

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

MICHAEL GONIDAKIS, MARY PARKER,
MARGARET CONDITT, BETH
VANDERKOOI, LINDA SMITH, DELBERT
DUDUIT, THOMAS W. KIDD JR., and
DUCIA HAMM,

Plaintiffs,

BRIA BENNETT, REGINA C. ADAMS,
KATHLEEN M. BRINKMAN, MARTHA
CLARK, SUSANNE L. DYKE, MERYL
NEIMAN, HOLLY OYSTER, CONSTANCE
RUBIN, and EVERETT TOTTY,

Intervenor-Plaintiffs,

v.

FRANK LAROSE, in his capacity as Ohio
Secretary of State,

Defendant.

Case No. 2:22-cv-00773

Judge Algenon L. Marbley

Magistrate Judge Elizabeth Preston Deavers

[Three-Judge District Court Requested]¹

COMPLAINT

1. Plaintiffs Bria Bennett, Regina C. Adams, Kathleen M. Brinkman, Martha Clark, Susanne L. Dyke, Meryl Neiman, Holly Oyster, Constance Rubin, and Everett Totty (“Bennett Petitioners”), by and through their undersigned counsel, file this Complaint for Injunctive and Declaratory Relief against Defendant Frank LaRose, in his official capacity as Ohio Secretary of State.

2. In 2015, Ohio voters approved Issue 1, a ballot measure amending Article XI of the Ohio Constitution and changing the way Ohio draws state legislative districts.

¹ While the claims at issue in this case would require a three-judge court to adjudicate, convening a three-judge court would be premature at this stage, because this case should be stayed for the reasons given in the Bennett Petitioners' contemporaneously filed Motion to Stay and Abstain. The Bennett Petitioners therefore do *not* request that a three-judge court be appointed at this time.

3. Under the new amendments, maps are drawn by the bipartisan Ohio Redistricting Commission (the “Commission”) and are subject to new and more rigorous requirements, including that the Commission “shall attempt” to draw a General Assembly plan that complies with the following standards: “(A) No general assembly district plan shall be drawn primarily to favor or disfavor a political party;” and “(B) The 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 Const. Art. XI § 6.

4. The 2015 amendments provide “[t]he supreme court of Ohio” with “exclusive, original jurisdiction in all cases arising under” Ohio Const Art. XI § 9(A).

5. In 2021, the United States Census Bureau released new census data. The Commission, for the first time, was tasked with drawing new General Assembly districts. In September, the Commission, presently controlled by a supermajority of Republicans, passed grossly gerrymandered maps on a 5-2 party-line vote.

6. Several groups of petitioners, including the Bennett Petitioners, sued the Commission and its members in the Ohio Supreme Court, alleging that the maps it approved violated the Ohio Constitution. Ever since, the Ohio Supreme Court—in the exercise of its exclusive jurisdiction—has closely and expeditiously driven the case forward.

7. Following discovery and briefing conducted on a highly expedited schedule, the Ohio Supreme Court issued a 56-page opinion (not including concurrences and dissents) on January 12, 2022 striking the maps down, and ordering the Commission to draw new, constitutionally-compliant maps within 10 days. Prior to this opinion, the Ohio Supreme Court had not had occasion to interpret Article XI. In its January 12 opinion, the Ohio Supreme Court

resolved several points of interpretative disputes between the parties, providing clear, detailed guidance on the applicable standards under Article XI.

8. On January 22, the Commission adopted a new General Assembly plan, which made only cosmetic improvements to the partisan composition of districts, and still failed to comply with the Ohio Constitution. The Bennett Petitioners promptly objected to the new maps and the Ohio Supreme Court struck down the maps less than two weeks later, once again ordering the Commission to draw maps that complied with the Ohio Constitution and the Ohio Supreme Court's orders.

9. The Ohio Supreme Court again gave 10 days for the Commission to draw a compliant plan but, this time, the Commission responded by sitting on its hands. While the Democratic members of the Commission brought forward a new proposal, the Republican Commissioners proposed nothing at all. On the day of the court-mandated deadline to adopt new maps, the Commission convened, voted the Democratic proposal down, and adjourned without adopting a new plan. In other words, the Commission declared its intention to violate an order of the Ohio Supreme Court.

10. The next day, in response to the Commission's declaration that it had no intention of complying with the court's latest order, the Ohio Supreme Court issued a new order, this time for the Commissioners to show cause why they should not be held in contempt for failing to comply with the court's order. The Commissioners' briefing is due tomorrow, February 23, at noon.

