

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

MICHAEL GONIDAKIS, et al.,

Plaintiffs,

v.

FRANK LAROSE,

Defendant, and

**LEAGUE OF WOMEN VOTERS OF OHIO
and A. PHILIP RANDOLPH INSTITUTE
OF OHIO,**

Intervenor-Defendants.

Circuit Judge Amul R. Thapar

Chief Judge Algenon L. Marbley

Judge Benjamin J. Beaton

Case No. 2:22-cv-773

**INTERVENOR-DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR A
TEMPORARY RESTRAINING ORDER TO MAINTAIN THE THIRD PLAN**

Table of Contents

I.	Introduction.....	1
II.	Factual Background	3
A.	The Supreme Court of Ohio is Actively Supervising the Redistricting Process.	3
1.	The Ohio Constitution expressly vests exclusive and original jurisdiction over partisan gerrymandering claims in the Supreme Court of Ohio.	3
2.	The Supreme Court of Ohio Carefully Reviewed Three Enacted Plans and Invalidated Them Under Ohio Law.....	4
3.	The Supreme Court of Ohio Set Forth a Detailed Procedure Regarding the Enactment of a Fourth Plan.	5
B.	The Ohio Redistricting Process is Moving Forward Expeditiously.	5
C.	At Present, Ohio Is Not Proceeding with General Assembly Elections as part of the May 3, 2022 Primary.	6
D.	There Is a Reasonable Prospect that the May 3, 2022 Primary Date May Move.	7
III.	Standard of Review.....	8
IV.	Argument	9
A.	Plaintiffs Are Improperly Seeking an Order to Change the Status Quo.	9
B.	Plaintiffs are Unlikely to Succeed on the Merits.	10
1.	Plaintiffs’ Claims Fail Under <i>Grove</i> : The State Process Has Not Run Out of Time.	10
2.	Plaintiffs’ Claims Fail Under <i>Bush v. Gore</i> : Imposing a Plan that the State Supreme Court Invalidated Would Be Improper.	10
C.	Plaintiffs are Not at Risk of Suffering Irreparable Injury.	12
D.	It is Not in the Public Interest for this Court to Impose a Map Struck Down by the Supreme Court of Ohio as an Unconstitutional Partisan Gerrymander.	12
V.	Conclusion	13

I. Introduction

This Court should deny Plaintiffs' Motion for a Temporary Restraining Order (TRO) to change the status quo and impose an Ohio General Assembly district plan that has already been invalidated by the Supreme Court of Ohio. This is true for four reasons.

First, Plaintiffs' motion improperly seeks to change the status quo – while purporting to be premised on doing nothing more than maintaining the status quo until the motion for preliminary injunction is decided. In particular, Plaintiffs seek an order to require Secretary LaRose to implement the Third (Redistricting) Plan. But that Plan is not presently being implemented, and Plaintiffs should not be able to force that result.

Second, Plaintiffs are not likely to win on the merits that federal imposition of a constitutionally defective map is warranted, given the need for federal courts to defer when “the State, through its legislative *or* judicial branch, has begun to address” redistricting. *Grove v. Emison*, 507 U.S. 25, 33 (1993). As long as there is a reasonable prospect that the state process will be completed in time to meet an election schedule, the federal court must defer to that process. Here, the Ohio Redistricting Commission (“the Commission”) has been working continuously throughout this week – with more meetings scheduled daily through Monday – to enact a revised Plan by the March 28, 2022 deadline set by the Supreme Court of Ohio. And various state actors are determining what needs to be done as regards the May 3, 2022 primary election given the work of the Commission. The process is far from broken. The state process is working – expeditiously.

And this Court should not impose a map that the Supreme Court of Ohio has held to be invalid under the Ohio Constitution. State Courts are given particular deference when interpreting law governing state elections. *See Democratic Nat'l Comm. v. Wisconsin State*

Legislature, 141 S. Ct. 28, 208 L. Ed. 2d 247 (2020) (noting the difference in in “the authority of state courts to apply their own constitutions to election regulations” and cases involving federal elections) (Roberts, CJ, concurring); *see also Democratic Nat’l Comm.*, 141 S. Ct. at 34 n.1 (noting the particular deference given to state court interpretation of state constitutions for state elections) (Kavanaugh, J, concurring).

Third, contrary to Plaintiffs’ assertions, they face neither immediate nor irreparable harm. The Commission is working to enact a plan by the March 28, 2022 deadline set by the Court, five days from now. Given this, nothing will impinge on the rights of the Plaintiffs between now and March 30, the date already set for a preliminary injunction hearing.

Fourth, Plaintiffs’ attempt to impose a map on the voters of Ohio that has been found to be constitutionally defective both injures third parties (the voters of Ohio) and is against the public interest. To impose this map would constitute an invitation to gerrymander and then stonewall so as to obtain federal relief to overturn a lawful state process.

When the Supreme Court of Ohio issued an order invalidating the Third Map on March 16, 2022, it set an intense, expedited schedule for the public drafting of maps, requiring “frequent” public drafting sessions involving the entire Commission, with the goal of a map being completed by March 28, 2022. The Commission is dutifully complying with this order, as evidenced by its *daily* meetings and its decision to hire two independent mapmakers and a mediation team to assist with the map-drawing process. These invigorated redistricting efforts marks major steps forward in Ohio’s redistricting process. This Court should not interfere, and should permit it to unfold.

II. Factual Background

A. The Supreme Court of Ohio is Actively Supervising the Redistricting Process.

1. The Ohio Constitution expressly vests exclusive and original jurisdiction over partisan gerrymandering claims in the Supreme Court of Ohio.

In 2015, Ohio voters, by an overwhelming margin of 71.5% to 28.5%, amended the Ohio Constitution by adding express constitutional commands that legislative plans not be drawn “to favor or disfavor a political party,” and that the distribution of seats “shall correspond closely to the statewide preferences of the voters of Ohio.” Ohio Const. art. XI, §§ 6(A)–(B). The express purpose of the constitutional amendment was to “[e]nd the partisan process for drawing Ohio House and Senate districts and replace it with a bipartisan process with the goal of having district boundaries that are more compact and politically competitive.” Ohio Sec’y of State, Issue 1 Ballot Language (Nov. 2015), <https://bit.ly/3ElgrPY>.

Article XI of the Ohio Constitution, as amended, gives the Supreme Court of Ohio a central role in supervising the enactment of any legislative plan. It provides the Supreme Court of Ohio with exclusive and original jurisdiction over all actions arising under Article XI, and grants it the authority to invalidate “any general assembly district plan made by the Ohio redistricting commission.” Ohio Const. art. XI, §§ 9(A)–(B); *League of Women Voters of Ohio v. Ohio Redistricting Comm’n*, --- N.E.3d ---, 2022-Ohio-65, 2022 WL 110261, ¶ 69 (Ohio Jan. 12, 2022). Moreover, in the event that the Supreme Court of Ohio finds a plan to be constitutionally defective, it has the express authority to order the Commission to “convene, and ascertain and determine a general assembly district plan in conformity with such provisions of this constitution as are then valid.” Ohio Const. art. XI, § 9(B).

2. The Supreme Court of Ohio Carefully Reviewed Three Enacted Plans and Invalidated Them Under Ohio Law.

On September 16, 2021, the Commission voted along strict party lines to enact a General Assembly district plan to be in effect for the next four years. A week later, on September 23, 2021, Intervenor-Defendants League of Women Voters filed a complaint in the Supreme Court of Ohio, alleging that the Commission's district plan violated Article XI of the Ohio Constitution. Specifically, Intervenor-Defendants alleged that the Commission violated Sections 6(A) and 6(B) of Article XI by enacting a plan that (i) primarily favored the Republican Party, and (ii) failed to correspond closely to the statewide preferences of the voters of Ohio. *See* Compl. ¶ 91, *League of Women Voters of Ohio, et al. v. Ohio Redistricting Comm'n, et al.*, No. 2021-1193 (Ohio Sept. 23, 2021).

Following expedited discovery, full merits briefing, and oral argument, the Supreme Court of Ohio, on January 12, 2022, struck down the Commission's plan. In so doing, it carefully examined (and affirmed) its authority to remedy a partisan gerrymander, *League of Women Voters of Ohio*, 2022 WL 110261, ¶¶ 64–75, ordered the Commission to reconvene to adopt a new plan within ten days of the Court's decision, and expressly retained jurisdiction to review the constitutionally compliant plan once adopted by the Commission, *id.* ¶ 137. On January 22, 2022, the Commission adopted a revised plan, to which Intervenor-Defendants, three days later, lodged objections, explaining that the revised plan violated Article XI, Sections 6(A) and 6(B). *See* Pet'rs' Obj. to Ohio Redistricting Comm'n's Revised Map, *League of Women Voters of Ohio*, No. 2021-1193 (Ohio Jan. 25, 2022).

Roughly two weeks later, on February 7, 2022, the Supreme Court of Ohio sustained Intervenor-Defendants' objections and struck down the Commission's Revised Plan plan for “violat[ing] Article XI, Sections 6(A) and 6(B) of the Ohio Constitution.” *League of Women*

Voters of Ohio v. Ohio Redistricting Comm’n, --- N.E.3d ----, 2022-Ohio-342, 2022 WL 354619, ¶ 3 (Ohio Feb. 7, 2022). On February 24, 2022, the Commission passed a second revised plan (the “Third Plan”), to which Intervenor-Defendants again filed objections. *See* Obj. to Ohio Redistricting Comm’n’s Feb. 24, 2022 Revised Plan, *League of Women Voters of Ohio*, No. 2021-1193 (Ohio Feb. 28, 2022).

On March 16, the Supreme Court of Ohio issued its Opinion and Order, sustaining Petitioners’ objections to the Third Plan on the basis of violations of Article XI, Sections 6(A) and 6(B) of the Ohio Constitution. *03/16/2022 Case Announcements #2, League of Women Voters of Ohio v. Ohio Redistricting Comm’n*, 2022-Ohio-790 (Ohio Mar. 16, 2022).

3. The Supreme Court of Ohio Set Forth a Detailed Procedure Regarding the Enactment of a Fourth Plan.

The Ohio Court spelled out just how the Third Plan’s constitutional defects should be remedied:

- The Supreme Court of Ohio ordered that the Commission be reconstituted and convene in order to draft and adopt a new Ohio General Assembly district plan that conforms with the Ohio Constitution. *Id*
- “To promote transparency and increase public trust,” the order requires the Commission to conduct its drafting “in public[.]” *Id*.
- To make sure that the work of the Commission is done effectively, the Court ordered the Commission to “convene frequent meetings to demonstrate their bipartisan efforts to reach a constitutional plan within the time set by th[e] court.” *Id*. (emphasis added);
- And to make sure that the work is done expeditiously, the new plan must be filed with the Secretary of State no later than March 28, 2022. *Id*.
- In addition, the Ohio Court set forth an aggressive (72 hour) schedule for the filing of objections, if any, and responses (again, 72 hours), if any, to any revised plan. *Id*.

B. The Ohio Redistricting Process is Moving Forward Expeditiously.

The Commission immediately began complying with the Ohio Court’s Order. It first met on Saturday, March 19, at which time the Commission agreed to hire two independent

mapmakers and a mediator to assist in the map-drawing process. *See* Ex. A (Tr. of 3-19-2022 Ohio Redistricting Comm’n Meeting) at 01:25:30. The Commission has now scheduled meetings *every day* through Monday, March 28. *See* Commission Meetings, OHIO REDISTRICTING COMM’N, <https://redistricting.ohio.gov/meetings> (last visited Mar. 23, 2022). The independent map drawers are being flown in from out of state to work with the Commission in person. *See* Ex. B (Tr. of 3-21-2022 Ohio Redistricting Comm’n Meeting) at 00:27:47. The Commission is taking seriously its obligations to be directly involved in the process of drawing the maps; it is not merely delegating the task to staff. *See generally*, Exs. A–B. And it is also taking seriously the admonition that the map drawing take place in public. *Id.*

C. At Present, Ohio Is Not Proceeding with General Assembly Elections as part of the May 3, 2022 Primary.

As a result of the rulings of the Supreme Court of Ohio, the Third Plan is presently not operative. Thus, when the Secretary responded to the Motion for a TRO, he stated that while work had been undertaken under the Third Plan, that in fact that work is not presently being undertaken in light of the rulings of the Supreme Court of Ohio. In the words of the Secretary:

Plaintiffs’ characterization of the current status of the May 3, 2022, Ohio primary election is not completely accurate. They write that Secretary LaRose “has started implementing the Ohio Redistricting Commission’s Third Plan though he may stop at any time. . . .”

They are partially correct about the Third Plan in one regard – that Secretary LaRose was implementing it and was readying the eighty-eight county boards of election to hold the May 3 primary election with the districts in the Third Plan. **But once the Supreme Court invalidated it, he had no choice but to pause those preparations.** So, on March 17, 2022 Secretary LaRose issued Directive 2022-30 informing the county boards of election that the Supreme Court had invalidated the Third Plan and ordered the Ohio Redistricting Commission to adopt a new one by March 28, 2022. *See*, Exhibit A, Directive 2022-30. As a result of the Court’s Order, he instructed boards that **they are prohibited from altering or sending ballots and that they must pause**

reprogramming of voter registration tabulating systems until his Office provides additional instruction.”

Ohio Sec’y of State LaRose’s Resp. to Pls.’ Mot. for a TRO to Maintain the Third Plan, ECF No. 88 at PageID # 1310-1311 (emphasis added).

The Secretary then succinctly summarizes the situation, stating: “[s]o, to be completely accurate, it is not that the Secretary may stop implementing the Third Plan at any time, **he already has paused implementing it.**” *Id.* at PageID # 1311 (emphasis added).

D. There Is a Reasonable Prospect that the May 3, 2022 Primary Date May Move.

Not only is the Third Plan inoperative as to the May 3 primary, but it also appears that the primary date itself may now move. Secretary LaRose has informed the legislature that the May 3 primary will not include state House and state Senate contests. *See* Letter from Sec’y LaRose, ECF No. 79-2. In a filing made on March 18, 2022, Secretary Larose underscored this point:

At present, the primary election for those districts will have to be held at a later date. . . . **And although the May 3, 2022 primary election is no longer looming for the state legislative races,** the need for final state legislative districts to be used in this year’s elections remains.

LaRose Opp’n to Pls.’ Mot. for Prelim. Inj., ECF No. 76 at PageID # 1108 (emphasis added).

The Secretary is not alone. In reaction to the Supreme Court of Ohio’s most recent decision, Ohio Senate President Huffman suggested moving the primary date for state legislative elections.¹ According to President Huffman, if all primaries were to be kept on one date, the

¹ *See* Jessie Balmert & Laura A. Bischoff, Ohio Supreme Court rejects statehouse maps, ending hopes of full May primary, ENQUIRER, (Mar. 17, 2022 7:59 AM).

earliest primary date would be in July. *Id.* Governor DeWine has also indicated a primary date move may be imminent, stating that “it’s looking unlikely” that the May 3 date would remain.² And consistent with this theme, and perhaps as a “belt and suspenders” measure to avoid any doubt on the issue, on March 21, 2022, Senator Sykes and House Minority Leader Russo filed a motion with the Supreme Court of Ohio to move the May 3, 2022 primary date for the General Assembly elections. *See* Mot. of Senator Sykes and House Minority Leader Russo to Move Primary Election Date, *League of Women Voters of Ohio*, No. 2021-1193 (Ohio Mar. 21, 2022).

III. Standard of Review

As a threshold matter, motions for a TRO are only proper to preserve the status quo. *See, e.g., Ison v. Madison Loc. Sch. Bd.*, 395 F. Supp. 3d 923, 930 (S.D. Ohio 2019); *Fort Washington Inv. Advisors, Inc. v. Adkins*, No. 1:19-CV-685, 2019 WL 4220902, at *3 n.5 (S.D. Ohio Sept. 5, 2019).

Where appropriate relief is sought, then in evaluating such a motion the governing factors are well established: “In adjudicating a motion for a TRO, the Court must balance whether: (1) plaintiff is likely to succeed on the merits; (2) the chance that plaintiff would suffer irreparable injury without immediate injunctive relief; (3) the possibility of harm to others; and (4) the public interest.” *Women's Med. Pro. Corp. v. Baird*, No. 03-CV-162, 2008 WL 545015, at *1 (S.D. Ohio Feb. 27, 2008) (Marbley, J.) (citing *Chabad of S. Oh. & Congregation Lubavitch v. City of Cincinnati*, 363 F.3d 427, 432 (6th Cir. 2004)).

² Jeremy Pelzer, Gov. Mike DeWine’s suggestion to break Ohio’s redistricting impasse: have mapmakers collaborate on bipartisan plan, MSN, (Mar. 17, 2022).

