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

MICHAEL GONIDAKIS et al.,

Plaintiffs,

THE OHIO ORGANIZING COLLABORATIVE, COUNCIL ON AMERICAN-ISLAMIC RELATIONS, OHIO, OHIO ENVIRONMENTAL COUNCIL, SAMUEL GRESHAM JR., AHMAD ABOUKAR, MIKAYLA LEE, PRENTISS HANEY, PIERRETTE TALLEY, and CRYSTAL BRYANT,

Intervenor-Plaintiffs,

v.

FRANK LAROSE, in his official capacity,

Defendant.

Case No. 2:22-cv-00773

Circuit Judge Amul R. Thapar

Chief Judge Algenon L. Marbley

Judge Benjamin J. Beaton

Magistrate Judge Elizabeth Preston Deavers

OPPOSITION OF INTERVENOR-PLAINTIFFS
THE OHIO ORGANIZING COLLABORATIVE, ET AL.
TO PLAINTIFFS' SECOND AMENDED MOTION
FOR A PRELIMINARY INJUNCTION AND DECLARATORY RELIEF

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INTRODUCTION

The OOC Petitioners[1] oppose Plaintiffs' second amended motion for a preliminary injunction and declaratory relief. The motion is an undisguised attempt to disrupt ongoing redistricting proceedings before the Ohio Redistricting Commission and abrogate decisions of the Ohio Supreme Court. The relief they seek in this case—an injunction directing the Secretary of State to implement the General Assembly district plan adopted by the Commission on February 24 and declared unconstitutional by the Ohio Supreme Court on March 16—is a nonstarter. Not surprisingly, Plaintiffs have not carried their burden to establish the prerequisites for obtaining injunctive relief. Accordingly, this Court should deny the motion.

BACKGROUND

In the interest of economy, this opposition assumes familiarity with the proceedings in this case. Since the OOC Petitioners filed their opposition to the Gonidakis Plaintiffs' motion for a temporary restraining order on March 23, 2022, the Gonidakis Plaintiffs have filed their second amended motion for a preliminary injunction (ECF 96), the Secretary of State has filed his notice of issuance of directive 2022-31 (ECF 97), and the Ohio Redistricting Commission has held three public meetings.

On March 16, 2022, the Ohio Supreme Court declared that the February 24 plan was invalid and ordered the Commission to reconvene and draft a new General Assembly district plan by March 28. Any objections are due within three days after the Commission files its new plan in the Ohio Supreme Court, and responses are due three days after that. *See League of Women Voters of*

[1] The OOC Petitioners are: The Ohio Organizing Collaborative ("OOC"), Council on American-Islamic Relations, Ohio ("CAIR-Ohio"), Ohio Environmental Council ("OEC"), Samuel Gresham Jr., Ahmad Aboukar, Mikayla Lee, Prentiss Haney, Pierrette Talley, and Crystal Bryant. The Court granted the OOC Petitioners' motion to intervene on March 4, 2022. (ECF 54).

Ohio, 2022-Ohio-789, 2022 WL 803033, ¶¶ 44-46. The Ohio Supreme Court ordered the Commission to file a copy of the plan in that court by 9:00 a.m. on Tuesday, March 29, 2022, and "retain[ed] jurisdiction for the purpose of reviewing the new plan." *Id.* ¶ 45. On March 21, 2022, the Gonidakis Plaintiffs sought a temporary restraining order "to maintain the third plan." (Gonidakis Pls' Mot. for a TRO, ECF 84). On March 23, 2022, Secretary of State LaRose issued Directive 2022-31, declaring that, in light of the Ohio Supreme Court's decision invalidating the third plan, "it is not possible to include the primary contests for the Ohio House, Ohio Senate, and State Central Committee on the May 3, 2022 Primary Election ballot."[2] In light of the ongoing proceedings in this case – specifically, the Gonidakis Plaintiffs' pending TRO motion – and the Ohio Legislature's lack of action to change the primary election date, Secretary LaRose concluded that "the only lawful and reasonable option to continue to move forward toward the May 3, 2022 Primary Election" was to omit the offices and candidates for the Ohio House, Ohio Senate, and State Central Committees from the primary ballots.