11. In an apparent response to the Ohio Supreme Court's show cause order, during a Commission meeting held today, the Commission discussed scheduling an additional meeting, as soon as tomorrow, February 23, to discuss further work on the General Assembly plan.

12. The Ohio Supreme Court thus continues to actively manage ongoing litigation to secure compliance with its orders and ensure that the Commission adopts a new General Assembly plan in compliance with the Ohio Constitution. Further, based on its latest meeting, it appears that the Commission is now reconsidering its decision to refuse to adopt a new General Assembly plan.

13. Nonetheless, before the Ohio Supreme Court even had a chance to react to the Commission missing its deadline, a group of Plaintiffs (“Gonidakis Plaintiffs”) instituted this action, declaring that the Ohio state legislative redistricting process had reached an “impasse,” and arguing that use of either (1) the state legislative maps approved by the Ohio Apportionment Board (the Commission’s predecessor) in 2011 or (2) no maps at all, would violate their rights under the First and Fourteenth Amendments of the United States Constitution.

14. As relief, the Gonidakis Plaintiffs ask this Court to commit an extraordinary intrusion into Ohio’s redistricting process, by wresting that process from the Ohio Supreme Court and ordering the adoption of Commission maps already rejected by that court in the exercise of its exclusive jurisdiction under Article XI.

15. There can be no doubt that use of either the 2011 state legislative maps (which would mean malapportioned districts) or no maps at all (which would mean no elections) would violate the Bennett Petitioners’ constitutional rights. However, the Gonidakis Plaintiffs have come to the wrong forum at the wrong time.

16. In our federal system of government, where the state apparatus—whether through its courts, legislature, or a redistricting commission—is still in the process of drawing new state legislative or congressional districts for citizens of the state to live under, there is only one instruction for federal courts: step back and wait. *See Grove v. Emison*, 507 U.S. 25, 34 (1993) (“[T]he Constitution leaves with the States primary responsibility for apportionment of their

federal congressional and state legislative districts Absent evidence that these state branches will fail timely to perform that duty, a federal court must neither affirmatively obstruct state reapportionment nor permit federal litigation to be used to impede it.”). The Ohio Supreme Court’s latest order, as well as the Commission’s subsequent action in response to that order, makes clear that the wheel of state legislative redistricting is still spinning in Ohio. This case should therefore be stayed pending proceedings before the Ohio Supreme Court and the Commission.

17. Nonetheless, this action has now been prematurely brought; and for the express purpose of attempting to undo the victory the Bennett Petitioners have won before the Ohio Supreme Court. In the event this Court determines that federal proceedings in relation to state legislative redistricting in Ohio should proceed—and it should not do so now—it should declare the prior state legislative plan approved in 2011 invalid and enjoin its use. As a remedy, it should order the use of a plan that is lawful under both state and federal law. That is to say, the Court should refuse the Gonidakis Plaintiffs’ invitation to use a plan that the Ohio Supreme Court has already struck down as violative of Ohio’s Constitution.

I. JURISDICTION AND VENUE

18. Plaintiffs bring this action under 42 U.S.C. § 1983 to redress the deprivation, under color of state law, of rights secured by the United States Constitution. This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1343 because the matters in controversy arise under the Constitution and laws of the United States and involve the assertion of a deprivation, under color of state law, of a right under the Constitution of the United States. This Court has the authority to enter a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202, and authority to enter injunctive relief under Federal Rule of Civil Procedure 65.

19. This Court has personal jurisdiction over the Defendant, who is sued in his official capacity and resides within this state.

20. Venue in this district is proper under 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the claims in this case occurred in this judicial district.

II. PARTIES

A. Plaintiffs

21. Plaintiff-Intervenors are Ohio voters who live in districts that are malapportioned under the General Assembly plan approved by the Ohio Apportionment Board in 2011 (the “2011 Plan”).

22. Plaintiff-Intervenor Meryl Neiman lives at 2115 Clifton Ave., Columbus, OH 43209, which is in Ohio House District 18 and Ohio Senate District 15 in the 2011 Plan. Based on 2020 census data, both Ohio House District 18 and Ohio Senate District 15 are overpopulated by more than 5%.

23. Plaintiff-Intervenor Regina Adams lives at 14360 Rockside Rd., Maple Heights, OH 44137, which is in Ohio House District 12 and Ohio Senate District 25 in the 2011 Plan.