IV. Argument

A. Plaintiffs Are Improperly Seeking an Order to Change the Status Quo.

Plaintiffs' Motion is defective because it seeks a TRO in order to *change* the status quo. It is fundamental to a proper Motion for a TRO that the relief sought be to “**preserve the status quo.**” *See, e.g., Ison*, 395 F. Supp. at 930 (emphasis added); *see also Fort Washington Investment Advisors* at *3 n.5 (striking part of the relief requested by a TRO on the grounds that a “temporary restraining order maintains the status quo; it does not provide affirmative relief.”). Plaintiffs are clearly aware of this requirement, as they claim to be seeking to “maintain the status quo,” Pls.’ Mot For a TRO to Maintain the Third Plan, ECF No. 84 at PageID # 1156, but this wording is at odds with the reality of their relief sought. The relief sought by the instant motion is plainly stated:

[Plaintiffs] “move this Court for a temporary restraining order pursuant to Fed. R. Civ. P. 65(b) to enjoin the Ohio Secretary of State Frank LaRose, in his official capacity, and all persons acting on his behalf or in concert with him, from deviating from **the status quo: implementing the Third Plan adopted by the Ohio Redistricting Commission.**”

Id. at Page ID# 1154 (emphasis added). Plaintiffs purport to seek this relief so that the status quo is intact until the motion for preliminary injunction is decided. *Id.* at PageID # 1156.

Thus Plaintiffs assert that the “status quo” amounts to the implementation of the Third Plan (and indeed they caption their motion as seeking to “maintain” the Third Plan). Plaintiffs have misstated the facts.

As set forth above, the Secretary has clearly stated that the implementation of the Third Plan *is not* the status quo. It was paused nearly a week ago. Thus, an affirmative order to implement the Third Plan would improperly require a *change* in the status quo.

B. Plaintiffs are Unlikely to Succeed on the Merits.

1. Plaintiffs' Claims Fail Under *Grove*: The State Process Has Not Run Out of Time.

So long as time remains for the state process to resolve itself, federal intervention in the redistricting process is improper. *See Grove*, 507 U.S. at 33 (“In the reapportionment context, the Court has required federal judges to defer consideration of disputes involving redistricting where the State, through its legislative *or* judicial branch, has begun to address that highly political task itself.”). In its ruling from the bench, the District Court distinguished this case from the federal intervention in *Branch v. Smith*, 538 U.S. 254 (2003), by accurately noting that in *Branch* there was “no prospect” of resolution before the election. Tr. of Status Conf., ECF No. 69 at PageID # 1003; *Branch*, 538 U.S. at 265 (“we affirm the injunction on the basis . . . that the state-court plan had not been precleared and had no prospect of being precleared in time for the 2002 election”).

Because a very real, and imminent, prospect for resolution remains in this case, deferral continues to be warranted. Accordingly, Plaintiffs are unlikely to succeed on the merits of their claim that federal imposition of an invalidated map is justified.

The Commission is moving with dispatch towards enacting a new map. The Commission is working long days – including weekend days to meet its March 28 deadline.

Clearly, if Ohio is on the precipice of enacting a new plan and also moving back the state primary date by several months, it can hardly be said that time has run out for letting the state redistricting process run its course.

2. Plaintiffs' Claims Fail Under *Bush v. Gore*: Imposing a Plan that the State Supreme Court Invalidated Would Be Improper.

This Court cannot order Ohio officials to go forward with a plan invalidated by the Supreme Court of Ohio. A federal court cannot compel state officials to violate state law. *See*,

e.g., Bush v. Gore, 531 U.S. 98, 111 (2000) (per curiam) (rejecting a proposed remedy on the grounds that it would require remanding to the Florida Supreme Court to issue an order in violation of the Florida Election Code). Nor can a federal court choose to ignore rights created by the Ohio Constitution and enforced by the Supreme Court of Ohio. *See, e.g., Guar. Tr. Co. of N.Y. v. York*, 326 U.S. 99, 105 (1945) (“Congress never gave, nor did the federal courts ever claim, the power to deny substantive rights created by State law”); *Peters v. Gilchrist*, 222 U.S. 483, 492 (1912) (“The question as to whether a particular law has been passed in such manner as to become a valid law under the Constitution of the state is a state, and not a Federal, question. Courts of the United States are therefore under obligation to follow the adjudications of the courts of the state whose law is in question.”).

Plaintiffs make no argument that the Ohio constitutional provisions underlying the Ohio Court’s decisions are somehow preempted by federal law. The Supreme Court of Ohio’s decision that the Third Plan violates the Ohio Constitution is controlling on this Court. *Rucho v. Common Cause*, 139 S. Ct. 2484, 2506–07, (2019) (“We conclude that partisan gerrymandering claims present political questions beyond the reach of the federal courts.”). This precludes federal imposition of the invalidated Third Plan. Indeed, Ohio’s Attorney General has acknowledged as much. *See* Ex. C (Feb. 22, 2022 Letter from Attorney General Yost to Ohio General Assembly) at 2 (“The federal court may not order the use of a map that was rejected by the Ohio Supreme Court, where the underlying provision of the state constitution has not been found to violate the federal constitution.”). Therefore, the federal imposition of the invalidated Third Plan is not a viable remedy.

C. Plaintiffs are Not at Risk of Suffering Irreparable Injury.

Plaintiffs' fundamental rights are not at irreparable risk. The Commission is working to enact a plan five days from now, by March 28, 2022. And the preliminary injunction hearing is set for three days later.

Plaintiffs allege they are currently living under the 2010 legislative district maps, and thus are suffering malapportionment harms. But as has been made clear above, there is no evidence of any intention for the election to be held under the 2010 district lines. *If* the exceedingly unlikely were to come about, and Ohio moved to hold an election under these lines, then federal intervention may be warranted. But such a harm is not remotely imminent. The same can be said for the notion that there will be no districts at all. It is very clear that Ohio is swiftly moving towards a new district plan.

Most important, harm to the Plaintiffs, if any, would not be irreparable. *Even* if (1) the Commission were to fail to produce a new plan, and (2) the General Assembly fails to move the primary date *and* (3) the Supreme Court of Ohio fails to move the primary date - only then would relief be needed, and at that point there would be nothing to stop *this* Court from issuing injunctive relief that delays the primary.

D. It is Not in the Public Interest for this Court to Impose a Map Struck Down by the Supreme Court of Ohio as an Unconstitutional Partisan Gerrymander.

Finally, a TRO would not be in the public interest. Granting a TRO would effectively nullify Article XI of the Ohio Constitution, which was passed with overwhelming public support. For 71.5% of voters to agree on a political issue is a rare thing, but such was the case when it came to Article XI of the Ohio Constitution. That vote makes clear that Ohio views partisan fairness in its elections as an essential component of the public interest. By stepping in unnecessarily, this Court would be effectively providing a work-around to the redistricting

process approved by the Ohio citizenry. This Court would be sending the message to those in the political majority on future Ohio Redistricting Commissions that they can gerrymander to their hearts' content because, in the event they are found to have not complied with Article XI, they can simply have their invalidated maps upheld in federal court. This is not the system Ohio voters approved. Article XI grants the Supreme Court of Ohio expansive authority to oversee the redistricting process, and that is authority this Court should respect to the greatest extent possible. A TRO at this time is therefore inconsistent with the public interest, and should be denied.

V. Conclusion

For the aforementioned reasons, Intervenor-Defendants respectfully request that Plaintiffs Motion for a Temporary Restraining Order be denied.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I , Freda J. Levenson, hereby certify that on this 23rd day of March, 2022, I electronically filed the foregoing with the Clerk of Court for the United States District Court for the Southern District of Ohio, Eastern Division via the ECF system, which will send notification of such filing to all counsel of record.

/s/ Freda J. Levenson

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MICHAEL GONIDAKIS, et al.,

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OF OHIO,**

Intervenor-Defendants.

Circuit Judge Amul R. Thapar

Chief Judge Algenon L. Marbley

Judge Benjamin J. Beaton

Case No. 2:22-cv-773

**DECLARATION OF FRED A. LEVENSON IN SUPPORT OF
INTERVENOR-DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR A
TEMPORARY RESTRAINING ORDER TO MAINTAIN THE THIRD PLAN**

I, Freda J. Levenson, 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 declaration, and further state as follows:

1. I am one of the counsel for Proposed Intervenor-Defendants in the above-captioned case.
2. Exhibit A is a true and correct copy of the transcript of the March 19, 2022 Ohio Redistricting Commission Hearing, which is publicly available on the Ohio Redistricting Commission's ("the Commission") website, <https://redistricting.ohio.gov/meetings>.
3. Exhibit B is a true and correct copy of the transcript of the March 21, 2022 Ohio Redistricting Commission Hearing, which is publicly available on the Commission's website, <https://redistricting.ohio.gov/meetings>.

4. Exhibit C is a true and correct copy of a letter sent by Ohio Attorney General Dave Yost to the Ohio General Assembly on February 22, 2022.

I declare the above to be true under penalty of perjury of the laws of the United States of America.

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Respectfully submitted,

/s/ Freda J. Levenson

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CERTIFICATE OF SERVICE

I, Freda J. Levenson, hereby certify that on this 23rd day of March, 2022, I electronically filed the foregoing with the Clerk of Court for the United States District Court for the Southern District of Ohio, Eastern Division via the ECF system, which will send notification of such filing to all counsel of record.

/s/ Freda J. Levenson

Freda J. Levenson (0045916)

Counsel for Intervenor-Defendants

EXHIBIT A

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2022-03-19-Redistricting-all-360.mp4

<https://ohiochannel.org/video/ohio-redistricting-commission-3-19-2022>

Co-Chair Sen. Vernon Sykes [00:00:00] Ladies and gentlemen, I like to call this meeting to order. We've been ordered to reconvene by the Ohio Supreme Court to produce constitutional maps by March, the 28th, will the staff please call the roll

staff [00:00:18] Speaker Co-Chair Cupp.

Co-Chair Speaker Robert Cupp [00:00:19] present.

staff [00:00:20] Senator Co-Chair Sykes.

Co-Chair Sen. Vernon Sykes [00:00:22] present.

staff [00:00:22] Governor DeWine, Auditor Faber, President Huffman, Secretary LaRose,

Secretary of State Frank LaRose [00:00:29] here.

staff [00:00:29] And Leader Russo, Mr. Co-Chair. All members are present.

Co-Chair Sen. Vernon Sykes [00:00:33] With a quorum being present. We will meet as a full committee in your folders are minutes of our last meeting on March 1st. Do I have a motion to accept the minutes.

Co-Chair Speaker Robert Cupp [00:00:45] So moved

Co-Chair Sen. Vernon Sykes [00:00:47] Moved and seconded. Are there any objections to the, to the minutes? Hearing and seeing none, we will accept the minutes as presented. At this time, we'll open the floor to any further business to be brought before the commission at this time. Governor DeWine,

Governor Mike DeWine [00:01:12] Mr. Chairman, thank you very much. I'm going to kind of go through oh, a few options and other members may have options, and I'm not tied into any one option at all. But maybe just to start the discussion first, I think we need to come out of here this afternoon with a plan as far as the process of the creation of a new map. I know there's been a lot of different discussions among different members. And let me just summarize a couple of those suggestions, at least one is this suggestion that I had started talking about the last time we went through this before the plan that was ultimately adopted by the commission. And that is to have the mapmakers really, I guess the three people who have been making these maps get together and work literally work together. I have a resolution that could be passed or we could pass any any kind of resolution, but basically what it would say is that this commission is asking the three mapmakers Republican, Democrat to work together to follow the Constitution, to follow the three now three court decisions that have been handed down by the Supreme Court of Ohio and to come back to the commission with with a map that does comply with all of those things. I guess I would propose that they they work together, that they be accessible at any time to members of this commission who could walk in and talk to them, and that they would give periodic reports back to the commission until such time as they'd come up with a map,

which does in fact comply with those three court decisions and with the Constitution. That would be one suggestion I know that the letter from the attorney general has been, I think all the members have seen the letter and I know there's been some informal discussion about with members, which would be, I guess, the second alternative. And I was not involved directly in the initial conversations, but it was reported to me that there are two mapmakers one Republican, one Democrat who were utilized in Virginia, and they came up with a a map. The attorney general, and a letter has indicated that, you know, he is would make those two available. He's had some, I guess, contractual contact with them or an agreement with them and that they would be available to do that. That would have obviously the advantage of having somebody, two people outside who have not been involved in this before, how much that would delay things, I really don't don't know, but that would certainly be a second second option. So I would just put those two options out on the on the table, at least to begin the discussion. You certainly could have other variations of those you know, you could have a with it with the partisan map makers, I suppose you could have another independent individual to be involved in that. The difficulty, of course, is getting everybody to agree on who that who that individual would would be going back to the one suggestion about the two independent mapmakers, again, you could substitute other people for those if the Democrats had somewhere else they want. If Republicans had somebody else they wanted, you could certainly do that. So I think there's a lot of different variations. But I think we need need to agree on something today and and and move forward.

Co-Chair Sen. Vernon Sykes [00:06:02] Governor, I thank you for your comments, starting us off here. I think it would be good for us to resolve or have a resolution here approved by the commission that would indicate our intentions to comply with the constitutional requirements directing staff also to do that. I think that would be a good for us to start with. Commissioner Russo,

Minority Leader Allison Russo [00:06:35] thank you, Mr. Co-Chair, and you know, I there's a lot that the governor has indicated that I agree with and, you know, hope that we all moving forward now in this process again commit to all working together, as has been suggested numerous times, so that we can come to some sort of resolution that both meets the requirements of the court and the Constitution, but also, I think, does well by the citizens of Ohio. I would just add that a couple of other things that I would like for us to discuss today and lay out whether it be through this resolution or coming to some sort of agreement on or at least begin discussions on, as you know, number one, what is this commission schedule going to be from now until the 28th? Are we going to meet every day, every other day? I think it's important for us to be clear about that. I know some members have expressed potentially having the option to attend these meetings virtually. But, you know, we'd like to have some resolution to that today. I think as the governor has brought up a couple of different options, whether it's through the independent map maker working with our existing mapmakers, I've just quick correction that we have four our total. There are two for the Democrats and two for the legislative Republican legislative leaders on the commission. But one of the other potential options is to also have a mediator that this commission could bring in as well to work with our map makers. I know that that has been discussed among some of the commission members here. The only thing that I would say about either of these options, which I am very open to, is I think that it's important whether we're using independent map makers or perhaps a professional mediator is that they actually be contracted and paid for through the commission. We do have finds through the task force to do that, but I think to avoiding any potential conflicts that that should come through this commission and not through the Attorney General's

Office. So I would just add that caveat. The third thing that I would say is the court was very clear about the work of this commission. A map maker is being done in public and how do we actually do that? What are the logistics of that and what do we agree on? I think that there is no reason why we can't make some of the work of our map makers available to the public and figuring out how we do that, whether it's in this room or it's in some other room or one of the theaters that we have available to us, how that's actually going to work. I also think that we need to talk about what is the timeline of releasing any maps so that the public has an opportunity to weigh in on them. I know the attorney general in his memo talked about a 24 hour window, but we have got to provide a better opportunity for transparency for the public to weigh in on the maps that are being considered by this commission. And I think we as part of this, and I hope as part of the resolution that we come to an agreement of what it means to abide by the court's decision in the Constitution. I think in this latest decision, there were some very detailed requirements and thoughts on that that I hope that we can all agree to. And then finally, I think that it is important for this commission to also have some discussion about the primary date and the implications of what instituting a new legislative map, what needs to be considered, having some conversations with the secretary of state, but all of us having some discussion about what are going to be the actions taken to move the primary date and what is actually feasible, what data is actually feasible for us to consider? So thank you.

Co-Chair Sen. Vernon Sykes [00:10:54] Further discussion? On the resolution, then that's being offered, do you have a draft or?

Governor Mike DeWine [00:11:11] Well, Chairman, I laid out two different proposals, and I guess I wanted to see if there is a consensus behind either one of those, if there's any modifications to any of those or if someone has another idea. So I didn't put those on the table in the form of a resolution. I put those two suggestions. I think we can certainly turn them one of those into a resolution, but I just thought that we should see if there is a consensus behind one idea or a variation of either one of those ideas. I mean, there are different ways of doing it. So I don't have a resolution at this point. I think the thought, frankly, that we would have some discussion and try to reach some sort of consensus about which way we would go because obviously it has to be something that there's a support for on this on this commission and I'm not wed to either one of these, if there's a third alternative, I'm fine at least looking at that and considering whether that will will work. I think there's advantages and disadvantages to the two I laid out. One could make arguments, you know, in favor of one or favor another. But I just think we need to come out of here with something that show that somebody is starting to work on maps this weekend.

