

IN THE SUPREME COURT OF OHIO

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

**MOTION FOR LEAVE TO FILE OBJECTIONS TO THE SEPTEMBER 2023 PLAN
OF PETITIONERS THE OHIO ORGANIZING COLLABORATIVE, ET AL.**

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Petitioners the Ohio Organizing Collaborative, et al. hereby move this Court for leave to file their objections to the Ohio Redistricting Commission's September 29, 2023 Revised General Assembly Plan (the "September 2023 Plan").

On May 25, 2022, this Court ordered the Ohio Redistricting Commission to reconvene and draft a revised General Assembly district plan that complied with Article XI of the Ohio Constitution. *League of Women Voters of Ohio v. Ohio Redistricting Commission*, 168 Ohio St.3d 522, 2022-Ohio-1727, ¶ 5. That revised plan was to be filed with the court by 12:00 pm on June 3, 2022. Petitioners' objections, if any, were to be filed by 12:00 pm on June 7, 2022, with respondents' responses due on June 9, 2022. On September 29, 2023—fully 483 days after their deadline to submit a plan to this Court—the Commission passed the September 2023 Plan. Three days after that, on October 2, 2023, they filed the September 2023 Plan in this Court.

In its May 25, 2022 order, this Court "retain[ed] jurisdiction for the purpose of reviewing the new plan." *Id.* at ¶ 6. Petitioners now respectfully request the opportunity to submit objections to facilitate that review in the manner that was authorized in that order. Nothing has changed since that order except for respondents' unexplained refusal to comply with this Court's directives. Petitioners respectfully submit that this Court should not reward respondents' defiance by allowing the September 2023 Plan to pass without review.

Petitioners' proposed objections are attached hereto.

Dated: October 5, 2023

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INTRODUCTION

For the sixth time, the Ohio Redistricting Commission has made no attempt to draw a General Assembly district plan that meets the representational fairness requirements of the Ohio Constitution, Article XI, Section 6(B). If anything, the Commission's September 2023 Plan is a move in the wrong direction. Rather than producing districts that correspond to the statewide preferences of Ohio voters, the Commission defiantly drew maps with a partisan breakdown nearly identical to the extreme gerrymander that first sparked this litigation over two years ago. Worse still, the Commission filed these maps nearly 500 days late. Both in process and in substance, the Commission's September 2023 Plan defies Ohio law and must be struck down. Failing to do so here would be a stunning reversal of the law governing this case.

In 2022, this Court issued five separate opinions holding that the Ohio Redistricting Commission had enacted an unconstitutional General Assembly district plan. Each time, the Court ordered the Ohio Redistricting Commission to reconvene, draft, and adopt an entirely new plan that conforms with the Ohio Constitution, including Article XI, Sections 6(A) and 6(B). Each time, the Commission failed to comply with the Court's order. Over time, the Commission's willful refusal to follow this Court's orders became clear. It responded to one order to draft and adopt an entirely new plan by resubmitting exactly the same plan. By May 2022, the Commission and its members could not argue that they had followed or even tried to follow this Court's orders. Instead, they argued that under separation-of-powers principles and Article XI itself, this Court could not make them do anything. This Court declined to hold the Commission and its members in contempt or schedule any further hearings.

In November 2022, the Secretary of State conducted elections under a plan that was unconstitutional as a matter of Ohio law, as repeatedly declared by this Court. Because Ohioans voted under a badly gerrymandered and unconstitutional district plan, the Article XI redistricting process so far has not produced significant benefits for the people of Ohio. But it is not too late. Justice was delayed, but it need not be denied. This Court should declare that the September 2023 Plan is invalid and order the Commission to reconvene and draft a new plan.

There should be no dispute about the following points:

- The September 2023 Plan that the Commission filed on October 2, 2023, violates Section 6(B) of the Ohio Constitution because it is as disproportionate or more disproportionate than all the preceding plans from this cycle.
- Under this Court's precedents, a district plan that violates Section 6(B) is unconstitutional, and this Court may declare such a plan invalid under Section 9(B) and order the Commission to draft a new plan.
- This Court does not abandon and overrule its precedents without a special justification.