24. Plaintiff-Intervenor Bria Bennett lives at 795 Lane West Rd. SW, Warren, OH 44481, which is in Ohio House District 64 and Ohio Senate District 32 in the 2011 Plan.

25. Plaintiff-Intervenor Kathleen M. Brinkman lives at 400 Pike St. Unit 809, Cincinnati, OH 45202, which is in Ohio House District 32 and Ohio Senate District 9 in the 2011 Plan.

26. Plaintiff-Intervenor Martha Clark lives at 4439 Filbrun Ln., Trotwood, OH 45426, which is in Ohio House District 43 and Ohio Senate District 5 in the 2011 Plan.

27. Plaintiff-Intervenor Susanne L. Dyke lives at 2558 Guilford Rd., Cleveland Heights, OH 44118, which is in Ohio House District 9 and Ohio Senate District 21 in the 2011 Plan.

28. Plaintiff-Intervenor Holly Oyster lives at 21370 Harrisburg Westville Rd., Alliance, OH 44601, which is in Ohio House District 59 and Ohio Senate District 33 in the 2011 Plan.

29. Plaintiff-Intervenor Constance Rubin lives at 3088 Whitewood St. NW, North Canton, OH 44720, which is in Ohio House District 50 and Ohio Senate District 29 in the 2011 Plan.

30. Plaintiff-Intervenor Everett Totty lives at 145 S. St. Clair St. Unit 28, Toledo, OH 43604, which is in Ohio House District 44 and Ohio Senate District 11 in the 2011 Plan.

31. According to 2020 census data, under the 2011 Plan, Plaintiff-Intervenors' districts, including House Districts 18, 44, 50, and 64, and Senate Districts 5, 9, 11, 15, 21, 25, 29, 32, and 33, are malapportioned.

B. Defendant

32. Defendant Secretary of State Frank LaRose is the Ohio Secretary of State and is the chief election officer in Ohio responsible for overseeing election administration pursuant to Ohio Rev. Code Ann. § 3501.04. He is sued in his official capacity.

III. FACTUAL BACKGROUND

A. This was Ohio's first redistricting cycle under new amendments designed to ensure fairness, bipartisanship, and transparency in drawing General Assembly maps.

33. In 2015, Ohio voters overwhelmingly approved Issue 1, a ballot initiative to fundamentally alter the way the state redraws state legislative districts following each census.

34. This was achieved by adding several amendments to Article XI of the Ohio Constitution, the provision that has governed redistricting of the Ohio General Assembly since the 19th century.

35. In previous cycles, Ohio's process for drawing new district lines for its General Assembly was plagued by a lack of bipartisanship and transparency and almost always resulted in severely gerrymandered maps that favored one party over the other.

36. Issue 1 was meant to upend this status quo entirely. A few of its key reforms included the establishment of a seven-member bipartisan Ohio Redistricting Commission (the "Commission") composed of the Governor, Secretary of State, Auditor of State, and appointees of the majority and minority leadership from both chambers of the General Assembly. Ohio Const. Art. XI § 1(A). Absent buy-in from members of both parties, the Commission would be unable to approve maps that lasted for more than two elections. *Id.* at § 1(B)(3).

37. Additionally, similar to previous iterations of Article XI, the new provisions included strict rules on when and how certain counties, cities, and townships could be split between districts. *Id.* at § 3. For example (subject to a narrow exception), Section 3(D)(3) states that "not more than one municipal corporation or township may be split per representative district."

38. Perhaps most importantly, Article XI imposed strict anti-gerrymandering requirements on any plan approved by the Commission. Under Article XI Section 6, the Commission is required to attempt to comply with the following requirements:

- (A) No general assembly district plan shall be drawn primarily to favor or disfavor a political party.
- (B) The 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.
- (C) General assembly districts shall be compact.

39. Section 6 also provides that "Nothing in this section permits the commission to violate the district standards described in Section 2, 3, 4, 5, or 7 of this article."

40. The new amendments took effect on January 1, 2021, and apply to the redrawing of General Assembly districts following the 2020 Census.