Co-Chair Sen. Vernon Sykes [00:12:41] Then we're still open for discussion. Commissioner Faber,

Auditor of State Keith Faber [00:12:47] thank you, I. I don't want to say I'm agnostic to the different ideas. I think all the ideas have the possibility to work. The only one thing that that's been mentioned so far that I have a little bit of an itchy concern with is that is this commission discussing primary dates because I'm looking at the group and I may be the only one on this group that has no say in what the primary date is or has no direct input on what the primary date is. You know, the governor certainly can veto legislation the legislators get to pass legislation Secretary LaRose has to implement legislation, but I'm not sure that the primary date is the concern of the commission. So having said that, I'll take that and let you guys figure that out because you all get a seat at the table and the

primary date on the mediator, I've been a mediator for the better part of 30 years. A mediator can help you find solutions would not otherwise appear to be possible. The problem is is who the mediator is. I there are some very good mediators throughout Ohio. I don't know any that really specializes in governmental mediation that would have background in redistricting, and probably that would be a good thing. But the parties have to have confidence that the mediator is truly a neutral party and is somebody they are comfortable sharing information with. And that brings me to a different, altogether different consideration. For mediation to be effective, the mediator has to have the ability to have confidence and people to talk to them in confidence about where their positions are to separate those from their interests. And there are court rules in place that allow mediators to have that confidentiality and mediation that are through the court. There are some state statutes on that point. But in this context, I would be concerned that any mediator would have a sunshine law or a public record confidentiality issue. Now, it's real tough to give up confidentiality if it's a discussion. And so I'm guessing there would be very few documents except map drafts that may be exchanged. But in that regard, I have not seen a mediation in my experience be as successful if they don't have the ability to have those candid one on one conversations in confidence. And so you may want to if you're going to do a mediator, we may ask the court to appoint that mediator, whoever somebody everybody can agree on. And then that would give the the court confidentiality procedures maybe some some extra teeth. That's my only concern as somebody who's been a mediator for a long time trying to figure out how you can get everybody to level. And candidly, we all saw this early on and I said it in my deposition testimony. A mediator might be very helpful to get us away from the concept of I don't want to say something that's going to hurt or help in litigation. When you go to the next stage of the of the next lawsuit, which everybody knows comes as soon as the map is filed from one side or the other. So a mediator, in my view, could be very helpful, but you got to understand the framework to get a mediator who's good and then a mediator who has the ability to leverage. And there are some very good mediators here in central Ohio. I don't know whether they're available in the next three or four days. With regard to, the staff getting together and agreeing all the play as employees of the commission and not employees of of our respective camps, I'm for that because it's probably easier to do that than to find outside parties. I was perplexed when the Supreme Court ruled that they wanted us to hire independent map makers and then get a map done in 10 days. I've tried to hire people in government and contract with people in government, and I've never seen that happen in 10 days, much less when you don't have even an RFP or RFQ and all the other governmental hiring, and then much less, I don't have any information as to how much this committee has as a budget or whether we have a budget or whether our budgets are subject to normal contracting or whether we can use a state based. I have no idea on any of that. But as an auditor, that's something we audit. And unless there's somebody going to tell me we have a statutory exemption in that process, I'm guessing that we would. I would have concerns with a hiring process that fails to meet the otherwise state requirements absent such an exemption. So if Attorney General Yost has been able to contract in his ability to hire experts that he has, he has the ability to hire in litigation and other things, maybe that's the reason to use the AG process to pay for it. I would just leave it at that, that from that perspective. But getting that done with a 10 day window. And by the way, I always find it interesting. By the way, we're going to hire you. We're going to offer you a job. But you know, you're terminated in 10 days. Another interesting discussion when you're hiring somebody working for government. So maybe the staff option is altogether better if we could have the staff repurposed for the purposes of working collectively to draw maps. I like that idea. I have like that idea from the beginning. I have had good good luck working with frankly that and I didn't realize Leader Russo that you guys had two people I've always dealt with. Maybe

I've dealt with both them. I just didn't realize it. I always assume you're your independent contractor, was your map-drawer, and I've had good luck working with them. You know, as long as we have luck working, working with them in that capacity. And I've had real good luck working with the Republican folks as well as long as everybody understands they work for the commission and we could all have input. I'm good with that. So I've gone on for a while basically saying I'm OK with either one of these. My only suggestion is an option that I've talked to most of the members about are my staff that the most of the members about. And that is this concept that we're all going to have hands on the mouse or we're all going to have the ability to sit in a room and draw maps. To me, the only way that works is if we have the ability to do electronic meetings and we use the electronic meeting purpose to actually have the map on the screen and then have input with the map drawing in an electronic purpose. We have shown throughout Ohio that electronic meetings can work. You can have full and vibrant public input at electronic meetings. It would also stop the concept that we keep scheduling things that people have to sit in the audience for 48 hours to come up and have a 10 minute meeting. I just think moving to an electronic open meeting for at least some purpose of of of this week as we try and do, this makes a great deal of sense to me. And it would allow us to meet Auditor Yost's suggestion that we meet every single day between now and the conclusion or whenever we have maps for at least some period of time. So we have a proposed rule change consistent with the statute that allows electronic meetings to move forward. So that's the only specific thing that I feel relatively strong about is that we could move to do this in a more transparent way using electronic meetings and make it more convenient for the public. But with that, I like the mediator idea if you can find a mediator and he has confidentiality issues. I like the staff collaborative and I like if Dave Yost got a couple of people. By all means, I've been told it's the people who drew the maps in Virginia. There's a Republican and a Democrat. I don't know who they are, so they ought to come in with a clean slate, and maybe that works just fine.

Co-Chair Sen. Vernon Sykes [00:19:58] Commissioner Huffman

Senate President Sen. Matt Huffman [00:20:00] Oh, thank you very much, Senator. So a few things on the scheduling part of it, we thought we had one question about the frequency of meetings. Attorney General Yost had suggested that every day was not excessive and just for the schedulers here I have. This is just personally. I've canceled my trip to see my grandkids in Florida next week. So I am available every day, all day through the midnight on March 28th. So I hope that lets the the schedulers except I have to be at the State of the State at noon on Wednesday. I think that's my only I have to gavel in that session. So other than that, that's my only official duty that I can't abandon, As Leader Russo in her letter, suggested every other day as a possibility. I'll I'll leave that to the schedulers and the co-chairs because as I said, I've made myself will make myself available any time or any, with the exception of the Wednesday event through the end of March 28th as to the method of meetings, Auditor Faber suggested Zoom meetings or some similar type of meeting, and that's that's fine with me too my, I have a basic problem with virtual meetings, which is nobody pays attention. It's hard to get anything done unless everyone's personally present. And so I've done on other issues in the public forum, I've tried to say no. If you're if you're getting paid to be here, et cetera, et cetera, every party needs to show up in the same room. But I think the auditor's right that if it's half an hour check in meeting, depending on what we schedule and how we schedule that, that makes more sense than people perhaps having to all assemble and makes the timing easier and things like that so that I would leave that to the schedulers and the co-chairs. Also Leader Russo, I think, brought up a an excellent point in terms of if we're going to have a public

hearing on a proposed map, when does that have to be done? And I believe leader or excuse me, Attorney General Yost suggested in terms of the transparency that the map be presented at least 24 hours prior to a vote on the map. So if we're if we're here at well, say, four o'clock on March 28th or some time, that the map would need to be presented to the commission by the afternoon of March 27th and if there are going to be public hearings or a hearing that those hearings have to take place on Saturday, the 26th or Friday the 25th, if there's going to be more than one day of hearings, which leaves us really about six or seven days to draw a map at this point. So I'm not saying we should have two days of public hearings or one or whatever it is, but if there is going to be a public hearing and we have to have a map prepared 24 hours, I don't think we have to. But the attorney general suggests that as part of the transparency, I think that's been some of the concern throughout this process that everyone sees the map at least a day before they vote on it, that that's in backing up, that's the kind of time schedule we have to deal with now in terms of additional staff in the suggestion of a mediator, I think mediators are great. I'm not sure whether I ever used Mediator Faber in the last. We had a case together. I don't think we have, but I've used lots of mediators. There are a lot of great ones right here in Columbus, former federal judges and retired judges. Again, I don't know whether there's a redistricting czar out there who also is a mediator, but if that's something that we want to consider hiring someone, you know, typically in a case, the parties agree on the mediator. And if they can't agree on the mediator, then a judge appoints one. But usually it's pretty easy to for parties to agree on a mediator. And if there's someone out there, that's, can be suggested to it and I, for my part, I would leave that to the co-chairs rather than having to come back to the full commission, if if we choose to have a mediator. Now on this issue of map makers or map drawers, the governor's suggestion of having the two Republican map makers and I assume by that they mean Ray DeRossi and Blake Springetti in there. Mr. Glassburn and I forgot Randall's last name, Randall Ralph. Sorry about that, that the four of them would essentially be the map makers, and I'm certainly fine with that. I guess the court's quote was the commission should retain an independent map drawer. I'm sure if it's more than one, it would still comport with that. Who answers to all commissioner members, not only to the Republican legislative leaders to draft a plan, The other things, and so I understand and it makes sense that what what the governor is saying because there are essentially both sides, if you will, represented. And then, of course, the attorney general's decision of having two people who I think none of us have ever met or no but one Republican, one Democrat who have worked in similar circumstances that also, to me, seems to make sense. I would note that in not to go too far down this road, that there are, you know, as as we know, various methods throughout states for General Assembly maps to be drawn, and some of those are independent commissions and some of those independent commissions if they're unable to draw maps, it defaults to the state legislature or some other method. In Virginia, I think I have this right. The there is also an independent commission that draws this, but there is no default method. In other words, of the independent commission can't come up with something. There's no map. And so the Supreme Court in Virginia said these two fellows, who the attorney general is suggesting you draw a map and that's going to be the map. And so there wasn't any General Assembly or group of people who had to vote. The Supreme Court of Virginia essentially impose that map through the method that they chose to do it, which of course, we don't have that circumstance in this. We still have to vote. The commission still has to vote on the map when we get done. And some of us may like the map. Some of us may not like the map. We wouldn't know that, of course, until these two gentlemen produced the map and so in, so I guess those are my comments on who and staffing. The next question, I guess, is on this issue of of how the commission, how the map makers, whoever they may be. And for all I know, there may be a third option. There may be an individual we all agree

with. But but the question is how they take direction, how are decisions made and the court has made clear that they want a public process in, you know, obviously the purest form of that is that the seven of us are here. There's somebody with a mouse, as the auditor suggested and we're saying, no, not that way, this way. And but is there something short of that? As the attorney general is suggesting but whatever the direction that is given to these four individuals or these two individuals or some one individual separate from all of this, it has to be a collective decision of all seven of us at that time when those decisions are made, because that's what the court has specifically said, and I'm just going to read some of their language. The commission has adopted three plans so far, but still has not drafted one. In staff members, the Senate President Huffman, House Speaker Cupp have drafted all three of the plans adopted by the commission. So if again, the people considered one of them as my staff member, one of them is is Speaker Cupp's staff member. We have a staff member for the Democrats and then a an independent person, independent contractor, Mr Glassburn. But I think the point is these drafters again, for people to people one people, they have to take direction from all seven of us. And I appreciate the governor's kind of get in the room and work it out kind of statement. But the question and that's a good headline, but what comes after that? How is it that they take direction? Is it so that's that part. And for example, if Ray DeRossi calls me and says, Hey, what do you think I should do here? Do I get to talk to Ray DeRossi, independent of the other six members of the commission, and I say all six, by the way, because on these maps, even though we've had majority votes by Republicans, we haven't all agreed on everything that's on there as I think some of the votes have been and in the discussion from September. And I can tell you that Speaker Cupp and I have had many differences over the past six months about this. So if if I'm not going to and I think this is what the Supreme Court is saying and what this commission is saying is if I'm not having a separate conversation with Ray DeRossi or any of the other three folks, but it's only with the of then it needs to be. And I think that's the way it has to be. It needs to be direction from the commission as a whole. Now, if someone says, "ah no you can talk to them whenever you want, you can talk to all four of them whenever you want." OK, I understand, but I just want to know what the rules are because in January, after being criticized by the court, we did our September 15th map and then January 10th, the court criticized that Speaker Cupp and I were too involved, and I said, Look, anybody can go talk to Ray DeRossi I'm not even going to go into the map drawing room, and I didn't. But other members of the commission did. And I just want to know what the rules are going to be that the commission is going to adopt. So I think those are that to me, is a more problematic resolution than frequency of meetings and who are mapped drawers are going to be, et cetera. And I think the location of the work that issue that was brought up that can be resolved, we can dedicate a room here in the state capital for those folks to do that. So those are those are my comments at this time.

Co-Chair Sen. Vernon Sykes [00:32:28] Any additional comments? Leader Russo

Minority Leader Allison Russo [00:32:36] thank you, co-chair. I appreciate I think these are all good discussions and things to consider, and you know, I would go back to last year, actually some of Commissioner Huffman's concerns about, you know, how do we actually implement if we've got whether it be an independent mapmakers or our mapmakers working together, how do we actually create a process so that decisions are made that they can work with? Because I will note that our makers have met in the past throughout this process. The problem has been when they are together not being able to serve as agents to actually come to some sort of consensus on what decisions should or should not be made within the map that has been the hangup primarily is, you know, often

they're in a room discussing some things and then everybody goes their separate ways. And then, you know, I will see a map shortly before we vote on it, not knowing if those things have been incorporated or not. Usually, they were not. So having a process that creates opportunities for actual consensus and agreement among the all commissioners so that the map makers can actually move forward in drafting the maps is, I think, an important detail that we do have to work out. I don't think it's an impossible thing. For example, I'm not opposed to the option of Commissioner Faber. You know, we're all sitting around looking at the map and giving some direction there. I don't think that that is something that is impossible to do or if we're in person in a room. But I do think that that's an important consideration. I will just go back to it sounds to me like we've kind of stepped away from the mediator option, which is fine. But that's what I'm hearing. I could be wrong, but we're stepping away from that potential option. And it's really either, you know, we come in with these independent map makers and decide on who those folks are or, you know, we create some path for our existing map makers people to work together and come to some sort of consensus. I think again, both of those have pros and cons to them, but I think the important detail here. Either way, we go is, you know, what are we agreeing upon is the process that we give any map maker directions as a commission and not as multiple entities within the commission.

Co-Chair Sen. Vernon Sykes [00:35:23] Yes.

Co-Chair Sen. Vernon Sykes [00:35:24] Yeah. To be cleared to Leader Russo, and I'm I have I'm for the mediator and I'm, you know, one method of doing that is to allow the co-chairs to choose that mediator. And I don't think I'm for it. Yeah. I don't think Auditor Faber was against that either. So that that's a I just want to make clear about that.

Auditor of State Keith Faber [00:35:45] I would argue a mediator would be particularly helpful, maybe at the end when we're trying to figure out where we land on the hard decisions. I mean, the map drawers, and again, I've always interpreted this maybe a little different than somebody else. I've always interpreted that. What we can get broad agreement on a lot of areas, I mean, if I looked at the first map, the leader, I'm sorry, leader Sykes and Senator Sykes proposed. I didn't remember having a whole lot of dispute until you get down around some of the urban county areas as to where the districts went. And so I think there are large areas you can just get agreement with by giving direction collectively to them after hours. OK, in this area, kind of do this in this area. But when we get to the end, there's going to be areas where there needs to be some compromise. And that's where a mediator will be particularly helpful. But. I'm for a mediator that my only question is make sure you figure out how you do the logistics on it to make sure that the mediator can be effective.

Co-Chair Sen. Vernon Sykes [00:36:41] For the record as well, you know, I am supportive of the concept of having a mediation. I think it's important. In my previous conversations with the Speaker Cupp and with Governor DeWine, one of the issues is trying to get the staff to go ahead and be somewhat independent to make decisions. But I think a mediator could be helpful in getting past those impass positions to actually make decisions. If we give them the whole authority, the authority to the staff to make decisions and of course, the mediator to help break ties or help us decide.

Senate President Sen. Matt Huffman [00:37:23] Yeah, and these might be questions of nuance in where lines are and all of that. But the court has made clear that the staff is not to make decisions. The commission is to make decisions. The commission has not drafted

a plan and I don't think that we're complying with the court's order. If we say staff, go draw a map and bring it back to us because that's what we've done so far and there are other constitutional infirmities as the court has laid out to them. But one of the things they've clearly said is the commission has not yet drafted a plan, and I know the practicalities of that are difficult and everybody or can be. But I mean, essentially that, you know, the court has said that.

Co-Chair Sen. Vernon Sykes [00:38:20] Thank you, Commissioner LaRose.

