

**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

Judge Algenon L. Marbley

Magistrate Judge Elizabeth Preston Deavers

**OPPOSITION OF THE OHIO ORGANIZING COLLABORATIVE, ET AL.
TO PLAINTIFFS' EMERGENCY MOTION TO VACATE STAY**

INTRODUCTION

The OOC Petitioners¹ oppose Plaintiffs' emergency motion to vacate this Court's stay of proceedings. Contrary to their arguments, a stay is necessary and warranted to avoid interference with state redistricting proceedings.

Plaintiffs first filed suit to cause this Court to force implementation of a general assembly district plan that the Supreme Court of Ohio had already declared unconstitutional. They did so because they claimed the Ohio Redistricting Commission had reached an impasse on February 18, 2022. It had not. It passed a third district plan on February 24, 2022.

Now, the Supreme Court of Ohio has again declared the Commission's general assembly district plan unconstitutional and ordered the Commission to draft a new one, this time by March 24, 2022. The Governor has already signaled that the Commission intends to meet this deadline, and the Commission is taking steps toward that end. Thus, the same circumstances that previously justified a stay of proceedings continue to justify a stay.

Under established principles of federal deference to state redistricting processes, this Court should not move forward with litigation on the merits at this time. *Grove v. Emison*, 507 U.S. 25 (1993). This is true even if the Court notifies the chief judge of this circuit of this case under 28 U.S.C. § 2284(b)(1)—which is not necessary. Ohio has time to conduct its elections under a constitutional plan, and neither this Court nor a three-judge panel could order litigation on the merits until after the Commission enacts a new plan in accordance with the Ohio Supreme Court's recent ruling.

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 No. 54) The OOC Petitioners have filed their complaint in intervention. (ECF No. 57)

BACKGROUND

As the Court will recall, this case began when Plaintiffs claimed that legislative redistricting in the State of Ohio had reached an “impasse” warranting federal intervention. Specifically, Plaintiffs asked this Court to order the State to adopt a plan that the Ohio Supreme Court had already rejected. Complaint ¶ 4 (ECF No. 1).

Plaintiffs’ report of the Ohio Redistricting Commission’s death was greatly exaggerated. On February 24, 2022 – six days after Plaintiffs filed their Complaint – the Ohio Redistricting Commission adopted new state House and Senate maps by a 4-3 vote. The OOC Petitioners and other intervenors here filed objections to the February 24 plan, arguing that it was unconstitutional under Ohio law. *See League of Women Voters of Ohio v. Ohio Redistricting Comm.*, Slip Opinion No. 2022-Ohio-789, 2022 WL 803033, ¶¶ 13-22 (Mar. 16, 2022).

This Court first ordered the parties to appear for a preliminary hearing on March 7 (ECF No. 45), then properly continued the hearing to March 14 because the Court would be required to “stay its hand” if the state process was ongoing (ECF No. 55 at 2, brackets and quotation marks omitted). The Court then stayed this matter while the Supreme Court of Ohio reviewed the constitutionality of the third plan enacted by the Ohio Redistricting Commission. (ECF No. 68).

On March 16, the Ohio Supreme Court declared that 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 Supreme Court; responses, three days after that. *See League of Women Voters of Ohio v. Ohio Redistricting Comm.*, Slip Opinion No. 2022-Ohio-789, 2022 WL 803033, ¶¶ 44-46 (Mar. 16, 2022).

Preliminary reports show that the Commission will reconvene. Yesterday, Governor DeWine—a member of the Commission—told reporters, “We have to look at this decision, and

we have to follow it.”² He suggested that the Commission could instruct the two parties’ separate mapmakers to work together to create a constitutionally-compliant map.³ And just today, the Commission announced a meeting “for organizational purposes” to take place on March 19, 2022.⁴

Echoing their previous rush into court upon invalidation of the Commission’s February 24 plan, however, plaintiffs immediately filed their emergency motion to vacate the stay and to appoint a three-judge panel. (ECF No. 73). This Court ordered a response. (ECF No. 74).

RESPONSE

As this Court recognized (ECF No. 55), the Supreme Court’s decision in *Grove v. Emison* requires federal judges “to defer consideration of disputes involving redistricting where the State, through its legislative or judicial branch, has begun to address that highly political task itself.” 507 U.S. 25, 33 (1993). This principle still controls. The Ohio Supreme Court, whose decisions are entitled to this Court’s full faith and credit, has ordered the Commission to enact a new plan. *See League of Women Voters of Ohio v. Ohio Redistricting Comm.*, Slip Opinion No. 2022-Ohio-789, ¶¶ 44-46. This means that, as a matter of law, Ohio’s redistricting process has not concluded and this Court may not interfere with that process. *See Grove*, 507 U.S. at 34-36.