B. Despite the new amendments, the Commission adopted a partisan gerrymander.

41. The redistricting cycle kicked off in August 2021 with the swearing in of the Commissioners. As required under the Ohio Constitution, the Commission included the Governor Mike DeWine, the Auditor Keith Faber, and the Secretary of State Frank LaRose. Three of the four legislative leaders from both major parties in the two houses of the General Assembly—Speaker Bob Cupp, Senate President Matt Huffman, and House Minority Leader Emilia Sykes—appointed themselves to the Commission. Senate Minority Leader Kenny Yuko appointed Senator Vernon Sykes to the Commission.

42. The Commission process that took place in late summer 2021 did not live up to the letter or spirit of Issue 1. The two Republican legislators on the Commission rushed through maps with little consultation from the Democratic Commissioners (or, for that matter, the three statewide elected officials). The maps that the Republican legislative members proposed were drawn by Republican legislative staffers out of public view and at the direction of the Republican leaders themselves.

43. In the early hours of September 16, 2021, the Commission voted to adopt a set of maps proposed by the Republican legislative members of the Commission (the “First Commission Plan”).

44. The First Commission Plan was heavily biased toward Republicans. Despite the fact that Republicans receive, on average, 54% of the vote in statewide elections in Ohio, Republicans were nearly certain to maintain supermajorities in both chambers under the First Commission Plan.

C. The Bennett Petitioners successfully challenged the First Commission Plan in the Ohio Supreme Court.

45. On September 24, 2021, barely more than a week after the Commission adopted the First Commission plan, the Bennett Petitioners brought suit in the Ohio Supreme Court,² naming as defendants the Commission and each of its individual members in their official capacities. The complaint argued that the First Commission Plan constituted an excessive partisan gerrymander and violated Sections 6(A) and 6(B) of the Ohio Constitution.³

46. On September 29, the Ohio Supreme Court issued a briefing schedule for three cases that all challenged the First Commission Plan. Under the court's schedule, all evidence was to be submitted to the court on October 22, petitioners would file merits briefs on October 29, respondents would file their merits briefs on November 5, and petitioners would file their reply brief on November 10.

47. The parties thereafter conducted discovery, completing document, written and witness discovery on the timeframe articulated by the court. On October 22, consistent with the court's order, the parties submitted evidence in support of their claims, including expert reports. The parties then filed their merits briefs on schedule and the case was fully briefed by November 10. The court heard arguments in all three cases on December 8.

48. On January 12, 2022, a little more than a month after the case was fully submitted, the Ohio Supreme Court issued an opinion declaring the First Commission Plan invalid. *League of Women Voters of Ohio v. Ohio Redistricting Comm'n*, ___ Ohio St.3d ___, 2022-Ohio-65, 2022 WL 110261, at *1 (Ohio Jan. 12, 2022). In its opinion, the court held that the plan violated both Section

² Under Ohio Const., Art. XI, § 9(A), the Ohio Supreme Court has original jurisdiction in cases brought under Article XI.

³ Two other sets of petitioners also challenged the First Commission Plan in the Ohio Supreme Court. The day before the Bennett Plaintiffs filed their complaint, the League of Women Voters, together with several other organizational and individual plaintiffs, brought suit. Three days after the Bennett Plaintiffs filed, the Ohio Organizing Collaborative, also with several other organizational and individual plaintiffs, filed suit as well.

6(A) and 6(B) of Article XI. *Id.* The court therefore ordered the Commission to reconvene and draw a new plan that complied with the court’s opinion within the next ten days. *Id.* It also ordered that petitioners submit objections, if any, to the plan, within three days of the plan’s adoption. *Id.* at *29.

D. The Commission’s second plan was also a partisan gerrymander, and the Ohio Supreme Court struck down that plan as well.

49. Following the Ohio Supreme Court’s order striking down the First Commission Plan, the Commission reconvened to pass a new plan, pursuant to the court’s order.

50. While the Commission’s Republican majority made a few small adjustments to the process, the theme of the new Commission proceedings was largely “more of the same.” Again, a Republican proposal was introduced with little notice to the public or other members on the Commission—this time with no opportunity for public participation at all—and the Commission once again adopted a Republican proposal along party lines on January 22, 2022 (the “Second Commission Plan”).