Secretary of State Frank LaRose [00:38:25] Thank you. Co-Chair. A lot of conversation so far about process, and I recognize the importance of process, but process matters only and so much as it yields outcome, right? I think that the idea of having a mediator is fine. I'm open to that. I think that it's great that we've got two folks from out of state who have experience at this that are bipartisan, that there could be a part of the process. I think that we've got four pretty smart people that work for this commission, or at least for the majority in the minority on this commission. But I want to talk about outcome a little bit because I found it frustrating that I think to say that the court has moved the goalpost is an understatement. But you know, we felt like a couple of weeks ago, we drew the 45 Democratic districts and 54 Republican districts that they had asked for. But now it's this new concept that unless it's a certain index, it's not strong enough or safe enough in the partisan index. So I think that we as a commission sort of agreeing on what we want the outcome to be to appease the Court X number of Dem seats, x number of Republican seats and what sort of indexes we're going to see. And then giving the map makers the chance to go and try to fulfill the wishes of the commission that we that we give them. And then we look at that and maybe as a status update, we after a couple of days we say, OK, good, do these changes come back to us? I don't think it's practical for seven people and another four or six staff members to all have their hands on the mouse. I mean, that's the classic too many cooks in the kitchen, and that'll yield nothing. But I think that giving the staff members clear guidance, letting them go and work for a day or two and then coming back to us for a status check may be the path forward on this.

Governor Mike DeWine [00:40:14] [microphone not used—there may be inaccuracies in this transcribed paragraph] Well, maybe just a follow up to what the secretary said. As far as instructions, I guess there's two ways of doing it. You simply hand, the simplest was is to hand the people who are physically doing maps the instructions in those come up by the Constitution, The State of Ohio and the three court decisions, that's one way to the other way of doing it is having a consensus with this group with specific things that need to be [inaudible] when you're either handing them the decision or you're summarizing that decision that that's the only way I that you can give them at least the initial instruction. I don't know, I don't think it matters, which way you do it there's also a possibility that, and I don't know if this will happen. There's a possibility that whoever is drawing the maps, one of these instructions come back and tells us we can't do everything, we cannot do everything the court says and cannot do everything in the Constitution says, I don't know what if they'll say that, but that back and forth probably is healthy, no matter what they come back and say. Well, I wouldn't envision, but I guess I don't envision seven hours sitting around watching them do this. But I do think it's consistent with what the court has said is that they continue to [inaudible] and tell us if there are challenges and the problems in their areas where there are conflicts back and forth, which occurs at least once a day, seems to me to be consistent with what the court is asking. And also, may be helpful to finally try and reach a [inaudible] instructions, initial instructions to the map makers, we have to go one way or the other I had a resolution based on the first two, there are several

court decisions, will I include a number of things in their map that I thought was in the summary, but I'm not saying you have to be that way to simply say turn the court decision over to them who was as well as the constitution I think, it has to be one or the other. [End of audio quality issues]

Senate President Sen. Matt Huffman [00:43:06] Thank you, co-chair. And just I think in response, maybe maybe to the secretary, but I think to the governor too. I'm certainly not suggesting. And even though the court kind of says it, but I think we've interpreted this, that it's not the seven of us sitting in this room watching the mouse move, that what I am suggesting is that I don't think that we can delegate a in agreement or authority to the staff to go out and make a deal and bring it back to us again because the commission is supposed to be drawing the map. And again, there may be a fine line exactly where it's what we think this was. Of course, we'll take it back to whoever. But if it's brought back to us individually and then we make our individual insertions into it, and that's how that's how the agreement happens with each of us individually and the auditor and the governor and the secretary of state don't have an employee in the room. That's one of the problems. So I think there has, to be sure, go out and do the work. But whatever work is done, whatever communication is done is done with the commission as a whole. So I'm not I just want to be clear, I think the point here is that we can't let the the map drawers cut the deal, so to speak. I don't think we're allowed. I don't think the court permits us to do that.

Co-Chair Sen. Vernon Sykes [00:44:46] Commissioner LaRose,

Secretary of State Frank LaRose [00:44:48] thank you, co-chair. Yes, so so building on that, I would agree with with the Senate President that it's up to us to make these decisions and that we can give clear guidance to the map makers. And maybe and this is just an arbitrary kind of example of what this could look like. We would tell the mapmakers to go sit down and draw us a map that has 54 Republican districts and 45 Democratic districts in the corresponding similar proportion of of, you know, Senate districts. So, you know, we give them the partisan breakdown of what we want to see. And then we say 10 percent of those for the Democrats and 10 percent of those for the Republicans can be in a certain range of competitiveness. But the other ones have to be outside of this range of competitiveness. And we we want to make every attempt to not put incumbents together that sort of double bunking concept. And we want to maintain compactness and communities of interest and then say, Hey, mapmakers, can you come back in 24 hours and try to accomplish that thing that we all seven just agreed on? And then see where they get and then obviously make adjustments from there.

Co-Chair Sen. Vernon Sykes [00:46:01] I think that whether or not we retain outside mapmakers or use the existing mapmakers, we are still giving them instructions to comply with the Constitution and the court order. And we will still be making the final decision. So I don't know if we need to make too much distinction with that.

Senate President Sen. Matt Huffman [00:46:22] Yeah, sure, I agree with that. It is. It is a little bit nuanced. And you know, the discussion, as we talked about is is with these folks who are hired and work for the Democratic legislators or the Republican legislators. And again, I don't know what how the statewide folks feel necessarily about that. That's why it makes more sense to have independent people do it because they're not beholden to anyone in particular. You know, as I mentioned, just because Speaker Cupp and I are Republican legislators, we don't agree and I can certainly tell you our respective map makers do not have not agreed on many of these things. Ultimately, there was a product

produced. I can also assure you that many Republican legislators are unhappy with it also. The one comment I just want to make is we're trying to if we talk a little bit about criteria regarding incumbents, and I appreciate the secretary's point. But I think that was also criticized by the court that we should not consider incumbency in drawing these maps. So I just want to kind of get that out. There is not not something that the court says that we're allowed to do if I have that right, right?

Co-Chair Sen. Vernon Sykes [00:47:54] Leader Russo,

Senate President Sen. Matt Huffman [00:47:58] I'm sorry could I just finish?

Minority Leader Allison Russo [00:47:59] Sure.

Senate President Sen. Matt Huffman [00:47:59] I didn't get. I probably didn't. It's it's it can't be the. It can't be an overwhelming part of the criteria, I guess maybe that's part of it, so there's probably some nuance to that too. So excuse me, leader Russo.

Minority Leader Allison Russo [00:48:18] Thank you, Mr. Co-Chair I think it's you know again to reiterate that I think we've got the important point here is that we can move forward with this, that there are multiple options. And honestly, there's not a reason that we can't do some combination of all of the above. You know, I'd go back to the independent mapmakers, which I think is a good suggestion and option. And actually, I think we can execute that pretty quickly. And they I would expect that the current map makers that we have been using who are most familiar with Ohio and some of the nuances of Ohio and our communities will be involved in that process as well. And I think in terms of the, you know, the commission has to be drawing this map and we are the decision makers. Part of the reason of having these daily meetings is, I think, to hear back from what is the progress, what are the sticking points, us being able to give clear guidance with those sticking points and make some decisions so that they can continue to move forward is part of the the process of us meeting daily is still, you know, what is the progress? What are the decisions that we need to make because we are the decision makers at the end of the day and we are the commission members. The other thing I would just say to in terms of the mediator, and I think Auditor Faber brought this up. You know, that can be particularly useful at the end. Again, not a reason that we can't use a combination of all of these options. And perhaps the mediator does come in at the end. If there are some remaining sticking points that we as a commission can't seem to come to some sort of agreement or consensus on. In terms of just, you know, I will point out that this commission has got close to \$4 million that has been allocated to it. I don't, and not at all suggesting that we would spend that in the next week, but I'm saying that we are have been very quickly able to both execute these contracts and get people on board when necessary. And so there are options there. I still hesitate at having this done through the Attorney General's Office because the attorney general technically serves as our counsel in these cases, and I do not want there to be potential conflicts of interest there.

Co-Chair Sen. Vernon Sykes [00:50:53] If I could maybe try to summarize Leader Russo. I think one suggestion would be that we move forward with independent map drawers. Working with our map drawers and using a mediator to help within the impasse issues. Just kind of the suggestion that we start with the resolution from the body indicating what our intentions are to comply with the Constitution and the court order, and that we empowered or direct the hired contractors as well as our staff to work together to come up with with the recommendation or suggestion. If there's any impasse issues that need to be

addressed, that the mediator would be involved at that point to make a final recommendation to this body for adoption. Commissioner LaRose,

Secretary of State Frank LaRose [00:52:00] Thank you co-chair maybe a hybrid of that, but I like the I like the concept of that sort of bipartisan group of outside out of state mapmakers that have shown a level of expertise at this and past success, being advised by the four very capable staff members that we've been working with for many months now. But maybe the difference would be that we are the the tiebreakers, we're the mediators, the seven of us, at least when the map makers get to the sticking point, if we're having daily meetings, whether they're by Zoom or in-person or what have you, they can bring it to us. And the seven of us could give them some better guidance to, you know, how to how to proceed with the next day's mapmaking session.

Governor Mike DeWine [00:52:51] Mr. Chairman,

Co-Chair Sen. Vernon Sykes [00:52:53] Governor.

Governor Mike DeWine [00:52:53] Just a clarification question, did you anticipate with the mediator that that would be picked by the two chairs?

Co-Chair Sen. Vernon Sykes [00:53:05] Yes,.

Governor Mike DeWine [00:53:06] I think that's a good idea.

Co-Chair Sen. Vernon Sykes [00:53:08] Yes.

Auditor of State Keith Faber [00:53:15] I would just make one potential suggestion that maybe the two chairs could ask the court through the attorney general or council to make a recommendation of three or four mediators that the two chairs could agree from a list that way, the court is the one that's again, I'm just trying to make sure we can give the mediator some artificial cover. Maybe that's necessary. Maybe that's not. But I don't I don't care about the process more than than maybe asking for that at the end.

Co-Chair Sen. Vernon Sykes [00:53:46] Senator Huffman,

Senate President Sen. Matt Huffman [00:53:47] Yeah. In terms of mediator, I yeah, I think this. I mean, we do have to vote as a commission to spend money. But, you know, delegating a selection or a review of names from mediators to the co-chairs seems to be makes sense that the one and perhaps this is a nuance. The one thing that I want to suggest as leader Sykes when you mentioned or co-chair Sykes, Senator Sykes that the mediator would make a final recommendation in my mind, that's not what mediators do. Mediators tried to get a an agreement, so the media and the mediator does not judge. And again, this is let the 30 year mediator comment if I'm getting this wrong. But the mediator doesn't say to a judge in a case or whoever. His job is to resolve the differences and not say, I tried to resolve the differences and they're not resolved. So here's what you should do because that that changes dramatically what the role of that person would be.

Co-Chair Sen. Vernon Sykes [00:55:00] I would agree and my comments only that we used the mediator to help us continue to make progress. Leader Russo,

Minority Leader Allison Russo [00:55:16] thank you, co-chair. I would just add, you know, for this discussion about the independent map makers, I recognize that the attorney general has put forth two suggestions. I do think that it's important that members of this commission, if we're going to go that route, that we have a little bit of discussion or agreement and who we don't necessarily have to stay with, who the attorney general recommended. But you know, what are we defining as independent? Do we agree? Is there opportunity, I think, for both sides to put forward a name? You know, I will just note that the name that was recommended, the Republican individual has actually been a consultant. I think on the last three cases with the the maps, that gives me some hesitation. You know, clearly there's been further guidance by the court in each decision that might change some of his recommendations. But I think that we just need to have an open discussion about, you know, do we do we agree on what is independent? Are we actually going to go forward with these two recommendations or do we have other suggestions or alternatives for these individuals? I think that's important.

Co-Chair Sen. Vernon Sykes [00:56:34] Senator Huffman, yeah,

Senate President Sen. Matt Huffman [00:56:34] I think it's a it's certainly a fair discussion to have. And as I think we all know, as Leader Russo indicated, these are suggestions by the Attorney General, Attorney General Yost. And other than, you know, his description in his dossier or memorandum that he gave to us. That's pretty much what I know about these folks. And other than they had this, they drew a map in Virginia and were successful. But it's it's there were only two people had to agree to that map, and that was the two of them. And there wasn't a commission later that seven folks had to or at least four four people on a commission had to be in favor of. So, you know, I think it's certainly a valid discussion as to whether if we go with and perhaps it's a single independent map maker, as the court suggested in its opinion, or it is a one from each party as as these two folks are. So I think that's a valid discussion. I don't have anybody to suggest other than, you know or even that I know about, other than the four people have been working on this and the two people, the attorney general suggested.

Co-Chair Sen. Vernon Sykes [00:57:58] One suggestion might be to leave it to the co-chairs, as we have with the mediator concept, leave it with the co-chairs to make the decision to recommend to recommend. So the co-chair here is trying to keep us on point to make some progress today. It seems that we may have some consensus, but I need input from the body that we select independent map drawer or drawers and those persons to be selected by the chair, the co-chairs and they work with that person or persons would work with the existing map drawers, Democrat and Republican two on each side to come up with a plan and to use either the body to deal with difficult positions and decisions and or mediator. If we use the mediator again, the mediator will be selected by the co-chairs upon recommendations from the court or some other entity selection process. And that would. That's what we where we are right now. If there any more discussion about this issue? Yes,

Minority Leader Allison Russo [00:59:25] Thank you, Mr. Co-Chair. I think there's a practicality to this as well in terms of timing. And what time are we going to hold ourselves to to actually make these selections? And most importantly, to begin the work and have some of the public meetings so that we are moving forward and making progress. I think that is entirely feasible for these recommendations to be made and implemented even by Monday. The stuff can move very quickly so that we can have our map makers moving

forward with progress and begin our daily meetings so that we can get feedback and begin having real substantive discussions on this.

Co-Chair Sen. Vernon Sykes [01:00:11] Monday suggested. The comments about time to other issues.

Co-Chair Speaker Robert Cupp [01:00:20] Mr. Chairman, I just want to make it clear that anything the co-chairs do, it's a recommendation to the commission, not a selection by the co-chairs. Is that part of our understanding?

Co-Chair Sen. Vernon Sykes [01:00:34] Yes.

Co-Chair Speaker Robert Cupp [01:00:44] So I've been listening to this with a great deal of interest, I think there is some optimism here. I think there may be some excessive optimism in terms of how this can work in practicality. So I'm a bit skeptical about how that should do. I do agree we need to do something. I do agree. We need to try to move forward. I agree we tried to come up with something that will satisfy the requirements of the court. Problem is, they keep changing what the requirements are or the refinement of those requirements, so it's difficult to know what's next. And I am concerned about the confidentiality issue on this. So I'm assuming that I could talk to Chris Blackburn and ask him to, you know, draw me something. It'll be, you know, spread everywhere. Is that something I want to do? Sure, that's going to work with everybody else as well. One of the problems with this process and Co-Chair Sykes and I have talked about this is there is a lack of confidentiality to be able to do some of these things that are normally done with confidentiality. So Auditor Faber is correct, I think, in saying that a mediator. We've got a confidentiality issue and mediation doesn't work very well without confidentiality. So there are some practical concerns with all of this. I hope members aren't being overly optimistic. Certainly work with the co-chair to try to develop this. I don't know where we can find mediators in, you know, 48 hours and, you know, have them thoroughly vetted and know what we're getting. But I'm certainly willing to to work if that's the direction of the commission. But I do think all of these things are decisions of the commission, not the co-chairs.

Co-Chair Sen. Vernon Sykes [01:02:42] Thank you. Other comments. Yes, Faber.

