

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 FOR AN ORDER DIRECTING RESPONDENTS TO SHOW
CAUSE, MOTION TO SCHEDULE CONTEMPT HEARING, AND MOTION FOR
ATTORNEYS' FEES**

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)
Harleen K. Gambhir (PHV 25587-2022)
Raisa M. Cramer (PHV 25880-2022)
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
hgambhir@elias.law
rcramer@elias.law

Donald J. McTigue* (0022849)
**Counsel of Record*
Derek S. Clinger (0092075)
MCTIGUE COLOMBO & CLINGER LLC

Dave Yost
OHIO ATTORNEY GENERAL

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

Special Counsel to Attorney General
Dave Yost

*Counsel for Respondent The Ohio
Redistricting Commission*

Dave Yost
OHIO ATTORNEY GENERAL

Julie M. Pfeiffer (0069762)
Jonathan D. Blanton (0070035)
Deputy Attorney General
Michael A. Walton (0092201)
Michael J. Hendershot (0081842)
Deputy Solicitor

545 East Town Street
Columbus, OH 43215
T: (614) 263-7000
F: (614) 368-6961
dmctigue@electionlawgroup.com
dclinger@electionlawgroup.com

Counsel for Petitioners

OFFICE OF THE OHIO ATTORNEY
GENERAL

30 E. Broad Street, 16th Floor
Columbus, Ohio 43215
T: (614) 466-2872
F: (614) 782-7592
Julie.Pfeiffer@OhioAGO.gov
Michael.Walton@OhioAGO.gov
Michael.Hendershot@OhioAGO.gov
Jonathan.Blanton@ohioAGO.gov

David A. Lockshaw, Jr. (0082403)
Terrence O'Donnell (0074213)
Manuel D. Cardona (0098079)
DICKINSON WRIGHT, PLLC
180 East Broad Street, Suite 3400
Columbus, Ohio 43215
T: (614) 744-2570
F: (844) 670-6009
dlockshaw@dickinson-wright.com
todonnell@dickinson-wright.com
mcardona@dickinson-wright.com

Special Counsel to Attorney General
Dave Yost

*Counsel for Respondent Secretary of State
Frank LaRose*

John W. Zeiger (0010707)
Marion H. Little, Jr. (0042679)
Christopher J. Hogan (0079829)
ZEIGER, TIGGES & LITTLE LLP
3500 Huntington Center
41 South High Street
Columbus, Ohio 43215
T: (614) 365-9900
zeiger@litohio.com
little@litohio.com

*Counsel for Respondent Governor Mike
DeWine*

Brodi J. Conover (0092082)
BRICKER & ECKLER LLP
2 East Mulberry Street

Lebanon, Ohio 45036
T: (513) 670-6693
F: (513) 670-0999
bconover@bricker.com

Anne Marie Sferra (0030855)
BRICKER & ECKLER LLP
100 South Third Street
Columbus, Ohio 43215
T: (614) 227-2300
F: (614) 227-2390
asferra@bricker.com

*Counsel for Respondent Auditor of State
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, House Speaker Robert Cupp, Senator
Robert McColley, and Representative Jeffrey
LaRe*

C. Benjamin Cooper (0093103)
Charles H. Cooper, Jr. (0037295)
Chelsea C. Weaver (0096850)
COOPER & ELLIOTT, LLC
305 West Nationwide Boulevard
Columbus, Ohio 43215
T: (614) 481-6000
benc@cooperelliott.com
chipc@cooperelliott.com
chelseaw@cooperelliott.com

*Counsel for Respondents Senator Vernon Sykes
and House Minority Leader Allison Russo*

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The Bennett Petitioners respectfully move this Court to order Respondents to show cause why the Ohio Redistricting Commission and its members should not be held in contempt for re-adopting the General Assembly district plan that this Court previously invalidated on March 16, 2022 in *League of Women Voters of Ohio v. Ohio Redistricting Comm.*, Slip Opinion No. 2022-Ohio-789; the Bennett Petitioners respectfully request the Court to promptly set a contempt hearing. Further, the Bennett Petitioners move for a finding that the Ohio Redistricting Commission engaged in bad faith conduct and/or frivolous conduct under R.C. 2323.51 and request that the Court award the Bennett Petitioners their reasonable attorneys' fees. A memorandum in support is attached.

Dated: May 10, 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)

Harleen K. Gambhir (PHV 25587-2022)

Raisa M. Cramer (PHV 25880-2022)

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
hgambhir@elias.law
rcramer@elias.law

Counsel for Petitioners

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MEMORANDUM IN SUPPORT OF PETITIONERS' MOTION FOR AN ORDER
DIRECTING RESPONDENTS TO SHOW CAUSE, MOTION TO SCHEDULE
CONTEMPT HEARING, AND MOTION FOR ATTORNEYS' FEES

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I. Introduction

The test of the rule of law is not what a party does when it agrees with a judicial decision, but what it does when it does not. The Ohio Redistricting Commission and a majority of its members continue to flout Article XI of the Ohio Constitution and the clear directions of this Court. They are explicitly attempting to run out the clock to secure use of the Third Plan that this Court has already held unconstitutional. They are not even pretending otherwise—last week, they defiantly “resubmitted” the Third Plan, notwithstanding the Court’s express order finding it invalid.

This Court should not countenance the Commission’s deliberate strategy to circumvent this Court and the Ohio Constitution’s strictures on partisan gerrymandering. The Commission has had nine months to pass a constitutional General Assembly plan. It has failed to do so not because it cannot, but because it will not. Each Commissioner is a public official who swore an oath to support the constitution of the United States and the constitution of this state. Ohio Constitution, Article XV, Section 7. Refusing to adhere to the Ohio Constitution as interpreted by this Court is not a clever litigation strategy or politics as usual. It is antidemocratic.

As explained in Petitioners’ previously filed Objections, the Court should invalidate the Commission’s latest Plan, which is identical to the Third Plan that was previously adopted by the Commission on February 24, 2022 and invalidated by this Court on March 16, 2022. Furthermore, the Court should order Respondents to show cause why the Commission and its members should not be held in contempt, and it should take immediate steps to enforce its four prior orders in this case. At this point, Petitioners respectfully submit that the Commission will only comply with the law if the Court takes further measures to compel it to do so. If the Commission refuses to adopt a constitutional plan, this Court should do so itself.

II. Factual Background

A. In contravention of the Ohio Constitution and this Court's orders, the Commission adopted unconstitutional General Assembly Plans in September 2021, January 2022, February 2022, March 2022, and now May 2022.

This Court has on four previous occasions considered the constitutionality of General Assembly Plans approved by the Ohio Redistricting Commission. *League of Women Voters of Ohio v. Ohio Redistricting Comm.*, Slip Opinion No. 2022-Ohio-65 (“*LWV I*”); *League of Women Voters of Ohio v. Ohio Redistricting Comm.*, Slip Opinion No. 2022-Ohio-342 (“*LWV II*”); *League of Women Voters of Ohio v. Ohio Redistricting Comm.*, Slip Opinion No. 2022-Ohio-789 (“*LWV III*”); *League of Women Voters of Ohio v. Ohio Redistricting Comm.* (“*LWV IV*”), Slip Opinion No. 2022-Ohio-1235. The Court found that all four of those Plans violated Article XI’s partisan fairness and proportionality requirements.

Most recently, this Court held on April 14 that the Commission had, for the fourth time, adopted an unlawful General Assembly Plan in contravention of the Ohio Constitution. *LWV IV* at ¶ 78. As the Court recounted, the Commission initially “retained independent map drawers and mediators, held meetings almost daily, ensured that the map drawers had a neutral set of written instructions, and allowed the public to observe the map-drawing process.” *Id.* ¶ 39. But “on the final day before the Commission adopted its [Fourth Plan], some members of the commission blocked, rather than facilitated, [the independent map drawers’] efforts to finish their work.” *Id.* ¶ 43. “[W]hen faced with one or more plans that closely matched the constitutional requirements” of Article XI, members of the Commission “reverted to partisan considerations,” *id.* ¶ 43, and “chose to modify a previously invalidated plan,” *id.* ¶ 46. The Court held that these facts “indicate[d] beyond a reasonable doubt an intent to favor the Republican Party at the expense of the Democratic Party in the commission’s fourth try at drafting the General Assembly-district plan.” *Id.*

The Court ordered the Commission “to convene, and to draft and adopt an entirely new General Assembly–district plan” by May 6, 2022. *Id.* ¶ 78; *see also* Ohio Constitution, Article XI, Section 9(B) (“In the event that . . . any general assembly district plan made by the Ohio redistricting commission . . . is determined to be invalid . . . the commission shall be reconstituted . . . , convene, and ascertain and determine a general assembly district plan in conformity with such provisions of this constitution as are then valid.”). The Court stated that “[f]or good cause shown, the commission may file a motion for extension of time to file the district plan with the secretary of state.” *LWV IV* at ¶ 81. The Court also stressed that “time is of the essence.” *Id.* at ¶ 74. It observed that the Commission had “a head start toward a complete and possibly constitutionally compliant plan” produced by the independent map drawers, Dr. Douglas Johnson and Dr. Michael McDonald. *Id.* at ¶ 77. The Court “express[ed] the view that the commission should use the independent map drawers’ work thus far as a starting point for the next plan.” *Id.*

B. The majority Commissioners ignored the Democratic Commissioners’ repeated pleas to convene.

The Commission once again manufactured a crisis by refusing to act until just hours before a deadline. *See LWV IV* at ¶ 18-26 (voting to adopt the Fourth Plan hours after it is introduced); *LWV III* at ¶ 13-20 (voting to adopt the Third Plan hours after it is introduced); *LWV II* at ¶ 44 (noting that the Second Plan was “was introduced and later adopted on the same day”); *LWV I* at ¶ 12 (noting that the Commission did not adopt a plan by its initial September 1, 2021 deadline); *id.* at ¶ 24 (noting that the Commission adopted the First Plan *after* its secondary September 15, 2021 deadline).

The Commission has repeatedly sought to blame the Court for the Commission’s own recalcitrance, complaining about Court-ordered deadlines. Supposedly, this is why the Commission passed an unconstitutional Fourth Plan that was near-identical to the unconstitutional

Third Plan—the Commission just regrettably ran out of time for the Commission-retained independent map drawers to finalize their work, so it had to pass the Fourth Plan as a “parachute.” *See* Objections to the General Assembly District Plan Adopted on March 28, 2022 at 5-6, *Bennett v. Ohio Redistricting Comm.*, Case No. 2021-1198 (Apr. 1, 2022). So, this time around, the Court gave double the time. Instead of giving the Commission ten days to adopt a new plan, the Court provided 22 days to do so.

The Commission’s response, as further discussed below, was to refuse to convene for nearly the entirety of the remedial period, despite the repeated urging of the Democratic Commissioners. Co-Chair Senator Sykes and Leader Russo sent a letter to the Commissioners on April 18, explaining that Senator Sykes had made “repeated calls” to Co-Chair Speaker Cupp that “went unanswered” in the four days following the Court’s decision. Resp. of Respondents Senator Vernon Sykes and House Minority Leader C. Allison Russo to Petitioners’ Objections, Exhibit C, *League of Women Voters of Ohio v. Ohio Redistricting Comm.*, Case No. 2021-1193 (May 9, 2022). In the same letter, they confirmed that “the authority and funding granted to the Commission by the Legislative Task Force on Redistricting to engage independent map drawers is still valid and available” and that the “original independent map drawers [Dr. Johnson and Dr. McDonald] are available to return and all mapmaking may again be accomplished in full public view.” *Id.* In a letter sent on April 22, Senator Sykes and Leader Russo stated that they had “contacted each of” the Commissioners “repeatedly” to ask them to join in reconvening the Commission, to no avail. Resp. of Respondents Senator Vernon Sykes and House Minority Leader C. Allison Russo to Petitioners’ Objections, Exhibit E, *League of Women Voters of Ohio v. Ohio Redistricting Comm.*, Case No. 2021-1193 (May 9, 2022). They made clear that the Commission should take up the Court’s suggestion to finish the plan of the independent map drawers and again

explained that Dr. Johnson and Dr. McDonald were available to finish the work. *Id.*

C. The federal court indicated that if the Commission failed to act, it intended to order implementation of the unconstitutional Third Plan on May 28: The majority Commissioners failed to act thereafter.

The majority Commissioners failed to respond to the Democratic Commissioners' pleas to meet because they were waiting for a way out of complying with this Court's orders—a path to securing use of their preferred (unconstitutional) plan. On April 20, a three-judge federal court in the Southern District of Ohio released an order stating that, unless Ohio acts before May 28 to adopt a General Assembly plan under which it can conduct a primary election in a timely fashion, the court will order the use of the Commission's Third Plan—which this Court held to be *unconstitutional*—in a primary election on August 2. See Order Granting Sec. Mot. for P.I., *Gonidakis v. LaRose*, Case No. 2:22-cv-00773, Dkt. No. 196 at 58 (S.D. Ohio April 20, 2022).

Nevertheless, at this point, the federal court has not yet ordered that a primary election be held on August 2 or that the Third Plan be used. The court “stay[ed] [its] hand until May 28 . . . in hope that Ohio [would] finally approve[] a map that complies with federal and state law.” *Id.* at 4. In doing so, it acknowledged that “[i]f Ohio passes a new map before May 28, 2022, and can conduct a primary in a timely fashion, that map will go into effect.” *Id.* at 58. The court even rejected a dissenting judge's concern that the Commission would “wait out the clock rather than work with the legislature and the Ohio Supreme Court to figure out a new map and, if necessary, a revised election timeline.” *Id.* at 48 n.19. It instead emphasized that “Ohio's officials are public servants who still view partisan advantage as subordinate to the rule of law,” and the Court's remedy “gives the Commission more time to work with the General Assembly and the Ohio

Supreme Court to pass another map that will supersede [the Third Plan].” *Id.* (citation omitted).¹

Ultimately, the Republican Commissioners would prove the dissent prescient.

Following the federal panel’s decision, Senator Sykes and Leader Russo attempted to schedule a Commission meeting on April 25. Resp. of Respondents Senator Vernon Sykes and House Minority Leader C. Allison Russo to Petitioners’ Objections, Exhibit E, *League of Women Voters of Ohio v. Ohio Redistricting Comm.*, Case No. 2021-1193 (May 9, 2022). The other Commissioners refused to attend, and when Senator Sykes and Leader Russo arrived at the meeting room, the doors were locked. (BENNETT_034 (Tweet by Reporter Josh Rultenberg).)

Later that same day, on April 25, the League of Women Voters (LWV) Petitioners filed a motion for an order directing respondents to show cause for why they should not be held in contempt of the Court’s April 14 Order. *See* Pet’rs’ Motion for an Order Directing Resp’ts to Show Cause for Why They Should Not be Held in Contempt of the Court’s April 14, 2022 Order, *League of Women Voters of Ohio v. Ohio Redistricting Comm.*, Case No. 2021-1193 (Apr. 25, 2022). That motion explained it was “important that the [map-drawing] process begin with haste, since Commissioners Cupp and Huffman claimed that they lacked sufficient time to follow the Court’s previous order to engage in an independent map drawing process.” *Id.* at 4 n.3. The LWV Petitioners warned that the Commission was “continuing to run out the clock” in order to ensure that “the 2022 General Assembly election will be conducted using the unconstitutional Third Plan.” *Id.* at 5-6.

¹ Though the court stated that the “General Assembly *may*, of course, change the primary date and election deadlines by law,” it did not purport to authoritatively interpret Ohio law as to whether the General Assembly is the only body permitted to alter election deadlines under these circumstances. Order Granting Sec. Mot. for P.I., *Gonidakis v. LaRose*, Case No. 2:22-cv-00773, Dkt. No. 196 at 43 (S.D. Ohio April 20, 2022) (emphasis added); *see also Mullaney v. Wilbur*, 421 U.S. 684, 691 (1975) (“State courts are the ultimate expositors of state law.”).

D. The majority Commissioners continued to refuse to meet, stalling until the final 48 hours before the Court's deadline.

On April 26, Speaker Cupp told reporters that he was “working” on a fifth plan, but said it was “not a clear-cut situation” because the Court had rejected the Commission’s previous plans due to what Speaker Cupp called a “difference of opinion as to what the constitution requires.” (BENNETT_035-038 (Lily Nickel, “Cupp: New Set of Maps is in the Works,” *The Vindicator* (Apr. 26, 2022))).

That same day, Leader Russo submitted a request to reserve the use of a House committee room for the business of the Commission until May 3. (BENNETT_039 (Speaker Cupp’s 4/27/22 Letter to Leader Russo).) Speaker Cupp then sent a letter to Leader Russo stating that her request to reserve a room for Commission use was “invalid” because a Commission meeting could be called only by the joint call of the Commission Co-Chairs or by any three members of the Commission. (*Id.*)

On April 27, the press reported that at least two Republican Commissioners told their Democratic counterparts that they did “not plan to meet until May 4th at the earliest because they are campaigning.” (BENNETT_040 (Tweet by Reporter Josh Rultenberg).) The Republican Commissioners dug in on this position the next day. On April 28, Speaker Cupp sent a letter to Senator Sykes stating that the Commission would hold a meeting on May 4 and that holding a meeting earlier than that date would be “unwise and not feasible” and “would serve no other purpose than to further confuse the electorate.” (BENNETT_041-042 (Speaker Cupp’s 4/28/22 Letter to Senator Sykes).) Speaker Cupp did not explain how the Commission’s compliance with its constitutional obligations and this Court’s order would “confuse the electorate.” Speaker Cupp went on to raise concerns regarding the Democratic Commissioners’ requests for funds to engage map-drawing consultant Chris Glassburn. (*Id.*) The majority Commissioners thus refused to

convene a Commission meeting, refused to rehire the independent map drawers to allow them to finish their work, and rebuffed the minority Commissioners' attempt to secure funding to retain their own map-drawing consultant. Resp. of Respondents Senator Vernon Sykes and House Minority Leader C. Allison Russo to Petitioners' Objections, Exhibit L, *League of Women Voters of Ohio v. Ohio Redistricting Comm.*, Case No. 2021-1193 (May 9, 2022).²

After weeks of inaction, the Commission finally announced on April 28 that it would hold a meeting at 2 p.m. on May 4, nearly three weeks into the remedial period and less than 48 hours before the Court's deadline. (BENNETT_044 (Ohio Redistricting Committee's Announcement of a 5/4/22 Meeting).) The day after the meeting was announced, Secretary of State LaRose released a letter that quoted multiple dissenting opinions from this case before proclaiming he had "serious concerns that an August 2 primary election can be conducted with any map other than the federal court's prescribed Map 3." (BENNETT_046-047 (Secretary LaRose's 4/29/22 Letter).) Secretary LaRose further claimed that this Court's "majority seems intent on riding this carousel in perpetuity by compelling . . . 'gerrymandering.'" (*Id.* at BENNETT_047.) He continued that "[d]espite the repeated threats of contempt against me and my fellow commissioners, I'm not willing to compromise my constitutional principles for the sake of appeasing an activist court"—indicating his belief that complying with an order from Ohio's highest court commanding compliance with the state Constitution constitutes "appeasing" the supposedly "activist" Court. (*Id.*)

Senate President Huffman similarly voiced his opinions regarding the Court. On May 3, he

² Senator Sykes responded to Speaker Cupp's letter by detailing Mr. Glassburn's extensive work with regards to redistricting and explaining that Speaker Cupp had misstated the fees paid to Mr. Glassburn. See Resp. of Respondents Senator Vernon Sykes and House Minority Leader C. Allison Russo to Petitioners' Objections, Exhibit L, *League of Women Voters of Ohio v. Ohio Redistricting Comm.*, Case No. 2021-1193 (May 9, 2022).

announced that Senator McColley would take his place on the Commission, claiming that it would provide “a new opportunity to produce a result that clearly the majority of the court was not willing to consider with the speaker and myself serving as members.” (BENNETT_048 (Tweet by Reporter Josh Rultenberg).) Speaker Cupp followed suit the next day, appointing Representative LaRe to take his place as Co-Chair of the Commission just an hour before the Commission convened. (BENNETT_048 (Tweet by Reporter Josh Rultenberg).) Speaker Cupp and President Huffman provided no explanation for why they waited until the Court-ordered redraw period had nearly elapsed before abruptly withdrawing from the Commission.

E. In the final days before the deadline, the Commission made no effort to adopt a constitutional General Assembly plan.

When the Commission finally convened on the afternoon of May 4, the majority Commissioners made every effort to throw sand into the gears of the map-drawing process. After swearing in Senator McColley and Representative LaRe as new members, the Commission discussed the Democratic Commissioners’ requests for funds to engage Mr. Glassburn. (BENNETT_049 (5/4 Commission Meeting Agenda); BENNETT_001-002 (5/4/22 Commission Meeting Tr.)) For nearly an hour, Senator McColley questioned Leader Russo at length regarding past payments to Mr. Glassburn and other consultants, including reviewing individual invoices and deposition testimony previously submitted in this case. (*Id.* at BENNETT_003-009.) Senator McColley ultimately indicated his willingness to approve the Democratic Commissioners’ request in his capacity as co-chair of the Legislative Task Force on Redistricting, Reapportionment, and Demographic Research. (*Id.* at BENNETT_009.)

Senator Sykes then moved that the Commission engage the independent map drawers, Dr. Johnson and Dr. McDonald, to complete their previously drawn plans, as Leader Russo had first proposed by letter 18 days earlier. (*Id.* at BENNETT_009-010); *see also* Resp. of Respondents

Senator Vernon Sykes and House Minority Leader C. Allison Russo to Petitioners’ Objections, Exhibit A, *League of Women Voters of Ohio v. Ohio Redistricting Comm.*, Case No. 2021-1193 (May 9, 2022).

The Court’s April 14 opinion “express[ed] the view that the commission should use the independent map drawers’ work thus far as a starting point for the next plan.” *LWV IV* at ¶ 77. But the majority Commissioners expressed opposition, not only to retaining the independent map drawers, but also to even attempting to draw a new General Assembly plan. Senator McColley stated that he opposed Senator Sykes’ motion, because “we have people already at our disposal who are eminently qualified” to draw compliant maps. (*Id.* at BENNETT_010.) Secretary LaRose claimed that any new plan “would certainly require the General Assembly to pass emergency legislation” to adjust election deadlines and that he would not even *consider* any new plan unless the Commission “could assure [him] that they can get that [the General Assembly] could get that supermajority vote to pass a piece of legislation.” (*Id.* at BENNETT_011.) In response, Senator Sykes raised the question of why, if impending election deadlines were of such concern, the Commission chose to “squander” most of the remedial period. (*Id.* at BENNETT_012.)

Governor DeWine then expressed skepticism that it was possible for the Commission to adopt a plan that complies with the Ohio Constitution and this Court’s orders. (*Id.* at BENNETT_014.) He claimed that the independent map drawers were not able to draw compliant plans when the Commission engaged them during the last process and concluded that “we have a Friday deadline, so we can’t get the independent mapmakers.” (*Id.*) Representative LaRe claimed that, like Secretary LaRose, he would need assurance from legislative leaders that emergency legislation would be passed before considering a new plan. (*Id.* at BENNETT_003-009.) Auditor Faber rounded out the group, stating that he opposed hiring the independent map drawers and

reiterating that any new plan could not be used for an August 2 primary without emergency legislation and certainty that the plan would survive judicial review. (*Id.* at BENNETT_015-016.)³ Senator McColley said that, based on conversations with the Republican caucus, there would not be sufficient votes in the Senate for emergency legislation. (*Id.* at BENNETT_017.) That is to say, the majority Commissioners explained that the majority party would refuse to allow a constitutional plan passed by the Commission to timely go into effect, and so the majority Commissioners would refuse to even attempt to pass a constitutional plan.

In response, Leader Russo emphasized that the independent map drawers had already completed a General Assembly plan—one that was more compact than the Third Plan—and that unrebutted evidence provided to the federal three-judge court indicated that the technical corrections would take less than one day to complete. (*Id.* at BENNETT_019.) Furthermore, the independent map drawers' plan performs better on compactness than the Third Plan and contains comparable splits of political subdivisions. (*Id.*)

Leader Russo was right. Unrebutted evidence submitted in the federal three-judge court on April 8, 2022 and filed with this Court shows that only minor technical corrections to the independent map drawers' plan were necessary, and that making those corrections took less than a day's work starting from scratch. Pet'rs' Notice of Filing in Southern District of Ohio of Corrected Independent Map Drawers' Plan, *Bennett v. Ohio Redistricting Comm.*, Case No. 2021-1198 (Apr. 12, 2022). The Bennett Petitioners submitted a corrected version of the plan that is in full compliance with Article XI and has truly minute changes: 99.9% of voters are unaffected by the corrections that brought the map into full technical compliance. *Id.*

³ The transcript incorrectly identifies the speaker as Governor DeWine, when the remarks in fact came from Auditor Faber.

