Supreme Court of Ohio Clerk of Court - Filed February 18, 2022 - Case No. 2021-1193

IN THE SUPREME COURT OF OHIO

LEAGUE OF WOMEN VOTERS OF OHIO, *et al.* ***Petitioners*,** ***v.*** **OHIO REDISTRICTING COMMISSION, *et al.*,** ***Respondents*.**	**Case No. 2021-1193** **Original Action Filed Pursuant to Ohio Const., art. XI and S.Ct.Prac. R. 1403**

PETITIONERS' MOTION TO REQUIRE RESPONDENTS TO EXPLAIN THEIR FAILURE TO COMPLY WITH THE COURT'S FEBRUARY 7, 2022 ORDER

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INTRODUCTION

Toward the conclusion of the Ohio Redistricting Commission's sole meeting, held on the eve of this Court's mandated deadline to enact a constitutionally compliant plan for the districts of the General Assembly, Governor DeWine summed up the situation:

> We have an obligation to follow the Ohio Constitution. We have an obligation to follow the Court order, whether we like it or not, whether we agree with it or not. And . . . *we have an obligation to produce a map*.

Feb. 17, 2022 Ohio Redistricting Comm'n Hrg., at 21:22, https://ohiochannel.org/video/ohio-redistricting-commission-2-17-2022-part-2 (emphasis added).[1]

The Ohio Redistricting Commission (the "Commission") was indeed obligated to obey this Court's February 7, 2022 order to enact a constitutional plan. But it did not enact a plan, nor did the majority Republican Commissioners even take any step towards doing so. Instead, the majority Commissioners devoted that single, eleventh-hour meeting to launching round after round of objections to a plan submitted by the Democratic Commissioners, before voting it down along party lines. They did not take up *any* of the other plans submitted to them, including a constitutionally compliant plan submitted by an expert for the Petitioners in *Bennett v. Ohio Redistricting Comm'n*, No. 2021-1198. Nor did they provide any explanation as to why they brazenly defied this Court's order, despite Governor DeWine's statement that they had a clear obligation to obey it.

Instead of filing a plan this morning in compliance with this Court's order, the Commission filed a "Notice of Impasse." That Notice provides only a few conclusory statements that purport to explain why the Commission failed to comply with the February 7,

[1] The aforementioned citation refers to a publicly available website link of the Ohio Redistricting Commission hearing held on February 17, 2022.

2022 order. What steps the Commission itself undertook to comply with the Court's order—and why there could be no possible plan to comply with the Constitution—remain shrouded in generalities.

In light of the Commission's *repeated* failures to enact a constitutionally compliant plan and bald refusal to abide by this Court's February 7 order, the above-captioned Petitioners respectfully request that the Court order Respondents to show cause why they failed to comply. Petitioners further request that Respondents be required to file their response by Tuesday, February 22, 2022 at 9:00 am Eastern Time, and that Petitioners be permitted to file a response three days thereafter, on February 25, 2022 at 9:00 am Eastern Time.

ARGUMENT

I. The Commission failed to adopt an Article XI-compliant plan in violation of this Court's order.

A. This Court issued a clear order directing the enactment of a constitutional plan by no later than February 17, 2022.

In the last two months, this Court invalidated the two plans enacted by the Commission on the basis that those plans failed to comply with Article XI, Sections 6(A) and 6(B) of the Ohio Constitution. *See League of Women Voters of Ohio v. Ohio Redistricting Comm'n*, Slip Opinion No. 2022-Ohio-65, ¶ 2 (January 12, 2022); *League of Women Voters of Ohio v. Ohio Redistricting Comm'n*, Slip Opinion No. 2022-Ohio-342, ¶ 3 (February 7, 2022). Pursuant to the Court's January 12 order, the Commission was directed to enact a plan that, consistent with Section 6(B), contained a distribution of seats that "closely corresponded" to the preferences of Ohio voters.

The Commission proceeded to enact a revised plan, but failed to enact a constitutional one. Accordingly, this Court invalidated the second Commission-enacted plan on February 7, 2022. At that time, it instructed the Commission to adopt a new plan "*no later than February*

17, 2022, and to file a copy of that plan with this court by 9:00 a.m. on February 18, 2022." *League of Women Voters of Ohio*, Slip Opinion No. 2022-Ohio-342, ¶ 68 (emphasis added).

B. The Republican Commission members refused to propose or consider any proposed plans before February 17.

In the ten days following that February 7 order, no Republican Commissioner submitted any General Assembly plan for the Commission's consideration. Moreover, the Commission did not even convene until the afternoon of February 17—the Court-ordered deadline to enact a plan.

The two Democratic Commissioners—Senator Vernon Sykes and House Minority Leader Allison Russo—submitted a proposed plan for the Commission's consideration on February 9. *See* Sykes/Russo Democratic Maps (Revision 01/26/2022), The Ohio Redistricting Comm'n, https://redistricting.ohio.gov/maps ("General Assembly District Plans – Commission Member Sponsors"). Senator Sykes and Leader Russo also "called on majority Commission members to immediately reconvene the Redistricting Commission and share with Democrats any map proposals they have prepared[.]" Sykes and Russo Present Democrats' State Legislative Map Proposal, The Ohio Senate, Feb. 11, 2022, https://tinyurl.com/2evnxpbp.