Auditor of State Keith Faber [01:02:50] I agree with with Speaker Cupp in general that I think the commission needs to be making some of the bigger decisions. But look, if we're going to go down either route, I again, I think it may be a hybrid, route? I don't, if you can, if we want to put the Yost to individuals that are recommended, I know nothing of either of them. So that probably means from my perspective, they're good neutrals and we want to tag them with our four staff members that have been doing this. Look, I'll make one of my staff members who has been kind of my go to person available. I know the secretary has somebody and the governor has somebody so we can put not four, but we could put seven staff members in a room with the two people and sit down there and start. And I would suggest that if they're going to start, I don't know how they get anything to us by Monday or Tuesday. Frankly, it's probably Wednesday before we could see anything realistically. But having said that, because we still got to pick people, we've got to get them in a room. But I would suggest that we start at the largest county, the way the Constitution says draw maps and Franklin County, then move on to the next largest county and move on until you get a map that works. And periodically they report back to us at each one of those stages because I do think at each each stage based on how we saw this go about before, we're

going to have decision points and those decision points should come back to the seven at us. That's why I suggested electronically we see a Columbus map. They say, Should we go outside of Franklin County, you can draw Franklin County, as we all know, without going outside. And I think it's I'm looking at Mr. Glassburn in 11 districts, House seats, or you can go out and draw it and 12. That's it's an important question we have to resolve. The map makers are going to have to figure that out. That's a question that we could sit here and say, OK, see me an 11 seat option, see me a 12 seat option. What does that mean? And then where do you go out? Do you go out into Union County? Do you go out into Pickaway county to go out into Madison County, Delaware County? All of those issues that are going to have to be debated? Certainly, the staff in the room can work out some kind of suggestion. It comes back to us. We say yes or no. Then we move on to the next area. If you go north into Delaware County, that means the Knox, Delaware Marrow area are going to be part of the next district. That's going to have to be debated because Delaware counties now split. All of those are issues that you're going to make decisions as you go about that. I think that's when we meet and that's when we start having those discussions. I think if we. I would be shocked if you get anybody on board between now and, Monday, maybe? I would be shocked if they can have a product for us to look at that has any merit between now and Wednesday. But I'm for it, whatever. And that's why we have I have a motion that before we leave, I'm going to offer to amend our rules to allow us to meet remotely. Because frankly, even if we have people hired, maybe, maybe. Monday's meeting is a remote meeting for Vern, and I'm sorry, co-chair Sykes and Speaker Cupp saying, We've succeeded. We've got two independent map drivers from the state of Bugtussle that want to come help us out with this. And if we put them in the room with all seven of our staff for four or three or whatever the number happens to be, they will start drawing on Monday. They're going to give us something back fungible Monday at three o'clock in the afternoon, and we can look at that for 3:45 meeting. Maybe the answer is it's 4:45 on Wednesday. I don't know. But I think in the end, that process is probably what we ought to do. And that periodic reports as we develop the best possible map we can do. And I don't know where this lands, but I am. I'm still trying to figure out what the new guidelines are, and I read the opinion twice now.

Governor Mike DeWine [01:06:31] Mr. Chairman,

Co-Chair Sen. Vernon Sykes [01:06:33] Governor.

Governor Mike DeWine [01:06:34] Mr. Chairman. We know who the two are. We know who the four are. So you've got six people who you know who they are. What you don't, if that's the consensus of this group, I'm not sure, is consensus yet, but the mediator does sound like a good idea to me. But it would seem that this the group doing the map can certainly start their work before a mediator is there, mediator is going to be in there to resolve problems. And, you know, I would hope that the mediator would, once he or she is there, would take an active role in trying to resolve, as is the Senate President has said, resolve problems and get a an agreement or a consensus. I'm a little concerned, I understand that the decision final decision has to be ours. I understand we have to be involved. We should be involved. But it seems to me that a better shot at getting things done is having the mediator take a shot at the problem first and see if there can be something worked out. And that doesn't mean that the mediator wouldn't necessary, could be very well talking to members, and the mediator could be talking to members behind the scenes. I just candidly, we want to be as transparent as possible. But candidly, a mediator going from one person to another back and forth gets a lot better results generally than an open, open meeting where everybody is involved. And it just it just doesn't move as fast.

And look, we're trying to comply with what the court says, but we only have 10 days now. They're less than 10 days. So the court has given us 10. We didn't make up the day and the court made up to 10. So I think we have some obligation to to make conscious decisions here. There is going to speed this up and get to a resolution. And so my idea was not to have the mediator, but I think was a great idea. And if you find the right person who who can move between not only the staff but also through members if need be, it seems to me that's how you resolve it. So I guess I'm not concerned about the fact we don't have a mediator today. Obviously need we need to start working on that. The two of you need to start working on it, I guess. But I think you could start with the people we have named and let them start on the process now. Time's running out.

Co-Chair Sen. Vernon Sykes [01:09:26] Senator Huffman,

Senate President Sen. Matt Huffman [01:09:28] Thank you, and I agree with the governor, I think he's summed up the issue pretty, very well. I again would caution. It is true that often resolutions, whether it's resolutions on legislation in differences we're trying to settle a case are done in a confidential way. You know, you can't settle a lawsuit, if what you're offering gets thrown out in front of the jury, then you don't want to offer anything because you're not sure. So settlement negotiations by law are not admissible as evidence. We have a legislative privilege that says if I go to Senator Sykes and say, Well, why don't you do this and say that? Or even with other legislators, that's that is confidential. It's privilege. And we do that now, kind of for the same reason that the media does not want to reveal their source. Those sources may not want to talk with them anymore if if that's revealed. So we all know the importance of private, confidential discussions to resolving matters. The issue is those kinds of discussions are one of the things that the court has criticized in a pretty severe way that decisions were not made in a public forum. And again, where that line goes well, there's a recommendation that the decision gets made here. You know, it's kind of like legislation that's broad. It gets resolved. Then it comes to the floor and we all vote for it. That's the legal decision. But the behind the scenes negotiating is not public. So I just caution that whatever negotiations, whatever the mediator would be doing that, that would be too hidden from the public. So that's one thing. The second thing you know, we talked about the map drawers, the independent map drawers and perhaps there are other people or an individual out there who would do that. And I think it's fair for Leader Russo to be skeptical, perhaps of the suggested Republican mapmaker that that's fair. Of course, we have to do it. The court talks about an independent map drawer singular, but I'm sure that two of them would be fine, too. I think we need to prepare for the possibility that in the work that the co-chairs or perhaps their staff or other people would do and trying to find a mediator or an independent map drawer that there's going to be a disagreement about this. And so this is sort of the question I pose: Does the independent map drawer or drawers, do they need to be approved by this commission unanimously? Now, the rules don't say that, but if if five or four members of the commission, perhaps all Republicans decide that this is a pretty good plan, we're going to get these two Virginia folks in here. They've worked together before they solved a Virginia problem. At least the two of them came up with an agreement, Supreme Court in Virginia said, OK. But you know, Leader Russo's concerned about the Republican involved, and I understand completely your concerns. Do we go ahead and hire them anyway? And I'm not sure that's within the spirit of this discussion. But in the spirit of getting this done in time to have a public hearing on Saturday, the 26th or Sunday the 27th and then passing this on Monday the 28th. We may not have time to go back and forth trying to find other map drawers and but maybe there's lots of folks out there who would like to do this, I don't know. And there's somebody that all of us know nothing about

and we're OK with. On the other hand, if we know nothing about them, maybe we shouldn't be OK with them. So I just want to suggest that possibility. If a majority of the commission decides to go one way or another.

Co-Chair Sen. Vernon Sykes [01:13:55] Leader Russo,

Co-Chair Sen. Vernon Sykes [01:13:57] Thank you, Mr. Chair. You know, listen, I think there is recognition that no one that we involve in this process is not going to have some level of bias. I think when I think maybe there should be some agreement that independent at a minimum means that it's someone who has not been involved in any of the litigation so far. I think is a fair sort of minimum thresholds. I would like to go back to, you know, the governor originally started this meeting recommending a resolution, and I think a resolution is a good idea to lay out, you know, what are the principles or the steps that we're attempting to achieve? I think that it is entirely practical for us to plan to meet again on Monday to vote on this resolution, assuming we'll see a draft beforehand that lays that out, but also is the opportunity for us to take those recommendations for the independent mapmakers and or the mediator. If we're ready to do that, I'm in agreement that we don't necessarily have to do all of those things concurrently. But Monday is a good opportunity, I think, for us to both establish a resolution about what our ultimate goals are as a commission and the instructions that we're giving to the map makers, which is to follow the Constitution and the three court orders, but also to consider these recommendations and take a vote on them. And I think, you know again in considering what is independent. You know, again, everyone comes with biases to this and we can recognize that. But for me, my only hesitation with the recommendations so far is just having somebody who has not been involved in the litigation so far.

Governor Mike DeWine [01:15:43] Mr. Chairman,

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

Governor Mike DeWine [01:15:47] I understand that. Maybe I'm a little pessimistic, but waiting until Monday to do this and then thinking that we all can agree on the specific instructions. Yeah, I think it's being a little optimistic. Seems to me that we all that simply going by the court decision and going by the Constitution is enough instruction. We all I'll be able to agree on that. But if you start putting it down in writing and putting more emphasis on one thing than on another, they'll never be in agreement here. We will not have an agreement. So I guess I would rather allow the map makers to have some flexibility. They've got their marching orders from the court, three separate decisions plus the Constitution. Isn't that enough? I'm just concerned we're waiting, under your idea that we wait until Monday, then we won't be able to come up with an agreement on the language, and then we battle that out for a while, and I guess I just don't know why we can't go with what the Constitution says and what the three court decisions say.

Minority Leader Allison Russo [01:17:17] Mr. Chairman.

Governor Mike DeWine [01:17:18] Seems to be from the from from, you know, most Republicans have not like those decisions. And so being willing to say we're accepting those decisions, it seems to me that you all ought to be able to say, I'm OK with that. So, yea

Co-Chair Sen. Vernon Sykes [01:17:37] Let me let me say that I appreciate President Huffman's suggestion. And one of the reasons that I suggest there be two map makers as opposed to one is because, you know, you could select one and we could select one, and we would be easier to come up with agreement in both of us trying to select the same one. I'd like the idea also of unanimous, vote, because if we do have an agreement between the co-chairs, I think we probably could get to that unanimous in the first policy course in my PhD program years ago, they indicated that the cave men and women, when they made decisions, public policy decisions, they were all unanimous. It had to be because that's the only way they can come up with an agreement because the majority might decide to eat the minority. So it's important that the unanimous decision, I think, would be clear, but I think it would be a clear path to that if we have bipartisan recommendations from the co-chairs. Lead Russo,

Minority Leader Allison Russo [01:19:05] thank you, chair, I concur with that, I did just want to quickly respond to the governor's comments, and I am actually fine with the marching orders to the mapmakers being the Constitution and the court decisions. And if that simplifies the process and eliminates any resolution, I'm perfectly fine with that. I think that I agree with you. I think they are perfectly clear and they are good instructions.

Co-Chair Speaker Robert Cupp [01:19:34] Great, so so maybe the the the map drawers from, and on either side can meet between now and sometime on Monday, whenever we decide to meet again with the consultants that the attorney general is offered to just sort of preliminary sketch out just the way the maps exist. And maybe that will produce some ideas as to how we might be able to bridge some of these differences and and go forward. And that being in the interim, while we're trying to decide whether there is a mediator at some point and whether there is or there should be other independent map drawers, which I think are all questions that are still up in the air. So at least there is some effort to try to move forward between now and Monday. I'm just throwing that open for discussion.

Co-Chair Sen. Vernon Sykes [01:20:48] Thank you for giving me that discretion as the chair to try to provide some guidance here. I think it would be important to have the resolution as long as there was bipartisan agreement to deal with the Constitution, implementing the constitutional requirements as well as the court order. I think that would be appropriate. I think a meeting tomorrow would be much better than one on Monday to make a decision about the recommendations the co-chairs would make as as it relates to the independent map drawers. And I think we need to resolve hopefully this so we can move on to some of the other items on the agenda that deals with this issue. Yes.

Senate President Sen. Matt Huffman [01:21:40] Mr. Co-Chair, yeah. In regards to a resolution that says we shall follow the Constitution and the decisions of the Supreme Court, absolutely. First of all, I don't think we have a choice to say whether we do that or not. We just do it. And in some ways, passing the resolution would be superfluous. But if we want to say we're going to do what we're required to do under the oath that we all took for our office, which is follow the Constitution, including as interpreted by the Supreme Court, decisions, I think if the attorney general were here, he would say that that's our also our obligation. So I'm fine with that resolution. The only thing I would say about a meeting tomorrow to decide to discuss the possibility of outside additional staffing, I'll put the mediator in the map drawer or drawers and just just call it additional staff, is that would be if there's something to report tomorrow in something to decide on. Great. But if you know it's and we can all be notified and up on our cars and be here however it is, you all wanted to do. But it would seem to me, given the complexity of it and given the concerns about,

first of all, you have to have, I don't know that there's several thousand map drawers around that are unemployed right now looking for something to do. But there might be. In finding someone that collectively the co-chairs would agree on or collectively the commission would agree on. In the next oh, 24 hours might not happen. If it does, we could meet tomorrow. If it doesn't, we could meet, you know, Monday morning or something.

Governor Mike DeWine [01:23:36] Mr. Chairman, maybe I misunderstood. I thought that we would pass a resolution giving the two co-chairs the authority to do this. I'm trying to keep this thing moving. I mean, we have confidence in you two. I think you've kind of we've outlined pretty much what you're going to do. I trust that you will be able to reach an agreement on that and do it. So I guess I would prefer giving you that authority today. And if there's a problem, you'll come back to us. But I don't know why that you know, the two of you are perfectly capable of doing this very well, and I think we have trust in you.

Co-Chair Sen. Vernon Sykes [01:24:33] LaRose,

Secretary of State Frank LaRose [01:24:34] Yeah. Be fine with the governor's suggestion. I think that the one thing that maybe we should add to that is some sort of a timeline. I think that if these folks are going to be hired, assuming they may not live in Ohio, they've got to get here, rent a hotel room, get to work. I mean, I think would be ideal if under that resolution, if the co-chairs could come to an agreement on who these two new independent map makers would be and then get them here and working by Monday morning.

Governor Mike DeWine [01:25:08] That would certainly be a goal.

Co-Chair Speaker Robert Cupp [01:25:10] Mr. Co-Chairman, would we be able to take a 15 minute recess?

Co-Chair Sen. Vernon Sykes [01:25:15] Yes. Are we now in recess for 10 minutes more or less. [Commission is in recess]

Co-Chair Sen. Vernon Sykes [01:25:29] [Commission reconvenes] Senator Huffman

Senate President Sen. Matt Huffman [01:25:30] Thank you, co-chair Sykes. So I have a motion, it's five parts to it, but I think it summarizes fairly what the discussions are and has an appropriate go forward plan over the next, oh, 72 hours or so here. So part one is that the, all staff currently hired and who might be hired in the future will be directed to follow the constitution of the State of Ohio and the decisions of the Ohio Supreme Court in the work that they're doing. That's part one, part two that the commission will schedule and as needed. Sunday evening, 7:00 p.m. Meeting to receive recommendations from the two chairs for two independent map makers and one mediator, if any. And the reason why I say as needed is if it's 4:30. And hopefully folks are going to dinner and doing other things, but they may not if we can find folks on Saturday night or Sunday morning and in time for that consideration to happen by tomorrow. That's why I'm suggesting later in the day, 7 p.m. Sunday evening. Third, that we schedule a not-as-needed, but actually schedule another meeting on Monday at 7 p.m. We will meet in person to discuss and hopefully decide on the mediator and the map makers and make that decision decision Monday night. I'm my motion doesn't say we have to make a decision Monday. It's aspirationally we're going to try to make a decision. And but we want to get together in person to talk

about that. Consider recommendations. Number four, that in the interim, the four map makers which we the individuals we've been discussing here today, the employees or contractors of the various caucuses will begin meeting somewhere in the State House, perhaps either the majority or minority conference rooms in the Senate building, if wherever they would choose and begin discussing. How it is that they can work with these two independent map makers. And what are some of the sticking points, things like that? This is not, a these meetings over, again I don't know if that's possible today, but tomorrow and during the day on Monday would be to tee up what the complex issues are. And as Senator Fa- or Auditor Faber and others talk, some some areas are more complex than others. And but to begin framing that and finding areas of agreement, areas of disagreement so that that can be presented to the independent map makers and the mediator and Five that we schedule a meeting of the redistricting commission for Tuesday morning, which is April, excuse me, March 22nd at 9:00 a.m. to continue the work of the commission. And that's that's the extent of my motion, mr. Co-Chair

Co-Chair Sen. Vernon Sykes [01:29:13] is there a second for the motion?

Co-Chair Speaker Robert Cupp [01:29:16] second

Co-Chair Sen. Vernon Sykes [01:29:16] Discussion, one just clarification on the meeting tomorrow, 7:00 p.m., the purpose would be to announce or to actually approve.

Senate President Sen. Matt Huffman [01:29:29] Well, the purpose of the meeting as needed session of the commission tomorrow is to receive the recommendations of the if any of the commissioners for two mapmakers and one mediator. And we probably can decide then or at some point between now and then, if those those determinations for recommendations have not been made, that will determine whether the meeting is made. If there aren't recommendations to be made, obviously, but. And we can't approve it if the recommendations are accepted by by the commission. I hope I hope I was clear, I hope I answered your question.

Co-Chair Sen. Vernon Sykes [01:30:16] Yes. So we could be divided. In other words, you could come up with map makers and not the mediator.

Co-Chair Sen. Vernon Sykes [01:30:26] Yeah, that's correct. Or vice versa. Vice versa.

Co-Chair Sen. Vernon Sykes [01:30:28] Right? OK, any other questions on the motion? Auditor Faber

Auditor of State Keith Faber [01:30:37] I just have one maybe friendly amendment or suggestion you mentioned before from the majority majority and minority legislative staff. I would suggest that we expand that to seven. If the other commissioners have somebody on their staff, they'd like to participate in those meetings.

