated version of the state legislative plan created by Dr. Jonathan Rodden (the “Rodden III Plan”) to the Commission’s public portal. *See* Clinger Aff. ¶ 7-8. As counsel for Petitioners explained in a letter accompanying the submission, the Rodden III Plan addressed the alleged technical violations

raised by Mr. Raymond DiRossi in his January 28, 2022 affidavit—even though Petitioners did not regard the issues to constitute constitutional violations—“in an effort to avoid any unnecessary disputes.” BENNETT_003 (February 15, 2022 Letter to Ohio Redistricting Commission from Ben Stafford and Freda Levenson). Counsel for Petitioners explained that the Rodden III Plan addressed all of Article XI’s technical requirements and “more closely corresponds to statewide proportionality than the state legislative plans adopted by the Commission in September 2021 or January 2022.” *Id.* The Rodden III plan was before the Commission. Despite this, the Commission did not consider the Rodden III Plan at any point.

On February 17, the Commission held its one and only meeting following the Court’s February 7 order, voted down the plan proposed by the Democratic Commissioners on a 5-2 party line vote, refused to articulate specific objections to the Democratic proposal (again on a 5-2 party line vote), and then abruptly adjourned after Co-Chair Speaker Cupp announced that the Commission was at an “impasse.” In other words, the Commission failed to adopt a constitutionally compliant General Assembly district plan. The Commission directly violated this Court’s order.

The Commission then filed with the Court, this morning, a “Notice of Impasse.” Notice of Impasse, *Bennett v. Ohio Redistricting Commission*, No. 2021-1198 (Feb. 18, 2022), at 1 (noting that, during the February 17 meeting, “President Huffman stated that the Commission was at an impasse”). In what would not appear to be a linguistic coincidence, mere hours after the majority Commissioners declared the Commission at “impasse” and voted to adjourn without adopting a new plan, and shortly *before* the Commission submitted its “Notice of Impasse” this morning, a

group of Republican activists¹ filed an “impasse” lawsuit in the United States District Court for the Southern District of Ohio. The lawsuit apparently seeks to bypass this Court and asks a federal court to adopt a General Assembly plan that this Court has already held unconstitutional. *See* BENNETT_042-057 (Motion for Preliminary Injunction in *Gonidakis et al. v. Ohio Redistricting Commission, et al.*, Case No. 2:22-cv-00773 (S.D. Ohio)) (“[The Southern District of Ohio] should issue an order adopting the Second Plan approved by the Ohio Redistricting Commission, attached as Exhibit B to the Complaint.”).²

The Commission’s disrespect for the rule of law may be startling, but the Commission’s reasons are anything but. Over the past ten years, slightly more Ohioans have favored Republicans than Democrats. Maps complying with Article XI of the Ohio Constitution and this Court’s orders will therefore slightly favor Republicans, but not at supermajority levels. However, Republicans currently enjoy supermajorities in both the House and Senate under the gerrymandered, pre-reform 2011 plan. And because the majority party does not wish to loosen its grip on power, the majority of Commissioners have refused to comply with this Court’s orders that the Commission draw new maps that comply with Article XI.

The first time this matter came before the Court, it was about the proper interpretation of Article XI. That is no longer at issue. This Court has twice provided clear instruction to the Commission on the Constitution’s meaning and application. The question now is thus not what the

¹ *See* BENNETT_006-008 (Andrew Tobias, “Republican activists sue in federal court in bid to institute legislative maps rejected by Ohio Supreme Court as GOP gerrymanders,” *Cleveland.com* (Feb. 18, 2022)).

² Remarkably, the 15-page complaint in the federal lawsuit that was filed *before* the Commission filed its “Notice of Impasse” to this Court is accompanied by a 15-page preliminary injunction motion. *See* BENNETT_009-041 (Complaint in *Gonidakis, et al. v. Ohio Redistricting Commission, et al.*, Case No. 2:22-cv-00773 (S.D. Ohio)); BENNETT_042-057 (Motion for Preliminary Injunction in *Gonidakis et al. v. Ohio Redistricting Commission, et al.*, Case No. 2:22-cv-00773 (S.D. Ohio)).

law is, but what happens when the Commission refuses to follow the rule of law.

Accordingly, the *Bennett* Petitioners respectfully request that this Court order Respondents to show cause³ with a detailed written response and evidence, no later than 9:00 a.m. on Tuesday, February 22, 2022, as to why, given the Commission's assertion that it was unable to pass a constitutionally compliant plan:

- (1) The Commission did not itself take any affirmative steps to draw a compliant plan or adopt the Rodden III Plan, the plan presented by the Democratic Commissioners, or any other alternative, and to include, as to any alternative plan (including the Rodden III Plan and the Democratic Commissioners' Plan), *specific*, detailed explanations and evidence of any and all supposed constitutional deficiencies, whether on a plan-wide or individual district basis.
- (2) The Court should not order an extension of the candidate filing deadline and, if the Court deems necessary, the date of the primary election, in order to accommodate a revised plan.