Nonetheless, the Commission then rejected Senator Sykes' motion to engage the independent map drawers on a party-line 2-5 vote. (*Id.* at BENNETT_020.) Representative LaRe asked if any Commissioners had comments related to the Commission's plan of work and meeting schedule. (*Id.*) No Commissioners responded, and the Commission abruptly adjourned. (*Id.*)

F. The majority Commissioners re-adopted the Third Plan, which this Court has already declared unconstitutional.

The Commission next convened at 4:45 p.m. on May 5, less than a day before the Court-ordered deadline to submit a new plan. (BENNETT_050 (Ohio Redistricting Committee's Announcement of a 5/5/22 Meeting).) At the start of the meeting, Leader Russo moved that the Commission adopt the Corrected Independent Map Drawers' Plan that was submitted to the federal court on April 8, 2022, *see* Notice, *Gonidakis v. LaRose*, No. 2:22-CV-0773, Dkt. No. 177 (S.D. Ohio), and submitted to this Court on April 12, 2022, Pet'rs' Notice of Filing in Southern District of Ohio of Corrected Independent Map Drawers' Plan, *Bennett v. Ohio Redistricting Comm.*, Case No. 2021-1198 (Apr. 12, 2022); *see also* BENNETT_051-054 (5/4 Letter from Bennett Petitioners).)

Respondents all had access to this Corrected Independent Map Drawers' Plan for weeks before the May 5 meeting. The Bennett Petitioners had served the Commissioners with the data files underlying the Corrected Independent Map Drawers' Plan simultaneously with those filings. (BENNETT_051-054 (5/4 Letter from Bennett Petitioners).) Secretary LaRose, who was a defendant in the federal case, did not raise any substantive objections to the Corrected Independent Map Drawers' Plan in his subsequent remedial filings in the federal court. Resp. Br. of Secretary LaRose, *Gonidakis v. LaRose*, Case No. 2:22-cv-00773, Dkt. No. 179 (S.D. Ohio April 11, 2022). Nor did Respondents raise any concerns after it was filed in this case.

The Bennett Petitioners also submitted the Corrected Independent Map Drawers' Plan via the Commission's online submission system on May 4, along with a full accounting of all changes that were made from the plan created by Dr. Johnson and Dr. McDonald. (See BENNETT_051-054 (5/4 Letter from Bennett Petitioners).) They noted that "[a]ll changes to the [original plan] were made for the purpose of ensuring compliance with the constitutional requirements regarding political subdivision splits and numbering of districts for house maps." (*Id.* at BENNETT_051.) "The corrections [did] not affect the performance of the plan, as compared to the [original plan], with respect to compactness, number of split counties or vote tabulation districts (VTDs), or expected partisan seat share—including proportionality and symmetry. (*Id.*) "Furthermore, the Corrected IMD plan places 99.9% of Ohio residents in the same district as in" Dr. Johnson and Dr. McDonald's original plan. (*Id.*) Leader Russo had sent a letter to all Commissioners on May 5, noting that the Corrected Independent Map Drawers' Plan had been submitted to the Commission's website and asking "that all commissioners review it and alert their fellow commissioners to any" perceived errors. Resp. of Respondents Senator Vernon Sykes and House Minority Leader C. Allison Russo to Petitioners' Objections, Exhibit O, *League of Women Voters of Ohio v. Ohio Redistricting Comm.*, Case No. 2021-1193 (May 9, 2022).

Leader Russo explained that the Commissioners all had access to the plan for several weeks and the plan complied with all provisions of Article XI. (BENNETT_021-022 (5/4/22 Commission Meeting Tr.)) She further noted that the Commission was subject to an order from this Court to submit a constitutional plan to the Secretary of State by 9 a.m. on May 6, regardless of any impediments to that plan's implementation and regardless of which election cycles the plan would apply to. (*Id.* at BENNETT_021-022.) The majority Commissioners universally opposed the motion, though none could identify a single concern with respect to the Corrected Independent

Map Drawers' Plan compliance with Article XI, Sections 2, 3, 4, 5, 6, or 7. (*See id.* at BENNETT_022-025;) *see also* Decl. of Dr. Megan Gall, *Gonidakis v. LaRose*, Case No. 2:22-cv-00773, Dkt. No. 183-1 (S.D. Ohio April 11, 2022) (finding no constitutional deficiencies with the Corrected Independent Map Drawers' Plan submitted by the Bennett Petitioners). The Commission voted against the plan on a party-line 2-5 vote. (*Id.* at BENNETT_022.)

Secretary LaRose then read a pre-prepared statement claiming that the Commission's Third Plan "is the only viable option to effectively administer a primary election on August 2, 2022." (*Id.* at BENNETT_026-028; BENNETT_055-056 (LaRose 5/5/22 Statement to the Commission).) Secretary LaRose explained that, in his view, on May 28 the federal court would "overturn the ruling of the Ohio Supreme Court, essentially validating" the Third Plan. (BENNETT_028 (5/4/22 Commission Meeting Tr.).)

Senator McColley then moved that the Commission resubmit the Third Plan to the Secretary of State and this Court, for use in the 2022 election cycle only. (*Id.* at BENNETT_028.) Leader Russo objected and explained that the federal court neither overturned this Court's decision (that is not how federalism works) nor authorized the Commission to ignore a court order (that is not how the judicial system works). (*Id.*) Leader Russo also emphasized that the Commission does not have authority to adopt a General Assembly plan that will be in effect for only two years. (*Id.*) Finally, she asked Secretary LaRose if he was refusing to vote in favor of the Corrected Independent Map Drawers' Plan merely because of implementation issues, even though this Court had ordered the Commission to adopt a plan that complied with Article XI, without reference to implementation. (*Id.*)

The Commission's role is simply to adopt a constitutionally compliant plan, not oversee or coordinate its implementation. That is why it is to dissolve automatically shortly after adopting a

plan. *See generally* Ohio Constitution, Article XI, Section 1(C). Nonetheless, Secretary LaRose responded to Leader Russo, incredibly, that he would not consider any plan besides the Third Plan unless he received assurances that the General Assembly would vote to adopt emergency legislation regarding election deadlines. (*Id.* at BENNETT_028-029.)

Senator Sykes then moved that the Commission recess in order to consult with counsel as to whether re-adopting the unconstitutional Third Plan would subject the Commission to contempt. (*Id.* at BENNETT_029.) On a 5-2 party-line vote, the majority Commissioners voted against the motion to receive legal advice before readopting an unconstitutional plan in defiance of this Court's orders. (*Id.*) The Commission then voted to re-adopt the Third Plan by a vote of 4-3; Auditor Faber joined the Democratic Commissioners in voting against the plan, though he explained his vote was based on a view that the plan unconstitutionally gerrymandered in favor of the Democratic Party (*id.* at BENNETT_030)—notwithstanding this Court's opinion explaining that it was unconstitutionally gerrymandered in favor of the Republican Party, *LWV III* at ¶ 34 (“The evidence shows—overwhelmingly—that the individuals who drafted the [Third Plan] primarily intended to favor the Republican Party and disfavor the Democratic Party.”).

Leader Russo then asked if the Commission would issue a statement pursuant to Article XI, Section 8(C)(2). (*Id.* at BENNETT_032.) The Commission recessed, but upon its reconvening only the Democratic Commissioners presented a Section 8(C)(2) statement. (*Id.*) The Commissioners who had voted to re-adopt the Third Plan did not even attempt to present an argument for why their action complied with Article XI or comply with their constitutionally mandated duty to provide such an explanation. *See* Pet'rs' Objections to the Already-Invalidated February 24, 2022 Plan, Re-Adopted on May 5, 2022, and Request for Immediate Relief, *Bennett v. Ohio Redistricting Comm.*, Case No. 2021-1198 (May 6, 2022).

III. Legal Standard

It would gut the rule of law if litigants were free to ignore adverse court orders. So they are not. It is well established that Ohio courts may punish by contempt those who violate their orders. R.C. 2705.02 (“Disobedience of, or resistance to, a lawful writ, process, order, rule, judgment, or command of a court or officer” “may be punished as for a contempt[.]”); *Cramer v. Petrie*, 70 Ohio St.3d 131, 133, 637 N.E.2d 882 (1994) (“[C]ourts have inherent authority—authority that has existed since the very beginning of the common law—to compel obedience of their lawfully issued orders.”). “To support a [civil] contempt finding, the moving party must establish by clear and convincing evidence that a valid court order exists, that the offending party had knowledge of the order, and that the offending party violated such order.” *In re A.A.J.*, 2015-Ohio-2222, 36 N.E.3d 791, ¶ 12 (12th Dist.); *see also Brown v. Exec. 200, Inc.*, 64 Ohio St. 2d 250, 253, 416 N.E.2d 610, 613 (1980).

“Once the movant establishes this *prima facie* case of contempt, the burden then shifts to the contemnor to prove his inability to comply with the court order The inability that excuses compliance cannot be self-imposed, fraudulent, or due to an intentional evasion of the order.” *In re A.A.J.* at ¶ 13. “Impossibility of performance occurs when an unforeseen event arises that renders a party’s performance of an obligation impossible. The performance of the obligation must have been rendered impossible without any fault of the party asserting the defense. A party who raises the defense of impossibility of performance has the burden of proving it.” *State ex rel. DeWine v. City of Wash. Court House*, 12th Dist. Fayette No. CA2013-12-030, 2014-Ohio-3557, ¶ 29. “A party must take all reasonable steps within her power to comply with the court’s order and, when raising the defense of impossibility, must show ‘categorically and in detail’ why she is unable to comply with the court’s order.” *Robinson v. Rummelhoff*, 10th Dist. Franklin No. 13AP-410, 2014-Ohio-1461, ¶ 35 quoting *Briggs v. Moelich*, 8th Dist. No. 97001, 2012-Ohio-1049, ¶

15. Finally, Ohio courts “are not bound by the sanction limits set forth in R.C. 2705.05 when imposing a penalty for contempt.” *City of Cleveland v. Bright*, 2020-Ohio-5180, 162 N.E.3d 153, ¶ 45 (8th Dist. 2020).

IV. Argument

Respondents are counting on federal court intervention to secure the use of an unconstitutional General Assembly Plan—that this Court has already invalidated as a partisan gerrymander in violation of the Ohio Constitution—for the 2022 election cycle. Given these circumstances, the Bennett Petitioners respectfully submit that this Court should find the Commission and, as the Court deems appropriate, individual Respondents, in contempt unless and until Respondents adopt a constitutional General Assembly plan.

Since the Commission passed the Third Plan, this Court has invalidated that plan and twice ordered the Commission to reconvene to pass an “entirely new” plan that complies with Article XI. The Commission and its members know what the Court has ordered them to do. And yet, the Commission, and at least those members who voted to “resubmit” the Third Plan, have willfully and flagrantly violated that order. Accordingly, in addition to the relief requested in their previously filed Objections, this Court should order Respondents to show cause as to why they should not be held in contempt of the Court’s most recent April 14 Order, schedule a contempt hearing, and award Petitioners their reasonable attorneys’ fees.

A. Respondents have once again disobeyed this Court’s clear orders.

As outlined above, on April 14, 2022, this Court ordered the Commission “to convene, and to draft and adopt an entirely new General Assembly–district plan” by 9 a.m. on May 6, 2022. *LWV IV* at ¶ 78-79. This Court should find the Commission and, as the Court deems appropriate, individual Respondents, in contempt pursuant to R.C. 2705 and its inherent contempt power unless—and until—Respondents adopt a constitutional plan.

Not only have Respondents directly violated the Court’s prior orders by resubmitting the Third Plan, they have also gone to extraordinary measures to attempt to evade those orders. Respondents did not gather to meet as a Commission until after 2 p.m. on May 4, less than 48 hours before this Court’s May 6 deadline. This is despite the fact that the Court gave the Commission a full 22 days to draw a remedial map, and that Senator Sykes and Leader Russo sent multiple requests to Commission members asking for the Commission to be convened to work on a compliant plan.⁴ Just three and two days before the deadline, respectively, President Huffman and Speaker Cupp gave up their seats on the Commission to two other General Assembly members in their respective caucuses—Senator McColley and Representative LaRe. Further, during the meeting on May 4, no maps were proposed.⁵ Instead, Republican Commissioners, namely Secretary LaRose, thumbed their noses at this Court, complaining that the Commission did not have enough time to do its work and that it should not impose a new map for the 2022 election just to “appease” this Court. Ultimately, the Commission’s majority members voted down a motion offered by Leader Russo to reengage the independent mapmakers as the Court had suggested in its April 14 Order.

The next day, the majority Commissioners remarkably voted to adopt the already-invalidated Third Plan, in direct defiance of this Court’s order that “the Ohio Redistricting Commission . . . shall draft and adopt an *entirely new* General Assembly-district plan that meets

⁴ Under the Commission’s rules, a meeting cannot be held without approval of both Co-Chairs or the demand of three Commissioners. (BENNETT_039 (Speaker Cupp’s 4/27/22 Letter to Leader Russo).) Not a single majority Commissioner joined in Leader Russo’s and Senator Sykes’ entreaties that the Commission meet. (*Id.*)

⁵ Given that the majority Commissioners who voted to readopt the Third Plan did not even attempt to adopt a new plan, the timing of Speaker Cupp’s and President Huffman’s withdrawal from the Commission is strongly suggestive of an attempt to evade contempt and/or a preconceived plan by majority Commissioners to simply resubmit the Third Plan.

the requirements of the Ohio Constitution, including Article XI, Sections 6(A) and 6(B).” *LWV IV* Order (emphasis added); *see also LWV IV* at ¶ 55 (explaining that “the [Fourth Plan] has not materially changed from the invalidated [Third Plan]”); *LWV III* at ¶ 44 (ordering the adoption of an “entirely new” plan after the invalidation of the Third Plan on March 16). At no point did the majority Commissioners assert that they were complying with this Court’s order; nor could they. The April 14 Order and Opinion were “clear and definite, unambiguous, and not subject to dual interpretations.” *Toledo v. State*, 154 Ohio St.3d 41, 2018-Ohio-2358, 110 N.E.3d 1257, ¶ 23 (quoting *State ex rel. Cincinnati Enquirer v. Hunter*, 138 Ohio St.3d 51, 2013-Ohio-5614, 3 N.E.3d 179, at ¶ 25). The Commission and the majority Commissioners who voted to readopt the already-invalidated Third Plan knowingly violated this Court’s April 14 Order.

B. Respondents’ explanations for resubmitting the Third Plan do not excuse their noncompliance with the Court’s order.

Although the majority Commissioners did not attempt to justify their actions in a constitutionally required Section 8(C)(2) statement, they did assert meritless reasons as to why re-adopting the Third Plan solely for use in 2022 is appropriate. None excuses their noncompliance with the Court’s orders.

1. Implementation concerns for the 2022 election cycle did not render Respondents’ compliance with the Court’s April 14 Order impossible.

The majority Respondents’ primary thrust is that because they have delayed so long by waiting until the last minute and then passing unconstitutional plans in seriatim, it is now too late to pass a constitutional plan. But the majority Respondents’ concerns about implementing a constitutional plan during the 2022 election cycle did not render their compliance with the April 14 Order impossible.

As an initial matter, any questions related to the *implementation* of a new plan are inapposite to the Commission’s compliance with this Court’s order by *adopting* a new plan. Per

the Court's order, the Commission's task is simply to "draft and adopt an entirely new General Assembly-district plan" by May 6. *LWV IV* at ¶ 78-79. The Commission's job under Article XI is not to implement the plan it adopts; its only concern is adopting a plan that complies with Article XI. Compare R.C. 3501.04 (establishing "the secretary of state [as] the chief election officer of the state, with such powers and duties relating to . . . the conduct of elections"), with Ohio Constitution, Article XI, Section 1(A) ("The Ohio redistricting commission shall be responsible for the redistricting of this state for the general assembly."); see also *id.*, Section 1(C) ("After the commission adopts a final plan, the commission shall promptly file the plan with the secretary of state. Upon filing with the secretary of state, the plan shall become effective."). By the same token, Secretary LaRose's argument that the Commission's adoption of a constitutional plan (that, in and of itself, says nothing of the plan's implementation) would be an "unlawful act" in "violation of Ohio's statutory deadlines for elections" is not only ludicrous, but untrue. See Sec'y of State Frank LaRose's Resp. to All Petitioners' Objections to the Commission's Re-Adoption of the Third Plan on May 5, 2022 at 20-21, *Bennett v. Ohio Redistricting Comm.*, Case No. 2021-1198 (May 9, 2022).

Indeed, the federal court in *Gonidakis* explained that "Ohio's elected leaders might still approve a lawful map or change Ohio election laws and deadlines, and [the federal court's] choice of remedy is designed to give them still another chance to do so." See Order Granting Sec. Mot. for P.I., *Gonidakis v. LaRose*, Case No. 2:22-cv-00773, Dkt. No. 196 at 3 (S.D. Ohio April 20, 2022). The federal court expressly recognized that the adoption of a lawful map and the implementation of that map are distinct tasks over which distinct state entities have responsibility. *Id.* at 8 ("The Commission is tasked with drawing Ohio's map for the state-legislative elections," citing Ohio Constitution, Article XI, Section 1(C)); *id.* at 7 ("Statewide authority for overseeing and

implementing elections rests with the Secretary of State (Defendant Frank LaRose). But 88 county boards of elections must implement the map and prepare ballots to administer elections,” citing R.C. 3501.04; 3501.11). Moreover, the federal court “stay[ed] [its] hand until May 28” to allow those state actors an opportunity to fulfill those tasks. *Id.* at 4. In no way did the federal court give the Commission license to withhold the approval of a lawful map, in violation of this Court’s order, on the assumption that *other* state actors would not be able to “conduct a primary in a timely fashion.” *Id.* at 58.

Nor does the record support that assumption. Earlier this year, the General Assembly changed election deadlines with overwhelming support. *See* Act of Jan. 28, 2022 (H.B. 93), 2022 Ohio Laws File 71, § 4. And notwithstanding Secretary LaRose’s unsupported allegation that legislative leaders had “publicly stated” that they lack votes and Senator McColley’s bald assertion that the Senate Republican caucus would not support emergency legislation, (BENNETT_027 (5/5/22 Commission Meeting Tr.); (BENNETT_017 (5/4/22 Commission Meeting Tr.)), there is no evidence that the General Assembly would not again do its duty to ensure that Ohioans can vote under constitutional maps this year. *See* Order Granting Sec. Mot. for P.I., *Gonidakis v. LaRose*, Case No. 2:22-cv-00773, Dkt. No. 196 at 8 n.1 (S.D. Ohio April 20, 2022) (“[T]he record doesn’t indicate what steps the General Assembly could or would take on [shortening election periods.]”); *cf. State ex rel. Skaggs v. Brunner*, 120 Ohio St.3d 506, 2008 Ohio-6333, 900 N.E.2d 982, ¶ 51 (2008)) (“[I]n the absence of evidence to the contrary, public officers, administrative officers and public authorities, within the limits of the jurisdiction conferred upon them by law, will be presumed to have properly performed their duties in a regular and lawful manner and not to have acted illegally or unlawfully.”). Besides, as Petitioners set forth in their earlier-filed Objections, this Court, too, has the authority to change election deadlines if necessary to vindicate

Ohioans' constitutional voting rights.⁶ *See* Pet'rs' Objections to the Already-Invalidated February 24, 2022 Plan, Re-Adopted on May 5, 2022, and Request for Immediate Relief, *Bennett v. Ohio Redistricting Comm.*, Case No. 2021-1198 (May 6, 2022); *see also supra* note 1.⁷

In any event, the Commission had six full days to comply with the Court's April 14 Order *before* April 20, the date by which Secretary LaRose claims it would have been necessary to have a new plan that could be implemented by a hypothetical August 2 primary date. (BENNETT_046-047 (Secretary LaRose's 4/29/22 Letter); *see* Commission's Resp. to Petitioners' Objections at 7, *Bennett v. Ohio Redistricting Comm.*, Case No. 2021-1198 (May 9, 2022) ("The last date a new map could have been ordered and implemented without altering current statutory deadlines that precede an August 2, 2022 primary election was April 20, 2022, six days after this Court issued its latest decision on any General-Assembly redistricting plan."). Even if the Commission had any reason to consider the feasibility of implementation as a prerequisite to adopting a new plan (which, again, it did not), it was well aware of the April 20 "deadline" before April 14, and it had time and again met and passed maps within much shorter time periods. *See supra* Part II.B. Its "inability" to adopt a new plan before April 20 was entirely "self-imposed" by its refusal to meet until May 4, *In re A.A.J.* at ¶ 13, and not at all "unforeseen," *State ex rel. DeWine* at ¶ 29. Instead

⁶ Petitioners acknowledge that the Court has previously expressed reservations concerning its power to set the date for a primary election. *See LWV IV* at ¶ 69. As outlined in their Objections, Petitioners respectfully submit that, in light of the certainty that a federal court will take action on May 28 to set a primary date and order an unconstitutional map absent action by this Court, *see infra* note 7, this Court should set a primary date itself in order to vindicate Ohioans' rights under Article XI.

⁷ If the state does *not* set a new primary date, shorten election deadlines, or take other steps to "conduct a primary in a timely fashion" under a constitutional map, then the federal court has already indicated its intention to intervene with an order on May 28. Order Granting Sec. Mot. for P.I., *Gonidakis v. LaRose*, Case No. 2:22-cv-00773, Dkt. No. 196 at 58 (S.D. Ohio April 20, 2022). As such, the Commission has no remotely plausible reason to refuse to adopt a constitutional map solely due to concerns about implementation; the federal court itself is the final, worst case scenario backstop.

of stonewalling past April 20, it could have instead adopted the plan created by its own independent map drawers, with final technical corrections made by Petitioners' expert Dr. Jonathan Rodden. *See supra* Part II.C. Or, if it didn't want to rely on Dr. Rodden's work, it could have verified and recreated that work in a matter of hours. *See* Pet'rs' Notice of Filing in Southern District of Ohio of Corrected Independent Map Drawers' Plan, Exhibit A, *Bennett v. Ohio Redistricting Comm.*, Case No. 2021-1198 (Apr. 12, 2022) (explaining that finalizing the Independent Map Drawers' Plan took "a matter of hours"). Again, the Commission purportedly pulled the plug on the independent map drawers' work in the first instance because it just ran out of time. *LWV IV* at ¶ 26-27. Its subsequent refusal to complete that work puts beyond all doubt that the majority Commissioners are instead purposefully sabotaging the Commission's work in pursuit of partisan gain.

Therefore, because neither the Commission as a whole nor the majority Respondents "t[ook] all reasonable steps within [their] power to comply with the court's order," they cannot raise "impossibility of compliance" as a defense. *Robinson* at ¶ 35. The Commission and its members cannot and should not be rewarded for their long delay with a free pass to adopt an already-invalidated plan. *Cf. London & Lancashire Indem. Co. of Am. v. Bd. of Comm'rs of Columbiana Cty.*, 107 Ohio St. 51, 64, 140 N.E. 672, 676 (1923) ("While, in certain instances, legal impossibility of performance is a defense to the performance of a contract, . . . such condition is implied only in those cases where performance has been rendered impossible without his fault and when the difficulties could not reasonably have been foreseen."); *City of Kettering v. Berger*, 4 Ohio App.3d 254, 448 N.E.2d. 458, 261-62 (2d Dist. 1982) ("The most memorable equitable maxim learned by every first-year law student is 'he who comes seeking equity must come with clean hands.' In order to have any standing to successfully assert an equitable defense,

i.e., laches, one must come with clean hands, and if he has violated conscience or good faith or has acted fraudulently, equitable release in defenses are not available to him.”).

2. The Commission’s purported limitation of the Third Plan to the 2022 election cycle does not validate its use.

The Commission purported to be adopting use of the already-invalidated Third Plan for only one election cycle. This doesn’t in any way justify or excuse the Commission’s noncompliance with the Court’s orders, and it is itself contrary to the constitutional reapportionment procedure. Article XI, Section 9(B) provides: “In the event that . . . any general assembly district plan made by the Ohio redistricting commission . . . is determined to be invalid by an unappealed final order of a court of competent jurisdiction then . . . the commission shall be reconstituted as provided in Section 1 of this article, convene, and ascertain and determine a general assembly district plan . . . to be used until *the next time for redistricting* under this article.” (emphasis added). The next earliest possible time for redistricting provided by Article XI is after “two general elections for the house of representatives have occurred under the plan”; *i.e.*, after November 2024. Ohio Constitution, Article XI, Section 8(C)(1)(a). Article XI provides no procedure by which the Commission can pass a plan for only one election cycle.⁸ Indeed, by passing a plan for only one election cycle, the Commission failed both to adopt an “entirely new plan” for 2022 *and* to adopt a plan for the rest of the decade (and, at the very least, 2024) entirely.

The Commission is undoubtedly under court order to adopt a constitutional plan to be used

⁸ Secretary LaRose faults Petitioners for “cit[ing] no authority for the proposition that under these circumstances, a stop-gap, one election map is impermissible.” Sec’y of State Frank LaRose’s Resp. to All Petitioners’ Objections to the Commission’s Re-Adoption of the Third Plan on May 5, 2022 at 21, *Bennett v. Ohio Redistricting Comm.*, Case No. 2021-1198 (May 9, 2022). Petitioners are happy to supply that authority—it is Article XI of the Ohio Constitution, which provides the Commission with no authority to pass a “stop gap, one election map.” It is curious that Secretary LaRose believes extraordinary circumstances might provide the *Commission* authority not explicitly provided in Article XI, but claims the *Court* cannot order implementation of a General Assembly Plan for similar reasons.

until at least 2025, and for the entire decade if it passes a plan with bipartisan support. The Court should make short work of Respondents' demands that the Court excuse their violation of its orders and allow them to remain in violation of those orders for months longer, deferring all further litigation until *after* the 2022 general election. See Resp'ts McColley and LaRe Response to Petitioners' Objections at 28-29, *Bennett v. Ohio Redistricting Comm.*, Case No. 2021-1198 (May 9, 2022); Commission's Resp. to Petitioners' Objections at 8, *Bennett v. Ohio Redistricting Comm.*, Case No. 2021-1198 (May 9, 2022). Their reasons for requesting this many months-long delay in the adoption of constitutional maps are transparently pretextual. The current Commission is comprised of each legislative caucus's appointees and the statewide members that Ohioans voted for to draw state legislative maps. These are the officials the Constitution mandates serve on the Commission to adopt a plan that will be in place for at least the 2022 and 2024 election cycles. See *generally* Ohio Constitution, Article XI, Section 1. Waiting out another election cycle for new appointments to the Commission (and after the November election for seats on this Court) is outside the constitutional structure, and there is no provision of Article XI that excuses the current Commissioners from doing their duty—especially when it was their own repeated passage of blatantly unconstitutional maps that extended the process into election season. And though “the possibility of delayed justice must be balanced against the principles of judicial economy,” *State v. Powell*, 2019-Ohio-4286, 148 N.E.3d 51, ¶ 41 (6th Dist.), here, both factors weigh in the same direction. This Court can and should use all remedial tools at its disposal as soon as possible to break the continuous cycle of lawlessness and wasted resources being perpetuated by the Commission. Indeed, the voters will be more confused by the Commission's continued inaction than, at long last, the passage of a constitutional plan.