51. While the Second Commission Plan nominally included more “Democratic-leaning” seats than its predecessor, even the shallowest of examinations revealed that it remained an aggressive Republican gerrymander. First, the Commission used the unconstitutional First Commission Plan as the basis for the Second Commission Plan. Additionally, the proposal included a staggering number of House districts that fell between 50 and 51% Democratic according to partisan indices,⁴ while every single Republican seat was above 52%. The same was the case in the Senate, with all but one of the seats that fell in the 48 to 52% range leaning toward Democrats. This arrangement allowed Republicans to claim that the Democratic seat count was

⁴ Partisan indices are precinct-level results of statewide elections (or sometimes composites of several elections) that are aggregated to the level of districts within a given redistricting plan. This allows for an assessment of how parties are likely to perform under a map.

significantly higher than it was, because seats that barely lean toward one party or another are in fact toss-up seats, meaning that many nominally-Democratic seats in the plan would have likely been won by Republicans. And even with this smoke and mirrors trick, the plan still fell short of the partisan proportionality contemplated by Section 6(B).

52. On January 25, the Bennett Petitioners objected to the use of the Second Commission Plan as violative of not only Sections 6(A) and 6(B) of the Ohio Constitution, but also the line-drawing requirements of Section 3(D)(3) and several procedural requirements under Section 1.

53. Respondents filed their response to petitioners' objections on January 28. In conjunction with their response, Respondents submitted an affidavit from the map-drawer, Raymond DiRossi. In his affidavit, Mr. DiRossi conceded that the Second Commission Plan violates Section 3(D)(3) Article XI of the Ohio Constitution. The Second Commission Plan is what the Gonidakis Plaintiffs ask this Court to adopt.

54. On February 7, only 16 days after the adoption of the Second Commission Plan and ten days after briefing had been submitted in the case, the Ohio Supreme Court issued an opinion striking down the Second Commission Plan. *League of Women Voters of Ohio v. Ohio Redistricting Comm.*, __ Ohio St.3d __, 2022-Ohio-342, 2022 WL 354619, at *14 (Ohio Feb. 7, 2022). The court again held that the plan violated Sections 6(A) and 6(B) Article XI of the Ohio Constitution because the evidence showed that the plan was drawn in order to favor the Republican party and because the plan fell short of partisan proportionality, despite the fact that a more proportional plan could have been drawn. *Id.* at *11-13.

55. On a concluding note, the court pointed out that filing deadlines for candidates to run in primaries in upcoming General Assembly elections were soon approaching. *Id.* at *13.

However, the court wrote, “the General Assembly established the date of the primary election . . . and it has the authority to ease the pressure that the commission’s failure to adopt a constitutional redistricting plan has placed on the secretary of state and on county boards of elections by moving the primary election, should that action become necessary.” *Id.* at *14.

56. After striking down the Second Commission Plan, the Ohio Supreme Court ordered that

The Ohio Redistricting Commission shall be reconstituted and shall convene and draft and adopt an entirely new General Assembly-district plan that conforms with the Ohio Constitution, including Article XI, Sections 6(A) and 6(B). The commission shall adopt the new plan and file it with the secretary of state no later than February 17, 2022, and shall file a copy of that plan in this court by 9:00 a.m. on February 18, 2022. This court retains jurisdiction for the purpose of reviewing the new plan.

Order, *League of Women Voters of Ohio v. Ohio Redistricting Comm.*, 02/07/2022 Case Announcements #2, 2022-Ohio-349.

E. Following the Ohio Supreme Court’s February 7 Order, the Commission’s Republican majority sat on its hands.

57. Following the issuance of the Ohio Supreme Court’s February 7 order, the Republican Commissioners took no action and ignored Democratic Commissioners’ efforts to craft a new proposal that could be used as the basis for a third Commission plan.

58. On February 9, House Speaker (and Co-Chair of the Commission) Bob Cupp announced that the Commission was unlikely to meet that week to consider another round of General Assembly maps and that no schedule existed for adopting new maps. *See* Josh Rultenberg, Twitter (@JoshRultNews) (Feb. 9, 2022, 3:39 PM), <https://twitter.com/joshrultnews/status/1491512059153899520?s=21>.

59. That same day, Democratic Senator (and also Co-Chair of the Commission) Vernon Sykes sent a letter to Speaker Cupp urging him to reconvene the Commission as soon as possible

and directing Speaker Cupp to a Democratic General Assembly proposal that was submitted to the Ohio Supreme Court during the previous round of objections. *See* Josh Rultenberg, Twitter (@JoshRultNews) (Feb. 9, 2022, 4:06 PM), <https://twitter.com/joshrultnews/status/1491518880761757704?s=21>. That proposal was also submitted to the Commission on the same day as Sykes's letter. *See* Ohio Redistricting Comm'n, *General Assembly District Plans – Commission Member Sponsors*, available at <https://redistricting.ohio.gov/maps>.