Secretary LaRose also noted that, even if the Commission adopts a new general assembly plan by the Ohio Supreme Court's March 28, 2022 deadline, the necessary shapefiles, legal descriptions, and county lists "will not be ready in time [for local clerks] to program the new districts and re-certify [candidate] petitions by the start of absentee voting on April 5, 2022." Since the Commission's third plan was invalidated by the Ohio Supreme Court, Secretary LaRose further indicated that local election boards' decisions to certify or reject candidate petitions for the May 3, 2022 primary election using that plan were null and void.

[2] Ohio Sec'y of State, Directive 2022-31, issued March 23, 2022, available at https://www.ohiosos.gov/globalassets/elections/directives/2022/dir2022-31.pdf.

Directive 2022-31 also requires local election boards to "reprogram their election databases and prepare ballots to be ready by April 5, 2022, without the offices of Ohio House, Ohio Senate, or State Central Committee," and to "prominently display on their website" a notice that the offices of Ohio House, Ohio Senate, and State Central Committee will not appear on the May 3, 2022 primary ballot due to the Ohio Supreme Court's invalidation of the Commission's third plan.

The three-judge panel on March 25, 2022 held the Gonidakis Plaintiffs' motion for a temporary restraining order in abeyance and ordered Secretary LaRose to file supplemental briefing. (Order, ECF 104).

As of this filing, the Commission's redistricting process continues and there is no indication that it will fail to meet the March 28 deadline. The Commission has scheduled public meetings every day from March 23 through March 28.[3] The Commission has retained two independent map drawers, Douglas Johnson, Ph.D. of National Demographics Corp. and Michael McDonald, Ph.D. of the University of Florida, to assist the Commission in drafting a fourth plan.[4] On March 23, 2022, the Commission unanimously adopted a set of ground rules for the map drawers,[5] and on March 24, the Commission met with the independent map makers to discuss the process.[6] On March 25, 2022, the independent map makers walked the Commissioners through alternative preliminary draft maps for the most populous counties., and expressed a hope to present state-wide

[3] https://redistricting.ohio.gov/meetings.

[4] https://redistricting.ohio.gov/meetings, March 23, 2022, Minutes ¶ F, Transcript 00:03:59-00:03:26; https://www.wcbe.org/wcbe-news/2022-03-22/redistricting-commission-agrees-to-consultants-for-latest-effort-to-redraw-maps; https://ohiocapitaljournal.com/2022/03/22/ohio-redistricting-commission-adds-two-new-mapmakers.

[5] https://redistricting.ohio.gov/meetings, March 23, 2022, Minutes ¶ J; https://redistricting.ohio.gov/meetings, March 24, 2022, Ground Rules for Map Drawers adopted March 23, 2022.

[6] https://redistricting.ohio.gov/meetings, March 24, 2022 video; March 25, 2022 video.

drafts at the meeting on March 26.[7] In addition, two federal mediators on loan from the Sixth Circuit have been approved by the Commission to assist in the process, and the federal mediators have met with each of the Commission members.[8]

ARGUMENT

I. This Court Should Deny Plaintiffs' Motion for a Preliminary Injunction

This Court's review focuses on the four factors that a plaintiff must establish to obtain injunctive relief: "(1) whether the movant has a strong likelihood of success on the merits; (2) whether the movant would suffer irreparable injury without the injunction; (3) whether issuance of the injunction would cause substantial harm to others; and (4) whether the public interest would be served by the issuance of the injunction." *Northeast Ohio Coal. v. Husted*, 696 F.3d 580, 590-91 (6th Cir. 2012). The Gonidakis Plaintiffs have not carried their burden with respect to these factors; therefore, this Court should deny their motion.