3. The adoption of a constitutional map is not foreclosed by *Purcell*.

In response to Petitioners' Objections, Respondents Senator McColley and Representative

LaRe invoke *Purcell*, arguing that federal law prohibits this Court’s intervention prior to the 2022 election. This invocation of *Purcell* misses the mark. As New York’s highest court made clear just recently, *Purcell* is a creation of the federal judiciary meant to encourage federal courts to show deference to state authorities near an election. *Harkenrider v. Hochul*, 2022 NY Slip Op. 02833, at 28 n.16 (N.Y. Apr. 27, 2022) (*Purcell* “does not limit state judicial authority where, as here, a state court must intervene to remedy violations of the State Constitution”).⁹ The U.S. Supreme Court cases applying *Purcell* have exclusively concerned federal courts’ power. *See, e.g., Moore v. Harper*, No. 21A455, 595 U.S. ____ (Kavanaugh, J. concurring); *Merrill v. Milligan*, 142 S. Ct. at 880 (Kavanaugh, J., concurring); *Andino v. Middleton*, 141 S. Ct. 9, 10 (2020) (Kavanaugh, J., concurring) (“This Court has repeatedly emphasized that *federal courts* ordinarily should not alter *state election rules* in the period close to an election.”) (emphasis added); *Merrill v. People First of Ala.*, 141 S. Ct. 190 (2020); *Clarno v. People Not Politicians*, 141 S. Ct. 206 (2020); *Little v. Reclaim Idaho*, 140 S. Ct. 2616 (2020); *Republican Nat’l Comm. v. Democratic Nat’l Comm.*, 140 S. Ct. 1205 (2020) (per curiam); *Democratic Nat’l Comm. v. Wisc. State Legislature*, 141 S. Ct. 28 (2020) (declining to vacate stay); *Benisek v. Lamone*, 138 S. Ct. 1942 (2018) (per curiam); *Veasey v. Perry*, 574 U.S. 951 (2014); *Purcell v. Gonzalez*, 549 U.S. 1, 4-5 (2006). And, save for one lower court in a case involving very different circumstances than those here, Ohio courts have never applied *Purcell*. *See Ohio Democratic Party v. LaRose*, 2020-Ohio-4664, ¶ 82, 159 N.E.3d

⁹ Respondents disagree, speculating that were the issue to come before the U.S. Supreme Court, the U.S. Supreme Court would conclude that *Purcell* has equal application in the context of state courts applying state constitutions. Respondents offer no authority in support of this proposition, save for citation to a 4-4 split decision on an application for an emergency stay. *See* Resp’ts McColley and LaRe Response to Petitioners’ Objections at 20-21, *Bennett v. Ohio Redistricting Comm.*, Case No. 2021-1198 (May 9, 2022), citing *Republican Party of Pa. v. Boockvar*, 141 S. Ct. 643 (2020). Setting aside the lack of a written opinion accompanying the order, it plainly tells this Court nothing about *Purcell*’s applicability, since a majority of the Court did not rule in favor of one party or the other.

852, 879 (reversing injunction granted within weeks of general election where there was ample evidence of injunction “disrupt[ing]” status quo and posing safety risk and administration problems). *Purcell* neither concerns nor binds this Court. It is inapplicable.

C. This Court should order Respondents to show cause, schedule a hearing, and order all remedies that it deems appropriate.

It cannot be disputed that the Commission knowingly violated the Court’s orders by voting to resubmit a plan already adjudicated to be unconstitutional. Because the Commission’s ongoing violation of the Court’s orders is depriving Petitioners and every other Ohio voter of their right to vote in constitutional General Assembly districts, this Court should require Respondents to show cause for their failure to follow this Court’s order in person on the earliest possible date. If the Court finds that Respondents’ explanation for why the Commission did not adopt a constitutionally compliant plan is inadequate, then it should direct Respondents to take further action to comply with the Court’s order and take specific steps to ensure their compliance. Namely, in addition to any other measures the Court deems appropriate, the Court should (a) require Respondents to begin meeting immediately and daily, (b) find the Commission and, as the Court deems appropriate, individual Respondents, in contempt pursuant to R.C. 2705 and its inherent contempt power, and (c) conditionally award Petitioners’ attorneys’ fees pursuant to a finding of bad faith and/or under R.C. 2323.51, as to all fees incurred in this litigation subsequent to the Court’s initial January 13 Opinion in this matter, but (d) order that contempt may be purged and the fee award rescinded if the Commission adopts a plan no later than May 13 that is either unchallenged by Petitioners or found to be valid by this Court. Any fees issued against the Commission may be issued against its members jointly or severally, or apportioned between Respondents as the Court deems appropriate.

Finally, as set forth in Petitioners’ earlier-filed Objections, if the Commission does not adopt a constitutional plan by May 13, then this Court should order implementation of a

constitutional General Assembly plan for a 2022 primary election, such as the Corrected Independent Map Drawers' Plan that was submitted to this Court on April 12, 2022, adjust appropriate election-related deadlines, and retain jurisdiction over the Commission's continued efforts to enact a valid plan for future election cycles. *See* Pet'rs' Objections to the Already-Invalidated February 24, 2022 Plan, Re-Adopted on May 5, 2022, and Request for Immediate Relief, *Bennett v. Ohio Redistricting Comm.*, Case No. 2021-1198 (May 6, 2022); Pet'rs' Notice of Filing in Southern District of Ohio of Corrected Independent Map Drawers' Plan, *Bennett v. Ohio Redistricting Comm.*, Case No. 2021-1198 (Apr. 12, 2022).¹⁰ This case should have been over months ago with the adoption of a constitutional General Assembly Plan. Instead, the Commission is continuing to violate Petitioners' constitutional rights as it attempts to stonewall long enough to secure use of a plan that unduly advantages the majority party.

¹⁰ In their responses filed on May 9, Respondents argue, incorrectly, that the precedent offered by Petitioners in support of this remedy is inapplicable. The cases are in fact squarely on point. Respondents claim that "*Bodyke* and *Russell* are distinguishable because the powers under Article XI, Section 9 have not been taken away from the Court," because "[t]he Court continues to have discretion to invalidate a legislative plan adopted by the Commission." Resp'ts McColley and LaRe Response to Petitioners' Objections at 27, *Bennett v. Ohio Redistricting Comm.*, Case No. 2021-1198 (May 9, 2022). To the contrary, the Commission has effectively nullified this Court's "exclusive, original jurisdiction in all cases arising under" Article XI. *See* Ohio Constitution, Article XI, Section 9(A). The Commission's adoption, for use in the 2022 elections, of a state legislative plan that this Court has already declared unconstitutional, while the Commission was under order to adopt a constitutional plan, effectively requires this Court to "to treat as valid laws those which are unconstitutional." *State v. Bodyke*, 126 Ohio St.3d 266, 2010-Ohio-2424, 933 N.E.2d 753, ¶ 51; *see also id.* at ¶ 56 ("There is no exception to the rule that the final judgments may not be legislatively annulled [sic] in situations where the Legislature has enacted new legislation." (citation omitted)); *State ex rel. Bray v. Russell*, 89 Ohio St.3d 132, 134 (729 N.E.2d 359 (2000) (explaining that no branch "ought to possess directly or indirectly an overruling influence over the others"). Allowing the re-adopted Third Plan to be used for the 2022 elections would be like allowing the General Assembly to re-adopt the tort-related legislation invalidated in *State ex rel. Ohio Academy of Trial Lawyers v. Sheward*, 86 Ohio St.3d 451, 467, 715 N.E. 1062 (1999).

D. Respondents' arguments against this Court's authority to hold them in contempt have no merit.

In previous filings, Respondents have baselessly argued that this Court does not have the power to hold them in contempt. *See, e.g.,* Responses to the February 18, 2022 Show Cause Order, *Bennett v. Ohio Redistricting Comm.*, Case No. 2021-1198 (Feb, 23, 2022). Primarily, they have asserted that separation of powers principles counsel against a finding of contempt and that Commission members are not only unaccountable for the actions of the Commission as whole, but shielded from liability by legislative immunity. That is to say, Respondents argue that the Court is powerless to enforce Article XI because the Commission can disregard the Court's orders with impunity. Respondents are wrong.

1. A finding of contempt would not violate the separation of powers doctrine.

First, background principles like separation of powers do not operate to shield bodies acting in a legislative capacity when the authority being exercised is used to subvert state constitutional law. Equally important is the state's system of checks and balances, and in particular, this Court's authority to conduct judicial review. *State v. Thompson*, 2001-Ohio-1288, 92 Ohio St. 3d 584, 586, 752 N.E.2d 276, 279 ("The purpose of the separation-of-powers doctrine is to create a system of checks and balances so that each branch maintains its integrity and independence."). Fundamental to the system of checks and balances and separation of powers is the idea that "the judicial branch is the final arbiter in interpreting the constitution and that the [legislature] may not enter upon the judicial business of settling the constitutionality of its own laws, disregard a Supreme Court decision on the subject, reenact legislation previously declared violative of the Constitution, or in any other way exercise, direct, control, or encroach upon the judicial power." *State ex rel. Ohio Academy of Trial Lawyers v. Sheward*, 86 Ohio St.3d 451, 467, 715 N.E.2d 1062 (1999).

The Commission does not have unreviewable authority to pass unconstitutional laws and undermine the integrity of the Commission, the constitution, and this Court. Contempt is a routine and necessary exercise of the court's inherent authority to enforce its own judgments, and one which advances separation-of-powers principles. By contrast, allowing the Commission take actions in direct contravention of the constitution and orders of this Court with complete impunity undermines the separation of powers by arrogating to the Commission the judicial power to be the final arbiter of the constitutionality of its own enactments *See Bartlett v. State*, 73 Ohio St. 54, 58, 75 N.E. 939 (1905) (explaining that the General Assembly cannot require the courts "to treat as valid laws those which are unconstitutional" because "[i]f this could be permitted, the whole power of the government would at once become absorbed and taken into itself by the Legislature"). This would be anathema to the Ohio Constitution's carefully constructed system of government. As this Court has stated, "[t]here is no question that the administration of justice by the judicial branch of the government may not be impeded by the other branches of government in the exercise of its powers." *State ex rel. Edwards v. Murray*, 48 Ohio St. 2d 303, 304, 358 N.E.2d 577, 578 (1976).

The cases previously cited by Respondents on this topic are not to the contrary. *Toledo v. State* bears little resemblance to the case at bar. 154 Ohio St.3d 41, 2018-Ohio-2358. In that case, after a common pleas court struck down a statute approved by the General Assembly and enjoined its enforcement, the General Assembly passed a new, related, piece of legislation which plaintiffs argued violated the original injunction. *Id.* at ¶ 9. This Court held that contempt was not warranted in the circumstances, because the injunction "did not clearly, definitively, and unambiguously prohibit the General Assembly" from passing the legislation in question, but rather barred enforcement of the legislation already struck down. *Id.* at ¶ 24. The Court also noted that such an injunction, were it to have been issued, would have violated separation-of-powers principles

because the judiciary cannot enjoin “the legislative branch of government from enacting laws.” *Id.* at ¶ 25. Here, the Court issued a clear order that falls far afield of the *Toledo* Court’s dicta. The Commission is constitutionally mandated to enact a plan that complies with Article XI, and this Court is constitutionally authorized to review such plans and issue orders to the Commission. *See* Article XI, Section 9. The *LWV IV* order carried out this constitutional structure: “We further order the commission to be reconstituted, to convene, and to draft and adopt an *entirely new* General Assembly–district plan that meets the requirements of the Ohio Constitution, including Article XI, Sections 6(A) and 6(B) *as we have explained those provisions in each of our four decisions in these cases.*” *LWV IV*, at ¶ 78 (emphasis added). The threat to separation powers is not the Court taking basic steps to enforce its orders: It is the Commission ignoring its constitutional responsibilities and readopting a plan already invalidated by this Court. Because Respondents plainly violated the Court’s orders, contempt is appropriate.

2. Individual Commissioners are responsible for the Commission’s actions and can be held in contempt.

Respondents are also likely to argue that they cannot be held responsible individually when this Court directed its orders toward the Commission. At the outset, Respondents cite no authority for the proposition that contempt will not lie when the would-be contemnor is not expressly the subject of a court order. In fact, Ohio courts have long recognized courts’ power to hold in contempt anyone—nonparties included—who with notice of a court order takes actions in defiance of the order. *See, e.g., State ex rel. DeWine v. C&D Disposal Technologies*, 2016-Ohio-476, 58 N.E.3d 614, ¶ 21 (7th Dist. 2016) (affirming contempt as to nonparty who with knowledge of order failed to take action to ensure compliance with the order); *State ex rel. Rogers v. Republic Env’tl Sys., Inc.*, 2010-Ohio-5523 ¶ 51 (2d Dist. 2010) (affirming contempt as to nonparty for failure to comply with consent decree where nonparty was “in active concert or participation with” the parties to the

action and evinced an intent to be bound by the consent decree); *Advantage Bank v. Waldo Pub., L.L.C.*, 3d Dist. Marion No. 9-08-67, 2009 WL 1664781, *4-7 (June 15, 2009) (affirming trial court's finding of contempt against individual "if it found that she had knowledge of the trial court's order and encouraged or participated in violating the order" despite not being a party to the action and never being personally ordered to perform any action by the court); *State ex rel. Turner v. Albin*, 118 Ohio St. 527, 532, 151 N.E. 792 (1928) (holding in contempt students who conspired with a former employee of the court to cheat on the bar exam, even where "the acts alleged in the instant cases were not committed in the course of pending litigation and have not resulted in injustice to any litigant in any cause . . ." because contempt was necessary to "vindicate the dignity and preserve the authority of the court"); *see also Elec. Workers Pension Trust Fund of Local Union 58, IBEW v. Gary's Elec. Serv. Co.*, 340 F.3d 373, 382 (6th Cir. 2003) ("whether or not [contemnor] was a named defendant in the order, or even mentioned at all, is not controlling" with regard to whether contemnor could be held in contempt).

South Euclid Fraternal Order of Police v. D'Amico, is not to the contrary. 29 Ohio St.3d 50, 505 N.E.2d 268 (1987). In that case, the Court determined that contempt was not appropriate absent an order "expressly directing the defendants to do, or refrain from doing, a particular thing or things." *Id.* at 52. Here, by contrast, the Court expressly directed the Commission to adopt a new General Assembly plan that complies with Article XI and the orders of this Court. That necessarily is an order that the Commissioners who make up the Commission take action to adopt a new plan.

Holding individual members of a larger body responsible for their obstruction of that body's compliance with a court order is nothing new. Cases in the corporate context are especially instructive on this point.

A command to the corporation is in effect a command to those who are officially responsible for the conduct of its affairs. If they, apprised of the writ directed to the corporation, prevent compliance or fail to take appropriate action within their power for the performance of the corporate duty, they, no less than the corporation itself, are guilty of disobedience, and may be punished for contempt.

Advantage Bank, 2009 WL 1664781, at *7 (quoting *Wilson v. United States*, 221 U.S. 361, 376, 31 S. Ct. 538, 55 L. Ed. 771 (1911) (collecting cases)). That the Commission is a public body, while a corporation is a private one, is a distinction without a difference: When a court commands action from an entity composed of individuals, compliance can only be achieved through the individuals themselves. This is so regardless of whether the body in question is established by the Ohio Constitution or by articles of incorporation. And although it is true that Commissioners individually cannot adopt General Assembly plans, a majority of Respondents did not “take all reasonable steps within [their] power to comply with the court’s order” and thus cannot raise “impossibility of compliance” as a defense. *Robinson* at ¶ 35.

3. Legislative immunity does not bar contempt.

Finally, Respondents will again repeat arguments that they cannot be held in contempt under the doctrine of legislative immunity. Even assuming that the functions performed by the Commissioners can be fairly characterized as “legislative,” Respondents have cited no case suggesting that this immunity stands as a bar to contempt. On the contrary, several Ohio cases have held legislators in contempt for the performance of legislative functions when done in flagrant defiance of court orders. *State ex rel. Edwards v. Murray*, 48 Ohio St. 2d 303, 304, 358 N.E.2d 577, 578 (1976) (“Where the basic function of a court . . . is impeded by a failure or refusal of the body responsible to provide a necessary appropriation, that court possesses the inherent power to order such appropriation and to enforce its order by contempt proceedings.”); *State ex rel. Turner v. Vill. of Bremen*, 118 Ohio St. 639, 639-40, 163 N.E. 302 (1928) (holding village councilmembers

in contempt where they ignored a writ of mandamus issued by the court); *State ex rel. Bd. of Cty. Comm'rs of Cuyahoga Co. v. Juv. Div. of Ct. of Common Pleas of Cuyahoga Cty.*, 54 Ohio St. 2d 113, 113-14, 374 N.E.2d 1369, 1369-70 (1978) (holding that the trial court had jurisdiction to proceed in a contempt action against county commissioners for failure to appropriate funds necessary for the court's operation); *Forsythe v. Winans*, 44 Ohio St. 277, 7 N.E. 13 (1886) (holding in contempt members of city council who violated injunction).

None of the cases that Respondents have cited undermine this point. *Hicksville v. Blakeslee*, 103 Ohio St. 508, 517 (1921), concerned the issue of whether a village council's enactment of legislation in the first instance (i.e., before the legislation had been declared unconstitutional by a court) could subject legislators to individual liability. Here, by contrast, Petitioners do not seek to hold Respondents individually liable for approving a plan in the first instance.¹¹ Instead, the Court has already ordered the enactment of an entirely new plan that complies with Article XI and its previous opinions, and Respondents have done the just opposite. Stated otherwise, Petitioners' concern with the Commission's action here is not merely that it is unconstitutional (as was the case in *Hicksville*), it is that the Commission has directly violated a prior order of this Court. What's more, the *Hicksville* court's formulation of legislative immunity rests on an understanding that the legislators in question have acted in "good faith." *Id.* at 508 (syllabus) ("The members of a municipal council, *when acting in good faith*, are exempt from individual liability for the exercise of their legislative discretion in voting, as such members of

¹¹ Indeed, Petitioners did not seek to have Respondents held in contempt when they passed an unconstitutional plan for the second time back in February either. Petitioners did not raise the issue of contempt until Respondents' ongoing refusal to pass a constitutional plan (or, in the case of Petitioners' first show-cause motion, any plan at all) had progressed to a point where Petitioners could no longer, even with the utmost charity, construe Respondents' conduct as good faith confusion over what Article XI required.

council, for or against any proposed legislation before them for consideration.”) (emphasis added); *Id.* at 519 (“We see no reason for applying a different rule to a municipal legislator, who, in good faith, exercises his discretion in voting for a resolution void because of legislative limitations upon his power, than is applied to a state legislator exercising his discretion in voting for a statute void by reason of a constitutional limitation upon his power”). Here, Respondents’ actions were not in good faith: After passing four prior unconstitutional plans and refusing to allow the Commission to be convened for weeks, Respondents adopted a redistricting plan already declared invalid by this court, in direct contravention of this Court’s orders.

E. This Court should award Petitioners their reasonable attorneys’ fees.

The same reasons that support a finding of contempt also support findings that the Commission engaged in frivolous conduct in violation of R.C. 2323.51 and acted in bad faith—both of which authorize an award of Petitioners’ reasonable attorneys’ fees. To award attorneys’ fees under R.C. 2323.51(B)(2), a court must first schedule a hearing, give notice of the hearing, and allow the parties to present evidence. Petitioners respectfully request that the Court conduct the hearing required by R.C. 2323.51 at the same time as the contempt proceeding requested above. And while the Court does not have to hold a hearing to make a finding that the Commission acted in bad faith, the Court, if it conducts the requested hearing on contempt and/or frivolous conduct, should defer its decision on bad faith until after holding such hearing.

V. Conclusion

For the foregoing reasons, Petitioners respectfully request that this Court order Respondents to show cause, at a hearing set at the earliest possible date, why they should not be held in contempt for failure to comply with this Court’s April 14 Order. Furthermore, the Court should issue any other remedies it deems appropriate and necessary, including awarding

Petitioners' reasonable attorneys' fees, to ensure that Ohioans are able to vote under a constitutional General Assembly plan this year and throughout the rest of the decade.

The Court has understandably stayed its hand in this regard as long as possible. If Article XI, and the commitment to fair districts it embodies, is to be given any force, the Court must act now.

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Dated: May 10, 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)

Harleen K. Gambhir (PHV 25587-2022)

Raisa M. Cramer (PHV 25880-2022)

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

hgambhir@elias.law

rcramer@elias.law

Counsel for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was sent via email this 10th day of May, 2022 to the following:

Dave Yost
OHIO ATTORNEY GENERAL

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

Special Counsel to Attorney General Dave Yost

Counsel for Respondent The Ohio Redistricting Commission

Dave Yost
OHIO ATTORNEY GENERAL

Julie M. Pfeiffer (0069762)
Jonathan D. Blanton (0070035)
Deputy Attorney General
Michael A. Walton (0092201)
Michael J. Hendershot (0081842)
Deputy Solicitor
OFFICE OF THE OHIO ATTORNEY GENERAL
30 E. Broad Street, 16th Floor
Columbus, Ohio 43215
T: (614) 466-2872
F: (614) 782-7592
Julie.Pfeiffer@OhioAGO.gov
Michael.Walton@OhioAGO.gov
Michael.Hendershot@OhioAGO.gov
Jonathan.Blanton@ohioAGO.gov

David A. Lockshaw, Jr. (0082403)
Terrence O'Donnell (0074213)
Manuel D. Cardona (0098079)
DICKINSON WRIGHT, PLLC
180 East Broad Street, Suite 3400

Columbus, Ohio 43215
T: (614) 744-2570
F: (844) 670-6009
dlockshaw@dickinson-wright.com
todonnell@dickinson-wright.com
mcardona@dickinson-wright.com

Special Counsel to Attorney General Dave Yost

Counsel for Respondent Secretary of State Frank LaRose

John W. Zeiger (0010707)
Marion H. Little, Jr. (0042679)
Christopher J. Hogan (0079829)
ZEIGER, TIGGES & LITTLE LLP
3500 Huntington Center
41 South High Street
Columbus, Ohio 43215
T: (614) 365-9900
zeiger@litohio.com
little@litohio.com

Counsel for Respondent Governor Mike DeWine

Brodi J. Conover (0092082)
BRICKER & ECKLER LLP
2 East Mulberry Street
Lebanon, Ohio 45036
T: (513) 670-6693
F: (513) 670-0999
bconover@bricker.com

Anne Marie Sferra (0030855)
BRICKER & ECKLER LLP
100 South Third Street
Columbus, Ohio 43215
T: (614) 227-2300
F: (614) 227-2390
asferra@bricker.com

Counsel for Respondent Auditor of State 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, House Speaker Robert Cupp,
Senator Robert McColley, and Representative Jeffrey LaRe*

C. Benjamin Cooper (0093103)
Charles H. Cooper, Jr. (0037295)
Chelsea C. Weaver (0096850)
COOPER & ELLIOTT, LLC
305 West Nationwide Boulevard
Columbus, Ohio 43215
T: (614) 481-6000
benc@cooperelliott.com
chipc@cooperelliott.com
chelseaw@cooperelliott.com

*Counsel for Respondents Senator Vernon Sykes and House Minority Leader Allison
Russo*

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

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]*

EXHIBITS TO PETITIONERS' MOTION FOR AN ORDER DIRECTING
RESPONDENTS TO SHOW CAUSE, MOTION TO SCHEDULE CONTEMPT
HEARING, AND MOTION FOR ATTORNEYS' FEES

RETRIEVED FROM DEMOCRACYDOCKET.COM

Affidavit of Derek S. Clinger

I, Derek S. Clinger, having been duly sworn and cautioned according to law, hereby state that I am over the age of eighteen years and am competent to testify as to the facts set forth below based on my personal knowledge and having personally examined all records referenced in this affidavit, and further state as follows:

1. I am one of the attorneys for Petitioners in the above-captioned matter, Case No. 2021-1198.
2. Document 1 is a true and correct copy of the transcript of the Ohio Redistricting Commission's May 4, 2022 meeting from the Ohio Redistricting Commission's website, <https://redistricting.ohio.gov/meetings>.
3. Document 2 is a true and correct copy of the transcript of the Ohio Redistricting Commission's May 5, 2022 meeting from the Ohio Redistricting Commission's website, <https://redistricting.ohio.gov/meetings>.
4. Document 3 is a true and correct copy of a tweet from reporter Josh Rultenberg (@JoshRultNews) on April 25, 2022 at 10:27 AM, <https://twitter.com/joshrultnews/status/1518597481000423426?s=21&t=a9oo2LkbAbFuaJlasoGlrq>.
5. Document 4 is a true and correct copy of an article in The Vindicator titled "Cupp: New Set of Maps is in the Works," first published on April 26, 2022 and available at <https://www.vindy.com/news/local-news/2022/04/cupp-new-set-of-maps-is-in-works/>.
6. Document 5 is a true and correct copy of an April 27, 2022 letter from Ohio House Speaker Bob Cupp to Ohio House Minority Leader Allison Russo.
7. Document 6 is a true and correct copy of a tweet from reporter Josh Rultenberg (@JoshRultNews) on April 27, 2022 at 1:44 PM, <https://twitter.com/joshrultnews/status/1519371864413511680?s=21&t=bhyuf1CiM4NfIJ9x-v3p8Q>.
8. Document 7 is a true and correct copy of an April 28, 2022 letter from Ohio House Speaker Bob Cupp to Ohio State Senator Vernon Sykes.
9. Document 8 is a true and correct copy of an April 28, 2022 letter from Ohio State Senator Vernon Sykes to Ohio House Speaker Bob Cupp.
10. Document 9 is a true and correct copy of the Ohio Redistricting Commission's Announcement of a May 4, 2022 Commission Meeting from the Ohio Redistricting Commission's website, <https://redistricting.ohio.gov/meetings>.
11. Document 10 is a true and correct copy of a tweet from reporter Susan Tebben (@susantebben) on April 28, 2022 at 4:40 PM,

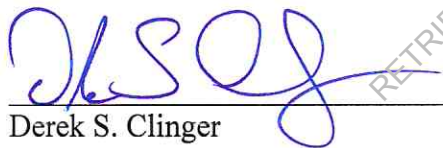
<https://twitter.com/susantebben/status/1519778517889818626?s=20&t=rVUR-gaYVUBjmTpVWmN2fw>.

