

IN THE SUPREME COURT OF OHIO

League of Women Voters of Ohio, et al., :
 :
 Petitioners, : **Case No. 2021-1193**
 :
 v. : **Original Action Filed Pursuant to**
 : **Ohio Constitution, Article XI, Section 9(A)**
 :
 Ohio Redistricting Commission, et al., : **[Apportionment Case Pursuant to S. Ct.**
 : **Prac. R. 14.03]**
 Respondents. :

Bria Bennett, et al., :
 :
 Petitioners, : **Case No. 2021-1198**
 :
 v. : **Original Action Filed Pursuant to**
 : **Ohio Constitution, Article XI, Section 9(A)**
 :
 Ohio Redistricting Commission, et al., : **[Apportionment Case Pursuant to S. Ct.**
 : **Prac. R. 14.03]**
 Respondents. :

The Ohio Organizing Collaborative, et al., :
 :
 Petitioners, : **Case No. 2021-1210**
 :
 v. : **Original Action Filed Pursuant to**
 : **Ohio Constitution, Article XI, Section 9(A)**
 :
 Ohio Redistricting Commission, et al., : **[Apportionment Case Pursuant to S. Ct.**
 : **Prac. R. 14.03]**
 Respondents. :

**RESPONDENTS SYKES AND RUSSO'S
MOTION TO MOVE THE PRIMARY ELECTION DATE**

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**RESPONDENTS SYKES AND RUSSO'S
MOTION TO MOVE THE PRIMARY ELECTION DATE**

The Court is no doubt aware of *Gonidakis et al. v. LaRose*, S.D. Ohio No. 2:22-cv-773, the federal court case involving an apportionment challenge to the General Assembly districts at issue in this case. On Friday evening, Chief District Judge Marbley vacated the stay in that case, Op. & Order, *id.*, ECF No. 82 (Mar. 18, 2022), and Chief Circuit Judge Sutton appointed a three-judge panel to hear the case as it moves forward, Order, *id.*, ECF No. 83 (Mar. 18, 2022).

This morning, the *Gonidakis* plaintiffs moved for a temporary restraining order, asking the federal court to implement the Ohio Redistricting Commission's February 24 Plan—the plan this Court just found to be an unconstitutional partisan gerrymander—in the upcoming primary and general elections. Pls.' Mot. for a TRO to Maintain the Third Plan, *id.*, ECF No. 84 (Mar. 21, 2022). The three-judge panel is expected to convene quickly and issue a briefing schedule on the TRO motion, as well as plaintiffs' earlier motion for a preliminary injunction.

The *Gonidakis* plaintiffs argue that the federal court must implement the February 24 Plan given the primary election's current date. Pls.' Mot. for a TRO to Maintain the Third Plan, *id.*, ECF No. 84 at PageID #1156 (Mar. 21, 2022). Before this Court issued its decision on that Plan, Secretary LaRose informed the federal court of his position that, "if the Ohio Supreme Court invalidates the [February 24] Plan, there will be insufficient time for the county boards of election to once again complete all of the mandatory pre-election processes using new a fourth plan in time for the May 3rd primary." Notice by LaRose, *id.*, ECF No. 71 at PageID #1040 (Mar. 16, 2022). Since then, LaRose has told the court that, "[b]ased on the Supreme Court's [March 16] ruling, there are currently no state legislative districts for which a primary election can be held on May 3." LaRose's Response to Pls.' Emergency Mot., *id.*, ECF No. 76 at PageID #1107 (Mar. 18, 2022). The *Gonidakis* plaintiffs, for their part, argue that an election

on May 3 with no General Assembly maps violates the U.S. Constitution, and that, as a practical matter, the February 24 Plan is the only set of maps that can be implemented in time for a May 3 election. Pls.’ Mot. for a TRO to Maintain the Third Plan, *id.*, ECF No. 84 at PageID #1160-62 (Mar. 21, 2022).¹

Senator Sykes and Leader Russo ask this Court to move the primary election date, which would accomplish two important things: (1) it would ensure that this Court can continue working with the Commission to make progress on adopting and implementing a plan that satisfies *both* state and federal constitutional requirements, and (2) it would allow that process to continue unimpeded by the federal litigation in *Gonidakis*, in keeping with our federal constitutional scheme, under which “reapportionment is primarily the duty and responsibility of the State”—not “of a federal court.” *Grove v. Emison*, 507 U.S. 25, 33, 113 S.Ct. 1075, 122 L.Ed.2d 388 (1993). Under the U.S. Supreme Court’s unanimous decision in *Grove v. Emison*, the general rule is that “federal judges [must] defer consideration of disputes involving redistricting where the State, through its legislative *or* judicial branch, has begun to address that highly political task itself.” *Id.* The *Gonidakis* plaintiffs now claim that this rule no longer applies, invoking an exception for cases where the record shows that “these state branches will fail timely to perform that duty” of apportionment of state legislative districts. *Id.* at 34. But undoubtedly with a later primary election, it cannot be said that the state branches are “unwilling or unable” to “timely” perform their redistricting duties, and the federal court should continue to refrain from involving itself in the process and deny the requested relief. *Id.* at 37.