Senate President Sen. Matt Huffman [01:30:56] I don't have any. I don't have any objection to the proposed amendment, to my amendment.

Minority Leader Allison Russo [01:31:10] Another. Thank you. Can we say the commission, any commissioner staff that is appropriate? I understand that the statewide have staff members. I'll just point out again that the House Democrats are we only have

the contractor available, so we do like to have a staff member or someone who's actually a staff of the caucus present.

Co-Chair Sen. Vernon Sykes [01:31:41] If I could make further clarification, how about the four mapmakers that we've designated already and one staff person from each of the commissioners? If the commissioner would be so inclined?

Senate President Sen. Matt Huffman [01:31:56] Yeah, that's that's fine with me.

Co-Chair Sen. Vernon Sykes [01:32:00] Right. Any other on readiness? All in favor of the motion to signify by saying, aye,.

COMMISSIONERS [01:32:08] Aye

Co-Chair Sen. Vernon Sykes [01:32:09] All of those opposed? so ordered. Is there other items to be brought before the commission today?

Auditor of State Keith Faber [01:32:26] Mr. Chairman, I would make a motion to amend Rule 3 specifically to allow the option of remote meetings. As most everybody in this room knows, the Legislature passed a statute allowing remote meetings, I believe we would be subject to that statute. That is a section that is being used widely across the state of Ohio. It has been well demonstrated that local governments, commissioners, cities and the like have used remote meetings effectively as long as the public has access to it. There are multiple means to give the public access to it, whether it's a phone call into an audio line or participation through a link at one of the many services. And this this rule essentially translates and follows the statute, I believe.

Co-Chair Sen. Vernon Sykes [01:33:25] I think there's been a copy of this rule had been circulated. One question I have, Commissioner Faber is would it be the same as saying that the attendance of any commission member could be virtual as opposed to making the total meeting a virtual meeting?

Auditor of State Keith Faber [01:33:51] I would certainly be open to that as an amendment to the amendment. And certainly if commissioners want to attend virtually and the technology is there, I think that's certainly appropriate. But I would again make my primary purpose for this is to look and say as we start looking at maps in detail and we start going over those details, it's going to be much easier for, I think, the public and much easier for commissioners, particularly if we get into the point where we're debating various alternatives to see that on the computer screen in front of you. Then looking at the handouts that we pass out and maybe a poster board over on the side of the corner. The technology has adopted so much in this area, and I think most of us in our own lives and attending meetings, it's going to be easier. The other reality is if we're going to be adjusting our meeting schedule and we're going to be doing what we're doing for public to have real input, I know where video stream and live streamed here on the wonderful Ohio Channel. But it's just as easy to have that input electronically and frankly, the Ohio Channel's probably the methodology that's going to be used for the electronic meetings if it's here in virtual component. I would imagine. But that technology is beyond my expertise.

Co-Chair Sen. Vernon Sykes [01:35:08] Second question, would this be optional and then to call of the chair?

Auditor of State Keith Faber [01:35:15] Certainly, Mr. Chair, I would anticipate that a complete virtual meeting would be at the call the chairs of the people who are calling the meeting because we have an alternative meeting calling procedure. I would think that certainly three members could call for a virtual meeting versus an in-person meeting. But I would think that that would certainly the way we anticipated and drafted this, it would be up to the call the chairs to be totally virtual.

Co-Chair Sen. Vernon Sykes [01:35:38] Could we stand at ease just a minute to allow the review of the proposed amendment? [Commission is at ease]

Co-Chair Sen. Vernon Sykes [01:37:13] [Commission reconvenes] Are there any additional questions or comments?

Co-Chair Speaker Robert Cupp [01:37:16] Mr. Chairman, I have a question. I don't have an objection to members participating virtually. If if we can be set up, I don't know if any. If you've, you know, we've asked anybody here whether they can do that and how it's done. And the question would be is is this looking for member participation virtually or is this public public participation as well? I would just add that the Ohio House has not done virtual meetings, so this is not something that we necessarily know right away. How to how to set up but in terms of a member participating, if we can set technology up for it, I don't have any objection to that.

Auditor of State Keith Faber [01:38:09] I mean, the short answer, from my perspective, is both. And again, I don't think this is necessarily something that, look, we don't have to decide on this now. We can certainly send it to OGT and ask how we would participate in how we would do this and consider this Monday, Tuesday or Wednesday. But I do think it is something that we should candidly be talking about. We should be doing. It is being done across the state, so I know it can be done. The public participation side is a little more difficult and most of them, my understanding is is that public participation is more in a passive viewing basis, kind of like, OGT. And if you're going to alot of testimony, you have an open ability to open that up like you do on a Zoom call or a WebEx or another other platform. We have a participation model that we've used in the auditor's office. I believe it's through WebEx where we've had meetings as many as thousand participants and you have the ability to take questions and have dialog. So I know it's doable. I know our technology that we have in the office does it, I can't imagine that OGT and or your people over here don't have that capacity, but it is something that is available. But I don't disagree. The nuances of the implementations a different question than allowing it to happen. Certainly, member participation is a little easier if you have the ability through a phone line or through a a laptop to have somebody participating virtually. It's one thing. The problem is is that you have to be able to transcribe and hear that through whatever you're putting out to the public.

Co-Chair Speaker Robert Cupp [01:39:43] Yeah. So if a member is not sitting here in the end and we all have to figure out some way of being able for the rest of us to see that member and that member to see us, and that's that's the only, you know, concern I have is maybe time to work that out. I do know when we had public hearings back in August or maybe a little later than that, we did have a remote, before for public participation, part of the public hearing. So that part was actually a little easier to do. And what this is, but we can certainly if if you want to hold it so we can see, you know, how we can do that. I don't have an objection to doing it.

Co-Chair Sen. Vernon Sykes [01:40:22] Do you want him to actually hold on the amendment or,

Auditor of State Keith Faber [01:40:26] I will take the amendment under consideration and ask that it be held on our agenda for consideration later the week.

Co-Chair Sen. Vernon Sykes [01:40:34] One comment I would like to make, too, is on the controlling board. We have used this very successfully to both the general public and broadcasting to the general public, as well as having agency representatives being presented and have an opportunity to answer questions and to actually participate also in the meeting. Are there any additional questions or comments at this point? The amendment will stand on hold, for further clarification. OK.

Co-Chair Sen. Vernon Sykes [01:42:10] With no further business, we stand adjourned.

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Co-Chair Speaker Bob Cupp [00:00:03] The staff please call the roll

Clerk [00:00:05] Co-chair Speaker Cupp.

Co-Chair Speaker Bob Cupp [00:00:06] Present.

Clerk [00:00:06] Co-chair Senator Sykes.

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

Clerk [00:00:08] Governor DeWine.

Governor Mike DeWine [00:00:10] Here.

Clerk [00:00:10] Auditor Faber

Auditor of State Keith Faber [00:00:11] Here.

Clerk [00:00:11] President Huffman.

Senate President Matt Huffman [00:00:13] Here.

Clerk [00:00:13] Secretary LaRose.

Secretary of State Frank LaRose [00:00:14] Here.

Clerk [00:00:14] Leader Russo.

House Minority Leader Allison Russo [00:00:15] Here.

Clerk [00:00:16] Mr. co-chair a quorum is present.

Co-Chair Speaker Bob Cupp [00:00:19] A quorum is present. All members are present in your folders are the minutes of the last meeting on March the 19th 2022. Is there a motion to accept the minutes?

Senate President Matt Huffman [00:00:31] Motion.

Co-Chair Sen. Vernon Sykes [00:00:31] Second.

[00:00:32] It's been moved and seconded that the minutes be adopted as presented. Are there any objections or amendments to the minutes? Hearing and seeing none, the minutes be accepted without objection? Is there further business to come before this meeting of the Ohio Redistricting Commission? Chair recognizes Co-Chair Senator Sykes.

Co-Chair Sen. Vernon Sykes [00:00:53] Thank you, co-chair. Ladies and gentlemen, we have the responsibility have made a decision that we were going to hire, retain

independent map drawers and to come to some agreement on it. We had decided in our last meeting that that each side would be able to recommend. Each co-chair would recommend to the body and the body would consider approving the recommendations being made. And at this time, I would like to offer up Professor Michael McDonald. He has a bachelor's in economics and political science. He's an expert in redistricting elections and methodology. He is a professor at the University of Florida, and he has been a consultant or considered an expert witness in redistricting issues in Alaska, Arizona, California, Georgia, Michigan, New Jersey, New York, Ohio, Oklahoma, Texas and Virginia. And he is available to come to Ohio right away to work on this project. And we have disseminated this information, distribute his more detailed resumé for the benefit of all of the members of the commission, and we would offer this as our suggestion or recommendation to the body.

Co-Chair Speaker Bob Cupp [00:02:39] Thank you, co-chair. So we also, I also took a look at finding independent consultant and interviewed several people. The one that seems to me to be suitable would be a Douglas Johnson, president of National Demographics Corporation, and he has consulted on redistricting both at the state and local level in numerous jurisdictions. He is also available to come to Ohio, unlike others that were have been discussed. And he is actually there are multiple people that work for him, so he has a capability of producing suggestions or map or analyzing maps, whichever the commission should decide that, that we want. And so that would be my recommendation to the commission is to hire or retain Douglas Johnson to help us with this project and process. I will let me just before we do that, I will also say that I have endeavored to find a person that would be available to be a mediator. There was also what we talked about. I contacted the Ohio State Bar Association as and asked for some, some some names, as I predicted Saturday evening that it was going to be difficult to be able to find somebody over the weekend. And while I do have, I had two names and one of them suddenly indicated they were not interested, I have not had an opportunity to contact the other. So just as a report on progress on that front.

Co-Chair Sen. Vernon Sykes [00:04:55] Mr. Co-Chair, I also have some progress. I did as well talk with several people. I was able to be successful with them in particular. I've been recently confirmed with the and approved by the Chief Judge Sutton of the United States Court of Appeals, the Sixth Circuit, that the mediators that they use would be available to us to help us in this venture. They'd be available immediately and it would not cost us anything.

Co-Chair Speaker Bob Cupp [00:05:33] Mediators provided by the federal court system is that?

Co-Chair Sen. Vernon Sykes [00:05:36] Yes, that work in the United States Court of Appeals, the Sixth Circuit.

Co-Chair Speaker Bob Cupp [00:05:47] So there you have it. That's our report.

Co-Chair Sen. Vernon Sykes [00:05:56] Mr. Co-chair, if I may, then I would make a motion that we did this by the commission, approved the two map drawers that we have recommended as we were instructed in our last meeting so that they can start working together to provide us with a map so that we map for the commission so that we can comply with the court order.

Co-Chair Speaker Bob Cupp [00:06:23] The motion, is there a second?

House Minority Leader Allison Russo [00:06:26] Second.

Co-Chair Speaker Bob Cupp [00:06:26] It's been seconded by Leader Russo. I will say that this is coming in here. Tonight is the first time that I've seen the resume for the Mr. McDonald, I think it is. So it was. I know we had several experts that were floated and I will admit that I was involved in other matters today. And so whenever the resumé came, I wasn't available to to look at it. So. So I don't really know much about him.

Senate President Matt Huffman [00:07:07] It's under discussion? So, Mr. Co-Chair?

Co-Chair Speaker Bob Cupp [00:07:14] Senator Huffman,

Senate President Matt Huffman [00:07:15] Yeah, certainly I didn't I don't know anything about Mr. McDonald, but I certainly accept the suggestions of co-chair Sykes. I would note for those who did not have an opportunity to talk to the suggested mapmakers by Attorney General Yost that they are not available for most of the time. They would be working at least after Friday, and I think one of them did not want to come to Ohio. So this gentleman who apparently are willing to come to Ohio and be here for this eight days that we have left, I think are preferable. But do we have, I guess, in complying with the court's order? The mapmaking is supposed to be done in public. And I mean, I say literally that means a room accessible to the public and is, I guess, what kind of instructions are going to be given to these folks in terms of who they can communicate with? Are they only communicating with our staff and or commission members, the members of the media, members of the Legislature, et cetera? I just think that needs to get clarified so that there's not kind of a confusion about that. And I'm not sure that we I don't think they're going to work tonight, but perhaps that's the subject of a of another meeting. But I think we need to clarify how those how that's going to happen.

Co-Chair Sen. Vernon Sykes [00:08:58] I think we had some discussion in our last meeting about the meeting with our map drawers, we had identified four of them as well that the staffs of the commission, at least one from each of the commissioners, those persons that we hold it in a public place that we possibly live stream the deliberations in that we would offer a place, a public place, one of our committee hearing rooms, possibly or theater that would be available and accessible to the public. As with most of these meetings, the co-chairs have worked out the details, but I think it's important, as you've mentioned, to have some general idea of how this will be conducted.

Co-Chair Speaker Bob Cupp [00:10:09] Chair recognizes Auditor Faber.

Auditor of State Keith Faber [00:10:11] Along those same lines, I just want to make sure we're all clear on what the obligations and goals are of what our map makers are going to do because it's going to change my concerns about who the quote unquote map makers are. My understanding is, is that what we're looking for is people essentially to move stuff around the map that we tell them to move. I don't I'm not looking for and I don't think the court suggested that we look for somebody to draw a map and then we we get to say, that's the map or that's the map were presented with. I think the court said we're going to draw a map. And so if the process is other than that, that these map makers are coming here to say, here's here's the map that we think you guys should adopt. I don't want to hear it. And candidly, that's not what I think our obligation is in this process. So if we're

picking people that are essentially going to sit around a table and say, OK, this is how you comply with two, three, four, five and seven, and then this is what you get to on Article six, and these are the options you can move left or right that we discussed last time working with our Gang of Seven, our gang of four, then that's fine. If it's going to be anything other than that, then I've got some questions, frankly, about both of these individuals who I know nothing about. And I would just start out with this one. Mr. McDonald was referenced is participating in a number of lawsuits as an expert witness. Did he or was he ever retained by any of the individuals involved as an expert witness that are involved in this set of litigation by any of the organizations or their affiliated entities and suing us? And who did he testify for? If he's going to hold himself out as an expert witness? And I'd ask the same thing of Douglas Johnson. I just looked at Mr. McDonald's résumé. He has a very interesting resume. But he has testified in redistricting cases all up and down. And so my guess is he has some opinions and I guessing those opinions are probably consistent with people on one side of this case or another. We heard objections that came from Leader Russo that may be a person who had done an analysis on the maps for for the Attorney General's Office may not be qualified or should not be allowed to do this. I'm questioning that in this capacity. Those concerns are much more mitigated and much, much less in the forefront of my concerns. If essentially we're bringing people in that know how to use Maptitude and know how to move districts around and know how to tell us what precincts can go where and not violate two, three, four, five and seven. I just want to make sure we're all clear on what the goal of the map drawers are and that they understand what their goal and roles are so that when we come in and say, Hey, we want to move this here, we want to move that there, we want to know what happens if that happens. It's a much different scenario. That's what I ask for a discussion on.

Co-Chair Sen. Vernon Sykes [00:13:19] I would if I could. I think it's clear that the court has made it clear that it should be a map that's produced by the commission and any map makers that we hire, retain are supposed to produce something for us. And we of course, always have the right and privilege to make any edits or any other requirements that we would like to have made during this during this process. I think that the court and the attorney general recognize that it could be beneficial to us to have some independent people assist us with this process and make a recommendation to us. And we still have the authority to make the final decisions or edits or tweaks to whatever's being presented by the outside independent consultants.

Auditor of State Keith Faber [00:14:25] My only response to be that is, OK. And I accept what you said because I generally agree that we're drawing the map. But my reading of the court's opinion was the court really wanted the commission to hire somebody to run the computers and do that, that work that before we had relied on either the staff that worked for the Democrat Legislative Caucus or the Republican legislative caucuses. OK, whether this is the person you hire and again, I'm much less concerned as long as we're hiring somebody to do the technical and that understand how maptitude works and understand the distinctions of the loading problems that we've heard about maptitude versus Dave's Redistricting in the precinct splits and all that stuff. That's all technical stuff that frankly, none of us are ever going to master. But if the person is coming in to give us some outside expertise on the foibles or joy of this concept in redistricting or another concept, I'm sorry that that's something that we hire experts to testify to us about, not to draw maps for us. And so to me, that's a very different analysis. So as long as that's the understanding, I don't object to either one of these two individuals who I know nothing about. But if we're coming with some other expertise in some other idea that I need to know a lot more about both of these two individuals.