12. Document 11 is a true and correct copy of an April 29, 2022 letter from Ohio Secretary of State Frank LaRose to the other members of the Ohio Redistricting Commission.
13. Document 12 is a true and correct copy of a tweet from reporter Josh Rultenberg (@JoshRultNews) on May 3, 2022 at 4:07 PM, <https://twitter.com/joshrultnews/status/1521582266283089921?s=21&t=fUtEokPMhZjon2q4fVUY2w>.
14. Document 13 is a true and correct copy of the Ohio Redistricting Commission's May 4, 2022 Meeting Agenda from the Ohio Redistricting Commission's website, <https://redistricting.ohio.gov/meetings>.
15. Document 14 is a true and correct copy of the Ohio Redistricting Commission's Announcement of a May 5, 2022 Commission Meeting from the Ohio Redistricting Commission's website, <https://redistricting.ohio.gov/meetings>.
16. Document 15 is a true and correct copy of the May 4, 2022 Letter from Bennett Petitioners from the Ohio Redistricting Commission's website, <https://www.redistricting.ohio.gov/maps>.
17. Document 16 is a true and correct copy of Secretary Frank LaRose's May 5, 2022 Statement to the Commission from the Ohio Redistricting Commission's website, <https://redistricting.ohio.gov/meetings>.
18. Document 17 is a true and correct copy of an April 18, 2022 letter from Ohio State Senator Vernon Sykes and Ohio House Minority Leader Allison Russo to the other members of the Ohio Redistricting Commission.
19. Document 18 is a true and correct copy of an April 22, 2022 letter from Ohio State Senator Vernon Sykes and Ohio House Minority Leader Allison Russo to the other members of the Ohio Redistricting Commission.
20. The following table gives a description of each document and states where it appears in this volume of exhibits:

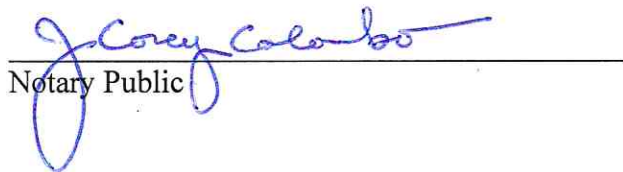
<u>ITEM</u>	<u>DESCRIPTION</u>	<u>BATES RANGE</u>
1	Transcript of Commission's 5/4/22 Meeting	BENNETT_001- BENNETT_020
2	Transcript of Commission's 5/5/22 Meeting	BENNETT_021- BENNETT_033
3	April 25, 2022, 10:27 AM Tweet by Josh Rultenberg	BENNETT_034
4	Lily Nickel, "Cupp: New Set of Maps is in the Works," The Vindicator (Apr. 26, 2022)	BENNETT_035- BENNETT_038
5	Speaker Cupp's April 27, 2022 Letter to Leader Russo	BENNETT_039
6	April 27, 2022, 1:44 PM Tweet by Josh Rultenberg	BENNETT_040

7	Speaker Cupp's April 28, 2022 Letter to Senator Sykes	BENNETT_041- BENNETT_042
8	Senator Sykes' April 28, 2022 Letter to Speaker Cupp	BENNETT_043
9	Ohio Redistricting Commission's Announcement of a May 4, 2022 Commission Meeting	BENNETT_044-
10	April 28, 2022, 4:40 PM Tweet by Susan Tebben	BENNETT_045
11	Secretary LaRose's April 29, 2022 Letter to Other Ohio Redistricting Commission Members	BENNETT_046- BENNETT_047
12	May 3, 2022, 4:07 PM Tweet by Josh Rultenberg	BENNETT_048
13	Ohio Redistricting Commission's May 4, 2022 Meeting Agenda	BENNETT_049
14	Ohio Redistricting Commission's Announcement of a May 5, 2022 Commission Meeting	BENNETT_050
15	May 4, 2022 Letter from Bennett Petitioners	BENNETT_051- BENNETT_054
16	Secretary Frank LaRose's May 5, 2022 Statement to the Commission	BENNETT_055- BENNETT_056
17	Sykes-Russo's April 18, 2022 Letter to Other Ohio Redistricting Commission Members	BENNETT_057
18	Sykes-Russo's April 22, 2022 Letter to Other Ohio Redistricting Commission Members	BENNETT_058

FURTHER SAYETH AFFIANT NAUGHT.


Derek S. Clinger

Sworn to and subscribed before me this 9th day of May, 2022.


Notary Public



JOHN COREY COLOMBO
Attorney at Law
Notary Public, State of Ohio
My Commission Has No Expiration
Section 147.03 R.C.

Ohio Redistricting Commission - 5-4-2022

<http://ohiochannel.org/video/ohio-redistricting-commission-5-4-2022>

Speaker Bob Cupp [00:00:00] A meeting of the Ohio Redistricting Commission will now come to order. I would note before we get into the roll call that we have some letters of appointment in your file and I'll just make note of them for the record. One from Senator Huffman, President of the Senate, appointing Senator Robert McColley in lieu of the Senate president's service on the commission. We have a second one from myself as speaker of the House, appointing Representative Jeff LaRe in lieu of my service on the commission. We have then a two letters, one from the President of the Senate and one from the speaker of the House, designating Jeff LaRe as the one of the co-chairs of the commission. So at this point, I would call upon the governor to administer the oath.

Gov. Mike DeWine [00:01:09] Please raise your right hand. Repeat after me. I , state your name.

Sen. Rob McColley [00:01:13] I, Rob McColley.

Rep. Jeff LaRe [00:01:13] I, Jeff LaRe.

Gov. Mike DeWine [00:01:13] Do solemnly swear.

Sen. Rob McColley & Rep. Jeff LaRe [00:01:14] Do solemnly swear.

Gov. Mike DeWine [00:01:14] To support the Constitution of the United States.

Sen. Rob McColley & Rep. Jeff LaRe [00:01:18] To support the Constitution of the United States.

Gov. Mike DeWine [00:01:22] The Constitution of the State of Ohio.

Sen. Rob McColley & Rep. Jeff LaRe [00:01:23] The Constitution of the State of Ohio.

Gov. Mike DeWine [00:01:24] And to faithfully discharge the duties of the office.

Sen. Rob McColley & Rep. Jeff LaRe [00:01:26] And faithfully discharge the duties of the office.

Gov. Mike DeWine [00:01:29] As a member of the Ohio Redistricting Commission.

Sen. Rob McColley & Rep. Jeff LaRe [00:01:30] As a member of the Ohio Redistricting Commission.

Gov. Mike DeWine [00:01:31] On which I serve.

Sen. Rob McColley & Rep. Jeff LaRe [00:01:32] On which I serve.

Gov. Mike DeWine [00:01:35] Pursuant to Article 11.

Sen. Rob McColley & Rep. Jeff LaRe [00:01:39] Pursuant to Article 11.

Gov. Mike DeWine [00:01:39] Section 1 of the Ohio Constitution.

Sen. Rob McColley & Rep. Jeff LaRe [00:01:39] Section 1 of the Ohio Constitution.

Gov. Mike DeWine [00:01:39] This I shall do as I shall answer unto God.

Sen. Rob McColley & Rep. Jeff LaRe [00:01:39] This I shall do as I shall answer unto God.

Gov. Mike DeWine [00:01:50] Congratulations.

Speaker Bob Cupp [00:01:50] Having been duly appointed and sworn in, I would now ask Representative LaRe, co-chair, to continue with presiding over the meeting today.
Co-Chair.

Co-Chair Rep. Jeff LaRe [00:02:35] Will the staff please call the roll.

Speaker 6 [00:02:38] Co-Chair, LaRe.

Co-Chair Rep. Jeff LaRe [00:02:40] Here.

Staff [00:02:41] Co-Chair Sykes.

Co-Chair Sen. Vernon Sykes [00:02:43] Here.

Staff [00:02:44] Governor DeWine.

Gov. Mike DeWine [00:02:46] Here.

Staff [00:02:46] Auditor Faber.

Auditor Keith Faber [00:02:46] Present.

Staff [00:02:46] Secretary LaRose.

Secretary of State Frank LaRose [00:02:48] Here.

Staff [00:02:48] Senator McColley.

Sen. Rob McColley [00:02:51] Here.

Staff [00:02:51] Leader Russo.

House Minority Leader Allison Russo [00:02:51] Here.

Co-Chair Rep. Jeff LaRe [00:02:55] With a quorum present will meet as a full committee. Members can find the minutes from the last meeting on March 28th in their folders. Do I have a motion to accept the minutes?

Co-Chair Sen. Vernon Sykes [00:03:04] So moved.

Co-Chair Rep. Jeff LaRe [00:03:06] Are there any objection or amendments to the minutes? Hearing none. The minutes are accepted. At this time, we'll move the discussion

to the allocation of funds to further work, for the further work of the Commission.
Representative Russo.

House Minority Leader Allison Russo [00:03:24] Thank you. Thank you. Co-Chair. Welcome to this illustrious committee. We are glad to have you here. I make a motion to adopt a resolution asking the legislative task force to approve the funds requested by the Democratic commissioners, specifically the allocation of funds that I have requested specifically. Specifically, I move that the Commission or I urge or specifically request of the Commission urge the Legislative Task Force on redistricting, of which I am co-chair, to approve funding for the caucuses so that the Democratic members of the Commission have the resources and professional expertise needed to perform their constitutional duties. As a reminder, we rely on a consultant to be able to help us with the mapmaking process. We also have a licensure software licensure as well as the licensure or the software support that need to be renewed. The last allocation of which we have not spent all of the allocation, but it expired on March 4th. So we do need to at least extend that so that we can continue to have the support that we need to continue with this process. And I would hope that this commission would be supportive of all of our members having the resources necessary to do our constitutional duties.

Co-Chair Sen. Vernon Sykes [00:04:59] I second the motion.

Co-Chair Rep. Jeff LaRe [00:05:03] Representative McColley or Senator McColley.

Sen. Rob McColley [00:05:06] Thank you, Chairman. Those of you who are on the commission probably know that Leader Russo is one of the co-chairs of the Legislative Task Force on Redistricting, and I am the other co-chair. I did receive a letter from Leader Russo regarding her funding request, and I believe all of you have also received a letter that was drafted by Speaker Cupp subsequent to that request, and I sent a letter back to her that I believe you also have all received as well, detailing some concerns that we have with some of the spending out of the allocations that have been made to the Democratic Caucus. And I really am just looking for an explanation, primarily just in our effort to exercise due diligence and transparency with some of these expenditures. And so primarily just from following this process, I think anybody would understand that Mr. Glassburn has been the Democrat map maker since the beginning of this process, or at least the primary Democrat map maker. And in reviewing some of the expenditures, it has an interesting pattern of payments being made that from first glance can't really be explained very well. It appears there were payments made September through December of what appears to be his his normal monthly retainer, his normal monthly fee of anywhere from \$13,000 to \$16,000. And then there were two payments in the month of February, and then a month later, in the month of March, that totaled \$58,500 and \$55,000. And the March payment was actually accompanied by a payment that seemed to be customary with what the monthly fees would appear to be, that being \$14,000 for a total of \$182,500 being spent. The Speaker had mentioned that in our duty to to exercise discretion over these funds, that it may not be a bad idea to to inquire as to the irregularity of those two payments that seem out of the ordinary course of business, and then to inquire as well about additional payments that were made totaling \$119,000 from August 20, August 20th, two payments made on October 20th and a payment made on December 2nd to Haystack DNA, which is a company out of Washington, D.C., that, best I can tell, focuses primarily on data analysis for political issue messaging, messaging and fundraising, and has had some involvement with redistricting efforts across the state, those payments totaling \$119,000. And so trying to get a little bit of an explanation what those what those funding numbers were, what that money went for, don't really have an issue with the monthly, what

appears to be the monthly payments to Mr. Glassburn. But primarily it's those two payments that seem to be out of the ordinary that I'm a little bit curious about.

Co-Chair Rep. Jeff LaRe [00:08:21] Representative Russo.

House Minority Leader Allison Russo [00:08:22] Thank you, co-chair. Thank you, Senator. Happy to answer some of those questions. So first, just to level set everyone, the Democratic caucus, we have been allocated a total of \$500,000 since this process began, of which we have spent \$354,000. Again, you know, we had originally requested that that allocation expire later than the date that I believe was changed by Senator McColley's office in some of our back and forth. And it was changed to expire on March 4th. So in total, the money that we originally allocated and approved has not been spent. In fact, we've got about \$145,000 left. I will also remind folks that the Democratic caucus and the money that we are spending to support our work on this commission goes through the task force. Unlike some of our other colleagues on the commission, where some of the consulting fees, for example, for outside mapmakers actually comes through some of the legal expenses. And that, of course, we can't get into detail. And I think there's been about \$600,000 of ours spent there, but we haven't been able to get details about how that has broken out. Also, as a reminder, we do not, at least for the House Democratic Caucus because of we have limited staff and limited payment to our staff. We are not able to reassign staff to this task and compensate them accordingly. So we have to go to these outside consultants. But specifically, your questions about Mr. Glassburn. As a reminder, Mr. Glassburn, at the beginning of this process, was only in contract with the Senate Democrats, not with the Senate House, the Senate or sorry, the House Democrats, the House Democrats. Originally, we had a consulting contract with Haystack. They were the mapmaker. This is before I came on the commission. Their work stopped, I believe, in December. So we did not have any other relationship with them, contract relationship with them after December. And that was before my time coming on the task force beginning in January when I transitioned onto the task force. We also thought that it was more efficient to have Mr. Glassburn working for both of the caucuses, and as a result, his contract amount was higher to reflect that. So the amounts that you see in February and March, and by the way, he had a contract amount that was approved, a total contract amount that was approved by the task force and the invoicing goes through LSC, which both the Senate president and the speaker chair that and go back and forth chairing that. So he submitted those invoices as he was legally required to do. There were no questions raised about the invoices, and they were paid. In the months of February and March. The invoices submitted, I will remind you, not only was he working for two caucuses at the time and two commissioners, but we had three court decisions that came about during that time period. So we were working on both two sets of state legislative maps, as well as an additional set of a congressional map, which is very different certainly than some of the previous months when he was consulting. So he simply invoiced. Again, his contract was a set amount that we gave to him and it was just simply a matter of how he broke up the invoicing that he did for those two months. But I will remind you, he was also doing not only working for two different commissioners, but also working during three different decisions as opposed to in the fall. That was only one decision or actually that was pretty decision about two different maps.

Co-Chair Rep. Jeff LaRe [00:12:24] Senator McColley.

Sen. Rob McColley [00:12:26] Thank you, Chairman. Thank you for the explanation, Leader Russo. To be clear for everybody, the individual invoices are not necessarily approved by the co-chairs of the task force. Generally, there's a lump sum that's been

allocated to the to each of the individual caucuses, and then it's within their discretion to approve the invoices individually. So these invoices would have been approved to have been paid by the Democrat co-chair of the task force. And I guess I understand, I guess, some of the reasoning behind that. However, it still doesn't, I guess, justify the the enormous departure from what would have been the ordinary and customary order of business with Mr. Glassburn to go from 16,000 in September, 13,000 for October, presumably 13,000 for November, 13,000 for December. And then all of a sudden, February and March, \$58,500 and \$55,000, then to return back to 14,000, despite the fact that, as you had said, he was working for two caucuses now. And I guess that's that was part of the reason why I requested in my return letter to you that there be an accounting of whatever costs were presented to justify that large departure in the order that would have, I think, raised many anybody's eyebrows if they were being objective when they looked at the pattern of payments.

House Minority Leader Allison Russo [00:14:07] Sure. So, you know, again, this is what mapmakers cost. And, you know, I appreciate us wanting to be good stewards of the taxpayer dollars, but this invoice, as required coming through the legislative task force, redistricting task force was submitted number one, the contract was approved. It was submitted through LSC. If there were any concerns about the contract, they can raise that. We allocated the dollars. You know, if I would love to have a full accounting, frankly, of what the Republican commissioners have spent on mapmakers, because we can't see those dollars. [applause] They come through.

Co-Chair Rep. Jeff LaRe [00:14:52] Let's maintain decorum, please.

House Minority Leader Allison Russo [00:14:54] Those come through legal fees that we don't have a detailed accounting of. So if you know, we're going to go back and forth again, if this is part of us not having the resources to be able to complete our constitutional duty, and this is going to be, you know, the games that we're going to play with us, then I would ask that we have the same level of scrutiny and detail of what has been spent on outside consulting mapmakers from other commissioners. Again, you know, there has been nothing raised about the contract. Mr. Glassburn was working for two commissioners under three decisions during this time period. Everyone who was up here, including staff, knows that there was an enormous amount of time and hours spent, particularly during the month of February, end of January, February and beginning of March. Given the number of decisions and the number of rounds of mapmaking that we were undergoing during that time.

Co-Chair Rep. Jeff LaRe [00:15:58] Senator McColley.

Sen. Rob McColley [00:16:00] I guess to start there, all of our mapmakers are employees of our caucus, so there was no additional money spent on them. So it's still, in my mind, doesn't get to the crux of the issue. The fact remains that. Looking at these payments, it's easy to see that his ordinary monthly retainer or fee, if you will, is anywhere from \$13,000 to \$16,000. And all of a sudden, in February, that quadrupled and then remained high for the for the first payment of the month of March. And then he was given another payment during the month of March of \$14,000. And so I realize there may have been a lot of work, and I'm not disputing that Mr. Glassburn has put an awful lot of hours into into this process. And, in fact, I don't have any dispute with his normal monthly retainer or fees or however the contract is structured. I've never seen the contract. And so the question remains, what is the justification for \$58,500, which is more than each of the previous four payments made to him combined that was paid to him in the month of February and then an

additional payment of \$55,000 one month later. So in the course of two months, just during February and March, there were payments made to him of \$127,000. You count both March payments.

House Minority Leader Allison Russo [00:17:33] So.

Co-Chair Rep. Jeff LaRe [00:17:34] Leader Russo.

House Minority Leader Allison Russo [00:17:35] Yes. Thank you, Senator. As a reminder, these are not monthly expenses. He has a set contract amount and the allocation was set to expire on March 4th. So it's not as if he could continue to do the \$13,000 every month if he was going to submit the invoice for the work. Essentially, he had to do it from January to March 4th because that's when the allocation expired. I also want to go back and just correct that you only use staff mapmakers. We know through public records request that in fact, Mr. Clark Benson, who's a DC mapping consultant, was paid through outside counsel. Nelson Mullins, We know that John Morgan, who is also a DC mapping consultant, was paid through outside counsel. Now Nelson Mullins. So this assertion that only Democrats on this commission are using outside mapmakers is just frankly incorrect. Also, I will say that again, the staff and the the Republican commissioners staff mapmaking staff who have been assigned to work on this were also given significant raises prior to this process totaling \$80,000. That same payment adjustment was not afforded to my staff. And so, you know, at the end of the day, frankly, looking at Mr. Glassburns, billings, that seems like a deal to me. And that is, you know, especially when we consider the \$9 million that's already been allocated for a primary that was conducted yesterday, that was confusing. And the \$25 million on top of that to conduct a second primary because this commission has not done its job. So if we want to start talking about-- [applause]

Co-Chair Rep. Jeff LaRe [00:19:18] Folks, please. Maintain decorum.

House Minority Leader Allison Russo [00:19:20] prudent use of taxpayer dollars, I think we're focusing on the wrong thing.

Co-Chair Rep. Jeff LaRe [00:19:33] Senator McColley.

Sen. Rob McColley [00:19:34] Thank you. Well, it's it's to me, I think we're, it's right for us to focus on this. And I think you admitted that even even earlier when we appreciate the the oversight we were trying to exercise over this, I just don't see and I've not heard in your explanation why something would quadruple and then stay quadrupled for yet another month. And keep in mind another thing. You keep bringing up these outside consultants. None of them participated in the map drawing process. Those people were were hired, I believe, by our lawyers. Right. Potentially to aid them. And in the litigation, they were not participating in map drawing at any point in time. And I think the record also proves that to be clear.

Co-Chair Rep. Jeff LaRe [00:20:23] Representative Russo.

Co-Chair Rep. Jeff LaRe [00:20:24] I believe those attorneys were advising members of this commission outside of the litigation, throughout the mapmaking process. Again, you know, you say I'm not explaining the invoiced amounts. I did explain the invoicing amounts. He was under contract to provide these services from January to March 4th and he simply invoiced over that time period his total contract amount totaling \$127,000 and

\$127,500. Again, these are not monthly fees. He had a set contract amount that was approved, approved by LSC, approved by us, and he simply invoiced over the period of time before the allocation expired, which was on March 4th. We had actually originally requested that it expire in mid-April, and I believe your office changed the date on that. So that is why we've got the the invoicing amounts over that compressed period of time. He just had a shorter period of time to submit invoices, but also his work was entirely justified. He was here doing the work and advising two different commissioners and working through three different decisions at the time.

Co-Chair Rep. Jeff LaRe [00:21:39] Senator McColley.

Sen. Rob McColley [00:21:40] Mr. Chairman, thank you. Um, haystack DNA. And I think I might know the answer to this, but can you, can you explain a little bit what their involvement was and the four payments made to them from August to December of last year totaling \$119,000?

House Minority Leader Allison Russo [00:21:59] Sure. So, Haystack. Again, this preceded my time on this commission. They were contracted with the House Democrats specifically and as mapmaking consultants and to develop maps for us to do the work here on the commission. And they had a set contract amount as well and invoiced over the period of time that they were under contract with us. That contract had ended before I came on this commission and before I was on the task force. But the decision was made and I will take full responsibility for this. At the beginning of January, when I assumed the position on this commission that I thought that their services were no longer needed by our caucus, and it was more efficient to have Mr. Glassburn.

Co-Chair Rep. Jeff LaRe [00:22:50] Senator McCauley.

Sen. Rob McColley [00:22:52] Did did haystack DNA ever actually develop any maps that were presented to the commission or or otherwise?

House Minority Leader Allison Russo [00:23:00] My understanding is that they developed draft maps for us to consider and for commission. My predecessor to consider to present to this commission is my understanding.

Co-Chair Rep. Jeff LaRe [00:23:17] Mr. Chairman.

House Minority Leader Allison Russo [00:23:18] Senator McColley.

Co-Chair Rep. Jeff LaRe [00:23:18] Did. Well, what was the reason you decided to eliminate their contract?

House Minority Leader Allison Russo [00:23:27] Well, first of all, I'm not being deposed, but primarily purpose, frankly, my decisions, Mr. Glassburn, I think as a as a much better consultant and had more knowledge about the maps. And I thought it was more efficient.

House Minority Leader Allison Russo [00:23:42] Senator McColley.

Co-Chair Rep. Jeff LaRe [00:23:43] Okay. I was just curious because. Thank you, Mr. Chairman. I was just curious because it's it's my understanding that Mr. Glassburn held the same opinion you did, given that in his in his deposition, he said Haystack had very limited value towards any of the final products that were fairness to the commission. So, I mean,

I'd open it up to discussion. I also pointed out in this the response letter to Leader Russo that I think before we allocated more money and before we we went down that path, that I wished that the Commission would express its wishes regarding its next steps and what we should be doing. And in the in the in the funding allocations, given that this is solely within the Commission at this point, and I would like to be deferential to what's going to happen in that regard.

House Minority Leader Allison Russo [00:24:38] Further discussion. Just for clarification on your motion, are you? Asking the task force for a reduced amount from the 200,000?