60. On February 11, the Democratic members of the Commission, Vernon Sykes and House Minority Leader Allison Russo,⁵ held a press conference concerning their General Assembly proposal, submitted two days earlier. *See* Josh Rultenberg, Twitter (@JoshRultNews) (Feb. 11, 2022, 11:04 AM), <https://twitter.com/JoshRultNews/status/1492167785769746435>. At the press conference, Russo and Sykes urged the Commission to reconvene to pass new General Assembly maps. Sykes and Russo also encouraged members of the public or the Commission to submit feedback on their proposal so that it could be fine-tuned to ensure complete constitutional compliance.

61. As of February 14, spokespeople for the Democratic caucuses in both houses said they had not heard anything from the Republican side about when the Commission could meet or with any feedback about their proposals. *See* Josh Rultenberg, Twitter (@JoshRultNews) (Feb. 14, 2022, 10:17 AM), <https://twitter.com/JoshRultNews/status/1493243062746849281>.

62. Finally on February 15—two days before the court-appointed deadline for adopting new maps—Speaker Cupp announced that the Commission would meet on February 17, the

⁵ Emilia Sykes stepped down as Minority Leader shortly before the Commission reconvened to discuss new General Assembly maps following the court's order striking down the First Commission Plan. She was replaced by Leader Russo as both Minority Leader and as the House Minority's representative on the Commission.

deadline itself. He refused to say whether the Republican caucus would be introducing a plan. At that point, there had been no indication that anyone in the Republican caucus or their staffers was working on a new General Assembly proposal. *See* Josh Rultenberg, Twitter (@JoshRultNews) (Feb. 15, 2022, 12:51 PM), <https://twitter.com/JoshRultNews/status/1493644178626015239>.

63. The following day, during a press scrum, a member of the press mentioned to Speaker Cupp that the deadline for adopting new maps was the following day. In response, Cupp laughed and said, “You’re really set on these deadlines aren’t you?” The reporter responded, “It’s not me, it’s the Ohio Supreme Court.” Cupp promptly shot back, while laughing: “They are too.”

64. Shortly after noon that day, the Democratic Commissioners circulated an update of their General Assembly proposal from the previous week, which included a few small technical fixes to ensure compliance with Article XI’s line drawing requirements. The Democratic Commissioners requested feedback from their colleagues on the plan by 9 AM the next day.

65. The following day, the Commission convened. First, the Democrats submitted their updated proposal, which had been circulated the previous day. Leader Russo noted, in introducing the plan, that despite her request for feedback on the plan by 9 AM, she had received no such feedback from her colleagues, save for an email from Auditor Faber.

66. After the Democratic proposal was introduced, the Republican Commissioners expressed their objections to the proposal, making use of visual aids in the form of posters that staffers had clearly prepared in advance.

67. After debate, the proposal was voted down 5-2, along party lines. Next, Leader Russo made a motion that all objections to the plan be put in writing. The Commission similarly voted this down on a 5-2 party-line vote.

68. Following the Commission's refusal to adopt the Democratic proposal, Republicans did not introduce a plan of their own. Instead, following remarks from the Commissioners, Speaker Cupp declared the Commission at an impasse and adjourned.

69. The Commission's court-appointed deadline came and went and no General Assembly plan was adopted.

F. The Ohio Supreme Court ordered the Commission to show cause why it should not be found in contempt for violating its February 7 Order.

70. The following morning, the Commission filed what it styled as a "notice of impasse" in the Ohio Supreme Court, stating that "a majority of the Commission has not been able to adopt a new plan, and the Commission is thus unable to file a copy of a new plan with this Court by the Court's deadline of 9:00 a.m. today." *Bennett v. Ohio Redistricting Commission*, Ohio Supreme Court Case No. 2021-1198, Notice of Impasse of Respondent the Ohio Redistricting Commission (Feb. 18, 2022).

71. In response, the Bennett Petitioners filed a motion requesting that the Ohio Supreme Court require the Commission to explain its failure to comply with the court's February 7 order. In the motion, the Bennett Petitioners suggested that "[i]f the Court finds that Respondents' explanation for why it did not adopt a constitutionally compliant plan as ordered by the Court is inadequate, then in addition to the Court directing Respondents to take further action to comply with the Court's order, the Court has additional tools to address the Commission's failure to comply." *Bennett v. Ohio Redistricting Commission*, Ohio Supreme Court Case No. 2021-1198, Petitioners' Motion to Require Respondents to Explain Their Failure to Comply with the Court's February 7, 2022 Order (Feb. 18, 2022). These tools included finding the Commission in contempt pursuant to Ohio Rev. Code Chapter 2705 and awarding attorneys' fees pursuant to Ohio Rev. Code § 2323.51.