A. Plaintiffs Do Not Have a Strong Likelihood of Success on the Merits

A preliminary injunction is an "extraordinary remedy involving the exercise of a very far-reaching power, which is to be applied only in the limited circumstances which clearly demand it." *Leary v. Daeschner*, 228 F.3d 729, 739 (6th Cir. 2000). Thus, the "proof required for the plaintiff to obtain a preliminary injunction is much more stringent than the proof required to survive a summary judgment motion." *Id.* The Supreme Court has further clarified that the "limited purpose" of preliminary injunctive relief "is merely to preserve the relative positions of the parties until a trial on the merits can be held." *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981). As

[7] https://redistricting.ohio.gov/meetings, March 25, 2022 video.
[8] https://redistricting.ohio.gov/meetings, March 23, 2022, Minutes ¶ E; https://redistricting.ohio.gov/meetings, March 24, 2022, video of public meeting; Legal mediators added to the Ohio redistricting fold (news5cleveland.com).

such, this Court should hesitate to grant a preliminary injunction in any case, but this is particularly important when such an injunction would radically alter the status quo prior to trial on the merits in ways that upset principles of federalism and comity. *See O Centro Espirita Beneficiente Uniao Do Vegetal v. Ashcroft*, 389 F.3d 973, 977 (10th Cir. 2004), *aff'd and remanded sub nom. Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418 (2006). Plaintiffs have and cannot meet their burden to show a strong likelihood of success on the merits.

1. If the Commission Adopts a Valid Plan on March 28, Plaintiffs Have No Likelihood of Success on Their Malapportionment Claim

Plaintiffs filed their amended complaint on March 21. (ECF 86 at PageID 1258) On that date, Ohio did not have a valid General Assembly district plan because, on March 16, the Ohio Supreme Court had invalidated the February 24 plan—the third plan enacted by the Commission. *See League of Women Voters of Ohio v. Ohio Redistricting Commission*, __N.E.2d__, 2022-Ohio-789, 2022 WL 803033, ¶¶ 44-46 (Mar. 16, 2022). Gonidakis Plaintiffs' asserted claims for malapportionment arising from the *absence* of a valid General Assembly district plan based on 2020 census data. (Plaintiffs' First Supplemental Complaint for Declaratory and Injunctive Relief, ECF 86 at PageID #1270-71).

If the Commission adopts a valid new plan on March 28, then the premise upon which the Gonidakis Plaintiffs based their motion crumbles away. Put simply, the Gonidakis Plaintiffs are unlikely to succeed on a claim that no plan exists if the Commission enacts a valid plan. The Court should decide the motion based on the "facts and circumstances, developed at the hearing, that existed at the time [the Court makes] its decision," *Brown v. Neeb*, 644 F.2d 551, 565 (6th Cir. 1981) (Bailey Brown, C.J., concurring in result), not the facts that existed on the day that Plaintiffs filed their motion.

Even if Plaintiffs can amend their complaint and motion for a preliminary injunction on the fly to challenge the plan adopted on March 28, then the question at the March 30 hearing would be whether *that* plan is malapportioned. Of course, the parties cannot say at the time of this March 25 filing whether there will be a March 28 plan and whether it will be malapportioned. Previous plans enacted by the Commission were unconstitutional under the Ohio Constitution, but none were malapportioned. There is no good reason to think that the *next* plan will have districts with substantially unequal populations in violation of the Fourteenth Amendment to the U.S. Constitution.

2. Even If the Commission Does Not Adopt a Valid Plan on March 28, Plaintiffs Still Have No Likelihood of Success on Their Claim

Although the Commission appears to be working diligently toward enacting a new plan on March 28 that complies with the Ohio Supreme Court's rulings, it is possible that the Commission will not enact a plan by the court-ordered deadline or that it will enact a plan that is substantially the same and just as gerrymandered as the last, and thus plainly invalid under Ohio law. If the Commission does not enact a new plan, or if it enacts a plan that is subsequently invalidated by the Ohio Supreme Court, then Ohio would have no valid General Assembly district plan based on the 2020 census data. Even in that situation, however, Plaintiffs would have no likelihood of success on their claims, much less would they have a "strong likelihood" of success.