House Minority Leader Allison Russo [00:24:53] Certainly that is up to up to discussion commission. I would just like this commission, the support of this commission for us to have allocation of funds to our caucus so that we can conduct our work as commissioners and perform our constitutional duties, which is to produce a map that is constitutionally compliant and meets the requirements of the court order that we are currently under. That I will remind everyone on this commission has a deadline of Friday at 9:00, and here we are, less than 48 hours before arguing over this when this should have been done two or two weeks ago.

Co-Chair Rep. Jeff LaRe [00:25:38] Any further discussion? All right. Senator Sykes.

Co-Chair Sen. Vernon Sykes [00:25:54] Mr. Co-Chair, ladies and gentlemen, an explanation was asked for, and I think Leader Russo has provided a detailed explanation historically and budgetary wise. And the question still remains before us making sure that we allocate resources so that we all can participate in map drawing process. And I would hope that you would all consider that.

Co-Chair Rep. Jeff LaRe [00:26:27] Thank you, Senator. Just for clarification for the record. Representative Russo, would you mind repeating your motion?

House Minority Leader Allison Russo [00:26:34] Yes. Thank you, Mr. Co-Chair. So I move that the commission passed a resolution urging the legislative task force on redistricting to approve funding for the caucuses so that Democratic members of the Commission have the resources and professional expertise needed to perform their constitutional duties.

Co-Chair Rep. Jeff LaRe [00:26:52] Senator McColley.

House Minority Leader Allison Russo [00:26:53] Um, just somewhat of a point of order. I don't know that a resolution is necessary given that the decision is up to Leader Russo and I being that we're both here. If the commission generally indicates that they're in favor of authorizing this for the continued expenditures, we can execute this today. So that's, I think, mainly what we're asking for. I don't know that we need an official vote. And so if there's no objection, we can we can do that.

House Minority Leader Allison Russo [00:27:25] Mr. Co-chair.

Co-Chair Rep. Jeff LaRe [00:27:27] Representative Russo.

House Minority Leader Allison Russo [00:27:27] So maybe if I'm hearing the senator correctly that you were expressing approval for the allocation, and we can expect that to come in short order.

Sen. Rob McColley [00:27:43] Yes. I mean, mainly in the letter. I wasn't expecting it. Sorry, Mr. Chairman. In the letter I wasn't expecting to have to bring it before the commission and talk about all of this. I was asking for some of these receipts in accounting in the letter I sent to you. But here we are having this conversation nonetheless. And so if the commission feels it appropriate, then we will we will sign that letter today. That's what I'm saying.

Co-Chair Rep. Jeff LaRe [00:28:13] Representative Russo.

House Minority Leader Allison Russo [00:28:14] Yes, just to clarify, I don't know if we need a vote, but for the commission on this resolution, I'm happy and I'm happy to withdraw the motion. But I also don't hear objections from any other members of the commission.

Co-Chair Rep. Jeff LaRe [00:28:32] Please.

Sen. Rob McColley [00:28:33] Mr. Chairman, I would say at some point in the future, we should be and I am find opening up the Republican caucus books. I mean, frankly, all of this is a public record at this point anyway. And so I am find opening up the the Republican caucus books, there's nothing in there that I, I think would be any surprise to anybody. And so what I would like to see, regardless of whether we approve this today, is still documentations and contracts and and things of that nature in the actual invoices. And maybe I can get that from LSC as to how this was actually structured because while while we were going to approve this, the payments still to me without reviewing that contract still seem highly irregular. And so, I mean, it could be something that we look into further down the road regardless of whether we allocate this future payment.

Co-Chair Rep. Jeff LaRe [00:29:31] Hearing no objection. Do you want to withdraw your motion?

House Minority Leader Allison Russo [00:29:36] Thank you, Mr. Co-chair. If there is no objection and we can expect the approval today in short order, then yes, I'm fine to withdraw this motion.

House Minority Leader Allison Russo [00:29:59] Okay. So at this time, we'll move the discussion. Regarding independent mapmaker drawers. Senator Sykes.

Co-Chair Sen. Vernon Sykes [00:30:09] Thank you, Mr. Chairman. I would move that the commission engage the independent map draws to perform a review of their previous work product, making necessary changes to and entertaining suggested amendments by the commissioners.

Co-Chair Rep. Jeff LaRe [00:30:27] Discussion.

House Minority Leader Allison Russo [00:30:30] Second.

Co-Chair Rep. Jeff LaRe [00:30:31] Senator McColley.

Sen. Rob McColley [00:30:33] If I might make.

Co-Chair Rep. Jeff LaRe [00:30:35] Well, don't know yet.

Co-Chair Sen. Vernon Sykes [00:30:38] Thank you. The co-chair of this commission and the people of the state have really invested a lot of work in and funds in the work product of the independent map drawers. In our last meeting, we were very close to having it conclude and being resolved to a position to be more productive for the for the Commission. And I'm hopeful that we can keep that investment and move forward from the from the actions and the map drawing that's already taken place by the independent map drawers. Thank you.

Co-Chair Rep. Jeff LaRe [00:31:22] Senator McColley.

Sen. Rob McColley [00:31:25] Thank you, Mr. Co-Chair. Having observed this this process, and I'm sure like many of the people in the room watching way more of the livestream than than I probably should have and way more live stream than my wife preferred that I would have watched. Several things became apparent to me. Number one is that while Drs. Johnson and McDonald put in a lot of hours and a good effort, one thing that became apparent to me is that we have people already at our disposal who are eminently qualified to conduct the business of the commission and to draw the maps of the Commission as the Commission sees fit while still being in compliance with the Supreme Court order. Let's not forget, in the most recent Supreme Court order, it reiterated the fact that it was a suggestion, not a requirement, and even stated that specifically that it could not require us to engage independent mapmakers. I personally, with as much scrutiny as he may have been under throughout this process or any of these mapmakers may have been under throughout this process, I think they are the most qualified in the entire country to be drawing these maps. And so I would oppose a motion to engage the independent mapmakers again going forward.

Co-Chair Rep. Jeff LaRe [00:32:56] Further discussion. Governor DeWine.

Gov. Mike DeWine [00:33:00] Chairman. Thank you. To try to put this in proper context. I think it would be good to hear from the Secretary of State in regard to the practical realities that we are facing. We all have seen his letter, but I would like for him to explain what's doable and what is not doable from his perspective because. The practicality of this is very important. I think before making any decision about independent mapmakers or anything else, I think we have to understand exactly where where we are at this point. So if the chair would be willing to do that and if the secretary would be willing to do that, I think this would be an appropriate, appropriate time.

Co-Chair Rep. Jeff LaRe [00:33:52] Secretary.

Secretary of State Frank LaRose [00:33:53] Yeah, happy to. And thanks. Co-Chair Thanks, Governor. I mean, the fact is, yesterday, Ohio's elections officials were able to accomplish something that's nothing short of miraculous. And it's because of the grit and the patriotism and the determination of these bipartisan teams that all of our boards of elections that they did this. Yesterday's election was a successful election. Certainly from the public standpoint, in most parts of the state, it ran smoothly, but there were some real challenges and they were able to overcome those challenges again, because we build redundancies in that we look for any time, there's a single point of failure and then we put backup plans in place. Unfortunately, we had to implement those backup plans in several counties defaulting to paper poll books instead of electronic poll books and all kinds of other things that again, the general public didn't really see much. But that happened because we required them to do 100 days worth of work in 45 days. That resulted in

rushed logic and accuracy testing, which led to technological failures. It resulted in rushed election night reporting preparation, which caused delays. And if we look sleepy, anybody that was involved in the election was working until about 3:00 in the morning over at the secretary of state's office and at 88 County Board of Elections because of those delays related to election night reporting. And also as a result, many of you may have noticed that we were not able to report the congressional results on a statewide basis. Those had to be done on a county by county basis. Those rushes that we had to conduct over the last few months also also resulted in trouble with ballot printing led to the need to remake some ballots. There were misprints with little timing marks and things like that that go wrong when the timing when the time is not allowed for all the testing. One of the other challenges that we have faced and will continue to face is just staff burnout. And this is not something that can just be swept aside or overlooked. I we but I, as the chief elections officer, have asked a lot of our elections officials. They are, as we speak, working on the next three and a half, four weeks to conclude that may election. The work of running an election certainly doesn't end on Election Day. They'll be working through the end of May to conclude yesterday's election. And we're having people that are saying, you know what, I don't know if I want to do this work and considering resigning. And that means that we have a loss of institutional knowledge and that kind of thing. PEO recruitment, recruiting poll workers has become challenging, although we had adequate numbers yesterday and we will have adequate numbers for an August 2nd election. But but that takes a lot as well. So, Governor, if I if I may, I'd like to go through the actual timeline that we're talking about and why. My office told the federal court that April 20th was the date that we needed finality. That was not arbitrary. For that matter, the August 2nd date, which is the really the only logical date to conduct a second primary, that is not arbitrary either. It's important to note that today is 90 days until August 2nd. Ohio's elections are normally administered on a 90 day calendar. Again, that's not by chance that that August 2nd date happens to be 90 days after today. 90 days is what it takes to prepare for and run an election in regular order to avoid some of the errors and challenges that we faced yesterday. So 90 days from today is August 2nd. The boards of elections need two weeks prior to that to program their systems with new maps. If there were to have been a new map by April 20th, they could have had it programed today so that they can begin the preparation for August 2nd while simultaneously still wrapping up the May election, which happened yesterday, backtracking from August 2nd to 90 days. It brings us to today and then two weeks back brings us to April 20th. That's why we set that date as of today. Of course, as I said, the boards are still working to conduct the May 3rd election. We have another 20 days for overseas military ballots to arrive. We have another ten days for for normal, normal absentee ballots to continue arriving. And then the official canvass and the post-election audit all still needs to be conducted over the next four weeks. So that's looking back. Looking forward, according to our 90 day election calendar, we would need to begin validating candidate if there was a new map passed, we would need to begin validating candidate petitions on May 16th. The law requires 78 days before a primary election, so that would have to happen on May 16th, of course, unless the Legislature were to pass emergency legislation to change that. Protest to those petitions would need to be filed by May 20th. That, again, is set in the law at 74 days before an election. We would need to certify the official form of the ballot by May 24th, required to be 70 days before an election. The first ballots for that August 2nd election would need to be in the mail on June 17th, folks. That's five weeks from now, just a little over five weeks from now for those overseas military ballots to start going out on June 17th. So let's say we pass a map tomorrow. Will it be challenged? I think that that's certainly a possibility, given the history of this process and all of the litigation from all of these special interest groups that like to file lawsuits about these things. So if it was challenged, there would be a week of time that the court would allow the challengers to to make their arguments. Then

the court has historically taken three weeks to consider those arguments. Three weeks from now, obviously takes us to within just a week and a half of when we'd actually have to send out overseas military ballots. So let's suppose let's just suppose for a minute that the court didn't strike it down. Let's suppose that we passed a map tomorrow and the court didn't strike it down. The two weeks then would need to be allowed for the boards to program those maps into their systems. And now that's taking us six weeks out from today. That six weeks takes us well past all of those statutory deadlines that are in the law and certainly past the beginning of sending out overseas and military ballots. This is why we said April 20th is not arbitrary. This stuff really matters and it has real results for Ohio voters and Ohio's elections officials. So let's talk about emergency legislation. Any map adopted at this point, any map, even a slight variation of another map, any new map adopted by this commission would certainly require the General Assembly to pass emergency legislation. That means bipartisan votes. That means supermajority votes to pass that emergency legislation. For me, my vote on this commission is both as a member of this commission, but also as Ohio's chief elections officer. I cannot separate those two roles. It would be irresponsible for me, as Ohio's chief elections officer, to even consider a new map unless the legislative leaders and it's unfortunate, but we don't the legislative leaders are now not part of this commission unless they could assure me that they can get that they could get that supermajority vote to pass a piece of legislation to allow us to adjust those timelines. I would need that assurance before I could even consider voting on a new map. I believe that any new map that could be adopted here, you know, must demonstrate that before we can pass any new map, we have to demonstrate that we could get that supermajority vote. So, again, revisiting this candidate filing question with 30 days of residency, that's a9c requirement in the Constitution that would be triggered by any new map as well. That brings up a whole nother set of questions. So again, unless the General Assembly is planning on calling their members into session tomorrow to pass this emergency legislation, I can't see any way that we can pass a new map. Our elections officials pulled off something miraculous last night, but I don't want to ask them to do that again. And so I'm not really willing to compromise the integrity of our elections by rushing through a new map at this point. Our state motto is, With God, all things are possible. So I remain open to conversation about this, but that's certainly where I am on this matter as far as the timing goes.

Co-Chair Rep. Jeff LaRe [00:42:14] Thank you, Secretary. Senator Sykes.

Co-Chair Sen. Vernon Sykes [00:42:17] Thank your chair. Governor DeWine and Secretary LaRose have really expanded the question that I propose. I propose that we continue to use Independent map drawers and they've expanded it to whether or not we should even consider any other map other than map three. And I understand the administrate the election calendar and the administration administrative procedures that need to be adhered to. But if we were so concerned about that time structure, why would we squander the 20 days of 22 days that the court has allotted us?

Co-Chair Rep. Jeff LaRe [00:43:08] Folks. Just out of respect for those listening online, let's let's stop with the clapping.

Co-Chair Sen. Vernon Sykes [00:43:16] So the time crunch is legitimate, but we have the ability to make decisions and we have it's only been the reluctance of the majority to approve the constitutional map that caused us to be in a place of where we are right now today. And all we need to do is to pass the constitutional map. It will be accepted by the court and we can move forward. So I think that we should be engaging. The independent map drawers, back to the original question that's on the floor now.

Co-Chair Rep. Jeff LaRe [00:43:54] Represented Russo.

House Minority Leader Allison Russo [00:43:58] I thank you, co-chair. You know, again, I agree with co-chair Sykes in his assessment of the situation in that we've had 22 days up until this point to avoid where we are now. So this is a problem of our own creation. And I am of the opinion, yes. That we can do things that are hard when there is a will to do it. And the other thing that I would note is that the federal court has given us until May 28, none of these procedures can start until May 28th because the court has given us and the federal court has given us until May 28th. So, you know, frankly, the third map is not set in place, even if you assume that it is so, it is not. So I don't see how we avoid, you know, some of these challenges. Either way, we go with this. But to me, whether people like it or not on this commission, my fellow commissioners, like it or not, we are under a state Supreme Court order to redo these maps. That is the order that we are under. And that is the task before us. And it is unfortunate that we have wasted all of this time getting to this point. And we are now less than 48 hours away from when the deadline is. But again, I believe we can do hard things. So I think that we need to do all that we can to meet those requirements to do right by the voters of Ohio. Because, frankly, any any election conducted on maps that have been thrown out by our state Supreme Court as unconstitutional, that's not a fair election. That's not a legitimate election in my opinion.

Co-Chair Rep. Jeff LaRe [00:45:57] Secretary LaRose do you want to respond to the status of the third map?

Secretary of State Frank LaRose [00:46:02] Yeah, I guess just to say that there's a reason why the three judge panel in their wisdom pointed out that the most reasonable course of action, if there is no other maps passed by the 28th of May, is to use the third map. That map is already programed at our boards of elections. Back in February, when it was passed, I ordered the boards to begin preparation for the May 3rd election with that map. It is programed and it's ready to go. The you know, the time period has has run since it's been enacted. That would have allowed candidates to move if they if that's what they wish to do. And so, you know, it's really the logical choice that the court made was to say that that third map, if there is no other action by this commission, is the best course forward.

Co-Chair Rep. Jeff LaRe [00:46:54] Representative Russo.

Co-Chair Rep. Jeff LaRe [00:46:55] I thank you, Mr. Co-Chair and Secretary LaRose. My understanding from the testimony that was presented to the Federal Court is that not all boards of elections have actually programmed that third set of map. I think there were eight county boards of elections that had not completed that process. You know, I would say that certainly in our larger counties that have over 50% of the population, if some of those have not started this process or at least have not completed it, it doesn't matter whether we're talking about the third map or another map that this commission completes, it's going to be work that they will have to do, because we've got most of our counties in the state have one legislative district, one Senate district, maybe two, and the bulk of the work will fall on those larger counties. And my understanding is it is many of those larger counties who haven't completed this programing of the maps to begin with. So I don't really see where the the difference in left that has to be done by the county boards of elections is going to be significantly different.

Gov. Mike DeWine [00:48:07] Mr. Chairman.

Co-Chair Rep. Jeff LaRe [00:48:09] Please.

Gov. Mike DeWine [00:48:11] Chairman besides the Supreme court timeline of this Friday, the Ohio Supreme Court timeline. And in addition to that, and also in addition to the problems that have been outlined by the secretary of state. We also have another problem, and at least from my reading of what was going on with the independent mapmakers, I don't think it's simply a question of even if you could, calling them in here, having them come in immediately and think that they can come up with a map that fits the Constitution and also fits the four Ohio Supreme Court decisions. Anybody who watched that in real time and watched what they had to do and I do not blame them at all. I don't blame the court. I don't blame anybody. But the reality is, when they were going through that process, it became abundantly clear you can't hit all those marks. You can't hit all of them. And that is the real problem. The other problem that we we are up against. You know, we start off with the Constitution on proportionality. The court interpreted that in one of their opinions. That's fine. The court added the required of symmetry. That's fine. We accept whatever the court tells us. But those those two were added. But then when you go through when you watched the independent mapmakers go through, you know, they were not able to to deal with to get all these things in here and avoid partisan favoritism. Because what we saw them do every single time when they had a choice, they felt based on these other two factors I just mentioned that the court was requiring them to favor the Democrats every single time they had to pick up, they had to pick up those to get those number. I'm not blaming anybody, but that's the way that's the way it turned. It turned out. The other thing that was not part not they were not able to do it was compactness. Compactness. You know, went out, went out the window. You know, they they basically said that they were not able to do the quotas. We had to blow through compactness. They had to blow through compactness to to reach these other things that the Ohio Supreme Court had said. And finally, one of the biggest selling points for the public, I think, for everybody when this constitutional amendment was passed, was that we would have more competitive districts, not fewer competitive districts. And yet the practical reality, again, no one's fault is just the way it worked out. The practical reality, when the independent mapmakers were doing this, they were looking, frankly, not to create more competitive districts, but they had to create fewer competitive districts. So it is we are we have a big, big problem. And, you know, look, I think that we have an obligation. I have said this consistently at every every stage of this, we have an obligation to try to come up with a map. We have an obligation to try to do that. I, I would think that's what we should do. But we have we have a Friday deadline, so we can't get the independent mapmakers. This goes back to the senators motion on the appointing the independent mapmakers. You know, we have people here, both parties who are here who can work on maps. You know, I don't think there's any choice other than to tell them to go work on maps and try to take the third map and try to improve that map because of the problems that are outlined by Secretary LaRose. It's not a good choice. I don't know if we can do it or not. It was look like it was demonstrated the other day that we can't hit all these march. But I think we have a legal obligation, according to what the court has said, to try to hit those marks. I don't think we have any other choice but to go that route, considering what the secretary of state has said. Considering what the Ohio Supreme Court has said on the date. And considering what the practicality is of what we watched in real time when the independent mapmakers were trying to do it. So it's a it's a long explanation. But for Sen. Sykes, I think it does pertain to whether we can get higher independent mapmakers and get them in here in time to do this without any kind of assurance, frankly, that they can do it because they didn't look like they were able to do it through no fault of their own the other day.

Co-Chair Rep. Jeff LaRe [00:53:34] Thank you, Governor. And just for my own clarification, if I understood the Secretary, correct. And even if we were able to get these independent mapmakers in tomorrow, they drafted a map that you still couldn't utilize that unless there was emergency legislative action.

Secretary of State Frank LaRose [00:53:50] Yeah, that's correct. It's worth reiterating, of course, I'm open to trying to do hard things as my friend the leader said. Anybody that knows me knows that I embrace challenges. But certainly we can't just pass a map and then hope that we can get emergency legislation done. I would need assurance from the Speaker and the president, the minority leaders of both chambers that we can get that emergency legislation done because otherwise we'd be passing a map that we couldn't implement. We can't run an election without the emergency legislation. And so I'm not willing to vote for a map and then hope that the legislature can come into session in the next week or two and pass this emergency legislation. We would need either firm assurance or they need to be called into session tomorrow to do that.

Co-Chair Rep. Jeff LaRe [00:54:35] Thank you, sir. Auditor Faber.

Gov. Mike DeWine [00:54:39] Thanks. I want to separate these two issues because I want to get back to what Secretary LaRose just indicated and make sure I understand clearly what that is. But I want to deal with this independent map drawer issue first. I oppose bringing the infinite map drawers back. I'm not sure that that process was overly helpful, in large part because we never had a chance to give independent input as commissioners. The whole understanding and the whole view of the order from the court in my view, was the commission was supposed to draw maps. We never even got a chance to offer amendments. We never got a chance to look at the details of what they were doing in the process because they didn't hit the deadlines. And candidly, I think that the staff that are here could have certainly done that and saved the state an awful lot of money. And while I'm sure they're good guys, they meant well, they expressed over and over how complicated the Ohio rules were and that they had to relearn the Ohio rules to do their job. And we had people in place, both Democrats and Republicans, that had our staff been directed to sit in a room and do it. They could have come up effectively what the independent map drawers did for, frankly, expenses that were already being incurred, some of which we heard about earlier and some of which apparently were incurred by staff staff charges, just like my my people who are I don't want to my people tell me not to say that they're map drawers, because they're not, they're staff who have tried to learn these complicated systems and understand the area the best they can. But there are people collectively who can find those answers. And so I think spending more money, of the taxpayers money on these two individuals, even if they're available is unnecessary. And so I would not be supportive of rehiring independent members. Now, if we want to get back to the second after, you want to dispense with the map drawer issue. With regard to the other issue, I think Secretary LaRose raised a very, very important baseline question. If I heard his testimony correctly, it is that we can do nothing at this point that is going to pass a map that is going to be able to be implemented by his staff for a whole host of reasons. And I want to walk through those reasons in a second and ask him to tell me what he thinks would need to be in a emergency piece of legislation. So we know exactly what the targets have to be, if that is doable or not. But what I heard him say very clearly, and he is the expert in this area and I will, of course, be deferential to him in this area. But it will certainly shape my view of what we can and can't do, is that if we can do nothing. Between now and August 2nd. With regard to the map for this next two year cycle, I don't think that ends our obligation to pass a map for some other period of time. I agree with the governor. We have to do what the court told us to do and we don't have a choice. But when we do that, in our ability to think

deliberately and carefully and thoughtfully on, that is a different analysis. But unless I misheard the secretary and I want to make sure I heard him correctly, whether we modified Map three or whether we modified a new map or whether we modified the map drivers map, anything we would pass between now and Friday is impossible. And I'm using that term on purpose, impossible to be implemented for an August 2nd election. No matter what we do. And the reality is, is the only possibility. For any of that to be able to be implemented by August 2nd would require at least two assumables, both of which were not in the power necessarily to assume. One is that the legislature could pass an emergency clause changing the law in some areas. And two, and I think this is an important thing you mentioned, but nobody picked up on was also having certainty that that's actually going to be the map because the court's going to have to review and the petitioners get a chance to challenge any map that we would ultimately pass. And without a certainty that the map is the map. It's tough for you to implement a map on an election basis on August 2nd. Did I hear you correctly, sir?

Secretary of State Frank LaRose [00:58:50] Yes, you absolutely did. The let's start with the May deadlines. The first one coming up is May 16th, which would be to certify the validity and sufficiency of petition candidates.

Auditor Keith Faber [00:59:02] Are these the things that you would need change in emergency legislation?

Secretary of State Frank LaRose [00:59:04] Absolutely.

Auditor Keith Faber [00:59:05] Thank you. I want to make sure I was.

Secretary of State Frank LaRose [00:59:06] Yeah. So, again, if the federal court were to approve, revalidate, whatever the right legal term is the May 3rd map. All of these deadlines would have already elapsed for the, sorry not the May 3rd map. The third map. All of these deadlines would have yet already elapsed for the third map that the federal court has said that they would consider re-validating if if this commission didn't act. So these are new deadlines that would only accrue if there was a new map enacted by this Commission. May 16th, certify validity and sufficiency of candidate petitions. May 20th, this is the deadline for protests against those petitions, which is again, all required by law. May 24th, and this is the big one for our office, the form of the ballot. This is when we lay out for the boards what the ballot looks like so that they can begin doing logic and accuracy testing. Remember back to me giving the list of things that went wrong over the last 48 hours that we were able to work through, but could have been avoided if they hadn't been rushed. The form of the ballot is necessary in order to do logic and accuracy testing and in order to begin the very careful and deliberate printing of those ballots. So that would occur on May 24th. Boards of elections must certify the names of the candidates, also on May 24th. And then there's a protest for write in candidates on May 27th. That's just the ones in May. There's a whole list of deadlines that come up in June. So those are the kinds of things that would have to be considered. We're not even talking about right now the 9C requirement in the Constitution allowing candidates 30 days to move from the date a new map is enacted.

Co-Chair Rep. Jeff LaRe [01:00:56] Representative Russo.