Petitioners recognize that respondents may argue that a special justification to depart from this Court's precedents exists. This Court should reject any such invitation. Nothing has changed that would permit the conclusion that this Court's prior precedents are unworkable or unsound. The Commission could have followed this Court's orders but simply refused. Thus, to change the law now would reward the Commission's strategy of systematic defiance. There is a better way to address this Commission's non-compliance, one based on the principle that the doctrine of stare decisis promotes the rule of law. This Court should uphold its prior precedents and declare the September 2023 Plan is invalid. And it should order the Commission to draft a new plan, once and for all, that complies with the Ohio Constitution.

BACKGROUND

We will not repeat the full history of this case, which is set forth in this Court’s prior opinions. After this Court declared in May 2022 that the Commission’s last plan was invalid, this saga resumed in September 2023, when Senator Rob McColley offered a new district plan.¹ Senator McColley’s proposed plan included 23 Republican Senate districts and 10 Democratic Senate districts “if you’re looking at plus or minus 50%,” *i.e.*, not excluding toss-up districts.² His plan included 62 Republican House districts and 37 Democratic House districts, again without excluding toss-ups.³ House Minority Leader Allison Russo noted that this Court had directed the Commission to meet the proportionality requirements of Article XI, Section 6, and stated that the plan proposed by Senator McColley “does not meet the proportionality requirement under Section 6.”⁴ Minority Leader Russo asked what prevented Senator McColley from meeting Section 6.⁵ She reminded the Commission that the Ohio Constitution does not address city splits unless the city is one of the smaller cities that falls within a House district.⁶

Senator McColley argued in response that there is a requirement to “minimize city splits” and that “many people up on this commission” viewed the imperative to minimize city splits “as

¹ The Ohio Channel, *Ohio Redistricting Commission - 9-20-2023*, at 33:30-34:22, <https://ohiochannel.org/video/ohio-redistricting-commission-9-20-2023>.

² *See id.* at 52:00-52:47.

³ *See id.* at 53:00-53:15.

⁴ *See id.* at 54:44-55:28.

⁵ *See id.* at 55:28-56:18.

⁶ *See id.* at 55:35-56:12.

a superior requirement than those requirements that are in Section 6.”⁷ As he had explained earlier in the hearing, “we felt it was absolutely imperative to endeavor to include whole cities within House districts that could contain them, and whole cities within Senate districts that could contain them.”⁸ Minority Leader Russo disagreed with Senator McColley’s argument that Article XI required the Commission to keep cities whole within Senate districts, stating, “that is not a constitutional technical requirement.”⁹ She concluded, “let’s be clear, this does not, by any stretch of the imagination, meet the proportionality requirements in Section 6.”¹⁰

Just a few days later, the Commission unanimously adopted a plan that was similar to the one that Senator McColley initially proposed,¹¹ with minor adjustments that Senator McColley described at the hearing on September 26, 2023.¹² Minority Leader Russo acknowledged that the public did not have any opportunity to comment on the changes announced on that day.¹³ With expert assistance, the parties have since analyzed the adopted maps. As described in the Affidavit of Dr. Jonathan Rodden, dated October 5, 2023 (“Rodden”) and submitted with the Bennett petitioners’ objections in case no. 2021-1198, the September 2023 Plan still does not meet the proportionality standard of Article XI, Section 6(B), of the Ohio Constitution.

⁷ *See id.* at 56:23-57:38.

⁸ *See id.* at 46:30-46:42.

⁹ *See id.* at 1:17:00-1:17:11.

¹⁰ *See id.* at 1:16:50-1:17:00.

¹¹ The Ohio Channel, *Ohio Redistricting Commission - 9-26-2023*, at 2:31:21-2:32:07, <https://ohiochannel.org/video/ohio-redistricting-commission-9-26-2023>.