The sum and substance of the Gonidakis Plaintiffs' claims is that *anything other than* the "Third Plan" enacted on February 24 is unconstitutional. They seek a declaration to that effect. (Supp. Am. Compl., ECF 86 at PageID #1272) They seek to "[p]ermanently enjoin Defendant and all persons acting on his behalf or in concert with him from implementing, enforcing, or conducting any elections under Ohio's current state legislative districts *other than the Third Plan*." (*Id.* (emphasis added)). They also ask this Court "to adopt a timely enacted and lawful plan and

implement the new plan for Ohio's state legislative districts, *specifically the Third Plan …*" (*Id.* at #1273 (emphasis added)). Thus, regardless of what happens on March 28, the question presented on this motion is whether Plaintiffs are likely to succeed in obtaining a permanent injunction commanding the Secretary of State to implement the Third Plan, which was previously invalidated by the Ohio Supreme Court as violating the Ohio Constitution. They are not.

Plaintiffs are unlikely to succeed in obtaining the relief sought in their complaint under any circumstances because, even when a federal court must draw districts, it may not impose a "court-ordered plan that reject[s] state policy choices more than [is] necessary to meet the specific constitutional violations involved." *Upham v. Seamon*, 456 U.S. 37, 42 (1982) (per curiam). Rather, when federal courts order implement a remedial plan, they must "follow the policies and preferences of the State, as expressed in statutory and constitutional provisions or in the reapportionment plans proposed by the state legislature, whenever adherence to state policy does not detract from the requirements of the Federal Constitution." *White v. Weiser*, 412 U.S. 783, 795 (1973). And the Ohio Supreme Court, not the Ohio Redistricting Commission, is the ultimate arbiter of the meaning of the Ohio law. *Ohio ex rel. Skaggs v. Brunner*, 549 F.3d 468, 472 (6th Cir. 2008).

In view of these principles, Plaintiffs are unlikely to obtain an injunction from this Court that remedies any malapportionment by directing the adoption of a plan that the Ohio Supreme Court has declared to be unconstitutional. It is possible to draw districts that comply with the Ohio Constitution, as construed by the Ohio Supreme Court, and therefore impermissible to adopt a district plan that the Ohio Supreme Court has expressly invalidated.

B. Plaintiffs Fail to Show That They Will Suffer Irreparable Injury Without the Requested Injunction

Plaintiffs "must demonstrate that in the absence of a preliminary injunction, [they are] likely to suffer irreparable harm before a decision on the merits can be rendered." *Winter v. NRDC, Inc.*, 555 U.S. 7, 22 (2008) (citation and internal quotation marks omitted). A preliminary injunction cannot issue merely to prevent a "possibility" of future injury. *Id.* Plaintiffs argue that without an injunction, they will not be able to vote or associate with candidates and like-minded voters. (Pls' 2d Am. Mot. for a Prelim. Inj., ECF 96 at PageID #1589-60). But their assertion that they will not be able to vote or associate without a *preliminary injunction* is untenable. Either the Commission will enact a constitutional plan or, if absolutely necessary, this Court will draw districts after appropriate proceedings on the merits.

Nor are Plaintiffs irreparably harmed if the House and Senate races do not appear on the May 3 primary ballot. Even if it were still possible for these races to appear on the ballot, despite Secretary of State LaRose's Directive 2022-31 statement to the contrary, Plaintiffs have failed to meet their burden to show any irreparable injury stemming from the movement of the primary date. Plaintiffs have a federal constitutional right not to vote in malapportioned districts. They have no federal right to vote specifically on May 3 – especially if doing so would require implementing a plan already held unconstitutional by the Ohio Supreme Court. Should neither the Ohio legislature nor the Ohio Supreme Court establish a new primary date, it is well within this Court's power to do so itself. *See* Ex. A (Amended Order, *Perez v. State of Texas et al.*, No. SA-11-CV-360, (W.D. Tex. Mar. 19, 2012))

A preliminary injunction is not necessary to ensure that Ohio has districts in time for the 2022 elections.