House Minority Leader Allison Russo [01:00:58] Thank you. Again, I'm going to go to the second part of this discussion, which is about these dates, unless I'm understanding or misunderstanding this May 28th, occurs after May 16th, May 20th and May 24th. My

understanding is in every, even with the third map, candidates have not been validated in all counties, nor has the process for questioning that validation. And I'm losing my train of thought here. That has not also not happened with the third map and all of these counties. So I'm still having trouble understanding that even with the third map, given that it has not been ordered yet by a federal court and will not happen until after May 28th. How regardless of whether or not we're talking about a third map or a new map that this commission passes, that we don't still have the same problem that may require or sounds like it will require emergency legislation. So I feel like this is a false choice here because it's the same choice regardless of which path we go with this, because these things, the deadlines will have already passed anyway, because they haven't been done. And the third map would not be ordered. And again, this all assumes the federal court doesn't change its mind until after the 28th.

Co-Chair Rep. Jeff LaRe [01:02:36] Secretary LaRose.

Secretary of State Frank LaRose [01:02:37] Yeah, I'll respond. And this is where I'll be careful not to make legal pronouncements because I'm not a lawyer. But the the act that the Federal Court would be taking punitively is that they would be validating a map that this commission has already enacted. This commission enacted a map. It was struck down by the Ohio Supreme Court. The federal court would be reversing the action of striking down that court. And so in that sense, the timelines have all played out from when this commission enacted that map. And the federal court would be ordering that that map be run on an August 2nd election. Now, of course, those of us in executive office, we don't make the laws. We faithfully carry those out. So what I need to look at with the work that I do. Excuse me. What I need to look at with the work that I do is to make sure that I'm faithfully following Title 35 of the Ohio Revised Code. And the legislature has already enacted a few weeks ago provisions stating that candidates that filed by the February 2nd filing deadline would be grandfathered effectively into the districts as long as the petitions had signatures in the county that includes a part of the new district and all that kind of thing. You remember the language that you all worked on, on that. And so those would be the the petition filing questions have already passed because that was triggered way back on February 2nd when the original statutory petition filing deadline occurred. And so these new deadlines that I was talking about would only be triggered by a new map and a new election to run those new maps.

Co-Chair Rep. Jeff LaRe [01:04:24] Thank you, Secretary. Senator McColley.

Sen. Rob McColley [01:04:27] Thank you, co-chair. I frankly am inclined to defer to the secretary. He knows that these deadlines inside and out. But as far as the discussion on whether there would be votes for an emergency, you know, I I hope I'm not stepping too far out of line here. But based upon previous conversations that we've had in our own caucus and conversations I've had with other members of our caucus, I don't think there would be votes for an emergency at this time in this process. And so, you know, whether whether people like that or not, that's what it takes under the Ohio Constitution to be able to change law without the 90 day layover. And I don't think there would be votes in the Senate at least to get the 22 requisite votes to make an emergency piece of legislation. As as we go a little bit further down that road, and again, for probably the fourth or fifth person trying to recenter this back to the topic of the independent mapmakers. I would I would agree wholeheartedly with everything the governor said as to the difficulties that these independent mapmakers confronted when they were in there drawing maps and it was through no fault of their own, they were thrown into a situation where, while they may, may be relative experts compared across the country, they were thrown into a situation where

there had been continuing hundreds of pages of guidance provided by the Supreme Court in a short amount of time and a complex set of constitutional requirements that I believe they even mentioned might be the most complex in the entire country and then told to try and figure this out, which reiterates the point that I was saying earlier. We have mapmakers on staff Ray DeRossi and Chris Glassburn, who are people who have deep familiarity with Ohio, with its political geography, and where some of these traps may come into place when they're trying to come up with these maps. But I would also say that in regards to the independent map, some of these difficulties were highlighted even with the what I feel is the narrow lane. And insofar as how this map needs to be drawn that the commission has been put into as a result of the jurisprudence from the Supreme Court. Some quotes that I noticed while watching it was Dr. Johnson saying, "I never worked this hard for a commission making districts noncompetitive." Dr. McDonald saying probably most of the way through his house map, the first iteration, saying he hasn't even considered compactness yet. One of the map makers saying, "no reason I can't split the community just because no one's done it, I'm allowed to." That was Dr. McDonald another saying, "if we meet the partisan balance goals, is population balance that important?" District another quote, "district by district, we are really drawing heavily for partisanship relative to the other requirements of the Constitution." Another quote from Dr. Johnson. "Parma and North Royalton are a perfect district together, but it's a Republican district," referencing why he could end up drawing this district. Quotes go on and on and on. Dr. McDonald asking Dr. Johnson what he's working on, getting rid of a competitive district, Dr. Johnson says. Dr. McDonald saying, "I could improve the performance of this district. I could get it to over 52%, making it more partisan." And this one as well. Dr. McDonald later on the Saturday saying, "if we're not worried about compactness, we'll get the seats and make them as symmetric as we can." The whole point in all of this is I feel there's been such and this is even from an outsider's view, who has not been involved in the actual commission process until now. There's been such an emphasis placed on the proportionality and the symmetry requirements that are that are being placed on us largely through the courts interpretation, rather than what I would see as the plain meaning of the Constitution that we have in some cases disregarded or at least subordinated many other provisions of the Constitution at that expense. And so you kind of look at look at the independent mapmakers map, even. When they finished, there were 16 constitutional violations that we could see. And when we're talking about compactness and the whole reason behind when this was passed, I would say everybody in this room, if they were being objective, would say part of the reason we passed this constitutional amendment was to eliminate unnecessary splitting of governmental units, eliminate unnecessary splitting of cities and counties, etc. But here we are even looking at the independent mapmakers map because they were so focused on maximizing the number of Democrat districts within the other bright line rules that may have been contained in Article 11, that you have the City of Dayton, for example, which is approximately 140,000 people could fit in one and part of a second House district was in four different House districts and two different Senate districts. The city of Toledo, approximately 270,000 people, which would fit in two House districts and part of a third was in four House districts and two Senate districts that would have fit entirely within one Senate district. Obviously, the city of Dayton would as well. Akron, which would have fit inside one Senate district and two House districts, was in four House districts and two Senate districts. The city of Cincinnati, which would have fit inside one Senate district and three House districts, was inside six House districts and three Senate districts. I know that people's towns may have changed over the course of time, but when this thing was passed, this was one of the biggest selling points for why we should pass it. Was the unnecessary splitting of some of these communities. And here we are trying to force these types of splits into a map because we put the partisan symmetry question and the proportionality question on such a pedestal over

everything else. And so I think, in my personal opinion, the best way to remedy this and get back to the basics at the very least is to reengage the caucus map drawers, because they're going to be the ones who have, in some cases, decades of familiarity with the state of Ohio.

Co-Chair Rep. Jeff LaRe [01:11:17] Representative Russo.

House Minority Leader Allison Russo [01:11:19] Thank you. Mr. Co-chair, there's a lot to respond to here. First, let me just be very clear. The independent mapmakers did finish a map and there was testimony in front of the federal court that the review, the work that needs to be done, the technical corrections would take less than a day to finish that. So let me be very clear. Also, let me be very clear that the splits that were just mentioned by Senator McColley, they exist in Map three. And in fact the independent mapmakers map, the compactness score and there was undisputed testimony about this actually has a better compactness score than map three. So I just want to, you know, make sure that we're being very honest about these maps. The other thing, just getting back again to the secretary of state and some of the dates that he has outlined. Again, statutorily, we still have deadlines May 16th, May 20th, May 24th. We have not done that work yet, even with the third map that still has to be done. The third map would not be put in place until the 28th at the earliest. And again, that's assuming that a federal court doesn't change its mind, which it could do, and they have been known to do in the past. But even if you assume that they won't, these statutory deadlines will still be an issue, even with that map. The other thing that I would like to note as well about map three is, if you will recall the 30 day -- Well, first of all, the changes that we did for the filing in the legislative adjustment, all of that was tied to a May 3rd primary date. Unfortunately, it was not tied to a primary. It was tied to the May 3rd primary date. So there may be some issues with that as well legally. But I will also remind you that after February 24th, the 30 day constitutional guarantee actually had not fully expired yet before that map was thrown out. So there's still this lingering question of if candidates, even with map three, have been granted their full ability to move into a new district because that 30 day window had not yet expired when the third map was thrown out, I believe it was three days before. And I believe that you and your staff specifically said that it was moot at that point, that 30 day window, because the map had been thrown out or the expiration of that 30 day window. So there's still that lingering question that even exist with map three. I say all of this again to reiterate that whether we're going down the map three map and not following the state Supreme Court's order, and we're going to defy that and not do anything or we're actually going to work on a map. You still have some of the same issues from just from the perspective of conducting an election.

Secretary of State Frank LaRose [01:14:30] Mr. Co-chair, let me respond to that, if I may?

Co-Chair Rep. Jeff LaRe [01:14:31] Please.

Secretary of State Frank LaRose [01:14:32] So all of these deadlines that we're talking about prior to the 28th of May don't apply if the third map is the thing that is enacted, because again, certifying sufficiency and validity of partisan candidates that happened on the schedule already, that was required in the code. And that's all I have to work with is what you all have instructed me to do. In the Ohio Revised Code, we can certify candidates. We have certified candidates for that, the boards of elections are prepared to do that and then of course protests to petitions and that kind of thing. All of those

deadlines are are things that have already been considered under the timelines set out in the code. And so this would only be necessary if there were a new set of maps enacted.

Co-Chair Rep. Jeff LaRe [01:15:23] Further discussion? The motion on rehiring the independent map drawers. Will the staff please call the roll.

Staff [01:15:40] Co-Chair LaRe.

Co-Chair Rep. Jeff LaRe [01:15:42] No.

Staff [01:15:43] Co-Chair Sykes.

Co-Chair Sen. Vernon Sykes [01:15:44] Yes.

Staff [01:15:45] Governor DeWine.

Gov. Mike DeWine [01:15:46] No.

Staff [01:15:47] Auditor Faber.

Auditor Keith Faber [01:15:50] No.

Staff [01:15:50] Secretary LaRose.

Secretary of State Frank LaRose [01:15:50] No.

Staff [01:15:52] Senator McColley.

Sen. Rob McColley [01:15:53] No.

Staff [01:15:54] Leader Russo.

House Minority Leader Allison Russo [01:15:55] Yes.

Staff [01:15:57] Mr. Co-Chair. Two five.

Co-Chair Rep. Jeff LaRe [01:16:00] The motion is voted down. At this time we'll move the discussion to the commission's plan of work and a meeting schedule will open that up for discussion. No discussion? Seeing none, is there any further business to be brought before the committee? Hearing none, the committee stands adjourned.

Ohio Redistricting Commission - 5-5-2022.mp4

<https://www.ohiochannel.org/video/ohio-redistricting-commission-5-5-2022>

Co-Chair Sen. Vernon Sykes [00:00:01] I would like to call the Ohio Redistricting Commission to order. Before we start, co-chair LaRe would like to make a comment.

Co-Chair Rep. Jeff LaRe [00:00:12] Certainly I understand everybody's enthusiasm, but after yesterday, I just want to remind folks that we have an overflow room just across the hall. Should anybody feel the need for clapping and cheering, that would be more appropriate. This institution was here before all of us, and it'll be here after we're all gone. So out of respect, I'd ask you to not clap and cheer so that we can hear one another in the folks listening online can hear as well. And the sergeant at arms in the back room will be happy to show anybody where that is should they need to go there. Thank you.

Co-Chair Sen. Vernon Sykes [00:00:44] Will staff please call the roll?

staff [00:00:47] Co-Chair LaRe (here) Co-Chair Senator Sykes (here) Governor DeWine (here) Auditor Faber (yes) Secretary, Secretary LaRose (here) Senator McColley (here) Leader Russo. (here) Mr. Co-Chair, a quorum is present.

Co-Chair Sen. Vernon Sykes [00:01:06] With a quorum being present, we will meet as a full commission. In your folders there are minutes of our previous meeting held yesterday. Is there motion to accept the minutes.

Unidentified [00:01:18] so moved

Co-Chair Rep. Jeff LaRe [00:01:19] seconded

Co-Chair Sen. Vernon Sykes [00:01:19] its been moved and seconded, is there any objections to the minutes being approved? Hearing none, the minutes are therefore approved. This time we'd like to know if there's any further business to be conducted here by the Commission. I will call on Leader Russo.

House Minority Leader Rep. Alison Russo [00:01:39] Thank you. Co-Chair. I'd like to make a motion to adopt the independent mapmakers maps as identified, as modified by Dr. Rodden and presented to the State and Federal Courts and uploaded to the Commission website.

Co-Chair Sen. Vernon Sykes [00:01:52] Second, the motion.

House Minority Leader Rep. Alison Russo [00:01:55] Great. As everyone knows, the independent map drawers completed the work that they were hired to do. They produced constitutional maps that were also more compact than any of the commission maps that have been adopted so far. As with any house that is built, inspection usually reveals a punch list of little fixes needed to make everything just right. The same is true with any set of maps, and the short punch list that was identified has also had each item addressed. So for us we have a modified independent map drawer's map, and I think those are going to be passed out if they haven't already. It's been available to all of us since April 8th. You have the handouts describing the map before you color maps, partizan stats, information about precisely what was fixed within the maps by Dr. Rodden as presented to the state and federal courts. Yesterday we heard the governor say that we must adopt constitutional

maps if it can be done. Well, it can be done. And that has been noted by the courts. It was done. That was also noted by the courts. And those maps are now before us with this motion. I will remind my fellow commissioners that we are under a court order to adopt a constitutional set of maps by 9 a.m. tomorrow morning, regardless of any implementation timelines or impediments or an election cycle. And I recommend support of this motion.

Co-Chair Sen. Vernon Sykes [00:03:41] Senator McColley

Sen. Rob McColley [00:03:43] Thank you, Mr. Co-Chair. I would be opposed to working off of these maps. There are several reasons. Number one, I know there's there's been some been some assertions that this was a finished product of the independent mapmakers or that they finished their work that night. And I understand what Leader Russo is saying, that there were several items that needed to be changed. Small items. But but I would I would note a few things. Dr. Johnson, in his sworn affidavit, said several things in anticipation of the the federal court case, I believe, where he mentioned that he did not finish his work on this map. And he further mentioned that, as you guys are all aware in the rules regarding the independent mapmakers, there was a requirement that none of the caucus mapmakers inject their maps or draw the maps themselves for the independent mapmakers. Dr. Rodden, in his affidavit further stated that there were a full 21 House districts and seven Senate districts that were literally taken from Mr. Glassburn and put into the map in violation of the rules established by this commission. And so the maps were neither finished nor in accordance with the rules of this commission. The next question I have is, who finished the maps? It's Dr. Rodden and Dr. Rodden did it outside the purview of this commission. He did it without the guidance of this commission. And beyond that, you have to ask yourself where, who, who, who is Dr. Rodden and what's his relevance to the case at hand? He is a paid expert by the attorneys that are the petitioners in this case and the Eric Holder aligned groups. And so I think it would be improper for us to use this Rodden map as a starting point for continuing our conversations and that's regardless of the reasons that the Secretary of State had mentioned yesterday and the objections that I think he still holds today. Thank you.

Co-Chair Sen. Vernon Sykes [00:06:10] And are there additional comments?

House Minority Leader Rep. Alison Russo [00:06:13] Mr. Co-Chair, I'd like to respond to that

Co-Chair Sen. Vernon Sykes [00:06:15] Leader Russo.

House Minority Leader Rep. Alison Russo [00:06:16] Thank you. Thank you, Mr. Co-Chair. To be clear, this map is finished. In fact, what Dr. Johnson said in his testimony was that he had not finished inspecting and reviewing and double checking the maps. After that, they were complete. And that is what Rodden did. That was submitted to both the court, the federal court, and as well as the state Supreme Court. So my question to the commission and for those who are opposed to this map, and I suppose I'll start with Senator McColley specifically what violations of Article 11, Sections two, three, four or five and seven have been identified within this corrected map that has been presented before us?

Co-Chair Sen. Vernon Sykes [00:07:04] Senator McColley.

Sen. Rob McColley [00:07:06] Thank you, Co-Chair. As I mentioned in my response earlier, it was regardless of the issues that Secretary LaRose illustrated, however, many of

those issues remain for me. So regardless of whether this map complies or not, although I have reason to believe looking at some of the districts, there could be some some issues. Regardless of that fact, I share many of the same concerns of the secretary. And so I cannot in good conscience support this map.

House Minority Leader Rep. Alison Russo [00:07:41] Senator?

House Minority Leader Rep. Alison Russo [00:07:42] Leader Russo.

House Minority Leader Rep. Alison Russo [00:07:43] I thank you. Co-Chair. So if I'm understanding correctly, again, we have a constitutional map that is before us that has been verified, has no constitutional violations of Article 11, Sections two, three, four, five and seven. And as a reminder, we are under a court order to adopt a constitutional set of maps by 9 a.m. tomorrow morning. Regardless of any implementation challenges, regardless of what election cycle we do or don't think that this will apply to. So I recommend support of this motion and would ask the commissioners, if not adopting a constitutional map today, will put us at risk of contempt.

Co-Chair Sen. Vernon Sykes [00:08:32] Any additional comments? Auditor Faber.

Auditor of State Keith Faber [00:08:44] Yeah. Yeah. I had trouble adopting this map that I learned about today for the first time at 3:00 or thereabouts. The fact of the matter is, this map was not completed by the independent map drawers who, frankly, as the evidence would show, may have not have been all that independent. But regardless, the obligation was on us to draw map. As we all know, a number of us had amendments to be offered that the were not able to be considered in the time frame that the independent or the the map drawers had. It was our obligation to draw map not on to people that we hired, particularly when we couldn't even offer amendments to that map or talk about suggestions as to where they are, whether this map meets all the provisions of two, three, four or five and seven, I have no idea. I have not had a chance to review it in detail. And from that reason, and because of the reasons articulated by Secretary LaRose, I think it's inappropriate for us to be voting on that map as completed by one of the petitioners and their lawyers. Make no mistake, the Mark Mark Elias group, who apparently submitted this map and Mr. Rodden, who works for them, I've had things that I liked Mr. Rodden had done and thought might be a workable spot in the past. However, this map and these changes, I don't believe, represent that. I don't believe they're fair. And I believe they're gerrymandered in front of in favor of one of the parties. So I will be a no vote.

Unidentified [00:10:05] [inaudible audience chatter]

Co-Chair Sen. Vernon Sykes [00:10:09] Governor DeWine

Governor Mike DeWine [00:10:10] Mr. Chairman, thank you very much. In addition to these problems, there is another problem. Yesterday, after our meeting, I sat down with Secretary LaRose and went over the problems that he had articulated and we spent some quite some time to do doing that. I asked him then at the end of our discussion to reduce to writing what his position was. And I would like, if I could, Mr. Chairman, to to yield to the Secretary to explain those problems.

Unidentified [00:11:00] [inaudible audience chatter]

Governor Mike DeWine [00:11:03] Let me just say, Mr. Chairman, it was in more detail. And I think I got a fuller understanding of what he said and it is clear to me that it is impossible to proceed with an August 2nd primary with any map other than map three. That's the conclusion he comes to.

Secretary of State Frank LaRose [00:11:34] Absolutely.

Unidentified [00:11:34] [inaudible audience chatter]

Governor Mike DeWine [00:11:36] So I think that is relevant. Mr. Chairman, I think that is relevant. Members of the committee. I think that is relevant to this discussion, too. And I would ask if the Secretary could explain that at this point.

Co-Chair Sen. Vernon Sykes [00:11:52] One question to the governor, do you think it would be more relevant? I understand there may be another motion for consideration of map 3?

Governor Mike DeWine [00:11:58] Mr. Chairman, if you rather have that explanation later, that's fine. I couldn't decide whether to do it now because I think it does have some relevance to this. But you're right, it probably has more relevance later. And if you want to do it later. I'm perfectly fine with it.

Co-Chair Sen. Vernon Sykes [00:12:14] Okay. We'll do it later.

Governor Mike DeWine [00:12:15] Thank you.

Co-Chair Sen. Vernon Sykes [00:12:17] Leader Russo.

House Minority Leader Rep. Alison Russo [00:12:18] I thank you. Co-Chair. I would like to address the issue of having these maps before us. Again, I would like to remind members of this commission that these maps were actually filed with the court on April 8th and April 12th. They've actually been delivered by the counsel of the plaintiffs to all of the counsel of members of this commission. So we have all had plenty of time and access to these maps. They are virtually the same as the maps that the map drawers completed on March 28th. And again, we again have a constitutionally compliant map in front of us. That is what the court has ordered us to do, is to adopt a constitutionally compliant map by tomorrow morning at 9 a.m.. Again, not with consideration of whether or not implementation of this map or the election cycle that this map would be used. That is the court order before us. And, you know, again, I would propose back to the members of the commission. If you are not happy with these maps, why no amendments have been offered to change this map if there were changes that you wanted to make.

Co-Chair Sen. Vernon Sykes [00:13:43] Are there additional comments? Will the staff please called roll?

staff [00:13:53] Co-Chair LaRe?

Co-Chair Rep. Jeff LaRe [00:13:55] No.

staff [00:13:56] Senator Sykes?

Co-Chair Sen. Vernon Sykes [00:13:58] Yes.

staff [00:13:59] Governor DeWine?

Governor Mike DeWine [00:14:01] No.

staff [00:14:01] Auditor Faber?

Auditor of State Keith Faber [00:14:02] No.

staff [00:14:03] Secretary LaRose?

Secretary of State Frank LaRose [00:14:04] No.

staff [00:14:05] Senator McColley?

Sen. Rob McColley [00:14:06] No.

staff [00:14:07] Leader Russo?

House Minority Leader Rep. Alison Russo [00:14:08] Yes.

staff [00:14:09] Mr. Co-Chair. Two-Five.

Unidentified [00:14:11] [inaudible audience chatter]

Co-Chair Sen. Vernon Sykes [00:14:16] Order! Please! Order, please. Order, please.

Unidentified [00:14:20] [inaudible audience chatter]

Co-Chair Sen. Vernon Sykes [00:14:25] The motion fails. Is there any other business to be brought before the commission?

Unidentified [00:14:31] [inaudible audience chatter]

Governor Mike DeWine [00:14:37] Mr. Chairman?

Co-Chair Sen. Vernon Sykes [00:14:39] Governor DeWine.

Governor Mike DeWine [00:14:40] I wonder if we now could have the explanation. Again, I asked the Secretary to reduce it to writing. I think it is, at least for me, was a more fuller, after reading this two pages, more full understanding of exactly the the quandary we are in or the very difficult situation that we are in. And I would ask if he could explain that.

Co-Chair Sen. Vernon Sykes [00:15:03] Are you making a motion just want the explanation?

Governor Mike DeWine [00:15:06] Not at this point, but we will have a motion.

Co-Chair Sen. Vernon Sykes [00:15:08] Okay.

Secretary of State Frank LaRose [00:15:09] Happy to do so, Mr. Chairman.

Co-Chair Sen. Vernon Sykes [00:15:12] Secretary LaRose

Secretary of State Frank LaRose [00:15:13] Yeah. Thank you, Mr. Chairman. Thank you, Governor. I'm going to read this. Normally, I wouldn't read something verbatim, but I think it's important for everybody to hear it. It's been passed out to the members of the commission right now, and there'll be copies for the members of the public and the press as well. This is a statement that I wrote today. As of today, a primary election date for the offices of state representative, state senator and political party state central committee member has not been established. The Ohio General Assembly has the sole authority in the Ohio Revised Code to set the time, place and manner of a public election conducted in the state of Ohio. The only other government entity that can supersede that authority is a federal court of law. A three judge panel assigned to consider the Ohio General Assembly redistricting case, *Gonidakis et al. v. LaRose* has ordered that if the state does not adopt a lawful district plan and set a primary election date before May 28, quote, "We will order the primary, be moved to August 2nd and map 3 be used for [the on- for] only the 2022 election cycle. After that, Ohio will have to pass a new map that complies with federal and state law." As of this date, the Ohio General Assembly has not set a primary election date for the above mentioned contests. Any action doing so would require an emergency clause to make the election date and its associated deadlines effective immediately. The Speaker of the House and the president of the Ohio Senate have indicated publicly that they lacked the required two thirds vote in both chambers to enact emergency legislation for this purpose. Therefore, the only remaining option to conduct a primary election to which Ohio voters are entitled is the prescribed action by the federal district court. My office,

Co-Chair Sen. Vernon Sykes [00:16:53] Order please.

