

IN THE SUPREME COURT OF OHIO

**LEAGUE OF WOMEN VOTERS OF  
OHIO, et al.,**

*Petitioners,*

v.

**OHIO REDISTRICTING COMMISSION,  
et al.,**

*Respondents.*

**Case No. 2022-0303**

**Original Action Filed Pursuant to  
Ohio Const., Art. XIX**

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**PETITIONERS' APPLICATION FOR DISMISSAL WITHOUT PREJUDICE**

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Pursuant to S.Ct.Prac.R. 4.05, Petitioners respectfully apply for dismissal of this original action without prejudice. *See generally, e.g., Sateren v. Sateren*, 74 Ohio St.3d 1452, 656 N.E.2d 947 (1995). The reason for this dismissal is that Petitioners no longer seek to pursue the relief requested in their Complaint. In lieu of the continued turmoil brought about by cycles of redrawn maps and ensuing litigation, Petitioners accede to the status quo of the March 2, 2022 Plan. That plan will provide Ohio voters with the certainty they deserve for the 2024 election cycle.

### **BACKGROUND**

On March 22, 2022, Petitioners filed this original action, seeking a declaration that a congressional district plan enacted by the Ohio Redistricting Commission on March 2, 2022 was invalid for failure to comply with Article XIX of the Ohio Constitution, as well as specified injunctive relief to require the Commission and/or the Ohio General Assembly to enact a revised, valid plan in time for the 2024 congressional election cycle.<sup>1</sup> Following submissions of evidence and briefing, on July 19, 2022, this Court issued an order requiring the General Assembly to pass a new congressional district plan that would comply with Article XIX within 30 days. In the event that the General Assembly failed to comply, the Court's order required the Commission to adopt a constitutional plan within a further 30 days. *Neiman v. LaRose*, 169 Ohio St.3d 565, 2022-Ohio-2471, 207 N.E. 3d 607, ¶ 65. Neither the General Assembly nor the Commission passed a plan.

On October 14, 2022—87 days after this Court's order—Respondents filed a petition for a writ of certiorari to the Supreme Court of the United States, in an action styled as *Huffman v. Neiman*. On June 30, 2023, the U.S. Supreme Court issued a grant, vacate, and remand, or

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<sup>1</sup> This Court has consolidated the instant action with *Neiman v. LaRose*, Supreme Court Case No. 2022-0298.

“GVR,” order. That order granted Respondents’ petition for a writ of certiorari, vacated without opinion this Court’s July 19, 2022 order, and remanded the case to this Court “for further consideration in light of *Moore v. Harper*, 600 U.S. \_\_\_ (2023).” On August 23, this Court instructed the parties to file “simultaneous briefs on the impact of *Huffman v. Neiman* . . . and what further proceedings this court should hold.”

### REASONS FOR REQUESTING DISMISSAL

While not a ruling on the merits, the GVR order does vacate this Court’s July 19, 2022 decision. See *In re Whirlpool Corp. Front-Loading Washer Prods. Liab. Litig.*, 722 F.3d 838, 845 (6th Cir. 2013) (citing *Tyler v. Cain*, 533 U.S. 656, 666 n.6 (2001)). Nor is it an “invitation to reverse.” *Id.* (internal citation omitted). See also *Lawrence on Behalf of Lawrence v. Chater*, 516 U.S. 163, 167 (1996) (“a GVR order conserves the scarce resources of this Court . . . [and] assists this Court by procuring the benefit of the lower court’s insight *before we rule on the merits*”) (emphasis added). Petitioners maintain that this action remains meritorious as it pertains to the 2024 congressional election cycle. This action would also remain timely for that cycle, if Petitioners elected to continue it. See *State ex rel. DeMora v. LaRose*, \_\_\_ N.E. 3d \_\_\_, 2022-Ohio-2173, ¶ 42 (“*ordinarily*, courts should not grant injunctive relief altering election rules *close to an election*”) (emphasis added).