C. Issuance of the Injunction Would Cause Substantial Harm to Others

Plaintiffs ask this Court to order implementation of the unconstitutional February 24 plan, but their requested injunction would harm the OOC Petitioners and Ohio voters generally. In fact, the Ohio Supreme Court sustained the OOC Petitioners' objections to the February 24 plan, and those of the other challengers, because the plan violated constitutional provisions that Ohio voters overwhelmingly approved in 2015 to create enforceable constitutional rights against partisan gerrymandering. The Ohio Constitution creates cognizable state-law interests in fair districts that closely correspond with the statewide preferences of Ohio voters. *See* Ohio Constitution, Article XI, § 6. The February 24 plan, if implemented, would harm those interests and harm the OOC Petitioners here.

Although the U.S. Supreme Court has held that the federal constitution's text is not sufficiently specific to provide administrable judicial standards, it has uniformly condemned partisan gerrymandering as fundamentally incompatible with democracy. *Rucho v. Common Cause*, 139 S. Ct. 2484, 2506 (2019) (conceding that "[e]xcessive partisanship in districting leads to results that reasonably seem unjust," but finding, nonetheless, "the fact that such gerrymandering is incompatible with democratic principles does not mean that the solution lies with the federal judiciary.") Thus, the harm arising from partisan gerrymandering has always been apparent. Here, the people of Ohio enacted specific constitutional provisions to address that harm, providing exactly the "standards and guidance" that the Supreme Court recognized state constitutions could offer even in the absence of a cognizable federal constitutional claim. *Id. at* 2507. If the Court ordered the implementation of February 24 plan, which is partisan gerrymandering, its order would directly harm the OOC Petitioners and voters statewide.

D. The Public Interest Would Not Be Served by Issuance of the Injunction

Plaintiffs seek to impose an unconstitutional map, drawn primarily to disadvantage a political party and its voters. *See League III*, __N.E.2d__, 2022-Ohio-789, 2022 WL 803033, ¶ 34. Their proposed injunction does not serve the interests of the public and challenges the authority of the Ohio Supreme Court to interpret and implement its state constitution.

Plaintiffs argue that the public interest is served by the existence of a constitutional map based on 2020 census data instead of one based on the 2010 census data. This is not in dispute. But again, a *preliminary injunction* is unnecessary to ensure that Ohioans can vote in General Assembly elections in 2022. The Commission or, if necessary, this Court will adopt a plan that serves the public interest, but it will not be the February 24 plan. Plaintiffs ask this Court to override the interests of the voters and adopt a plan that the Ohio Supreme Court already invalidated because it primarily favors one political party over another and fails to correspond closely to the statewide preferences of Ohio voters, in violation of the Ohio Constitution. There is no reason to do so, and no public interests are served by adopting an invalidated plan.

This is the first decennial redistricting since Ohio voters passed the 2015 amendments. To order the implementation of a General Assembly district plan that is unconstitutional under those amendments would contravene the public interest. The public interest is best served by adhering to the rule of law, even if Plaintiffs disagree with the law in question, by respecting the decision of the Ohio Supreme Court. Imposition of the February 24 plan here, at Plaintiffs' request, would not only undermines the Ohio Constitution and the Ohio Supreme Court's ability to enforce it, but would also undermines the public trust in government by preventing voters from holding their elected officials accountable by law. Thus, the imposition of the Commission's third unconstitutional plan would not serve the public interest.

E. The Anti-Injunction Act Prohibits an Issuance of an Injunction that Would Stay State Court Proceedings

The Anti-Injunction Act also constrains this Court's authority to grant the injunctive relief requested by the Gonidakis Plaintiffs. It provides: "A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments." 28 U.S.C. § 2283. The Anti-Injunction Act is not merely "principle of comity," it is a "binding rule on the power of the federal courts." *Atl. Coast Line R.R. Co. v. Bhd. of Locomotive Eng'rs*, 398 U.S. 281, 286 (1970). In addition to prohibiting injunctions that seek to directly stay proceedings in state court, "[i]t is settled that the prohibition of § 2283 cannot be evaded by addressing the order to the parties." *Id.* at 287-88. Further, "[a]ny doubts as to the propriety of a federal injunction against state court proceedings should be resolve in favor of permitting the state courts to proceed in an orderly fashion to finally determine the controversy." *Id.* at 297.