Petitioners request the opportunity to respond three days later, by 9:00 a.m. on February 25, 2022. Petitioners respectfully submit that this expedited briefing schedule is necessary to ensure that a remedy for the violation of their constitutional rights is available in time for this year's General Assembly elections, and in light of the apparent attempt to use the federal courts to do an end run around this Court's orders that the Commission abide by the Ohio Constitution.

If the Court finds that Respondents' explanation for why it did not adopt a constitutionally compliant plan as ordered by the Court is inadequate, then in addition to the Court directing Respondents to take further action to comply with the Court's order, the Court has additional tools to address the Commission's failure to comply. These include (a) finding the Commission and, as

³ The Court had directed the *Bennett* Petitioners to file objections, if any, to a new General Assembly plan no later than three days after the Commission's adoption of a new plan. *League of Women Voters of Ohio v. Ohio Redistricting Comm.*, Slip Opinion No. 2022-Ohio-342, ¶ 68. Given the Commission's failure to comply with the Court's order, the *Bennett* Petitioners file this motion in lieu of objections.

the Court deems appropriate, individual Respondents, in contempt pursuant to R.C. 2705 and its inherent contempt power, (b) awarding Petitioners' attorney's fees under R.C. 2323.51, with any such fees issued against the Commission and/or individual Respondents as the Court deems appropriate, or (c) any other remedy that the Court deems appropriate.

Dated: February 18, 2022

Respectfully submitted,

/s/ Donald J. McTigue

Donald J. McTigue* (0022849)

**Counsel of Record*

Derek S. Clinger (0092075)

MCTIGUE COLOMBO & CLINGER LLC

545 East Town Street

Columbus, OH 43215

T: (614) 263-7000

F: (614) 368-6961

dmctigue@electionlawgroup.com

dclinger@electionlawgroup.com

Abha Khanna (PHV 2189-2021)

Ben Stafford (PHV 25433-2021)

ELIAS LAW GROUP LLP

1700 Seventh Ave, Suite 2100

Seattle, WA 98101

T: (206) 656-0176

F: (206) 656-0180

akhanna@elias.law

bstafford@elias.law

Jyoti Jasrasaria (PHV 25401-2021)

Spencer W. Klein (PHV 25432-2021)

ELIAS LAW GROUP LLP

10 G St NE, Suite 600

Washington, DC 20002

T: (202) 968-4490

F: (202) 968-4498

jjasrasaria@elias.law

sklein@elias.law

Counsel for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was sent via email this 18th day of February, 2022 to the following:

DAVE YOST
OHIO ATTORNEY GENERAL
Bridget C. Coontz (0072919)
Julie M. Pfeiffer (0069762)
30 E. Broad Street
Columbus, OH 43215
Tel: (614) 466-2872
Fax: (614) 728-7592
bridget.coontz@ohioago.gov
julie.pfeiffer@ohioago.gov

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

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

Phillip J. Strach (PHV 25444-2021)
Thomas A. Farr (PHV 25461-2021)
John E. Branch, III (PHV 25460-2021)
Alyssa M. Riggins (PHV 25441-2021)
NELSON MULLINS RILEY & SCARBOROUGH LLP
4140 Parklake Ave., Suite 200
Raleigh, North Carolina 27612
phil.strach@nelsonmullins.com
tom.farr@nelsonmullins.com
john.branch@nelsonmullins.com
alyssa.riggins@nelsonmullins.com
T: (919) 329-3812

*Counsel for Respondents
Senate President Matt Huffman and
House Speaker Robert Cupp*

Erik J. Clark (Ohio Bar No. 0078732)
Ashley Merino (Ohio Bar No. 0096853)
ORGAN LAW LLP
1330 Dublin Road
Columbus, Ohio 43215
T: (614) 481-0900
F: (614) 481-0904
ejclark@organlegal.com
amerino@organlegal.com

*Counsel for Respondent
Ohio Redistricting Commission*

Vernon Sykes
Vernon.Sykes@ohiosenate.gov
Respondent, Pro Se

Allison Russo
Allison.Russo@ohiohouse.gov
Respondent, Pro Se

/s/ Derek S. Clinger
Derek S. Clinger (0092075)

RETRIEVED FROM DEMOCRACYDOCKET.COM