Secretary of State Frank LaRose [00:16:53] My office and the bipartisan Ohio Association of Elections Officials have repeatedly stated that because August 2nd, 2022, is already reserved for special elections in Ohio law, it is the only date on which a statewide primary election can be conducted in advance of the scheduled general election, of course November 8, 2022. August 2nd, 2022 is the latest date by which Ohio can conduct a primary election without overlapping or altering the scheduled timeline to successfully administer a general election. This is also recognized by the three judge panel in *Gonidakis et al. v. LaRose* and uncontested by any of the parties involved in that litigation. Under Ohio law elections are conducted over at least a 90 day period. 89 days now stand between this date, today and August 2nd, 2022. This puts Ohio within the traditional statutory window for administering its next election. Federal panel majority in *Gonidakis* stated clearly that for any new district plan to be utilized for an August 2nd, 2022 primary election and to have the benefit of a full 90 day election administration period, the Commission would need to adopt it by April 20th, 2022. Obviously, that did not happen. Their opinion is based on testimony from my staff that the 88 county boards of election would collectively need at least two weeks to reprogram their computer systems to new House and Senate districts before the full 90 day primary election period would begin, which would also do the least amount of damage to current Ohio election law. To administer an August 2nd election the boards must meet a series of statutory and administrative deadlines to have the first ballots, the first ballots which are known as the Uniformed and Overseas Civilians Absentee Voting Ballot Act, or UOCAVA ballots. Those must be prepared not later than June 17, 2022, 46 days before the election. To achieve this, elections officials must meet the following statutory requirements, these are those requirements: have to certify no later than 78 days before the primary election, hold protests against certified candidates no later than 74 days before the primary election, determine the validity or invalidity of the declaration of candidacy and petition, receive

write in candidate declarations of intent for partisan offices, hold protests against write in candidates no later than 67 days before the election, the Secretary of State must certify to boards of elections the form of the official ballot no later than 70 days before the primary election, and then boards of elections of the most populous counties in a multi county district must certify names of all candidates to the other county boards of elections in the district no later than 70 days. Boards of elections need at least two weeks, as I stated before, to reprogram voter registration and tabulation systems to accommodate a new map, which, as of this date takes us to at least May 19th were a new map to be passed. At this point, the boards would already be in violation of state law unless the General Assembly changes the statutory deadlines. Additionally, my office would not instruct the boards to deprogram map three before May 28. Risking the new map could be invalidated with no immediate options to administer a primary election. This administrative delay also reduces or nearly eliminates the required process election officials must complete to conduct testing on all voting equipment proof ballots, test ballots, recruit poll workers, and order absentee ballot absentee and Election Day ballots. These are the some of the issues that I detailed for you all yesterday. In summary, the last day, a new map could have been ordered and implemented without ordering altering current statutory deadlines that proceed in August 2nd, 2022. Primary election was April 20th, 2022. The General Assembly has not set a new primary date and its leaders have publicly stated that they do not have the votes to pass emergency legislation to do so. All but two of Ohio's 88 County Board of Elections have fully programed the Third General Assembly District plan adopted by the Ohio Redistricting Commission. A majority of the federal panel considering Gonidakis recognized that map 3 has administrative advantages of implementation that no other map produced by the Commission to date presents, including a largely completed candidate certification process that also would not require the revisiting of deadlines and residency requirements. Therefore, map 3 is the only viable option, the only viable option to effectively administer a primary election on August 2nd, 2022. If on May 28th, 2022, the Federal Court orders that Ohio used Map three and sets that primary election date for August 2nd, 2022, my office will be prepared to issue a directive to the Boards of Elections, implementing that order and providing detailed instructions on the administration of a successful primary election, wanted to state, quickly, for reiteration purposes, the Speaker and the President have made it abundantly clear that they lacked the votes for an emergency clause legislation. They said that to us yesterday, and while I'm always willing to strive to accomplish something worthwhile, I'm certainly not interested in exercises in futility. And so what we have to work with is map 3. It's important to understand that earlier this year, when the commission adopted Map 3, my office began conducting the required statutory deadlines that are laid out in code for Map 3. We dutifully followed the law under Map 3 by sending out directives,

Co-Chair Sen. Vernon Sykes [00:22:39] Order please, please.

Co-Chair Rep. Jeff LaRe [00:22:43] Committee will stand at ease.

Secretary of State Frank LaRose [00:22:46] We dutifully followed the law... [committee stands at ease]

Secretary of State Frank LaRose [00:24:12] [reconvene] Appreciate that. So as I was stating, once Map 3 was adopted by this commission, our office dutifully followed the law with all of the timelines laid out in the law, including, administering directives to the boards of elections that told them to accept and review candidate petitions, allow for the protest period to begin. It also informed candidates how to utilize their rights under 9-C should they wish to move and even issuing the form of the ballot as well as posting a federal write

in ballot absentee notice which is required under federal law. All of those things occurred prior to the court's invalidation. So effectively, the Court the, the Ohio Supreme Court pressed pause on all of those elections administration processes if the federal court on the 28th of May were to overturn the ruling of the Ohio Supreme Court, essentially validating the third map. Our office is fully prepared to press play again on all of those processes which need to continue. That simply stated, is why MAP 3 is the most viable option from the elections administration standpoint. And with that, Mr. Chairman, I appreciate the time.

Sen. Rob McColley [00:25:26] Mr. Chairman, mr. Chairman.

Co-Chair Sen. Vernon Sykes [00:25:31] Yes, Senator McColley,

Sen. Rob McColley [00:25:35] Thank you. For for all the reasons we've discussed here today and those enumerated by Secretary LaRose's statement, I move that the Commission resubmit the February 24th, 2022 Commission Group plan only for use in the 2022 election, and the statement to the Redistricting Commission by Ohio Secretary of State LaRose to the Secretary of State's office no later than 9 a.m. tomorrow morning in response to the Ohio Supreme Court's order dated April 14, 2022. And after filing with the Secretary's office, counsel for the Redistricting Commission shall file the February 24th, 2022 Commission Approve Plan and the statement to the Redistricting Commission by the Ohio sec- by Ohio Secretary of State LaRose with the Ohio Supreme Court not later than 12 p.m. tomorrow in response to the Ohio Supreme Court's order dated April 14, 2020.

Secretary of State Frank LaRose [00:26:26] Second, second

Co-Chair Sen. Vernon Sykes [00:26:30] Is there a second? Leader Russo.

House Minority Leader Rep. Alison Russo [00:26:41] I thank you, co-chair. First, I would like to say and be very clear about this, that the federal court has not overturned a state court decision. Nor have they given us a loophole to simply ignore a court order. And this commission does not have the authority to only set a map for two years. We don't have that authority. We can vote to set a map out for four years or for a ten year map. That is the authority that we have. So my question for the Secretary of State that Secretary LaRose, after hearing your explanations, are you saying that you object to a constitutional compliant, constitutionally compliant map that was submitted the independent mapmakers map with the corrections by Rodden simply because of this implementation timeline or because the order itself, again, is not about implementation, it is about instituting a constitutionally compliant map.

Secretary of State Frank LaRose [00:27:49] There's two responses to that. Mr. Chair, if I may.

Co-Chair Sen. Vernon Sykes [00:27:51] Yes, please.

Secretary of State Frank LaRose [00:27:52] The first one is that, as I stated yesterday, in order to use that map to conduct an election, we would need to have supermajority votes in both chambers. And the Speaker and the President have made it clear to me that the votes for those for the for such legislation does not exist. And so I'm not interested in creating a situation where our elections officials are handed an untenable and unaccomplished situation. So unless there was a vote of the legislature to set the date and then change the deadlines associated with it, no map is something that I'm willing to consider at this point. Second, I guess I don't share your confidence that the map that you

presented today is void of any constitutional violations. You have stated that. But I have I guess I don't share that same optimism that that map is divinely inspired or perfectly void of any kind of constitutional violations.

Co-Chair Sen. Vernon Sykes [00:28:52] I would like to I'd like to move that we take a recess to consult with the commission's attorney to give us some advice as relates to map 3, whether or not is constitutional and or whether or not we are subjecting this commission to further charges of contempt.

Sen. Rob McColley [00:29:13] I object.

Secretary of State Frank LaRose [00:29:16] I object as well.

Co-Chair Sen. Vernon Sykes [00:29:22] I second the motion

Co-Chair Sen. Vernon Sykes [00:29:26] Any additional comment?

Secretary of State Frank LaRose [00:29:27] There is an objection

Co-Chair Sen. Vernon Sykes [00:29:31] Will this staff please call the roll.

Sen. Rob McColley [00:29:34] To be to be a point of order. This is on the motion to recess correct?

Co-Chair Sen. Vernon Sykes [00:29:38] On the motion to recess

staff [00:29:43] Co-Chair LaRe

Co-Chair Rep. Jeff LaRe [00:29:44] No

staff [00:29:45] Co-Chair senator Sykes

Co-Chair Sen. Vernon Sykes [00:29:46] Yes

staff [00:29:47] Governor DeWine.

Governor Mike DeWine [00:29:48] No

staff [00:29:48] Auditor Faber

Auditor of State Keith Faber [00:29:50] No

staff [00:29:51] Secretary LaRose

Secretary of State Frank LaRose [00:29:52] No

staff [00:29:53] Senator McCauley.

Sen. Rob McColley [00:29:54] No

staff [00:29:55] And Leader Russo

House Minority Leader Rep. Alison Russo [00:29:56] Yes.

staff [00:29:58] Mr. Co-Chair, two-five.

Co-Chair Sen. Vernon Sykes [00:30:00] Motion fails.

Secretary of State Frank LaRose [00:30:01] Chairman, I move we call the question.

Co-Chair Sen. Vernon Sykes [00:30:10] Staff please called the roll

staff [00:30:15] Co-Chair LaRe.

Co-Chair Rep. Jeff LaRe [00:30:16] Yes.

staff [00:30:17] Senator Sykes.

Co-Chair Sen. Vernon Sykes [00:30:18] No.

staff [00:30:19] Governor DeWine.

Governor Mike DeWine [00:30:20] yea

staff [00:30:21] Auditor Faber.

Auditor of State Keith Faber [00:30:23] Consistent with my vote on this map the first time, because I believe it has constitutional infirmities, particularly because I believe it's unconstitutional as a drawn map in favor of one political party, the Democrats. I don't believe this map supports the constitutional test. And therefore, even though I understand the need to get a map in place, I think if the federal courts want to impose it, they can do that. I'm a no vote.

Sen. Rob McColley [00:30:52] Mr Chariman, more point of order.

Co-Chair Sen. Vernon Sykes [00:30:54] Yes.

Sen. Rob McColley [00:30:55] A motion to call the question is a separate motion from the actual question. Correct. I'm just confirming that. And so this vote is on a motion to call the question. It's not on the actual question. That was the motion.

Auditor of State Keith Faber [00:31:10] Thank you. Thank you for that clarification Senator McColley and for calling the question? Yes. [inaudible audience chatter, simultaneous]

staff [00:31:17] I'm sorry Mr. Co-Chair, I did not hear what Auditor Faber said

Co-Chair Sen. Vernon Sykes [00:31:31] He indicated that he, uh, yes. The yes, the yays prevail. So we will call the question now on the motion.

Sen. Rob McColley [00:31:41] Mr. Chairman, that I don't believe my name was called on the previous motion. I just want to make sure it's a it's a yes vote.

staff [00:31:48] Would you, Mr. Co-Chair, would you like me?

Co-Chair Sen. Vernon Sykes [00:31:49] Please call the name Senator McColley

staff [00:31:54] Senator McColley.

Sen. Rob McColley [00:31:54] yes

staff [00:31:54] Secretary LaRose

Secretary of State Frank LaRose [00:31:54] Yes

staff [00:31:55] Leader Russo.

House Minority Leader Rep. Alison Russo [00:31:56] No.

staff [00:31:58] 5 to, to 2, sir.

Co-Chair Sen. Vernon Sykes [00:32:02] At this point, we will call to question then on the motion. Staff, please call the role.

staff [00:32:10] Co-chair LaRe

Co-Chair Rep. Jeff LaRe [00:32:12] Yes.

staff [00:32:14] Co-Chair Senator Sykes.

Co-Chair Sen. Vernon Sykes [00:32:15] No.

staff [00:32:16] Governor DeWine.

Governor Mike DeWine [00:32:17] yes.

staff [00:32:17] Auditor Faber.

Auditor of State Keith Faber [00:32:20] For all the reasons I previously articulated, I am a no vote because I believe it is a constitutional gerrymanders.

staff [00:32:29] Secretary LaRose.

Secretary of State Frank LaRose [00:32:30] Yes.

staff [00:32:31] Senator McColley.

Sen. Rob McColley [00:32:32] Yes

staff [00:32:33] Leader Russo [audience chatter]

House Minority Leader Rep. Alison Russo [00:32:35] Consistent with a previous Supreme Court order and ruling that has already indicated that this map is not constitutional, I vote no.

staff [00:32:44] Mr. Co-Chair 4-3

Co-Chair Sen. Vernon Sykes [00:32:50] The motion is approved. Is there any further business to be brought before the Commission today?

House Minority Leader Rep. Alison Russo [00:32:55] Mr.,

Co-Chair Sen. Vernon Sykes [00:32:56] Yes.

House Minority Leader Rep. Alison Russo [00:32:57] Are we going to see the statement?

Co-Chair Sen. Vernon Sykes [00:32:58] Yes. [audience chatter] It's improper at this time. Do you have the majority report We have a requirement, if I have order.

Unidentified [00:33:24] [audience chatter] [committe stands in recess]

Co-Chair Sen. Vernon Sykes [00:33:35] [reconvene] at this time, we will call on Leader Russo for a Minority Report.

House Minority Leader Rep. Alison Russo [00:33:54] Thank you. Co-Chair Sykes. Ladies and gentlemen, the majority commissioners of the Ohio Redistricting, Redistricting Commission failed once again to uphold their duty to the Ohio Constitution and the people of Ohio. They failed to adhere to the old adage that those who cannot remember the past are condemned to repeat it. Unfortunately, we are not today dealing with ancient history, but instead in recent events we are again left with a blatantly unconstitutional plan that brings us no closer to the goal of a constitutionally compliant map. The actions taken by the majority are a clear affront to the Supreme Court of Ohio. The majority sat on their hands and adopted a plan today that we all know is unconstitutional. Once again, the majority members dragged their feet, they ignored our calls for action, defied the Supreme Court of Ohio, and paid no mind to the reforms adopted into our Constitution by the voters of Ohio at the last minute. The Commission once again adopted a patently unconstitutional map. In fact, it is simply a resubmission of Map 3 without seriously considering any widely available constitutional alternatives. The majority commissioners performed exactly as the dissent in the federal case of *Ganidakis versus LaRose* predicted. They did nothing and tried to run out the clock and a bad faith effort to punt the responsibility to another entity, prizing their partisan advantage over their duty as public servants sworn to uphold the rule of law. The federal court presumed that, quote, "Ohio's officials are public servants who still view partisan advantage as subordinate to the rule of law and that it would be, quote, 'in our own self-interest to pass a new map rather than accept map three.'" The majority commissioners have ignored this call to adhere to the rule of law and rise above partisan interest. The majority did not take us down this path by mere accident. The events that led us back here were not committed through incompetence. We are here purposefully. The majority had plenty of time to meet all the criteria presented by the Supreme Court of Ohio. There were some members of this commission who made consistent and clear efforts to meet those standards set by the court. And instead of action, our calls were met with silence or indifference. The Commission should have met numerous times between April 14th and today, and instead we met yesterday and adjourned abruptly without even fully discussing our sparse agenda. And at that meeting, the majority commissioners seemed much more interested with the Democratic caucuses map drawing consultant than they did with actually meeting a Supreme Court ordered deadline for a set of constitutional maps. The Supreme Court of Ohio gave every reason for the Ohio Redistricting Commission to reengage our independent map drawers, Dr. McDonald and Dr. Johnson and allow them

the few hours needed to finalize their maps from the last round of map drafting. Beginning April 14th, the time allotted to the commission was more than enough to reengage the map drawers provide them with the commissioner's feedback, debate potential amendments and finalize a constitutional set of maps. Instead, no action was taken, and less than two days before our May 6th, 9 a.m. deadline, the majority instead refused to reengage with the independent map drawers. The deficiencies of the map, adopted on May 5th by a vote of 4 to 3 are well known by commissioners, the court and the general public. The map fails to live up to the requirements in the Ohio Constitution, Article 11, Section 6-A and 6-B. The act of passing an unconstitutional map is egregious. It's egregious enough in its own right, but resubmitting an identical copy of a map already struck down by the Supreme Court of Ohio is indefensible. The majority commissioners have no defense, and they refused even to provide a pretense for their actions by abiding by the requirement in Ohio's Constitution, Article 11, Sections 8-C-2 to explain the constitutionality of their actions. The majority commissioners have ignored the Ohio Supreme Court and have not only refused to work on a new plan, as we have been given time and again directed to do, but have passed a plan that the Supreme Court of Ohio has already found to be unconstitutional. This is a clear slap in the face of Ohio voters and of the rule of law.

Co-Chair Sen. Vernon Sykes [00:39:38] The report does not require a vote and will be accepted in the record. Is there any further business? The meeting is adjourned.

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Josh Rultenberg 
@JoshRultNews

...

 [@DrVernonSykes](#)/[@Russo4Ohio](#) try to get in the meeting room doors but they are locked. Sykes then explains how Democrats are ready to work on legislative maps but the Republicans have been unwilling to do so. [@SpectrumNews1OH](#)



10:27 AM · Apr 25, 2022 · Twitter Web App

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Prohibition of Menthol Leaves Police Perplexed

Biden's menthol ban will create a black market for tobacco—funding criminal groups and making our streets less safe.

Cupp: New set of maps is in works



Ohio House Speaker Bob Cupp, R-Lima, attended a fundraiser at the Medici Museum of Art on Monday for Nick Santucci, of Howland, a Republican state House candidate. Cupp also is the co-chairman of the Ohio Redistricting Commission.

HOWLAND — With less than a month to come up with a fifth set of legislative district maps, House Speaker and Ohio Redistricting Commission co-chair Bob Cupp has given up on speculating whether an agreement will be reached.



But he assures voters that the commission is doing its best with the hand it has been dealt.

A three-member federal judicial panel in the Southern District of Ohio ruled last week that if the Ohio Redistricting Commission couldn't get maps approved by the state Supreme Court by May 28, it would impose the third set of maps from Feb. 24 that were deemed unconstitutional by the court.

The hope is to have an agreed-upon set of maps before a second primary election, tentatively slated for Aug. 2. Cupp said the federal court has weighed in and ensured a second primary election to include the state general assembly. He added that the statewide officeholders, candidates for Congress and all the local candidates and issues will be on the May 3 ballot.

Cupp said the commission is working hard to create a fifth map that is agreeable to both sides of the aisle. While the new maps, or previous maps if new ones are not agreed upon in time, will not apply to the May 3 primary, it will significantly affect the second primary.

The Hill

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“We’re working on it. This will be the fifth map that we’ve tried to do, and we’ve looked at it at all different angles,” Cupp said. “There is quite a disagreement on the Supreme Court itself because their decisions have been 4-3, and so it’s not surprising that there are differences of opinion on the commission.”

Cupp said that while the deadline is tight, it’s better than the previous, tighter deadlines that he said were not reasonable.

The court has rejected four sets of maps due to what Cupp called a “difference of opinion as to what the constitution requires.” Cupp said the court has no constitutional authority to tell the commission when a new map is due back, but it is trying to comply with the orders as best as it can. He said this is the first time Ohio has gone through this process and it has been “more complicated and taken longer than anyone expected.”

Cupp, a former Ohio Supreme Court justice, did not comment on whether he believes the court has overstepped its authority by rejecting four sets of maps. He said the situation is in litigation so he could not comment, but he added that division among the court is the source of the issue.

“This is a sharply divided court with 4-3 decisions. One vote separates those who think the maps have met the constitution’s requirement and those who think it has not,” Cupp said. “This is not a clear-cut situation.”

Varying deadlines and a second primary that is not yet confirmed has some concerned that voter turnout will be impacted by the confusion. Cupp said he is hopeful and optimistic that there will still be a good voter turnout based on the candidates’ resourcefulness in generating voter interest.

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ROBERT R. CUPP
SPEAKER OF THE HOUSE
OHIO HOUSE OF REPRESENTATIVES
DISTRICT 04



77 S. HIGH STREET, 14TH FLOOR
COLUMBUS, OH 43215
REP04@OHIOHOUSE.GOV

April 27, 2022

Representative C. Allison Russo
Minority Leader
Ohio House of Representatives
77 South High Street
Columbus, Ohio 43215

Dear Leader Russo:

I was made aware of your letter submitted yesterday, April 26, 2022 at 4:25 p.m. to the House Clerk's office requesting use of a House committee room for the "business of the Ohio Redistricting Commission" from April 27 – May 3, 2022.

As you know, Ohio Redistricting Commission Rule 5 allows for a meeting of the Commission to be called in one of two ways: (1) by joint call of the Co-Chairs, or (2) by any of the three members of the Commission.

Your request does not meet the criteria specified by Commission Rule 5, and it is therefore invalid. I have attached a copy of the Rules for your reference.

Sincerely,

A handwritten signature in dark ink that reads "Robert R. Cupp". The signature is written in a cursive style.

Robert R. Cupp
Speaker of the House
Ohio House of Representatives

BENNETT_039



Josh Rultenberg ✓
@JoshRultNews

...

A source tells me at least two Republicans on the Ohio Redistricting Commission are telling their Democratic counterparts they do not plan to meet until May 4th at the earliest because they are campaigning.

[@SpectrumNews1OH](#)

1:44 PM · Apr 27, 2022 · Twitter for iPhone

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Josh Rultenberg ✓ @JoshRultNews · Apr 27

...

Replying to [@JoshRultNews](#)

.[@FrankLaRose](#) tells me he would be willing to meet before May 4th including this weekend. He would like have Tuesday to focus on the election. [@SpectrumNews1OH](#)

2

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24



ROBERT R. CUPP
SPEAKER OF THE HOUSE
OHIO HOUSE OF REPRESENTATIVES
DISTRICT 04



77 S. HIGH STREET, 14TH FLOOR
COLUMBUS, OH 43215
REP04@OHIOHOUSE.GOV

April 28, 2022

Senator Vernon Sykes
Ohio Senate
Statehouse
Columbus, Ohio 43215

Dear Senator Sykes:

I write in reply to your letter dated April 27, 2022. Thank you for agreeing to hold an Ohio Redistricting Commission meeting on May 4. Our staffs are collectively preparing a meeting notice for that date. We will continue to work on an agenda for that meeting as it will draw near soon.

To recap our earlier conversation, it is both unwise and not feasible for the Redistricting Commission to meet prior to that date. As you are quite aware, the primary election for statewide and congressional offices, as well as numerous local races and ballot issues across Ohio will be held on May 3, less than a week from now. Secretary LaRose has the statutory responsibility to ensure that the election runs properly across the state – a huge responsibility. Further, the redistricting process has caused enough confusion among Ohio voters. We already have a split primary. Early voting is at a record low. Holding more meetings prior to May 3 would serve no other purpose than to further confuse the electorate. I am not willing to sacrifice the smooth operation of the primary election for the sole purpose of conducting business that can just as easily be conducted at the Redistricting Commission meeting already scheduled for May 4.

You also mischaracterize Auditor Faber's April 26, 2022 letter. That letter clearly did not call a meeting of the Redistricting Commission pursuant to Rule 5. Instead, the letter encouraged the Commission to meet "as soon as possible." As explained above, we are meeting as reasonably and feasibly soon as possible and thus meeting the Auditor's request.

I must express my concern with your request for even more money to re-engage your outside map making consultant, Chris Glassburn. The decision on that request, of course, rests not with me as only the Legislative Task Force on Redistricting, Reapportionment, and Demographic Research ("Task Force") can allocate those funds. That Task Force is co-chaired by Senator Rob McColley and Representative Allison Russo. Your request for additional money should be directed to them. Since you raised the issue, however, I do harbor some concern with your request for additional funding for Mr. Glassburn. It is my understanding that on April 16, 2022, Rep. Russo requested an additional \$200,000 allocation to the Democratic caucus for the stated purpose of re-engaging Mr. Glassburn. It is important to note that this request is in addition to **three other allocations** to the Democratic caucus.

BENNETT_041

- On April 23, 2021, \$150,000 was allocated to the Democrat caucus¹.
- On August 11, 2021, less than four months later, another \$250,000 was allocated to the Democrat caucus because the original allocation had already been consumed.
- On January 16, 2022, five months later, you expressed a need for an additional \$150,000 for your map making consultant.² This request too was granted.

Now, after paying \$500,000 to Mr. Glassburn, you claim a need to pay him an additional \$200,000? To put this into context, the two independent map makers, Dr. Douglas Johnson and Dr. Mark McDonald, combined were paid roughly \$100,000. I would encourage both co-chairs of the Task Force to request an accounting from Mr. Glassburn for past expenditures and an itemized statement of any billings going forward

I look forward to a productive meeting of the Redistricting Commission on May 4.

Sincerely,



Robert R. Cupp
Speaker of the House
Ohio House of Representatives

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¹ The two Democrat members of the Redistricting Commission.

² The Republican Caucus, all five Republican members of the Redistricting Commission, has received a total allocation of \$200,000.



Ohio Senate
Senate Building
1 Capitol Square
Columbus, Ohio 43215
(614) 466-4071

April 28, 2022

Dr. Vernon Sykes
Ohio State Senator
28th Senate District

Dear Speaker Cupp,

I write to address your recent wholly incorrect assertion about the cost of the Democratic Caucuses' map drawing consultant, Mr. Chris Glassburn. Mr. Glassburn has not been paid \$500,000 as your earlier letter incorrectly states. That is the total allocation to both Democratic Caucuses for all non-legal redistricting-related expenses. However, as you know, these allocations have certain time limitations before the remaining expenditures lapse and are returned to the Legislative Service Commission. \$145,878 of allocated dollars to the Democratic Caucuses lapsed during the redistricting process, were unspent, and thus, returned to taxpayers.

Mr. Glassburn was paid \$182,500 for his work (see attached) – considerably less than the amount you allege. Your comparison to the cost of the recently hired independent map makers is completely unfair as well. Mr. McDonald and Mr. Johnson were paid approximately \$49,000 apiece for six days of work. Mr. Glassburn has served as the Senate Democratic Caucus map drawing consultant since August 2021. He has worked continuously for more than eight months – through four unconstitutional map drawing rounds for state legislative maps, and for two rounds of congressional maps. Since January, he has also been the principle map drawing consultant for the House Democratic Caucus. The record of this process additionally shows that Mr. Glassburn has done extensive work in close proximity for the Secretary of State and Auditor of State to assist them in applying their map making ideas, since no allocation of funds were made available to the statewide officeholders who sit on the Ohio Redistricting Commission. Mr. Glassburn has done work commensurate with this elongated process. I would reiterate that, for future map making efforts, additional funds should be allocated for Mr. Glassburn to compensate for his considerable efforts.