The Gonidakis Plaintiffs request that this Court issue an injunction that prevent ongoing remedial proceedings in the Ohio Supreme Court from producing relief for the 2022 primary and general elections. The current remedial process would be abrogated by the issuance of injunctive relief while, which qualifies as a proceeding under the statute. This is because "the term proceedings is comprehensive and includes all steps taken or which may be taken in the state court or by its officers from the institution to the close of final process." *Roggio v. Federal Deposit Insurance Corporation*, 313 F. Supp. 3d 129, 133 (D.D.C. 2018) (cleaned up). Practically speaking, "'[t]he Act's mandate extends not only to injunctions affecting pending proceedings, but also to injunctions against the execution or enforcement of state judgments.'" *Id.* (quoting *Henrichs v. Valley View Dev.*, 474 F.3d 609, 616 (9th Cir. 2007).

In certain circumstance, Section 1983 has been deemed to be an express authorization by Congress that permits enjoining state court process. *See Mitchum v. Foster*, 407 U.S. 225 (1972). But the Gonidakis Plaintiffs' claims under Section 1983 in the present case do not trigger that exception. In *Mitchum*, the Supreme Court articulated its fact specific holding because "federal injunctive relief against a state court proceeding can in some circumstances be essential to prevent great, immediate, and irreparable loss of a person's constitutional rights." *Id.* at 242 (citations omitted). When these threats are not present, then claims brought under that Section do not satisfy the express authorization exception to the Act.

II. Plaintiffs' Motion for a Preliminary Injunction Is Procedurally Improper

Even if the Ohio Redistricting Commission does indeed reach an impasse and a malapportionment claim becomes ripe, it would be inappropriate to affirmatively impose a new district plan for the Ohio General Assembly by preliminary injunction. This principle would be true even if the Gonidakis Plaintiffs' request did not seek the resurrection of an unlawful plan in violation of principles of comity and federalism. Instead, should this case become justiciable, the raised malapportionment claims should be resolved at trial after the parties have had a chance to confer and propose a case schedule after assessing discovery needs, disclosing experts, and identifying threshold issues needing resolution. *See e.g. Common Cause Florida v. Lee*, No. 4:22-CV-00109-AW-MAF, Order Setting Case-Management Conference and Requiring Joint Report (N.D. Fla. Mar. 24, 2022).

Preliminary injunctions do play a role in malapportionment cases, but they are properly ordered to prevent a state from moving ahead with elections under an unconstitutional plan – not as a mechanism to impose a remedial map, which requires a full and robust factual record, expert showings, and a trial. In *Brown v. Jacobsen*, for example, a three-judge panel granted plaintiffs'

motion for a preliminary injunction seeking to enjoin a candidate certification process under malapportioned plan. __F.R.D.__, No. 21-CV-00092-PJW-DWM-BMM, 2022 WL 122777, at *1 (D. Mont. Jan. 13, 2022). However, the court only imposed a remedial plan after a bench trial, where the parties were given an opportunity to present witnesses and evidence and where the three-judge panel considered four viable maps to resolve a malapportionment claim. *Brown v. Jacobsen*, __F. Supp. 3d__, 2022 WL 683089 (D. Mont. Mar. 8, 2022). Notably, the *Brown* dealt with the malapportionment of the five-member Montana Public Service Commission, *id.*, not the potential malapportionment of a 99-member Ohio House and 33-member Ohio Senate. Plus, the case featured simpler state redistricting policy that the court needed to effectuate. *Id.* at *10 (finding that relevant state law "include[d] the following requirements to which [the court had to] adhere: each district must (1) be compact and contiguous, (2) represent a community of interest, and (3) use county lines as the district boundary"). Surely, here given the number of interested parties and the complexities of Article XI of the Ohio Constitution, even greater process should be required to ensure the proper resolution of any malapportionment.