Plaintiffs argue that “*Grove* requires a stay only absent evidence that state branches will fail timely to perform reapportionment.” (ECF No. 73 at 2) (brackets, quotation marks, and ellipsis omitted). Plaintiffs’ argument is incorrect for two reasons. First, while evidently conceding that

² <https://twitter.com/JoshRultNews/status/1504499859285594119>; *see also* <https://www.cleveland.com/news/2022/03/gov-mike-dewines-suggestion-to-break-ohios-redistricting-impasse-have-mapmakers-collaborate-on-bipartisan-plan.html>.

³ *See id.*

⁴ *See* <https://redistricting.ohio.gov/meetings>.

they bear the burden of presenting evidence that the Ohio Supreme Court and Commission will fail in their duty, they have presented no such evidence. To the contrary, the Ohio Supreme Court has ordered that a new plan be produced.

Second, Plaintiffs argue that “there is no time to implement a new map before the election.” (*Id.*) But Plaintiffs are incorrect. The Secretary of State has acknowledged in a letter that the Ohio Supreme Court’s decision “effectively causes the primary election” for general assembly districts to be conducted on a later date.⁵ He reiterated this in his filing today. (ECF No. 76 at 2) (“At present, the primary election for those districts will have to be held at a later date.”). Thus, while the primary date is currently unknown, the Ohio Supreme Court’s decision ensures that it *will not* take place on May 3. Moving the primary date will afford sufficient time to satisfy the pre-election deadlines as well, as these are set relative to the primary itself. For example, ballots for primary elections must be sent to eligible uniformed services and overseas voters not later than 45 days before the election. 52 U.S.C. § 20302(a)(8). Although this deadline will pass on March 19 for the May 3 primary date (*see* ECF No. 71 at 3), there is ample time for the state court remedial process to run its course as long as the primary is rescheduled for June or later.⁶

In brief, the OOC Petitioners hope and expect that the Commission’s next plan will comply with the Ohio Constitution, thus mooting these proceedings. If it does not, and petitioners in the Ohio Supreme Court object to the new plan, then the Ohio proceedings would not be complete until about early to mid-April. Even then, sufficient time would remain for the

⁵ <https://twitter.com/JoshRultNews/status/1504639350428028929/photo/1>; *see also* <https://www.the-daily-record.com/story/news/2022/03/17/ohio-redistricting-what-court-decision-means-may-3-primary/7073394001>.

⁶ The OOC Petitioners note that at least 18 states will hold primary elections in August or September 2022. *See 2022 State Primary Election Dates and Filing Deadlines*, National Conference of State Legislatures (Feb. 24, 2022), <https://www.ncsl.org/research/elections-and-campaigns/2022-state-primary-election-dates-and-filing-deadlines.aspx>.

federal court to convene, receive expedited briefing, and craft a remedy in time to conduct primary elections in Ohio. There is no emergency.

In addition to asking this Court to vacate the stay, Plaintiffs also ask this Court to “appoint” a three-judge panel under 28 U.S.C. 2284. (ECF No. 73 at 2). Presumably Plaintiffs mean that this Court should “notify the chief judge of the circuit” of their request for a three-judge panel, who would then designate two other judges to serve on the panel. 28 U.S.C. 2284(b)(1). There is no emergency and no need for such notification at this time, because the Ohio state redistricting proceedings have not concluded. This Court’s prior reasoning in resetting the Local Rule 65.1 conference still holds: “[t]he ongoing nature of statue judicial processes implicates the ripeness of Plaintiffs’ case and thus blunts the immediacy of their panel request.” (ECF No. 55 at 2). Even if this Court notified the chief judge and a three-judge panel were convened, the panel would have nothing to do but defer to state proceedings until their completion.

CONCLUSION

For the reasons set forth above, the OOC Petitioners respectfully request that this Court deny plaintiffs’ emergency motion and continue the stay while general assembly redistricting proceedings continue in the State of Ohio.

Dated: March 18, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing was served upon all counsel of record by means of the Court's electronic filing system on March 18, 2022.

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