Sincerely,

A handwritten signature in black ink, appearing to read "Vernon Sykes", with a stylized flourish at the end.

Senator Vernon Sykes
28th Senate District
Co-Chair, Ohio Redistricting Commission



OHIO REDISTRICTING COMMISSION

ANNOUNCEMENT OF COMMISSION MEETING

TO: Members of the Ohio Redistricting Commission

FROM: Speaker Robert Cupp, Co-Chair
Senator Vernon Sykes, Co-Chair

DATE: Wednesday, May 4, 2022

TIME: 2:00 P.M.

LOCATION: Ohio House Finance Hearing Room (Room 313)
Ohio Statehouse
1 Capitol Square
Columbus, Ohio 43215-4275

AGENDA

The Ohio Redistricting Commission will convene at 2:00 P.M. in the House Finance Room 313.

Senate Contact: Mallory Golski, (614) 466-5899
House Contact: Aaron Mulvey, (614) 466-8759



Susan Tebben 
@susantebben



INBOX: The official notice of the Ohio Redistricting Commission's next meeting, on legislative maps, has been released:

The ORC will meet at 2 p.m. on May 4, in room 313 (House Finance Room).

4:40 PM · Apr 28, 2022 · TweetDeck

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April 29, 2022

Honorable Mike DeWine
Governor, State of Ohio
77 South High Street, 30th Floor
Columbus, Ohio 43215

Honorable Matt Huffman
President, Ohio Senate
Ohio Statehouse
Columbus, Ohio 43215

Honorable Robert Cupp
Speaker, Ohio House of Representatives
77 South High Street, 14th Floor
Columbus, Ohio 43215

Honorable Allison Russo
Ohio House Minority Leader
77 South High Street, 14th Floor
Columbus, Ohio 43215

Honorable Kenny Yuko
Ohio Senate Minority Leader
Ohio Statehouse
Columbus, OH 43215

Members of the Ohio Redistricting
Commission

Members of the Ohio General Assembly

Dear Colleagues:

As the Ohio Redistricting Commission once again considers its next steps, I fear we've reached the proverbial definition of insanity - doing the same thing over and over again but expecting a different result. It would seem I'm not alone.

One dissenting Ohio Supreme Court justice said after the invalidation of the fourth General Assembly redistricting plan, "Ohio is now stuck in a proverbial 'time loop,'" adding that "after months have passed and thousands of taxpayer dollars have been spent, we are right back to where we were on September 21, 2021, without any end in sight." Another dissenting justice wrote, "... in reality, it may take federal intervention..." to fix the current redistricting impasse. This is precisely why my office testified in federal court that, to successfully administer a second primary election, we need immediate clarity on the districts in which candidates will compete, as well as certainty about the date of the election and the associated deadlines required to administer it. The court responded on April 20 in the *Gonidakis v. LaRose* case:

"As of today, no map exists, uncertainty persists, and nothing ensures that a state-legislative election will happen at all. This court's intervention, however, can restore a lawful and orderly election by ensuring Ohio voters, candidates, and officials know the districts that will apply—at least as a last resort."

The majority opinion then clarified that "if the State does not act before May 28, we will order the primary be moved to August 2 and Map 3 be used for only the 2022 election cycle. After that, Ohio will have to pass a new map that complies with federal and state law." *To be clear, the federal court prefers that the Commission adopt a "lawful map" with bipartisan consensus before May 28 that would resolve ongoing litigation and receive state court approval.* I truly hope we can meet those expectations; however, I'm also aware that it's a high bar to reach, and time is not our ally. It's also a feat that's far from certain given that Commission members don't


appear to have suddenly changed their convictions on what constitutes a “lawful” map, and litigants seem to have an unending pot of special interest money and political arrogance with which to contest this process.

Therefore, as Ohio’s chief elections officer, I have serious concerns that an August 2 primary election can be conducted with any map other than the federal court’s prescribed Map 3. At the federal court hearing nearly a month ago, my Elections Director testified that time was of the essence for the 88 county boards of elections to conduct a General Assembly primary election on August 2 *with any district map other than the one they had already programmed into their computer systems – Map 3.* The reasons for this are many. First, drafting a new map requires time for the map drawers to produce the electronic files and written legal descriptions that define the new districts, as well as time for the 88 county boards of elections to then reprogram their voter databases and tabulation systems. The General Assembly also would need to enact legislation by a two-thirds vote in both chambers that would reset the primary election calendar, including revisiting the candidate petition verification process and addressing the 30-day candidate residency allowance in the state constitution. (It’s worth noting that legislative action would not be needed under the federal court’s prescribed Map 3 remedy.) As if that’s not enough of a hurdle, let’s hypothetically say the Commission miraculously adopts a consensus map on May 6. As I mentioned, the Ohio constitution allows potential candidates 30 days to relocate after a new district plan is adopted. Depending on the outcome of pending litigation on that issue, the boards might have just a few days or *no time at all* to certify candidates, consider protests, set deadlines for write-in candidacies, and produce ballots prior to the first overseas military ballots being sent on June 17, which is not only an unworkable outcome but also one that would fly in the face of both state and federal law. This problem becomes even more pronounced if the Commission seeks additional time from the Ohio Supreme Court.

I’m skeptical that all of this will fall perfectly into place, and it’s exactly why I conveyed to the federal court the urgent need for finality in this process. I asked them to provide us with guidance by April 20 so we had adequate time to prepare for another primary election without having to alter the copious amounts of statutory and administrative deadlines. They did so – clearly understanding that the prescribed remedy, however distasteful, is likely necessary given the political insanity of this process. I also recognize that we have obligations to the Ohio Supreme Court, whose majority seems intent on riding this carousel in perpetuity by compelling, as one justice described it, “what the Constitution forbids: gerrymandering.” Despite the repeated threats of contempt against me and my fellow commissioners, I’m not willing to compromise my constitutional principles for the sake of appeasing an activist court or, worse, Eric Holder’s attempt to countermand one party’s electoral failures.

None of this is intended to suggest that we don’t try to resolve our differences. I look forward to reconvening the Commission next week and reevaluating our willingness to compromise on a new lawful map. I’m hopeful for a positive outcome, but I’m skeptical that it’ll be any different a fifth time around. I suspect the federal court is skeptical as well, which is why they’ve given us a remedy to ensure that Ohio voters can receive an accurate, accessible, and secure election in a timely manner. We should respect that remedy as the “last resort” the court intends, but, if we fail to reach consensus quickly, it’s likely our last chance to replace voter confusion with confidence, as we continue working toward a long-term solution to this constitutional crisis.

Yours in service,


Frank LaRose
Ohio Secretary of State



Josh Rultenberg ✓
@JoshRultNews



.@Rob_McColley has been appointed to the Ohio Redistricting Commission by Senate President Matt Huffman. @SpectrumNews1OH

4:07 PM · May 3, 2022 · Twitter for iPhone

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Josh Rultenberg ✓ @JoshRultNews · May 3



Replying to @JoshRultNews

Huffman says, "I believe Senator @Rob_McColley offers a fresh approach and a new opportunity to produce a result that clearly the majority of the court was not willing to consider with the speaker and myself serving as members." @SpectrumNews1OH

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**OHIO REDISTRICTING COMMISSION
WEDNESDAY, MAY 4, 2022 MEETING
AGENDA**

- I. Call to Order
- II. Attendance
- III. Minutes
- IV. Consideration of allocation of funds to further the work of the Commission
- V. Consideration regarding independent map drawers
- VI. Consideration regarding Commission's plan of work and meeting schedule
- VII. Other business
- VIII. Adjourn

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OHIO REDISTRICTING COMMISSION

ANNOUNCEMENT OF COMMISSION MEETING

TO: Members of the Ohio Redistricting Commission

FROM: Representative Jeff LaRe, Co-Chair
Senator Vernon Sykes, Co-Chair

DATE: Thursday, May 5, 2022

TIME: 4:45 P.M.

LOCATION: Ohio House Finance Hearing Room (Room 313)
Ohio Statehouse
1 Capitol Square
Columbus, Ohio 43215-4275

AGENDA

The Ohio Redistricting Commission will meet at 4:45 P.M in House Finance Room 313.

Senate Contact: Mallory Golski, (614) 466-5899
House Contact: Aaron Mulvey, (614) 466-8759

May 4, 2022

To the Ohio Redistricting Commission:

The *Bennett* Petitioners hereby submit for the Commission's consideration the attached Corrected Independent Map Drawers' Plan (the "Corrected IMD Plan"), which is the same plan that was filed in *Gonidakis v. LaRose*, No. 2:22-CV-0773 (S.D. Ohio), on April 8, 2022, and in *Bennett v. Ohio Redistricting Commission*, No. 2021-1198 (Ohio), on April 12, 2022. Counsel for the Commission, Governor DeWine, Secretary LaRose, Auditor Faber, Senate President Huffman, House Speaker Cupp, Senator Sykes, and Leader Russo—all of whom are parties to one or both of those cases—were also served with data files for the Corrected IMD Plan by April 12, 2022.

The Corrected IMD Plan's census block assignment files are available at <<https://www.dropbox.com/scl/fo/um6dwnnbq0vy227csq5uj/h?dl=0&rlkey=5096h23h85hnux1sndqvs4iye>>, and links to view the maps on "Dave's Redistricting App" are copied below:

- Corrected Independent Map Drawers' Plan – House: <https://davesredistricting.org/map#viewmap::0f491073-dc37-44d5-818a-0be53d16db0f>.
- Corrected Independent Map Drawers' Plan – Senate: <https://davesredistricting.org/maps#viewmap::b1fb3054-ff7e-4490-8490-9301e2cc924e>.

Upon request, the *Bennett* Petitioners also stand ready to provide shape files, most populous county designations, and draft legal descriptions for the Corrected IMD Plan.

As explained in court filings accompanying the submission of the Corrected IMD Plan, the Corrected IMD Plan makes minor edits to the "Original IMD Plan," which was drawn by the Commission's consultants, Dr. Douglas Johnson and Dr. Michael McDonald, and published on the Commission's website as "Johnson McDonald Independent Plan 328 Final" on March 28. All changes to the Original IMD Plan were made for the purpose of ensuring compliance with the constitutional requirements regarding political subdivision splits and numbering of districts for House Maps. *See* Ohio Constitution, Article XI, Section 3(C)(3) & 3(D)(3). The Senate Map followed directly from the House Map and required no additional changes. *See id.*, Section 4. The corrections do not affect the performance of the plan, as compared to the Original IMD Plan, with respect to compactness, number of split counties or vote tabulation districts (VTDs), or expected partisan seat share—including proportionality and symmetry. Furthermore, the Corrected IMD Plan places 99.9% of Ohio residents in the same district as in the Original IMD Plan.

The Corrected IMD Plan fully complies with Article XI. If the Commission believes the Corrected IMD Plan has any technical violations, we welcome the Commission's feedback and invite the Commission to make any further adjustments it believes are constitutionally required. Attached is a detailed list of all edits from the Original IMD Plan made in the Corrected IMD Plan.

Sincerely,



Ben Stafford

Counsel for *Bennett* Petitioners

Attachment:
Corrected Independent Map Drawers' Plan
Edits to Johnson McDonald Independent Plan 328 Final

- 1. Ohio Constitution, Article XI, Section 3(C)(3) provides that “no county shall be split more than once.”**
 - In the Original IMD Plan, House District 60 keeps the small village of Green Springs whole, even though Green Springs traverses the Seneca County boundary. The Corrected IMD Plan moves the portion of Green Springs in Seneca County to House District 56 to avoid splitting Seneca County more than once.
- 2. Ohio Constitution, Article XI, Section 3(D)(3) provides that “[w]here [Section 3’s line-drawing] requirements . . . cannot feasibly be attained by forming a representative district from whole municipal corporations and townships, not more than one municipal corporation or township may be split per representative district.”**
 - In the Original IMD Plan, House District 12 splits Columbus and Hilliard. The Corrected IMD Plan moves 2 people from House District 12 to House District 11 to avoid splitting Hilliard.
 - In the Original IMD Plan, House District 34 splits Copley Township and Hudson. The Corrected IMD Plan moves 15 people from House District 34 to House District 33 to avoid splitting Hudson.
 - In the Original IMD Plan, House District 35 splits Akron and Copley Township. The Corrected IMD Plan moves 5 people from House District 35 to House District 34 to avoid splitting Copley Township.
 - In the Original IMD Plan, House District 38 splits Dayton and Beavercreek. The Corrected IMD Plan moves an unpopulated census block from House District 38 to House District 37 to avoid splitting Beavercreek.
 - In the Original IMD Plan, House District 39 splits Dayton and Union. The Corrected IMD Plan moves 11 people from House District 39 to House District 40 to avoid splitting Union.
 - In the Original IMD Plan, House District 54 splits Perry Township and North Canton. The Corrected IMD Plan moves an unpopulated census block from House District 54 to House District 53 to avoid splitting North Canton.
 - In the Original IMD Plan, House District 60 splits Jerry City and Weston. The Corrected IMD Plan moves an unpopulated census block from House District 60 to House District 82 to avoid splitting Weston.
 - In the Original IMD Plan, House District 9 splits Columbus, Grove City, and Franklin Township. The Corrected IMD Plan moves an unpopulated census block from House District 9 to House District 10 to avoid the split of Franklin Township, and it moves 8 people from House District 10 to House District 9 to avoid splitting Grove City.

- In the Original IMD Plan, House District 40 splits Dayton and Carlisle. The Corrected IMD Plan moves an unpopulated census block from House District 40 to House District 42 to avoid splitting Carlisle.
- In the Original IMD Plan, House District 11 splits Columbus and Prairie Township. The Corrected IMD Plan moves the portion of Prairie Township in House District 11 to House District 10 to avoid splitting Prairie Township.
- In the Original IMD Plan, House District 67 and House District 68 each split Berkshire Township, Delaware City, and Sunbury. House District 68 also splits Harmony Township. The Corrected IMD Plan reconfigures those two districts so that they each include only one split of a municipal corporation or township, while also being within the 5 percent population deviation required by the Ohio Constitution.
- Because Section 3(D)(3) also prefers that House Districts be comprised of whole municipal corporations and townships where feasible, the Corrected IMD Plan also makes the following changes:
 - The Corrected IMD Plan moves an unpopulated census block from House District 99 to House District 98 to avoid splitting West Jefferson.
 - The Corrected IMD Plan moves an unpopulated census block from House District 48 to House District 49 to avoid splitting St. Clair Township.
 - The Corrected IMD Plan moves 8 people from House District 78 to House District 80 to avoid splitting Baltimore.
 - The Corrected IMD Plan moves 6 people from House District 55 to House District 54 to avoid splitting Perry Township.
 - The Corrected IMD Plan moves 225 people from House District 82 to House District 60 to avoid splitting Jerry City.
 - The Corrected IMD Plan moves 1232 people from House District 62 to House District 63 to avoid splitting Middletown.

3. Ohio Constitution, Article XI, Section 3(C) provides an order of priority for the creation and numbering of House Districts:

- (1) Proceeding in succession from the largest to the smallest, each county containing population greater than one hundred five per cent of the ratio of representation in the house of representatives shall be divided into as many house of representatives districts as it has whole ratios of representation. Any fraction of the population in excess of a whole ratio shall be a part of only one adjoining house of representatives district.
- (2) Each county containing population of not less than ninety-five per cent of the ratio of representation in the house of representatives nor more than one

hundred five per cent of the ratio shall be designated a representative district.

- (3) The remaining territory of the state shall be divided into representative districts by combining the areas of counties, municipal corporations, and townships. Where feasible, no county shall be split more than once.
- In the Original IMD Plan, the House District numbers were not consistent with the order set forth in Section 3(C). The following table sets forth the original House District numbers (left) shaded in gray and the correct House District numbers (right) in bold. The House District numbers referenced in earlier sections of this attachment are the *original* numbers, to maintain an apples-to-apples comparison between the Original IMD Plan and the Corrected IMD Plan.

Original	Correct
1	1
2	2
3	3
4	4
5	5
6	6
7	7
8	8
9	9
10	10
11	11
12	12
15	13
16	14
17	15
18	16
19	17
20	18
21	19

22	20
23	21
24	22
13	23
31	24
25	25
26	26
27	27
28	28
29	29
30	30
35	31
32	32
33	33
34	34
75	35
39	36
40	37
41	38
42	39

38	40
43	41
44	42
46	43
45	44
48	45
49	46
50	47
47	48
53	49
54	50
55	51
64	52
58	53
59	54
57	55
62	56
63	57
14	58
65	59

66	60
67	61
68	62
71	63
70	64
72	65
73	66
76	67
77	68
79	69
78	70
37	71
36	72
80	73
81	74
97	75
82	76
60	77
61	78
51	79

52	80
56	81
69	82
83	83
84	84
85	85
86	86
87	87
88	88
89	89
90	90
91	91
92	92
93	93
94	94
95	95
96	96
74	97
98	98
99	99

**Statement to the Ohio Redistricting Commission
by Ohio Secretary of State Frank LaRose
Regarding Logistical Realities of Administering
a 2022 General Assembly Primary Election**

As of today, a primary election date for the offices of State Representative, State Senator, and political party State Central Committee member has not been established.

The Ohio General Assembly has the sole authority in the Ohio Revised Code (3501.40) to set the time, place, and manner of a public election conducted in the State of Ohio. The only other government entity that can supersede that authority is a federal court of law.

A three-judge panel assigned to consider the Ohio General Assembly redistricting case *Gonidakis, et al. v. LaRose*, Case No. 2:22-CV-773 (S.D. Ohio), has ordered that if the State does not adopt a lawful district plan and set a primary election date before May 28, "... we will order the primary be moved to August 2 and Map 3 be used for only the 2022 election cycle. After that, Ohio will have to pass a new map that complies with federal and state law."

As of this date, the Ohio General Assembly has not set a primary election date for the above-mentioned contests. Any action doing so would require an emergency clause to make the election date and its associated deadlines effective immediately. The Speaker of the Ohio House and the President of the Ohio Senate have indicated publicly that they lack the required two-thirds vote in both chambers to enact emergency legislation for this purpose; therefore, the only remaining option to conduct a primary election to which Ohio voters are entitled is the prescribed action by the federal district court.

My office and the bipartisan Ohio Association of Elections Officials have repeatedly stated that because August 2, 2022 is already reserved for "special elections" in Ohio law, it is the only date on which a statewide primary election can be conducted in advance of the scheduled General Election (November 8, 2022).

August 2, 2022 is also the latest date by which Ohio can conduct a primary election without overlapping or altering the scheduled timeline to successfully administer a General Election. This is also recognized by the three-judge panel in *Gonidakis, et al. v. LaRose* and uncontested by any of the parties involved in that litigation.

Under Ohio law, elections are conducted over at least a 90-day period. Eighty-nine days now stand between this date and August 2, 2022, putting Ohio within the traditional statutory window for administering its next election.

The federal panel majority in *Gonidakis, et al. v. LaRose* stated clearly that for any new district plan to be utilized for an August 2, 2022 primary election – and to have the benefit of a full, 90-day election administration period – the Commission would need to adopt it by April 20, 2022. Their opinion is based on testimony from my staff that the 88 county boards of election would collectively need at least two weeks to reprogram their computer systems to new House and Senate districts before the full, 90-day primary election period would begin, which would also do the least amount of damage to current Ohio election law.

To administer an August 2 primary election, the boards must meet a series of statutory and administrative deadlines to have the first ballots, known as Uniformed and Overseas Citizens

Absentee Voting Act (“UOCAVA”) ballots, prepared no later than June 17, 2022 (46 days before the election). To achieve this, elections officials must meet the following statutory requirements:

- Certify candidates no later than **78 days before** the primary election. R.C. 3513.05.
- Hold protests against certified candidates no later than **74 days before** the primary election. R.C. 3513.05.
- Determine the validity or invalidity of the declaration of candidacy and petition. R.C. 3513.05.
- Receive write-in candidates declarations of intent for partisan offices no later than **72 days before** the primary election. R.C. 3513.041.
- Hold protests against write-in candidates no later than **67 days before** the primary election. R.C. 3513.041.
- The Secretary of State must certify to boards of elections the form of official ballots no later than **70 days before** the primary election. R.C. 3513.05.
- Board of elections of the most populous county in a multi-county district must certify names of all candidates to the other county boards of elections in the district no later than **70 days before** primary election. R.C. 3513.05.

Boards of elections need at least two weeks to reprogram voter registration and tabulation systems to accommodate a new map, which as of this date takes us to at least May 19. At that point, the boards would already be in violation of state law unless the General Assembly changes the statutory deadlines. Additionally, my office would not instruct the boards to deprogram Map 3 before May 28, risking that the new map could be invalidated with no immediate options to administer a primary election. This administrative delay also reduces or nearly eliminates the required process election officials must complete to conduct testing on all voting equipment, proof ballots, test ballots, recruit poll workers, and order absentee and Election Day ballots.

In summary:

- The last date a new map could have been ordered and implemented without altering current statutory deadlines that precede an August 2, 2022 primary election was April 20, 2022.
- The General Assembly has not set a new primary date, and its leaders have publicly stated they do not have the votes to pass emergency legislation to do so.
- All but two of Ohio’s 88 county boards of elections have fully programmed the third General Assembly district plan adopted by the Ohio Redistricting Commission.
- A majority of the federal panel considering *Gonidakis, et al. v. LaRose* recognized that Map 3 has “administrative advantages” of implementation that no other map produced by the Commission to date presents, including a largely completed candidate certification process that also would not require the revisiting of filing deadlines and residency provisions.

Therefore, Map 3 is the only viable option to effectively administer a primary election on August 2, 2022. If on May 28, 2022, the federal court orders that Ohio use Map 3 and sets the primary election date on August 2, 2022, my office will issue a directive to the boards of elections implementing that order and providing detailed instructions on the administration of a successful primary election.



April 18, 2022

Dear Commissioners,

The Supreme Court of Ohio has once again ordered this Commission to reconvene in order to undertake the task of drawing constitutionally compliant state legislative district maps. Fortunately, we have clear guidance from the Court. Therefore, finalizing legally compliant fair maps should be straightforward.

Over the past four days – ever since the Supreme Court’s decision was rendered – we have attempted to, in earnest, restart the Commission process. Senator Sykes made repeated calls to our commission Co-Chairman. Unfortunately, over the holiday weekend, these calls went unanswered. Leader Russo confirmed for us all that the authority and funding granted to the Commission by the Legislative Task Force on Redistricting to engage independent map drawers is still valid and available. We have confirmed through our staff that our original independent map drawers are available to return and all mapmaking may again be accomplished in full public view.

We believe that the Commission should reconvene in the next few days and rehire the independent mapmakers who were utilized in the last mapmaking round. We should ask them to review and finalize their prior work product and consider any additional input from the Commission, to the extent that such input would not lead to unconstitutional maps. We can then take a vote on a constitutional plan in advance of the Supreme Court of Ohio’s May 6, 2022 deadline.

It takes three of us Commissioners to call a meeting and restart our work. The two of us stand ready to work with all of you to do our duty to draft and adopt fair and constitutional maps. Any one of you could join us in scheduling our next meeting of the Commission, fulfilling our constitutional obligation. Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in dark ink, appearing to read "Vernon Sykes".

Senator Vernon Sykes
Co-Chair, Ohio Redistricting Commission
Senate District 28

A handwritten signature in dark ink, appearing to read "C. Allison Russo".

C. Allison Russo
Commissioner, Ohio Redistricting Commission
House Minority Leader
House District 24



April 22, 2022

Dear Commissioners,

It has now been eight days since the Ohio Supreme Court ordered this Commission to reconvene and draw constitutionally compliant state legislative district maps. We have contacted each of you repeatedly and asked you to join us in reconvening the commission to fulfill our constitutional obligations and comply with the Court's order. Yet, still, no meetings have even been scheduled.

We now invite you to meet Monday morning, April 25, at 10 a.m. in Room 313 of the Statehouse. Anyone who is unable to attend in person may attend virtually.

The Court stated in its April 14th decision: "We further order the commission to be reconstituted, to convene, and to draft and adopt an entirely new General Assembly district plan that meets the requirements of the Ohio Constitution, including Article XI, Sections 6(A) and 6(B) as we have explained those provisions in each of our four decisions in these cases." This is not a suggestion. It is a Court order we must comply with. We only have until 9:00 a.m. on May 6—now less than two weeks away—to adopt a new plan.

We have the time, resources, and ability to draw maps that comply with the Ohio Constitution. Our duties are clear. We are to produce fair maps that reflect the preferences of Ohio voters. We should rehire the independent mapmakers and allow them to review and finalize the maps they produced for us, and vote on those maps before May 6. Both Dr. McDonald and Dr. Johnson have indicated that they are available, and all mapmaking may again be accomplished in full public view.

Please join us at 10 a.m. on Monday.

Sincerely,

A handwritten signature in black ink, appearing to read "Vernon Sykes".

Senator Vernon Sykes
Co-Chair, Ohio Redistricting Commission
Senate District 28

A handwritten signature in black ink, appearing to read "C. Allison Russo".

C. Allison Russo
House Minority Leader
Commissioner, Ohio Redistricting Commission
House District 24