This has been typical for federal courts that have been called on to draw district plans as a result of political impasse in prior redistricting cycles. *See Essex v. Kobach*, 874 F. Supp. 2d 1069, 1078-79 (D. Kan. 2012) (resolving impasse-based malapportionment claim in Kansas by implementing federal-court drawn maps with the help of a technical advisor after considering evidence, submissions, and argument from original parties and intervenors); *Favors v. Cuomo*, No. 11-CV-05632-RR-GEL, 2012 WL 928223, 2012 WL 928216 (E.D.N.Y. Mar. 19, 2012) (resolving impasse-based malapportionment claim in New York by implementing court drawn maps after appointing a technical advisor and delegating map-drawing to a magistrate judge who considered 26 plans from parties and nonparties, held a public hearing, and submitted a report and

recommendation to the three judge panel); *Colleton County Council v. McConnell*, 201 F. Supp. 2d 618, 625-46 (D.S.C. 2002) (resolving impasse-based malapportionment claim in South Carolina by implementing court drawn maps after appointing a technical advisor, considering voluminous evidence, and fact and expert testimony); *Baumgart v. Wendelberger*, No. 01-CV-00121, 2002 WL 34127471, at *2-8 (E.D. Wis. May 30, 2002), *amended* 2002 WL 34127473 (E.D. Wis. July 11, 2002) (resolving impasse-based malapportionment claim in Wisconsin by implementing court drawn maps after a trial on the merits that involved the consideration of 16 submitted plans and expert testimony, among other things); *Balderas v. Texas*, No. 01-CV-00158, 2001 WL 36403750, at *2-6 (E.D. Tex. Nov. 14, 2001) (resolving impasse-based malapportionment claim in Texas by implementing court drawn plan after conducting a trial on the merits, hearing testimony, taking fact and expert evidence, and considering post-trial briefs).

The common thread throughout these cases is the recognition by three judge panels that an intensive and robust process is needed to resolve impasse-based malapportionment claims. A motion for preliminary injunction does not offer sufficient opportunity for all interested parties to be heard or for the Court to have the benefit of a full factual record. Further, none of the courts that have in recent decades stepped in to adopt districts as a result of impasse have accepted maps previously rejected by a state's highest court, much less accepted maps deemed unconstitutional by that court, by preliminary injunction or otherwise. Nor has there been sufficient notice and a full opportunity for the parties to present their cases necessary for converting the preliminary injunction hearing to a trial on the merits. *See Univ. of Tex. v. Camenisch*, 451 U.S. at 395; *U.S. v Owens*, 54 F.3d 271, 277 (6th Cir. 1995).

The Gonidakis Plaintiffs have presented no evidence that elections officials in Ohio are preparing to hold elections using unconstitutional districts. On the contrary, Defendant LaRose's

recent Directive 2022-31 informed all county board of election members, directors, and deputy directors that no Ohio House or Senate elections will appear on the May 3, 2022 ballot given the Ohio Supreme Court's invalidation of the unconstitutional February 24 Plan. (*See* ECF 97 at PageID #1599). Further, all decisions made by county board of elections to certify or reject candidate petitions have been rendered null and void. (*Id.* at PageID #1600). This directive obviates the need for any preliminary relief at this time, especially given the ongoing mapping efforts of the Ohio Redistricting Commission. If this case becomes ripe, this Court should establish a case schedule that allows for the robust development and interrogation of evidence by all interested parties at a merits trial and a resolution consistent with all applicable state and federal law.

CONCLUSION

This Court should deny the Gonidakis Plaintiffs' second amended motion for a preliminary injunction.

Dated March 25, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 25, 2022, I electronically filed the foregoing document with the Clerk of the Court which will serve all attorneys of record.

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