Co-Chair Speaker Bob Cupp [00:15:47] Leader Russo,

House Minority Leader Allison Russo [00:15:50] Thank you, Mr. Chair. I think, you know, to echo what I think I'm hearing from the auditor, just to say that, you know, certainly my expectation is not that we give both the Constitution and the court decisions which should guide any mapmaker, regardless of whether they're independent mapmakers or ones that we are part of our staff, that they go off, produce a map in a black box and they come back to us to report. I don't think that that is neither what any of us seek to achieve, nor is it in the spirit of the court's decision that very clearly laid out that this should be happening in public. So I personally have envisioned this, and I'm not sure if this is in line with the rest of the commission is that this is number one. These two individuals are working together. They come with the technical expertise they are following with the Constitution and the court order have directed. But there will be decision points in discussion that they will need us to weigh in and and there will be multiple as I suspect there are multiple ways to accomplish this. And there, as we've seen in various iterations of maps that have been presented to this commission, that we will need to weigh in on. So I don't think that this is just sending them off to make a map and come back to us. I think that this is very much a they are helping us implement as a commission and coming with their technical expertise, but using the Constitution and the court decision as the guidance.

Co-Chair Speaker Bob Cupp [00:17:32] Further discussion. Secretary LaRose.

Secretary of State Frank LaRose [00:17:48] Yeah, thanks, Baker. And just something to add, and I think that the two individuals that have been recommended, I'm sure, are highly qualified and very purposeful and hardworking and all of that. That doesn't change the fact that we have an enormously complex process with enormously complex rules here in Ohio that are, you know, require a specialized skill. We've got four people that have that specialized skill. Those are the the two very hardworking staffers that have been working for the Republicans and the two very hardworking staffers that have been working for the Democrats. I think that those four individuals are skilled and know this process better than really anybody. And I think that whoever the outside map makers are that we hire should also work together with the four staffers that we have maybe even all six of them in a room together, quite honestly, because I think that's the best possibility, and I remain skeptical that this is going to yield a workable result, but that's the best possibility that we could get that done.

Co-Chair Speaker Bob Cupp [00:18:53] Further discussion.

Governor Mike DeWine [00:18:56] Mr. Chairman?

Co-Chair Speaker Bob Cupp [00:18:57] Governor DeWine.

Governor Mike DeWine [00:19:00] What do you think as both the chairs i the timing of these two individuals hitting Ohio and being able to start work? And I'm I'm curious about that, obviously, because we're in a hurry. But second, you know, we may want to before they really get too far into it to have them actually in front of this panel or commission? So there is an understanding of how this is going to work. I mean, I guess I would understand it to be that it's it's a continuous process that they would come back to us with different issues at the appropriate at the appropriate time and that we certainly should have the ability to go into the map room at any time and check on how they're doing and what the

progress is and what they foresee the issues to be. So I guess the question is what what is the timing and if, if, if the two of you if you know, I mean, I know.

Co-Chair Sen. Vernon Sykes [00:20:16] If I could co-chair, I have also distributed a suggested timetable for our meetings. And I believe a copy was sent to everyone. If not, let's make sure we have that? and on Wednesday, at five o'clock was the time that I thought would be give them time to get in here and get to get together in time for our meeting at that particular meeting, for them to make initial presentations, introductions for us to to exchange expectations and so forth.

Co-Chair Speaker Bob Cupp [00:21:04] OK, I think the proposal was just being circulated now. I have not seen it. I'm just thinking out loud while it's being distributed, whether we want to have a written description of what we were expecting them to do so that they know and we know what it is that we are asking the experts to do.

Co-Chair Sen. Vernon Sykes [00:21:35] I think that would be appropriate on the for the meeting on Wednesday to to have them as well. I think that would be good.

Co-Chair Speaker Bob Cupp [00:21:45] It might be better to have it before then. So they know if whatever it is, if that's something they're willing to live with, I guess. So I mean, I I don't know how they'll come thinking about this. I do know that Mr. Johnson indicated that he was available for a variety of ways that we wanted to do it. So I did. Since I've had a discussion with him, my I think I understand that Mr. McDonald, I do not know, of course.

Co-Chair Sen. Vernon Sykes [00:22:17] And one suggestion I might have co-chair is that on tomorrow morning for our meeting tomorrow morning, it could be a part of it could be a work session of where we actually put that statement together based on some, I'm sure, in advance each of us or may have some ideas of that we can exchange of ideas in advance. But to have a work session tomorrow morning for our regular scheduled meeting time at 9:00 a.m. to kind of work out that that arrangement.

Co-Chair Speaker Bob Cupp [00:23:01] It's certainly a possibility.

Senate President Matt Huffman [00:23:09] Mr. Co-chair. I guess I'm I'm wondering about the governor's question is, is are the map makers are, I assume, are even though this paper says tomorrow morning at nine co-chair Sykes, you're suggesting they'll be here Wednesday?

Co-Chair Sen. Vernon Sykes [00:23:26] Wednesday.

Senate President Matt Huffman [00:23:27] OK. All right. So that, I think, answers the governor's question, right? We're talking about the map makers being here Wednesday.

Governor Mike DeWine [00:23:34] The answer is they cannot be here till Wednesday. Is that what I think?

Senate President Matt Huffman [00:23:37] I think that's

Co-Chair Sen. Vernon Sykes [00:23:40] From what we've been able to figure out so far. Yes. OK.

Senate President Matt Huffman [00:23:44] One in Florida and one in California, right? I believe, right?

Co-Chair Sen. Vernon Sykes [00:23:50] I believe so. OK.

Co-Chair Speaker Bob Cupp [00:23:52] Leader Russo.

House Minority Leader Allison Russo [00:23:54] So I think my understanding is probably tomorrow as a travel day for Italy. Mr McDonnell, given that it is eight o'clock now on a Monday evening, so they will, I assume, probably both be arriving tomorrow. So I think it's fair to expect that on Wednesday they would be available in front of this commission. But certainly that does not prevent us from meeting in the morning to talk about, you know, specifically what our expectations are for each of them, at least in my conversations with Mr MacDonald. I think he is very flexible, has worked in a variety of different circumstances. So whatever the expectations are of this commission, he is adaptable to because he has worked in several different settings and scenarios to be able to do this kind of work.

Co-Chair Speaker Bob Cupp [00:24:46] I did not ask Mr. Johnson when he could arrive here. I asked him whether if he if he was willing and able to come to Ohio, and he said he was. So, I'd have to follow up with to see what timetable might be. I'm just checking your

Auditor of State Keith Faber [00:25:13] While we're looking at our schedules. And maybe it's because the auditor in me has some fiscal questions. I first question who's retaining these folks and what are they charging us? Those people who are coming in generally aren't doing it for the goodness of their heart. And if they are, then I have a question about that because usually they're they have some other interest. And then secondly, who's responsible for paying them? And then do we have a state contracting issue? I assume these are likely going to be fairly expensive items. And do we have a controlling board issue or how are we going to get this approved? I'm just curious whether anybody run those traps to ground. Whether we have to do an RFQ, an RFP usually if it's under \$50,000, we don't, but do we have to run it past controlling board for approval? Do we have to? And, and, and so I just asked that question before we agree to commit to something that we may or may not have authority to do.

Co-Chair Sen. Vernon Sykes [00:26:20] I can help you co-chair. Leader Russo,

House Minority Leader Allison Russo [00:26:27] Thank you and thank you, Auditor Faber, for that question. I have actually looked into this a little bit and we do have some experience actually as a commission approving staff and expenses. We've got about \$70,000 that is left for this commission. So, you know, again, we can vote to approve this expense and we've got that remaining in this commission's budget. We also have close to \$4 million that is left in the task force budget. I've already spoken with my co-chair, Senator McColley. And you know, if there are needs of this commission, we can very quickly issue the allocation of necessary funds. We have actually done a contract through that process that was fairly quick and we can certainly set the limit at forty nine thousand from each of those components if necessary. So I'm saying all of that to say that we can issue those contracts fairly quickly. Have LSC take a look at it, which is what we've done before when we hired our consultant and get the necessary funds allocated.

Auditor of State Keith Faber [00:27:47] I would just like, again, those funds may be there, I have no idea. Again, we've had no role other than the co-chairs in allocating funds in this process. I just want to make sure I mean, as I've been reminded, apparently we passed good government legislation to make certain exemptions for some of these contracting requirements for the General Assembly. There's a General Assembly is the one that's making the contracts through the the task force budget or wherever you have some authority and discretion. Regular state agencies do not. So I just want to make sure whatever we're doing, we're doing in a transparent manner and we're making sure we're doing it correctly. And then frankly, I don't have a clue of what these people expect to be paid. But for somebody getting on a plane from Florida or California and bring a team here or whatever they need is not going to be inexpensive because it is a short duration, even inexpensive, maybe relatively affordable. But I just want to make sure that's transparent and that we all know what that is. The other thing I would ask is that both of these two individuals. Make a conflicts disclosure specifically about and frankly, we can hire them knowing they have a conflict, but we need to know what those conflicts are. It's just been handed to me that one of these gentlemen testified in a case as an expert witness for the League of Women Voters who was a party in this action. And I go, I just ask that question because we need to know those conflicts as all lawyer friends on this board know we can waive conflicts, but you can't waive a conflict you don't know about. And in that regard, I just ask that we have a conflict disclosure from the two individuals.

Co-Chair Sen. Vernon Sykes [00:29:27] We can consider it a friendly amendment, we'll add to it, for sure.

Co-Chair Sen. Vernon Sykes [00:29:43] So Leader Russo.

Co-Chair Sen. Vernon Sykes [00:29:44] Sure, just as a quick follow up to that and to let you know that we have reached out also to LSC just to make sure that, you know, the proper procedures are followed so that we get this these contracts and make sure that the payment is is all certainly appropriate. Regarding, you know, the the rates. We do have some idea based on what the attorney general with the two potential options that they had that he had reached out to. We at least have an idea of what was negotiated with those individuals, so we at least have a threshold. I would say, I dare say that probably neither of the co-chairs has yet talked about rates with these individuals. So I hesitate to even throw anything out there at this point without having that discussion first. But we at least know from the attorney general's previous discussions what I think would be reasonable to expect from these individuals.

Auditor of State Keith Faber [00:30:54] I don't know what that is.

Senate President Matt Huffman [00:30:56] You know, Mr. Chair, Co-Chair, I don't. Auditor just mentioned I don't know what those suggested rates either were. But just just to be clear. Speaker Cupp and I had a conversation with these two individuals yesterday afternoon, and I believe leader Russo and Senator Sykes did. Also, just to be clear, those two individuals, one was in California and made it clear he's not traveling to Ohio for this. So I just know the out of town rate is usually not as much as the, I'm going to sit in my kitchen and work on my computer rate, the other individual who happens to be local, from nearby Delaware County. He was not able to work after three o'clock for a variety of reasons, and both of them after Friday were not available. So. And I also, after kind of some inquiry, believe that they were not really familiar with the frankly extraordinary constitutional requirements that we have in Ohio that I I think you might ask Mr. Glassburn

or some of the others that really other states don't have. They weren't really familiar with that, nor the details of the Supreme Court decisions. So whatever it is that they were quoted, they probably like a lot of things, sometimes you get quoted prices and they say, Oh, I didn't know you wanted five bathrooms. I quoted you only two bathrooms in this house, so. But the point remains, I guess, that we we should try to figure out what the cost is and the contracting complexities and those things. So but you know, just I want to make that point.

Co-Chair Sen. Vernon Sykes [00:32:46] Additional point. I'm glad you raised that issue. Those issues have been delegated to the co-chairs. Previous contracts and we will do our due diligence to make sure we comply with all the necessary requirements.

Co-Chair Speaker Bob Cupp [00:33:05] It would seem to me that would be prudent that rather than proceeding with the resolution today that we ought to try to get the answers to these questions and bring them back to the commission tomorrow with the what the cost is, when can they be here? What is the the technical requirements for signing the contract? Where does the the the money appropriately come from? What kind of conflicts disclosure should we have? And as well as what is in these some written description of what it is we're asking them to do. So I don't know that we can determine all of that right now. I'm not sure how best to do it by nine o'clock tomorrow, but I mean, it's a lot of a lot of information now. Maybe, maybe you've already done some and LSC can provide that fairly quickly. But it would seem to me that it would be better to have all this in order before we proceed with actually hiring anybody.

Governor Mike DeWine [00:34:14] Chairman.

Co-Chair Speaker Bob Cupp [00:34:15] Governor?

Governor Mike DeWine [00:34:15] I certainly understand all that. I just I hope that we're able to communicate to them that all likelihood they're going to be hired. I'd hate to lose another day. I mean, if we're into tomorrow and we don't know until whatever time, then they've got to make flights and then we push it back another day. I'm just I'm just concerned about the time here, so.

Co-Chair Sen. Vernon Sykes [00:34:44] I agree with the governor, I am concerned about the time on a very short fuse and we have the funds, the ability and guidance. And I think we should move posthaste ahead. I think it's important for us to keep on schedule so that we can comply with a court order.

Governor Mike DeWine [00:35:09] Mr. Chairman, I did not mean to say that we should not do this, wait until 9:00 to do it, but I just hope that we're in contact with both of them and make sure that we're getting flights booked in or they're getting flights booked. And we're we're moving forward. I'm just I'm concerned about losing another day. That's my concern. So I don't mind waiting till tomorrow to voting on it. That's fine. But I just don't want I don't want to lose another day here.

Co-Chair Speaker Bob Cupp [00:35:37] So I was suggesting they you try to gather as much of that this evening as possible and so that we're ready tomorrow. If we if we can be and I guess we're going to meet tomorrow to maybe review what it is their scope of work is which we've talked about in generalities, but not in really any kind of specific. Leader Russo?

House Minority Leader Allison Russo [00:36:00] Mr. chair. Yes. You know, I I would say I'm not in agreement that we should delay at least voting on the selection of these two individuals. I think certainly by tomorrow morning, we can talk about the specifics of what our expectations are. But you know, I feel like we sort of punted this a little bit on Saturday. We didn't meet yesterday to talk about this. We're now going to punt this again to tomorrow morning. Don't know if we're going to vote on this tomorrow morning and move forward with this. We need these individuals to begin to make plans to be here so that we can begin work on a map. We now are one week out from the deadline and the more we turn our wheels here. You know, the more. I just think this delay is not a wise move. Let's at least vote. There's a motion on the floor to agree with who the vote selections from the co-chairs will be. And then we can move forward with some of the details in the morning so that we have everything lined up. But I think that it is important that we keep moving forward in this.

Senate President Matt Huffman [00:37:17] Mr. Co-chair. Just a suggestion we can contact these individuals tonight, say we expect to approve them tomorrow morning at nine o'clock with an expectation that they're going to be here Wednesday at 5:00. But for the formal approval tomorrow, we need to have some information what they're going to charge. And sometimes if you hire somebody and they get to say how much you're going to charge, you know, but but we need to know these things. We need to know about conflicts that the auditor raised. We'd like to have all that information. We expect to formally approve the contract based on the information we are likely to get, which is a reasonable price. No conflicts that are significant that they can be here in person on Wednesday to present to the commission or answer questions. You know, with the folks that the attorney general suggested, that sounded like a good idea until we talked to them and we found out they couldn't be here for most of the time. So if there's going to be conversations with these gentlemen tonight or shortly and we can affirm the information that we're thinking is likely that they're we want to pay what they want to do, that they can be here, that there aren't any significant conflicts that they're. And I understand the charge, so to speak. So I don't think something's going to happen between now and tomorrow anyway, and we don't expect them to be here till Wednesday at 5:00, so.

Co-Chair Speaker Bob Cupp [00:38:58] Leader Russo,.

Co-Chair Speaker Bob Cupp [00:38:59] Thank you, Mr. Chair. Is there a reason that we can't recess for about 45 minutes to have these conversations? I think both of us, both co-chair Sykes and you are probably in very direct communication with each of these individuals to be available to clarify some of these questions pretty immediately.

Senate President Matt Huffman [00:39:22] Not me,

Co-Chair Speaker Bob Cupp [00:39:24] We could try. I had a phone conversation earlier in the day with Mr. Johnson. I can certainly see if he's available. But I mean, there's no way to know whether he really is or not. If we want to recess, I mean, I have no objection, anybody else have a thought on it.

Auditor of State Keith Faber [00:39:52] My only thought on the recesses are we really do anything by recessing tonight and talking to them versus coming back tomorrow morning, talking to them. I'm more concerned. I mean, frankly, I'd ask them to get in here Wednesday morning and start working with our Gang of four Gang of Seven to maybe give

us some draft ideas so we can start the process of looking at central Ohio and then looking at northeast Ohio and then looking at other places, maybe at our meeting on Wednesday to make that more productive Wednesday evening. But I think certainly. The conversations tonight would be, but for something that doesn't work out in this, we anticipate finalizing the request to hire you tomorrow. We expect you to be here Wednesday morning with the expectation that Wednesday night we can have a meaningful discussion. I think we could do that just as easily tomorrow's breaking today, but I don't care if we can get an answer in 45 minutes. We can come back, but I doubt you're going to get an answer on the conflicts. I doubt you're going to get an answer on some of those things until they have a chance to pull all that together. But but I maybe I'm willing to stay to midnight tonight, I don't care.