¹² *See id.* at 2:09:10-2:16:53.

¹³ *See id.* at 2:17:45-2:18:22.

OBJECTIONS

I. The District Plan Is Not Entitled to a Presumption of Constitutionality

In its January 12, 2022 opinion, this Court held that apportionment is a legislative task and the commissioners are public officers who “are presumed to have properly carried out their duties.” *League of Women Voters of Ohio v. Ohio Redistricting Commission*, 167 Ohio St.3d 255, 2022-Ohio-65, 192 N.E.3d 379, ¶ 79. Thus, in the “*absence of evidence to the contrary*,” this Court presumes “that the apportionment board properly performed its duties in a lawful manner.” *Id.* ¶ 76 (emphasis added). Today, in October 2023, the Commission is not entitled to a presumption that it performed its duties in a lawful manner because there *is* clear evidence to the contrary. Specifically, the Commission flouted this Court’s orders by drafting and adopting district plans that it knew were unconstitutional under this Court’s precedents. *See League of Women Voters of Ohio v. Ohio Redistricting Commission*, 168 Ohio St.3d 522, 2022-Ohio-1727, 200 N.E.3d 197, ¶¶ 3-5.

To be sure, in an order issued on May 25, 2022, this Court declined to sanction the Commission or its individual commissioners for ignoring this Court’s orders and denied petitioners’ motion for an order directing respondents to show cause why they should not be held in contempt. *See Ohio Organizing Collaborative v. Ohio Redistricting Commission*, 166 Ohio St.3d 1514, 2022-Ohio-1750, 187 N.E.3d 573, ¶ 1. The majority issued a ruling without an opinion. *See id.* Concurring opinions argued that the doctrine of separation of powers and Article XI precluded contempt sanctions. Not a single justice argued, however, that the Commission had followed this Court’s orders. And that was *before* the Commission disregarded the May 25, 2022 order to file a new plan by 12:00 p.m. on June 3, 2022. *See League of Women Voters*, 2022-Ohio-

1727, ¶ 6. The Commission unambiguously violated this Court’s May 25, 2022 order by declining to file a new plan by the deadline. It simply ignored the order.

While this Court has held that its orders are not enforceable by *contempt* against the Commission, this does not and should not mean that the Commission may freely ignore this Court’s orders. At least one logical consequence of repeatedly violating orders, in the absence of contempt sanctions, is that the Commission is not entitled to the presumption that its enactments are lawful. The presumption of regularity is not irrebuttable, or else it would be a rule and not a presumption. Here, the district plan under review is, among other things, nearly 500 days late. Because the Commission delivers it without any regard for prior deadlines, this Court should not presume that the Commission followed *other* aspects of the Court’s prior rulings. As demonstrated below, the Commission did not attempt to comply with Section 6(B) or this Court’s precedents, and the Commission will not be able to show otherwise.

II. The District Plan Violates the Ohio Constitution

A. Under Article XI and This Court’s Precedents, the District Plan Is Invalid

Section 6(B) provides that “[t]he statewide proportion of districts whose voters, based on statewide state and federal partisan general election results during the last ten years, favor each political party shall correspond closely to the statewide preferences of the voters of Ohio.” Ohio Constitution, Article XI, Section 6(B). This provision is a critical safeguard against gerrymandering and ensures that the preferences of Ohio voters are reflected in the composition of the General Assembly. As such, the Court has repeatedly made clear that Section 6(B) is enforceable. And while different methodological approaches could be employed to assess districts for compliance, this guarantee cannot be satisfied through the use of toss-up districts and

clever accounting that allocates all such districts to one party. *See League of Women Voters of Ohio v. Ohio Redistricting Commission*, 168 Ohio St.3d 28, 2022-Ohio-342, ¶¶ 57-61.