¹ Secretary LaRose has suggested that even under the February 24 Plan, the primary election cannot be held on May 3. *See, e.g.*, LaRose’s Response to Pls.’ Emergency Mot., *Gonidakis*, ECF No. 76 at PageID #1108 (Mar. 18, 2022) (“And *although the May 3, 2022 primary election is no longer looming for the state legislative races*, the need for final state legislative districts to be used in this year’s elections remains.”) (emphasis added).

Specifically, Senator Sykes and Leader Russo respectfully ask this Court to move the primary election date from May 3 to June 28, or to any other date that indisputably allows sufficient time for the Commission to adopt and implement a new, constitutional set of maps. June 28 would afford plenty of time to have a primary election completed for the general election in November. It would also give sufficient time for a primary election's necessary preparations, including adopting and implementing a new set of maps, allowing 30 days for candidates to move after the maps' effective date, proofing and printing ballots, and allowing 45 days of early voting for military and overseas voters.²

This Court has the authority to move the primary election date. It has inherent authority to issue injunctions and “do all things reasonably necessary to the administration of justice in the case before it.” *See City of Norwood v. Horney*, 110 Ohio St.3d 353, 2006-Ohio-3799, 853 N.E.2d 1115, ¶ 119, quoting *Smothers v. Lewis*, 672 S.W.2d 62, 64-65 (Ky. 1984). It also has inherent authority to enforce its judgments and decrees, *Infinite Sec. Sols., L.L.C. v. Karam Properties, II, Ltd.*, 143 Ohio St.3d 346, 2015-Ohio-1101, 37 N.E.3d 1211, ¶ 27, and to facilitate “orderly and efficient exercise of [its] jurisdiction,” *Hale v. State*, 55 Ohio St. 210, 45 N.E. 199 (1896). In its March 16 opinion, the Court invalidated the February 24 Plan, ordered the Commission to draft and adopt an entirely new General Assembly-district plan, and retained jurisdiction “for the purpose of reviewing the new plan.” *League of Women Voters of Ohio v. Ohio Redistricting Comm.*, Slip Opinion No. 2022-Ohio-789, ¶ 44-45. Federal intervention to implement the February 24 Plan would render the Court's March 16 order meaningless.³

² Legislation to move the primary election date has been introduced in the General Assembly, but neither Speaker Cupp nor President Huffman has allowed the legislation to proceed.

³ Other state high courts have recently suspended or modified election-related deadlines to ensure that voters may vote under constitutional maps. *See, e.g., Carter v. Chapman*, No. 7

The Court has worked diligently to protect the will of Ohio voters, who adopted Article XI of the Ohio Constitution and want to see it vindicated. And the Court's orders have had real impact in moving the Commission toward a constitutional map. Even this weekend the Commission worked to respond to the Court's most recent decision and order, including by meeting on Saturday, scheduling additional meetings, and planning to have the Commission itself hire experts and a mediator. *See* Ohio Redistricting Comm. Mtg. (Mar. 19, 2022), available at <https://ohiochannel.org/video/ohio-redistricting-commission-3-19-2022>. Senator Sykes and Leader Russo want these state processes to continue unimpeded under our state constitutional scheme so that the will of the Ohio voters may be vindicated. The federal court lawsuit asks that the process be taken away from the state and seeks to impose a map that this Court held was unconstitutional—all because of a looming primary date. To protect its own orders, its authority, and the will of the Ohio voters, this Court should move the primary.

CONCLUSION

To ensure that this Court may continue to oversee the process for adopting and implementing a new, constitutional Plan, Senator Sykes and Leader Russo respectfully ask this Court to move the primary election date to June 28, or to any other date that indisputably allows sufficient time for the Commission to adopt and implement a new, constitutional set of maps.

MM 2022, 2022 WL 549106 (Pa. Feb. 23, 2022) (modifying congressional and statewide election calendar due to impasse and noting the suspension of state legislative election deadlines until resolution of litigation); *In the Matter of 2022 Legislative Districting of the State*, Misc. Nos. 21, 23, 25, 26, 27, Sept. Term 2021 (Md. Mar. 15, 2022) (modifying primary election calendar), available at <https://perma.cc/LLX6-LZET>; *Harper v. Hall*, 379 N.C. 656 (N.C. Dec. 8, 2021) (moving primary election date to give sufficient time to resolve litigation challenging state legislative maps).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 21, 2022, the foregoing *Respondents Sykes and Russo's Motion to Move the Primary Election Date* was filed electronically and sent via email to the following counsel of record:

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