Co-Chair Sen. Vernon Sykes [00:41:00] And that's unless we take the recess.

Co-Chair Speaker Bob Cupp [00:41:04] All right. If without objection, we will recess for when we just recess for an hour. See if we can get in touch with it. And in the meantime, maybe anybody whose office has some forms, a conflict disclosure form try to get some information on what their requirements are for actually contracting, what kind of documents and time. To do list of things that you. Yep. So Commission will recess till nine 9:30.

Co-Chair Speaker Bob Cupp [00:41:40] Redistricting commission will come back to order. I would ask. Well, first of all, report that I was able to get a hold of Mr. Johnson and he is able to arrive here Wednesday, subject to airline schedules as to particularly when on Wednesday and willing to sign a disclosure of conflicts form that we talked about and compensation was was suitable. So at this point, we have a motion pending. Could we have the motion restated?

Clerk [00:42:19] Restate the motion for the two mapmakers?

Co-Chair Speaker Bob Cupp [00:42:20] Yes, please. Go ahead. Go ahead.

Clerk [00:42:25] Co-Chair, Speaker Cupp

Co-Chair Speaker Bob Cupp [00:42:27] what can you say? So what is the motion? It's for understand that's that's all right. You're doing fine.

Clerk [00:42:34] I'm learning this. It's great. The motion was to have the two makers, sorry,.

Co-Chair Sen. Vernon Sykes [00:42:45] The motion was to approve the recommendations of the two map drawers recommendations of the co-chairs to be retained by the commission to complete the work that we have ahead of us.

Co-Chair Speaker Bob Cupp [00:42:57] And there was a second to that. Is there further discussion on the motion? Secretary LeRose.

Secretary of State Frank LaRose [00:43:08] Yeah, so thank you, co-chair. As I'm trying to learn more about these folks that we're talking about here, it got me curious to dig in. It seems as though Michael McDonald has some affiliation. Maybe he's a on retainer with or has some affiliation with Marc Elias. That's deeply concerning to me. Basically, anybody who's affiliated with that person, somebody I don't want to do business with, but it tells me that we don't know a lot about these people. For one, I guess go back to the comment that

I'd made earlier that we've got for really good map drivers that know this work. And when I was looking at what the court order said, it says the commission should should, shall whatever. The commission should retain an independent map driver who answers to all commission members. It seems to me that we could take the four people we've got, put them on the commission payroll and get them to work tomorrow morning. They already know the process and they could pick up their computers, move them into a room somewhere in this building and start working together and be paid by the commission for the next seven days or whatever else. Just a just a thought. I want to put out there for conversation.

Co-Chair Sen. Vernon Sykes [00:44:23] Leader Russo.

House Minority Leader Allison Russo [00:44:24] Yes. Thank you, Mr. Chair. I just want to clarify that we have specifically asked Mr. McDonald about any potential conflicts. He has confirmed that he has no current conflicts with the current litigants in the Ohio redistricting cases. There may be some confusion. He is working with the Florida League of Women Voters on a state election law issue, not on a redistricting case there and not with the Ohio League of Women Voters. I will also note we actually didn't know this until we were just talking with Mr. McDonald or Dr. McDonald. Rather, that actually he and Doug Johnson, who is who you all have put forward, have actually worked together in Arizona for the independent commission to defend Republican crafted maps. In fact, he's worked for both Republicans and Democrats, specifically defending Republican maps in Maryland and Virginia. And then, of course, in Arizona with Mr. Doug Johnson. So I actually was pleasantly surprised to find out that these two have worked together before in the past. And I think certainly if we started digging down, I think, you know, even with Mr. Johnson, I believe that he's been a consultant with one of the attorneys retained in this case as well. So again, as I said yesterday, I think we're going to have a hard time finding any single person to do this who doesn't have some bias coming into this. The point of us each being able to make recommendations is to balance that. And again, I remind you that these individuals work for the commission and they will be working with all commissioners and at the direction of the entire commission.

Co-Chair Speaker Bob Cupp [00:46:17] Further discussion?

Co-Chair Speaker Bob Cupp [00:46:19] Again, I would just reiterate my request that we have a complete conflict disclosure of any and all law firms, any times that they work for any of the law firms involved in the current litigation or any of the times they work for any of the parties to litigation or the people funding the part of this litigation, including specifically the League of Women Voters, the ACLU, the Holder Group and the like. The fact of the matter is as long as everybody comes into this with the understanding that these these gentlemen are only going to be executing the suggestions of this committee and will not be independently operating or communicating with outside parties. Once they start working for us. If I were to hear they talk to any of these outside law firms or any of the parties, I would consider that a first level conflict of interest. And from that perspective, as long as we're under that clear assumption that they're independently working for this commission, I will. We'll go for it. But I have real concerns hearing somebody is working and has a history of working for the parties that are suing us and their purported to be independent. I would love as a lawyer to have my former experts be the ones that are called on by my opponent in the litigation. What a great concept.

Co-Chair Sen. Vernon Sykes [00:47:44] Co-Chair, I would also say that in talking with Mr. McDonald, what we found is he confirmed that he has no current conflicts with the current litigants at all and is willing to and of course will sign any conflict disclosure statement at the time of who we contract with him.

Co-Chair Speaker Bob Cupp [00:48:14] So is our standard current conflict with any of the current parties as opposed to having had employment or arrangements with the parties before they became current? We saw before the litigation, so the case so that I think that's an important point here, and I have no idea know whether there's any conflict or not. I'm just.

Co-Chair Sen. Vernon Sykes [00:48:51] Well, Mr. Co-chair, I think it's important we had an hour recess, in this time we were able to answer any questions that we could bring about polls to him, but also was willing to sign a disclosure conflict disclosure statement that would be more comprehensive. Yeah, know. Usually that's what happens when you have a contract, you'd have documents that are required that you have to comply with, and he's willing to do that.

Co-Chair Speaker Bob Cupp [00:49:21] So and I think that's fine. I don't have a I don't have a problem with that. We have a full and complete disclosure.

Co-Chair Sen. Vernon Sykes [00:49:31] I think we have that.

Senate President Matt Huffman [00:49:34] Yeah, I mean, on the issue of conflict there, I think there are different standards. For example, attorneys who have represented a party in the past may represent a party against that party if the cases are unaligned or if there is a waiver by their client that they formally represented. I don't think there's that kind of restriction and this is in the legal world. I know this is a unique process, but because an expert witness was was my expert witness in the past and this has happened doesn't mean they can't be someone else's expert witness. Now if it's an expert witnesses, as the Auditor has mentioned many, many times. You know that that's is interesting. I do have the same expert CPA in Lima, Ohio. He's testified for me many times in many different kinds of cases, but in other expert witnesses who have testified, but it doesn't mean they can't go testify for the other side. So I think the key here is that that they disclose. And ultimately, I suppose the commission and if we need to, we could ask them about this Wednesday when they're here right at five o'clock Wednesday, I think is what we're talking about the time being. And we can ask them and see if there's anything that we think would be disqualifying at that time. But you know, we're going to recognize that if you're going to get people who are very good at this, they probably have a pretty extensive background and they've worked for for a lot of different people. So I think we just let that question pend for a while or until they're here and we can ask those specific questions. But good question by the speaker. We can't just be. Is there a current conflict? Is there a disqualifying conflict in some time in their background and, you know, if it's years ago? Well, what difference does that make now if it was six months ago? Maybe it does make a difference, so we just have to ask those questions.

Co-Chair Speaker Bob Cupp [00:51:39] Further discussion on the motion. Auditor Faber.

Auditor of State Keith Faber [00:51:42] And again, while I want to know about the conflicts, my primary goal towards getting to a point where we can overlook the conflicts is having these two gentlemen both understand that they work for the commission as a

whole. One of them, I'm told, sent a Twitter message out that he was about to be hired by the Democrat members on the Redistricting Commission. We're not hiring a Democrat and a Republican. We're supposed to hire independent. And the independents are supposed to work collectively for the group. And as long as that's our understanding, as long as we all have access to them, as long as we can continue to go forward in that capacity, I'm less concerned. As long as I'm assured that we're not having backroom conversations with the litigants, that we're not having other discussions that they truly, oh. I hate to use this term, but their employment loyalty feel, what is it?

Senate President Matt Huffman [00:52:33] Fealty.

Auditor of State Keith Faber [00:52:33] Fealty to the commission? I'm less concerned, but I just want to make sure we're clear on that. Based on the information that's already been out in the I guess we call it the metaverse,

Co-Chair Sen. Vernon Sykes [00:52:46] we have an additional hand out. We kind of outlined some of those issues.

Senate President Matt Huffman [00:52:50] Could I just make a comment or ask a question, I guess?

Co-Chair Speaker Bob Cupp [00:52:54] Senator Huffman.

Senate President Matt Huffman [00:52:56] Do I? I don't have Twitter on my phone. I know I'm supposed to, but I don't have time to keep up. I just read newspapers like guys my age do. If I understand what the auditors said. One of these folks tweeted out tonight that tonight that they were been hired by the Democratic members. Is that the.

Auditor of State Keith Faber [00:53:25] Personal News, I've been put forward as a map drawer of Democrat members of the Ohio Redistricting Commission. The Republican member put forward is Doug Johnson.

Senate President Matt Huffman [00:53:33] OK, well, so that's probably accurate, right? Put forward by the Democrat members. So that's probably accurate. I guess, I guess that's the other thing I would ask is during this process. How about if nobody tweets what's going on unless it's completely public process and they should be tweeting, I don't know. But we ought to have those ground rules figured out the next the next day or so. This is why I should have Twitter on my phone, right?

Co-Chair Speaker Bob Cupp [00:54:08] All right, there's a further discussion on the motion to hire these two experts? Hearing none, hearing no additional discussion. Is there any objection to hiring them? Without objection, the motion will be agreed to the next item is the schedule. Several members have asked me if they could have until tomorrow morning to look over the schedule to see how it compares with their schedule and adopt it at that time, if that's OK. Tomorrow at 9:00. All right.

Co-Chair Sen. Vernon Sykes [00:54:48] Mr. Co-chair the other item is the dealing with the mediators. The chief mediator of the Circuit Court, could be available tomorrow at our meeting just to ask questions or give us information about mediation in general or what kind of services could be offered through their organization, if you if it could be helpful.

Co-Chair Speaker Bob Cupp [00:55:17] Are they willing to come here? Are you suggesting we see if they're able to come,

Co-Chair Sen. Vernon Sykes [00:55:23] They're able to come.

Co-Chair Speaker Bob Cupp [00:55:24] All right. I think that would be fine if they want to provide information on what they do. Any objection to that,.

Senate President Matt Huffman [00:55:31] I could... [inaudible]

Co-Chair Speaker Bob Cupp [00:55:33] Would you want to restate?

Co-Chair Sen. Vernon Sykes [00:55:35] The chief of the mediators for the Circuit Court is available tomorrow morning at 9:00 to come in and just make a brief presentation about the services that could be offered.

Senate President Matt Huffman [00:55:50] OK.

Co-Chair Sen. Vernon Sykes [00:55:53] Without objection. If you want to contact them and invite them in, that would be that would be fine. And you've also passed out a draft description of the scope of map drawers. I think members can look at this till tomorrow morning. We'll talk about it then. All right. Is there any further business to come before the redistricting commission at this time? I think we are scheduled to reconvene tomorrow at nine a.m. and without objection. The commission is adjourned until 9:00 a.m. tomorrow.

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February 22, 2022

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Dear Colleagues:

What happens now? This letter is to outline some answers to that question, and to identify possible actions—and the probable outcome of inaction.

I am writing to you on behalf of my client, the State of Ohio. However, this is not a legal brief, and my aim is to lay out the law in plain English to assist you in your duties. You do not answer to me, but to the people of Ohio...as do I. We have parallel duties to the same superior.

Maps for the General Assembly have been rejected twice by the Ohio Supreme Court. The Court's deadline to produce a third came and went without a new map and last Friday the Court issued a short entry requiring the Redistricting Commission to show cause by this Wednesday as to why it failed to comply with the Court's earlier order to produce a new state legislative map proposal.

The Congressional map is not as far along, but the first federal map was rejected by the Ohio Supreme Court and time ran out on a second without action by the General Assembly. Though that matter is pending before the Redistricting Commission, no action has yet been taken.

The result: there are no maps as of today for state or federal legislative districts, or the offices that are dependent on them, such as the State Board of Education or the state central committees of the political parties. This presents an unusual legal problem, because lawfully enacted, Constitutional maps are what lawyers call a *condition precedent* to the ballot. That is, legislative district maps have to happen before the ballot.

That bit of legal logic takes on special importance today, because today is the statutory deadline for the Secretary of State to certify the ballot for the 2022 Primary Election. Without valid maps, he cannot certify candidates to county board of elections, because there is no way to tell which

precincts are in which districts—or, for that matter, which candidates are in which districts, because there are no districts.

Yet Ohio law requires a primary election to be held on May 3, and the General Assembly has reserved the power to move that date to itself—a decision properly within the Legislature's authority. Neither court nor executive may change that.

So, a primary election will be held, and the Secretary of State will certify a ballot today without legislative candidates, because no certification is possible without maps. For each and every one of you, your voters will go to the polls on May 3—and they will not see your name. Indeed, none of you even know who your voters are. The Secretary of State will have fulfilled his statutory duties, but few would view this outcome as sufficient.

The General Assembly granted the power to the Secretary of State to move certain statutory deadlines leading up to the primary election for races impacted by redistricting, and the ballot certification deadline is one of them. Statewide and county office races are not impacted by redistricting, the Secretary has no authority to move deadlines related to them and he will be certifying that ballot today. As for statehouse and congressional races, the Secretary of State informs me that necessary actions between these deadlines form a “critical pathway” of tasks that take a certain amount of time, and must be done in order. He does not feel he can move this deadline and still complete the necessary work prior to May 3, 2022. I have no reason to doubt him.

It has been suggested that the Secretary could use the existing 2011 maps until new maps are qualified. However, because of the decennial census, the 2011 maps are now “malapportioned”—some districts have too many voters and others have too few. This violates existing case law applying the Fourteenth Amendment to the United States Constitution.

It is true that the 2011 maps, perhaps, could be adjusted by a federal court, and there is a brand-new lawsuit seeking to invoke federal court jurisdiction. But that lawsuit seeks to use the map passed on January 22 and invalidated by the Ohio Supreme Court on state constitutional grounds, not the 2011 map. The federal court may not order the use of a map that was rejected by the Ohio Supreme Court, where the underlying provision of the state constitution has not been found to violate the federal constitution. In any event, any action by the federal court is unlikely to come early enough to cure the May 3 ballot.

The uncertainty does not end in May. Without a primary election decision on party nominations, it is unclear what the general election in November would look like. Assuming valid maps exist by then, do all candidates run in a field? A thousand other questions arise, and there is no clear view from this place in time of how it would sort out.

Unless you act.

The General Assembly has the authority to fix this. An obvious solution is to move the primary date, though that would take a two-thirds vote of both chambers and the Governor's signature because it would require an emergency clause. If a primary election ballot largely without one of the three branches of government does not constitute an emergency, what does? (Obviously, the maps do not impact primary races for the United State Senate.)

I personally have immense distaste for moving the date of the primary. Government should favor regular order, and predictability is one indicia of trustworthiness. Yet here we are, with an intractable situation not of your design that demands a solution.

Other, less-obvious solutions are possible. A second, separate primary process could be put in place for districted legislative offices only. Some sort of ranked-choice voting could be enacted, or a post-November runoff process. In federal law, the *in extremis* statutory provision is that all congressional candidates run at-large, state-wide.

Our constitution invests you—my distinguished colleagues in both parties—with the authority to act, and your good minds may find other solutions. But a solution must be found.

The federal deadline for mailing primary ballots to overseas and military voters is fast approaching. Obviously, the General Assembly is without authority to move it. I would urge you to consider it in your deliberations, and consider how it might be collaterally impacted by the current situation.

This is not fundamentally about the map-drawing process. Maps will eventually emerge as the legal reviews continue, and it is to be hoped, those charged with the responsibility continue to negotiate and deliberate toward a resolution.

This is about running a primary election that includes the nominating process for the legislative branch, which is most directly reflective of the will of the people. It is up to you to give them their voice.

A handwritten signature in blue ink that reads "Dave Yost". The signature is fluid and cursive, with the first name "Dave" being larger and more prominent than the last name "Yost".

cc: Frank LaRose, Secretary of State
Keith Faber, Auditor of State