Over the course of this litigation, the Court has repeatedly construed and applied Section 6(B) and stood firm on its enforceability. Despite this, the Commission has made no attempt to comply. The September 2023 Plan so plainly violates Section 6(B) that it requires no assessment of analytical methods nor inquiry into the proper allocation of toss-up districts. No matter how the numbers are crunched, the districts in this latest plan do not at all correspond closely to the preferences of Ohio voters. This is true whether available election results from 2012-2020 or from 2014-2022 are used to establish the relevant benchmark against which districts are measured. If anything, the Commission has made *less* of an effort to satisfy the Court's prior orders or meet the requirements of the Ohio Constitution than in prior attempts. Accordingly, this Court should hold that the Commission has, for the sixth time, failed to satisfy Article XI, Section 6(B) and strike down the September 2023 Plan.

1. The District Plan Does Not Correspond Closely to the Statewide Preferences of the Voters of Ohio

As established by the expert analysis of Dr. Jonathan Rodden, “the distribution of partisan seats in the September 2023 Plan is nearly identical to that in the September 2021 Plan.” (Rodden ¶ 21) Instead of satisfying the Section 6(B) standard, the Commission has regressed.

Between 2012 and 2020, in statewide partisan elections, 54.1 percent of ballots cast by Ohio voters favored Republican candidates and 45.9 percent favored Democratic candidates. (Rodden ¶ 17) This means that a General Assembly district plan that corresponds closely to voter preferences should have roughly 54 districts that favor Republicans and 45 districts that favor Democrats in the Ohio House and roughly 18 districts that favor Republicans and 15 that favor

Democrats in the Ohio Senate. (Rodden ¶ 17) Using available election results from 2012-2020, the September 2023 Plan fails to come anywhere near these seat splits. With toss-ups excluded, the September 2023 Plan produces 59 districts that favor Republicans and 30 that favor Democrats in the Ohio House and 20 districts that favor Republicans and 9 that favor Democrats in the Ohio Senate. (Rodden ¶ 22) Even with toss-up seats included, 61 districts favor Republicans and 38 favor Democrats in the Ohio House and 23 districts favor Republicans and 10 districts favor Democrats in the Ohio Senate. (Rodden, Tables 2 & 4)

Between 2014 and 2022, 56.4 percent of ballots cast by Ohio voters favored Republican candidates and 43.6 percent favored Democratic candidates in statewide partisan elections. (Rodden ¶ 18) Based on that data, a General Assembly district plan that corresponds closely to voter preferences should have roughly 56 districts that favor Republicans and 43 districts that favor Democrats in the Ohio House and roughly 20 districts that favor Republicans and 13 that favor Democrats in the Ohio Senate. (Rodden ¶ 18) Using available election results from 2014-2022, the September 2023 Plan fails to correspond to the preferences of Ohio voters. With toss-ups excluded, the September 2023 Plan produces 61 districts that favor Republicans and 29 that favor Democrats in the Ohio House and 23 districts that favor Republicans and 9 that favor Democrats in the Ohio Senate. (Rodden ¶ 22) And, again, including toss-ups does not improve matters. When all seats are allocated, the September 2023 Plan produces 67 districts that favor Republicans and 32 that favor Democrats in the Ohio House and 24 districts that favor Republicans and 9 districts that favor Democrats in the Ohio Senate. (Rodden, Tables 3 & 5)

Once again “the quality and degree of favoritism in each party’s allocated districts is grossly disparate” and, thus, the September 2023 Plan must be struck down. *See League of Women Voters, 2022-Ohio-342, ¶ 61.* As Dr. Rodden’s analyses demonstrate, the partisan

composition of this plan is nearly identical to that of the Commission’s first plan, which started this litigation and where the evidence showed that the Commission “did not try to comply with the Section 6(B) standard.” *League of Women Voters*, 2022-Ohio-65, ¶ 102. Given the substantial similarity between the September 2023 and September 2021 plans, the Commission cannot be found to have made any attempt to comply with Section 6(B). Comparing the September 2023 Plan to the plan drawn by the Commission-appointed independent map-drawers reinforces this conclusion. The independent map-drawers’ plan produces districts that closely correspond to the preferences of Ohio voters and perform as well as or better than the September 2023 Plan when it comes to other Ohio redistricting criteria. (Rodden ¶¶ 23-27 & Tables 2, 3, 4, 5, 6, & 7)

