

1 ***League of Women Voters of Ohio v. Ohio Redistricting Comm.***

2 **KENNEDY, J., dissenting.**

3 I dissent from today’s administrative orders setting this matter for a contempt
 4 hearing. The chief justice, acting alone, does not have the authority to reject the
 5 answers filed by respondents, the Ohio Redistricting Commission and the
 6 commission members, to the show-cause orders in these cases and order the
 7 commission members to appear in person. Rather, such orders require the assent of
 8 at least three other justices of this court. *See* Article IV, Section 2(A), Ohio
 9 Constitution.

10 Because the administrative orders are not approved by four members of the
 11 court, I dissent.

12 On January 12, 2022, a divided court held that the General Assembly-district
 13 plan adopted by the commission on September 16, 2021, violated Article XI,
 14 Sections 6(A) and 6(B) of the Ohio Constitution, and it directed the commission to
 15 adopt a new plan within ten days. *League of Women Voters of Ohio v. Ohio*
 16 *Redistricting Comm.*, __ Ohio St.3d __, 2022-Ohio-65, __ N.E.3d __. The
 17 commission adopted a second plan on January 22, 2022, but a majority of this court

1 invalidated it, holding that it too violated Sections 6(A) and 6(B). *League of Women*
2 *Voters of Ohio v. Ohio Redistricting Comm.*, __ Ohio St.3d __, 2022-Ohio-342, __
3 N.E.3d __. The majority ordered the commission to adopt a new plan by February
4 17, 2022, and to file it with this court by 9:00 a.m. on February 18, 2022. *Id.* at ¶ 68.
5 Petitioners were then given three days after the filing of the maps to present
6 objections. *Id.* at ¶ 69.

7 The commission reconvened, but it reached an impasse and adopted no new
8 plan. It then filed a “Notice of Impasse” with this court on February 18, 2022. On
9 that same day, the petitioners filed motions in the three cases before the court.

10 Petitioners in case No. 2021-1193¹ requested that this court “order
11 Respondents to show cause why they failed to comply” with the court’s February 7,
12 2022 order and further requested that “Respondents be required to file their response
13 by Tuesday, February 22, 2022 at 9:00 am Eastern Time.” Petitioners in case No.
14 2021-1198² asked this court to “order Respondents to show cause with a detailed

1. Petitioners in case No. 2021-1193 are the League of Women Voters of Ohio, the A. Philip Randolph Institute of Ohio, and six individual voters: Tom Harry, Tracy Beavers, Valerie Lee, Iris Meltzer, Sherry Rose, and Bonnie Bishop.

2. Petitioners in case No. 2021-1198 are ten individual voters: Bria Bennett, Regina C. Adams, Kathleen M. Brinkman, Martha Clark, Susanne L. Dyke, Carrie Kubicki, Meryl Neiman, Holly Oyster, Constance Rubin, and Everett Totty.

1 written response and evidence, no later than 9:00 a.m. on Tuesday, February 22,
2 2022, as to why, given the Commission’s assertion that it was unable to pass a
3 constitutionally compliant plan.” (Footnote deleted.) In addition, petitioners in
4 2021-1210³ asked this court to “order the Commission, and all of its members, to
5 show cause by 9:00 am on February 22, 2022, as to why they should not be held in
6 contempt of court, with appropriate remedies to follow.”

7 Without calling for a vote of the court, the chief justice, acting alone, issued
8 an administrative order in each case, stating:

9
10 This cause originated in this court upon the filing of a complaint
11 invoking this court’s original jurisdiction pursuant to Article XI,
12 Section 9 of the Ohio Constitution.

13 It is ordered by the court, sua sponte, that respondents show
14 cause by filing a response with the clerk of this court no later than 12:00
15 p.m. on February 23, 2022, why respondents should not be found in

3. Petitioners in case No. 2021-1210 are the Ohio Organizing Collaborative, the Ohio chapter of the Council on American-Islamic Relations, the Ohio Environmental Council, and six individual voters: Pierrette Talley, Samuel Gresham Jr., Ahmad Aboukar, Mikayla Lee, Prentiss Haney, and Crystal Bryant.

1 contempt for failure to comply with this court’s February 7, 2022 order.

2 The clerk shall refuse to file a response that is untimely.

3

4 __ Ohio St.3d __, 2022-Ohio-498, __ N.E.3d __.

5 The commission filed a timely response to the show-cause orders, as did each
6 of the commission members. The commission argued that none of its members
7 should be held in contempt, and it asked this court to “withhold judgment on any
8 finding of contempt, allowing the Commission a few additional days to attempt to
9 adopt a compliant General-Assembly plan, file any such plan with the Court, and
10 allowing the Court to consider any objections and responses thereto.”

11 The following morning, February 24—again without calling for a vote of the
12 court—the chief justice issued another administrative order in each case, this time
13 requiring the members of the commission (the governor of Ohio, the secretary of
14 state, the auditor of state, the president of the Ohio Senate, the speaker of the Ohio
15 House of Representatives, the minority leader of the Ohio Senate, and the minority
16 leader of the Ohio House of Representatives) to “appear in person in this court for a
17 hearing on March 1, 2022 at 10:00 a.m.” __ Ohio St.3d __, 2022-Ohio-518, __
18 N.E.3d __.

1 Nothing in the Ohio Constitution grants the chief justice of this court authority
2 to rule on motions on behalf of the full court. Rather, Article IV, Section 2(A) states:
3 “The supreme court shall, until otherwise provided by law, consist of seven judges,
4 who shall be known as the chief justice and justices.” It further provides that “[a]
5 majority of the supreme court shall be necessary to constitute a quorum or to render
6 a judgment.” Article IV, Section 2(A), Ohio Constitution.

7 Nonetheless, we have delegated authority to the chief justice to issue
8 administrative orders in certain instances. For example, we have allowed the chief
9 justice to grant an appellant’s application for the dismissal of a case and to issue an
10 interim order suspending an attorney for committing a felony. However, we have
11 never, other than in attorney-discipline cases, authorized the chief justice to make a
12 determination on behalf of the court that there is a prima facie case that a party is in
13 contempt of one of our orders and that it must show cause why it is not. Our
14 precedent reveals that in cases other than those involving attorney discipline, a
15 motion to show cause why a party is not in contempt involves the vote of the entire
16 court. *See, e.g., McDougald v. Greene*, 157 Ohio St.3d 1468, 2019-Ohio-4419, 133
17 N.E.3d 543 (the respondent was ordered to show cause within 14 days why he should
18 not be held in contempt for failing to provide the records under the terms of the

1 preemptory writ or produce evidence that the records did not exist); *State ex rel.*
2 *Stuart v. Greene*, 157 Ohio St.3d 1413, 2019-Ohio-3797, 131 N.E.3d 941 (sua
3 sponte, the respondent was ordered to show cause within five days why he should
4 not be held in contempt); *State ex rel. Doner v. Logan*, 133 Ohio St.3d 1431, 2012-
5 Ohio-4958, 977 N.E.2d 663 (ordering a show-cause hearing).

6 The chief justice, acting alone, has made a prima facie finding of contempt
7 and set the matter for a hearing. This is not authorized by the Constitution, our rules,
8 or the precedent of this court. I therefore dissent from the administrative orders
9 issued in these cases today.

10

11