

IN THE SUPREME COURT OF OHIO

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

**STATEMENT OF JOINDER AND OPPOSITION TO MOTION TO DISMISS
OF PETITIONERS OHIO ORGANIZING COLLABORATIVE ET AL.**

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STATEMENT OF JOINDER

Respondent McColley and LaRe's motion to dismiss seeks to relitigate issues long decided and to upend this case in the remedial stage. It is a retread of failed arguments in hopes that the Court will be more receptive this time around. At its root, it asks the Court to join the Ohio Redistricting Commission in abandoning constitutional obligations to the people of Ohio and to leave voters without recourse against extreme gerrymandering. The Commission has long defied its duty to produce maps that correspond to the statewide preferences of Ohioans. The Court previously stood firm and provided a proper and necessary check on the Commission's brazen overreach. Ruling in Respondents' favor now would write Section 6(B) of Article XI out of the Ohio Constitution and greenlight political abuses that undermine principles of representative democracy.

This Court should deny the motion to dismiss filed by respondents McColley and LaRe for all the reasons stated in the Opposition to Respondents' Motion to Dismiss and Vacate filed by Petitioners the League of Women Voters, et al. in Case No. 2021-1193, and for all the reasons stated in the Response to Respondents McColley and LaRe's Motion to Dismiss and Vacate filed by Petitioners Bria Bennett, et al. in Case No. 2021-1198. Petitioners the Ohio Organizing Collaborative, et al. ("the OOC petitioners") join and incorporate the League's and Bennett's opposition and response to the motion to dismiss in full. The OOC petitioners write separately to bring the dire consequences of any order granting the motion to the Court's attention.

ARGUMENT

Granting the motion to dismiss and vacating all prior orders and opinions would have extraordinary and potentially unintended consequences for the parties, voters, and candidates. The validity of the September 2023 General Assembly district plan depends entirely on the validity of the May 25, 2022 order directing the Commission to reconvene and enact a new plan. If the May 25, 2022 order were invalid for any reason, then the Commission would have had no legitimate reason or constitutional basis to reconvene and enact a new plan this year. This is mutually assured destruction: any showing that the *Court* lacked jurisdiction or authority to order the Commission to enact a new plan would prove that the *Commission* also lacked jurisdiction or authority to enact such a plan and that its new plan is invalid.

Article XI of the Ohio Constitution provides for four, and only four, possible bases for the Commission to convene. In relevant part, the Ohio Constitution provides that “the governor shall convene *only* in a year ending in one, *except as provided* in Sections 8 and 9 of this article and in Section 1 and 3 of Article XIX of this constitution * * *” Ohio Constitution, Article XI, Section 1(C) (emphasis added). Thus, the Commission may convene in the following circumstances:

1. A year ending in one. *Id.*
2. After a four-year General Assembly district plan adopted under Section 8(C)(1)(a) ceases to be effective and not earlier than July 1 of the year following the year in which the plan ceased to be effective. *See* Ohio Constitution, Article XI, Section 8(D).
3. After the Court exercises its jurisdiction and remedial authority under Article XI, Section 9. *See* Ohio Constitution, Article XI, Section 9(B).
4. As part of the process for drawing Ohio’s congressional districts. *See* Ohio Constitution, Article XIX, Sections 1 and 3.

Under the plain language of Article XI, the Commission could convene in September 2023 if, and only if, this Court validly exercised its jurisdiction under Section 9(B) when it issued its May 25, 2022 order. This year does not end in one. The plans that the Commission previously adopted in 2021 and 2022 did not cease to be effective under Section 8 because they were never effective, much less were they effective for two house elections as Section 8 contemplates, because this Court invalidated all of them. And the Commission had no reason to convene under Article XIX of the Ohio Constitution either. Moreover, Article XI automatically disbands the Commission once a General Assembly district plan has been adopted. *See* Ohio Constitution, Article XI, Section 1(C) (“Four weeks after the adoption of a general assembly district plan or a congressional district plan, whichever is later, the commission shall be automatically dissolved.”). Thus, if the Court lacked authority to direct the Commission to convene pursuant to Section 9(B), the Commission would have dissolved in 2021. It could not convene again unless and until one of the four events described in Article XI occurred.

Should the Court vacate or cast doubt on the validity of its prior orders, such an action would open the door to a federal malapportionment challenge in 2024 on the ground that Ohio has no valid district plan. As the Court is aware, the General Assembly district plan used in 2022 is no longer in effect. *See Gonidakis v. LaRose*, S.D. Ohio Case No. 2:22-cv-0773, 2022 WL 1709146, *1 (May 27, 2022) (ordering “Secretary of State Frank LaRose to push back Ohio’s state primaries to August 2, 2022, and to implement Map 3 for this year’s elections *only*.” (emphasis in original)). And if the Court’s orders directing the Commission to reconvene under Section 9(B) of Article XI were null and void because this Court lacked jurisdiction or authority to issue them under that provision, then the Commission had no valid authority to reconvene. Some may argue that retroactively invalidating all of this Court’s orders would reinstate the

original September 2021 plan that this Court previously declared invalid, but such a ruling also would necessarily invalidate the plan that the Commission enacted in 2023, creating still further confusion about which plan is effective, if any. Certainly, nothing in Article XI would allow the Court to order use of the four-year General Assembly plan that the Commission adopted in September 2021.

In short, granting Respondents' motion to vacate this Court's prior orders would have cascading consequences and render the Commission's September 2023 plan *ultra vires*. As a result, Ohio would not have a General Assembly district plan for the 2024 election and the Ohio Constitution would provide no valid mechanism for the Commission to adopt one. The General Assembly districts would once again be malapportioned in violation of the U.S. Constitution and once again a federal court would have to step in to order the use of a plan. In the meantime, voters and candidates would not know with certainty where the district boundaries for Ohio Senate and House offices would fall. These undue hardships are yet another reason why *stare decisis*, law of the case, and other equitable considerations weigh so heavily in favor of maintaining the Court's prior precedents. See *Westfield Ins. Co. v. Galatis*, 100 Ohio St.3d 216, 2003-Ohio-5849, 797 N.E.2d 1256, ¶ 47.

CONCLUSION

This Court should deny Respondents' Motion to Dismiss and Vacate.

Dated: October 30, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Danielle L. Stewart, hereby certify that on October 30, 2023, I caused a true and correct copy of the foregoing STATEMENT OF JOINDER AND OPPOSITION TO MOTION TO DISMISS OF PETITIONERS OHIO ORGANIZING COLLABORATIVE ET AL. to be served by email upon the counsel listed below:

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