2. Minimizing City Splits Did Not Require the Commission to Violate Section 6(B)

As noted, Senator McColley argued at the September 20, 2023 hearing that the Ohio Constitution contains a requirement to “minimize city splits” that “should be viewed as a superior requirement than those requirements that are in Section 6.”¹⁴ But no such blanket requirement exists. Rather, Article XI provides: “Representative districts shall be drawn so as to split the smallest possible number of municipal corporations and townships whose contiguous portions contain a population of more than fifty per cent, but less than one hundred per cent, of one ratio of representation.” Ohio Constitution, Article XI, Section 3(D)(2). In other words, the “minimize city splits” requirement in Section 3(D)(2) applies only to medium-sized cities—those with a population between about 60,000 and 120,000 people. Larger cities *must* be split to comply with the federal constitution’s equal protection requirements. *See* Ohio Constitution, Article XI, Section 3(B)(2); *Reynolds v. Sims*, 377 U.S. 533, 562-69, 84 S. Ct. 1362 (1964).

¹⁴ The Ohio Channel, Ohio Redistricting Commission, 9-20-2023, at 56:23-57:38.

Senator McColley may have alluded to Section 3(D)(3) in his remarks at the September 20, 2023 hearing, but that provision does not and could not limit the division of large cities into multiple districts. Rather, it states that where the Commission cannot comply with Section 3's other requirements by combining smaller municipalities into a single district, the Commission may not split those smaller municipalities more than once per representative district. Ohio Constitution, Article XI, Section 3(D)(3). This provision limits the division of municipalities that are smaller than a single ratio of representation, but again, does not limit the division of large cities. This is normal and expected because large cities are like large high-population counties; they must be subdivided to meet equal population or ratio of representation requirements. *See* Ohio Constitution, Article XI, Section 3(B)(1). Finally, nothing in Section 4 of Article XI nor any other part of the Ohio Constitution required the Commission to include whole cities within a single Senate district, as Senator McColley had argued.

As Dr. Rodden has repeatedly shown in this litigation, it is possible to draw maps that comply with all of the Ohio Constitution's requirements, including Section 6. (Rodden ¶¶ 27-28) Respondents have never rebutted that assertion or proved otherwise. Senator McColley's assertion at the hearing that the Commission could override or ignore Section 6 because of a superior requirement to minimize city splits was simply incorrect.

3. The Unanimous Vote for the Plan Does Not Cure the Section 6(B) Violation

The Commission's unanimity does not absolve it of the egregious Section 6(B) violation or give the Court license to turn a blind eye. As the Court previously reasoned, "Section 6(B) does not require the majority-party members of the commission to try to draw a plan that is acceptable to the minority-party members of the commission or vice versa. It requires *all* members of the commission to attempt to draw a plan [that complies with Section 6]." *League of*

Women Voters, 2022-Ohio-65 at ¶ 111. Critically, “even if commission members of the minority party agreed to a proposed plan, this does not necessarily mean that the agreed-upon plan would comply with Section 6.” *Id.* Such reasoning is supported by the plain text of Section 6 and its purpose to ensure that Ohio voter preferences are reflected in the composition of the Ohio House and Senate. Put simply, Democrats joining Republicans to pass the September 2023 Plan makes the violation of Section 6(B) no less significant. Democrats joining Republicans to pass the September 2023 Plan leaves Ohio voters in no better position than prior plans enacted by party-line vote. The only thing proven by the vote is the continued need for this Court to provide a meaningful check against violations of the Ohio Constitution.