72. Later that day, the Ohio Supreme Court sua sponte ordered “that respondents show cause by filing a response with the clerk of this court no later than 12:00 p.m. on February 23, 2022, why respondents should not be found in contempt for failure to comply with this court’s February 7, 2022 order.” *Bennett v. Ohio Redistricting Commission*, Ohio Supreme Court Case No. 2021-1198, Entry (Feb. 18, 2022).

73. The Commission met today, February 22. In addition to discussing the schedule for the Commission’s work on the separate process of drawing a remedial congressional districting plan, the Commission discussed scheduling an additional meeting, as soon as tomorrow, February 23, to discuss further work on the General Assembly plan.

74. State proceedings concerning the drawing of General Assembly districts are therefore ongoing, with an imminent deadline looming. The Commission has the power to draw a new General Assembly plan at any moment. Ohio’s redistricting process has not reached an “impasse”: The Commission has disregarded one deadline imposed by the Ohio Supreme Court, the court is taking immediate action to enforce its orders, and the Commission seems to be responding by scheduling further meetings to discuss the General Assembly plan.

G. Ohio cannot run the 2022 elections under the General Assembly maps enacted in 2011 because they are malapportioned.

75. In 2011, the Ohio Apportionment Board (the Commission’s predecessor) drew a General Assembly Plan that was based on the 2010 census data and the version of the Ohio Constitution that existed prior to the 2015 amendments.

76. As the 2020 census has shown, Ohio has seen significant population changes since 2010. The state’s population has grown by 2.3%, with growth concentrated largely in central Ohio.

77. As a result, the 2011 version of Ohio’s General Assembly districts have significant variations in population. The total deviation between districts is well in excess of 10%.

IV. CLAIMS FOR RELIEF

COUNT I: Violation of Equal Protection Under the First and Fourteenth Amendments of the United States Constitution and Violation of 42 U.S.C. § 1983 (Malapportionment)

78. Plaintiffs reallege and incorporate by reference the allegations above as though fully set forth herein.

79. Under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution “seats in both houses of a bicameral state legislature must be apportioned on a population basis.” *Reynolds v. Sims*, 377 U.S. 533, 568 (1964). Under this principle, known as “one person, one vote,” state legislative districts must be roughly equal in population. *Evenwel v. Abbott*, 578 U.S. 54, 59-60. Where the total population deviation in a map—the difference between the largest and smallest district—is greater than 10%, the deviation is “presumptively impermissible.” *Id.* at 60.

80. The 2011 Plan’s maximum deviation in each chamber of the Ohio General Assembly is well in excess of 10%. It is therefore presumptively impermissible. Because no state interest can justify the population deviations in the 2011 Plan, it is invalid under the Equal Protection Clause.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs request that this Court enter the following relief against the Defendant:

A. Stay this matter until the Commission has adopted a new redistricting plan for the General Assembly or it is clear that state processes, including Ohio Supreme Court proceedings, concerning the redrawing of General Assembly districts following the 2020 Census have concluded, pursuant to the abstention principle articulated in *Grove v. Emison*, 507 U.S. 25, 34 (1993).

B. If this matter is not resolved through Ohio's state legislative redistricting process:

1. Declare that the 2011 Plan for Ohio's General Assembly districts is malapportioned and therefore violative of the Fourteenth Amendment to the United States Constitution;
2. Permanently enjoin the Defendant from administering any elections under the 2011 Plan;
3. Implement a new plan for Ohio's General Assembly districts that complies with state and federal law;
4. Pursuant to Ohio Supreme Court Rule of Practice 9.01, certify to the Ohio Supreme Court the question of whether the plan or plans under consideration by this Court for Ohio's General Assembly districts complies with the Ohio Constitution.

C. Award Bennett Petitioners attorneys' fees and costs in this action;

D. Grant such other further relief as this Court deems just and proper.

DATED: March 7, 2022

Respectfully submitted,

/s/ Donald J. McTigue

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**Motions for admission pro hac vice
forthcoming

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