Having heard *nothing* from the Republican Commissioners—despite repeated requests for feedback—the Democratic Commissioners submitted a substantially similar plan that fixed minor technical issues to the Commission on February 16. *See* Sykes/Russo 2/15/21 General Assembly Maps, The Ohio Redistricting Comm'n, https://redistricting.ohio.gov/maps ("General Assembly District Plans – Commission Member Sponsors").

C. At the February 17, 2022 Commission meeting, the Republican Commissioners failed to propose any plan or explain with specificity the basis for its noncompliance with this Court's February 7, 2022 order.

At the sole Commission meeting, held on February 17, 2022, the Republican Commissioners failed to propose any plan and instead simply declared an impasse. *See* Feb. 17,

2022 Ohio Redistricting Comm'n Hrg., at 36:30, https://ohiochannel.org/video/ohio-redistricting-commission-2-17-2022-part-2. They did so notwithstanding Governor DeWine's admission that "it [wa]s a mistake for this Commission to stop and basically say that we're at an impasse," and his correct observation that an impasse was "*not an option that the law gives* [the Commission]." Jarrod Clay, Facing deadline, Ohio Redistricting Commission fails to draft new House, Senate maps, Dayton 24/7 Now (Feb. 17, 2022), https://tinyurl.com/2z3u8cdy (emphasis added).[2]

While Senate President Huffman complained that the Court did not define "corresponds closely," he did not explain why the Commission had been unable even to try to enact a more proportionate map. *See* Feb. 17, 2022 Ohio Redistricting Comm'n Hrg., at 18:50, https://ohiochannel.org/video/ohio-redistricting-commission-2-17-2022-part-2. Indeed, there was no disclosure of the steps that the Commission itself had taken, including efforts of the majority staff, to draw any plan that was compliant with the Court's February 7, 2022 order. There was no concrete explanation of any difficulty of drawing a map that more closely meets the proportionality requirement of Section 6(B). And there was no explanation as to why the Commission understood Section 6(B) sufficiently to be able to enact a revised plan on January 22, 2022 that superficially (but unsuccessfully) complied with the proportionality requirement, but now found it baffling.

[2] That same evening a group of Republican voters filed a federal lawsuit contending that the Commission's impasse requires them to vote under an outdated map, apparently in an effort to wrest control of the redistricting process from this Court. *See Gonidakis, et al. v. Ohio Redistricting Comm'n, et al.*, No. 2:22-cv-773 (S.D. Ohio).

D. At its February 17 meeting, the Commission instead focused on the alleged infirmities in the plan proposed by the Democratic Commissioners.

Instead of proposing a plan, the Commission launched an orchestrated attack on the plan formally introduced by Leader Russo—*i.e.*, the plan that she and Senator Sykes previously submitted to the Commission. Yet despite failing to raise *any* concerns in the preceding days, the Republican Commissioners used their meeting time only to take turns lodging a series of objections. The Democratic Commissioners offered to work with Republican Commissioners to address any issues. *See* Feb. 17, 2022 Ohio Redistricting Comm'n Hrg., at 33:05, 1:04:40, https://ohiochannel.org/video/ohio-redistricting-commission-2-17-2022. But the Republican Commissioners flatly refused, voted down the Democrats' proposed plan, and declared an impasse. *Id.* at 1:21:45.

E. The Notice of Impasse provides no further substantive explanation of the Commission's failure to comply with this Court's order.

This morning, on February 18, 2022, the Commission filed a Notice of Impasse instead of a revised plan. The Notice is remarkable for what it does not say. It tersely reports that "[a]mong other discussion, President Huffman stated that the Commission was at an impasse, as the Commission is unable to ascertain and determine a plan that complies with the Court's order and the Ohio Constitution." Notice of Impasse at 1. It does not state *why* it could not do so. It provides no concrete statement of any reason why a more proportionate plan could not be enacted, consistent with Section 6(B). It provides no explanation of the steps taken by the Commission or its staff to draw a compliant plan. It provides a bare conclusion, as if that were sufficient to justify the refusal to comply with this Court's order.

F. The Commission must provide an immediate explanation for its failure to comply with this Court's February 7, 2022 order.

In the ten days following this Court's order, the Commission delayed convening until the last possible moment and then only engaged in debate over a single plan that had been submitted several days prior. In particular, it failed to consider—indeed, it completely disregarded—the fully compliant plan submitted by Petitioners' expert (the "Rodden III Plan"). The Commission made no apparent effort whatsoever to adopt any plan, and did so without providing any explanation for its noncompliance with the Court's order. This blatant disregard of this Court's mandate requires an immediate explanation.

As Secretary of State LaRose stated at the meeting, time is of the essence, given the present election calendar. An expedited schedule for the Commission's explanation, and Petitioners' response, is therefore in order.

Accordingly, Petitioners respectfully request that this Court order Respondents to file by 9:00 am Eastern Time on February 22, 2022:

1. An explanation, with evidence, for their noncompliance with this Court's February 7, 2022 order. This explanation must concretely identify why a compliant plan could not be drawn, including a plan that more closely meets the proportionality requirement of Section 6(B).

2. An explanation, with evidence, of the specific reasons why the Commission did not consider or adopt the plan suggested by the Petitioners (the Rodden III Plan).

3. Their position on whether the Court can order an extension of the candidate filing deadline in order to accommodate a revised plan.

Petitioners request the opportunity to respond three days later, by 9:00 am Eastern Time on February 25, 2022.

Dated: February 18, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Motion was filed electronically and served via email upon the following, this 18th day of February, 2022:

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