B. The Doctrine of Stare Decisis Warrants Adherence to This Court’s Precedents

From this Court’s first decision in this case, a majority has held that Section 9(B) authorizes it to declare that a district plan is invalid under Section 6(B). *See League of Women Voters*, 2022-Ohio-65, ¶¶ 91-100. A majority has likewise held that that this Court may issue remedial orders and retain jurisdiction to review the Commission’s compliance with those orders. *See id.* ¶¶ 136-37. Dissenting justices disagreed. These disagreements persisted through five opinions.

The Court should resist any invitation from respondents to throw aside the prior five opinions and to articulate new rules governing a case that is in remedial proceedings. Stare decisis counsels against such abrupt shifts. The doctrine applies here because each of the Court’s prior five decisions have become final. Any “motion for reconsideration must be filed within ten days after the Supreme Court’s judgment entry or order is filed with the Clerk of the Supreme Court.” S.Ct.Prac.R. 18.02(A). Respondents did not seek reconsideration. Therefore, all of the 2022 opinions are final as to the matters they adjudicated. This Court has decided five times that

it has authority to retain jurisdiction to review compliance with orders. None of those decisions were tentative or subject to reconsideration.¹⁵

Respect for this Court’s prior decisions is ““a foundation stone of the rule of law, necessary to ensure that legal rules develop in a principled and intelligible fashion.”” *State v. Hubbard*, 167 Ohio St.3d 77, 2021-Ohio-3710, 189 N.E.3d 720, ¶ 44 (quoting *Michigan v. Bay Mills Indian Community*, 572 U.S. 782, 798 (2014)). “Fidelity to precedent ‘is the preferred course because it promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process.’” *Id.* (quoting *Payne v. Tennessee*, 501 U.S. 808, 827 (1991)). The doctrine of stare decisis ““permits society to presume that bedrock principles are founded in the law rather than in the proclivities of individuals, and thereby contributes to the integrity of our constitutional system of government, both in appearance and in fact.”” *Id.* (quoting *Vasquez v. Hillery*, 474 U.S. 254, 265-266 (1986)).

Nothing has changed in law or fact that could justify a departure from this Court’s prior precedents in this matter. The people have not amended Article XI. The constitutional provisions at issue remain the same. They have not been construed and could not be construed by other courts. The facts are also the same in relevant respects. The September 2023 Plan is just as disproportionate as those that this Court previously declared to be invalid. The unanimous vote on this plan has no bearing on this Court’s prior interpretations of Section 6(B) or Section 9(B) of Article XI of the Ohio Constitution.

¹⁵ If the Court concludes that the “law of the case” is a more appropriate doctrine for analyzing whether to follow the prior decisions in this case, that doctrine too would warrant adherence to precedent for all the reasons discussed in this section. Among other things, the doctrine ensures consistency of results and avoids endless litigation. *See Nolan v. Nolan*, 11 Ohio St.3d 1, 3, 462 N.E.2d 410, 413 (1984).

In the context of constitutional history, the Court’s prior decisions are brand new, not ones that may be viewed in hindsight with the benefit of accumulated study, experience, and wisdom. “While stare decisis is not an inexorable command, the careful observer will discern that any detours from the straight path of stare decisis in [the U.S. Supreme Court’s] past have occurred for articulable reasons, and only when the Court has felt obliged ‘to bring its opinions into agreement with experience and with facts newly ascertained.’” *Vasquez*, 474 U.S. at 266 (quoting *Burnet v. Coronado Oil & Gas Co.*, 285 U.S. 393, 412 (1932) (Brandeis, J., dissenting)). Because the Court’s opinions in this case are recent, the Court cannot reevaluate them in light of any significant new “experience” or “facts newly ascertained.”