However, in light of the GVR order vacating the July 19, 2022 decision, Petitioners must consider what is in the best interests of Ohio voters going forward. Litigation regarding redistricting plans is often a protracted process, and in this case has already required two rounds of decisions by this Court. See *Adams v. DeWine*, 167 Ohio St. 3d 499, 2022-Ohio-89, 195 N.E.3d 74; *Neiman v. LaRose*, 166 Ohio St. 3d 1452, 2022-Ohio-1016; 184 N.E.3d 138. Meanwhile, in contemporaneous challenges to the Commission’s General Assembly district

plans, this Court *five times* considered and invalidated district plans for failure to comply with Article XI of the Ohio Constitution. See *League of Women Voters of Ohio v. Ohio Redistricting Comm'n*, Supreme Court Case No. 2021-1193. The stalemate leading up to the 2022 election cycle ultimately led to a federal court's decision to impose, for that cycle, a General Assembly district plan that this Court had already struck as unconstitutional. See *Gonidakis v. LaRose*, 599 F. Supp. 3d 642 (S.D. Ohio 2022). As of now, Ohio still has no valid General Assembly district plan for the 2024 election cycle.

As at least three justices of this Court have already observed expressly, the March 2, 2022 plan was enacted in a manner that would leave it in force through the 2024 congressional election cycle. *Neiman*, 2022-Ohio-2471, ¶ 79 (Kennedy and DeWine, JJ., dissenting) (“These cases are about an election that will not be held until 2024.”); *id.* ¶ 97 (“We would hold that . . . that plan should apply to the 2024 primary and general election cycle”); *id.* ¶ 98 (Fischer, J., dissenting) (“I fully join the other dissenting opinion.”). As a result of the U.S. Supreme Court's GVR order, the July 19, 2022 order from this Court stands vacated, leaving the March 2, 2022 plan currently operative for the 2024 cycle. Petitioners have no desire to launch another round of maps and challenges, given the recent history of map-drawing in Ohio.

To leave in place that March 2, 2022 plan through the 2024 cycle offers Ohio voters much-needed certainty. Ohioans have borne the considerable costs and frustration of years of districting disputes, with each round of map-drawing and litigation generating additional confusion and concern about the fairness of their representation. After nearly two years of diligently pursuing this litigation, Petitioners have decided that it is not presently in the state's best interests to continue pursuing relief in this manner. Dismissal and preservation of the status quo under the March 2, 2022 map will bring an assured resolution to congressional districting for

the upcoming cycle, and will avoid imposing any additional attendant costs and burdens of litigation upon Petitioners—and all other Ohioans, whose interests Petitioners seek to represent. Accordingly, Petitioners no longer wish to press their claims in this action, but instead seek dismissal so as to leave the March 2, 2022 map intact.

This application is for dismissal without prejudice. Lack of prejudice or preclusive effect is consistent with, and indeed implied by, the U.S. Supreme Court’s GVR order. *See Simpson v. Motorists Mut. Ins. Co.*, 494 F.2d 850, 854–55 (7th Cir. 1974), *cert. denied*, 419 U.S. 901 (1974) (extent of insurance policy coverage could be re-litigated after initial judgment had been remanded with instructions to dismiss on ground that requisite jurisdictional amount had not been met); *State v. Baron*, 156 Ohio App. 3d 241, 249, 2004-Ohio-747, 805 N.E.2d 173, ¶ 18 (“It is well established that when a judgment has been vacated, reversed, or set aside on appeal, it is thereby deprived of all conclusive effect, both as res judicata and as collateral estoppel.”) (internal citations omitted); *see also GEICO Indem. Co. v. Aug.*, \_\_\_ N.E. 3d \_\_\_, 2023-Ohio-1196, ¶¶ 20–21 (10th Dist.).

September 5, 2023

Respectfully submitted,

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I, Freda J. Levenson, hereby certify that on this 5th day of September 2023, I caused a true and correct copy of the foregoing to be served by email upon the counsel below:

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