Respondents may argue that all five of the prior decisions are “wrongly decided.” *Westfield Ins. Co. v. Galatis*, 100 Ohio St.3d 216, 2003-Ohio-5849, 797 N.E.2d 1256, ¶ 44. But that would simply be a reassertion of arguments already made that a majority of the Court rejected. For stare decisis purposes, the question is not whether the current Court would have made the same decisions in 2022, but whether the prior decisions were “‘flatly absurd or unjust.’” *Id.* ¶ 43 (quoting 1 W. Blackstone, Commentaries on the Laws of England 70 (1765)).¹⁶ There is no legitimate way to reach the conclusion, less than two years later, that all five prior decisions were flatly absurd or unjust where the only difference between then and now is a change in one member of the Court. The scales of justice would capsize with just one “new judge’s opinion.”” *Ramos v. Louisiana*, 140 S. Ct. 1390, 1411 (2020) (Kavanaugh, J., concurring)

¹⁶ In *Westfield*, the Court overruled a precedent that was wrong and contravened other “well-settled and intrinsically sound precedent.” *Westfield Ins. Co.*, 2003-Ohio-5849, ¶ 49. The overruled precedent had caused “chaos” in the courts and “created massive and widespread confusion.” *Id.* ¶¶ 50, 51. It was subject to widespread criticism from other jurisdictions. *Id.* ¶¶ 19, 50. It created conflicts in the lower courts. *Id.* ¶ 50. As indicated, *Westfield* did not merely overrule a precedent because the precedent was “wrong,” but because it was egregiously wrong and totally unworkable.

(quoting 1 W. Blackstone, Commentaries on the Laws of England 69). Such a result would be incompatible with stare decisis.

Respondents may also argue that the five prior decisions defy “practical workability.” *Westfield*, 2003-Ohio-5849, ¶ 48. But their deliberate and repeated violations of this Court’s orders does not prove that the orders were unworkable; rather, it proves that the Commission held this Court in contempt. There is no dispute that the corrected independent mapmakers’ plan is fully compliant with Article XI, including Section 6. The Commission could have adopted a version of the district plan that the independent mapmakers created, but it simply chose to adopt a non-compliant gerrymandered plan instead. There was nothing stopping the Commission from adopting a plan that complied with this Court’s orders but its own recalcitrance and insistence on repeatedly passing gerrymandered district plans.

In prior opinions, the dissent has argued that the Court had intruded on a purely political process that belongs to another branch of government when it invalidated district plans that did not correspond closely to the preferences of Ohio voters. See *League of Women Voters of Ohio*, 2022-Ohio-65, ¶ 308 (Fischer, J., dissenting); *League of Women Voters of Ohio v. Ohio Redistricting Commission*, 168 Ohio St.3d 309, 2022-Ohio-789, 198 N.E.3d 812, ¶ 143 (Kennedy and DeWine, JJ., dissenting); *League of Women Voters of Ohio*, 2022-Ohio-1727, ¶ 38 (Kennedy, J., dissenting). This reflects a disagreement about what the voters intended when they overwhelmingly approved amendments to Article XI that included Section 6(B). But the conclusion that voters intended to create a safeguard against partisan gerrymandering, including by authorizing this Court to declare a plan invalid should the Commission adopt districts that make no attempt to reflect the preferences of Ohioans was and is reasonable. Given the history of extreme gerrymandering in Ohio, this Court’s construction of the voters’ intent was not irrational.

That Ohioans sought a role for this Court to play in enforcing provisions that the people themselves enacted is supported by the history of amendments to Article XI and its text. In short, this Court's prior opinions are reasonable, workable, the governing law of Ohio, and consistent with the public interest. This Court should not depart from them here.

CONCLUSION

This Court should declare that the General Assembly district plan filed with this Court on October 2, 2023, is invalid and order the Commission to draft a new plan that complies with the Ohio Constitution, including Section 6 of Article XI.

Dated: October 5, 2023

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CERTIFICATE OF SERVICE

I, Danielle L. Stewart, hereby certify that on October 5, 2023, I caused a true and correct copy of the foregoing MOTION FOR LEAVE TO FILE OBJECTIONS TO THE SEPTEMBER 2023 PLAN OF PETITIONERS THE OHIO ORGANIZING COLLABORATIVE, ET AL to be served by email upon the counsel listed below:

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