UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Michael Gonidakis, *et al.*,	:	
	:	Case No. 2:22-cv-773
Plaintiffs,	:	
	:	
v.	:	Chief Judge Algenon L. Marbley
	:	
Frank LaRose,	:	Circuit Judge Amul R. Thapar
	:	
Defendant.	:	Judge Benjamin J. Beaton
	:	

PLAINTIFFS' REPLY IN SUPPORT OF
MOTION FOR PRELIMINARY INJUNCTION AND DECLARATORY RELIEF

Secretary LaRose removed state legislative offices from the May 3, 2022, primary election ballot. Yet Plaintiffs are entitled to vote for candidates for these offices. Because Plaintiffs' constitutional rights are being denied, this Court should order Secretary LaRose to carry out the Third Plan or, in the alternative, the Fourth Plan, assuming that the Fourth Plan is passed by the Redistricting Commission and feasible to implement without bifurcating the May 3, 2022 primary election. Plaintiffs are also unopposed to moving the necessary statutory deadlines should this Court determine it is in the public interest to do so.

I. BACKGROUND

A. Maintaining the Third Plan avoids a bifurcated May 3, 2022 primary election.

Secretary LaRose directed the county boards of elections to begin implementing the Third Plan on February 26, 2022. (Affidavit of Amanda Grandjean ("Grandjean Aff."), ECF No. 88-1, ¶ 15). As a result, county boards of elections started to print ballots and program voter registration and tabulating systems, among other things. (*See* Directive 2022-30, ECF No. 88-1, PageID #

1315). This work was "paused" when the Ohio Supreme Court—nearly three weeks later—invalidated the Third Plan. (Grandjean Aff., ECF No. 88-1, ¶ 20).

Secretary LaRose then conveyed that he faces two choices: either the Third Plan goes forward or there must be, at the very least, a bifurcated primary election. (LaRose Response, ECF No. 88, PageID # 1312). That is because, due to the short amount of time remaining before the election, ballots either include the information from the Third Plan or the information for state legislative races must be removed entirely. (*Id.*). And if the information is removed, there is no time to print new ballots for a Fourth Plan, creating two primaries. (Notice, ECF No. 71, PageID # 1039).

On March 23, 2022, after indicating that there was no more time to move forward with all races on one ballot, Secretary LaRose issued a new directive. (LaRose Notice, ECF No. 97). Directive 2022-31 removed state legislative races from the ballot. (*Id.*). This directive made it easier for the local boards of elections to later issue supplemental ballots for state legislative races. As a result, it is possible to conduct the May 3, 2022, primary election with the Third Plan, and possibly the Fourth Plan, depending on Secretary LaRose's required submission to this Court today. (*See* ECF No. 104).

B. The Fourth Plan will be challenged, and the Ohio Supreme Court will not decide the issue until next month.

The Redistricting Commission is working on a Fourth Plan, and it must be finalized by today, March 28, 2022. But even if the Redistricting Commission adopts a Fourth Plan, there are several barriers to implementation. As outlined by the Ohio Supreme Court's most recent opinion, the Fourth Plan must be filed with the Court on March 29, 2022. *See League of Women Voters of Ohio v. Ohio Redistricting Comm.*, 2022-Ohio-789, ¶ 45. This then triggers three days for objections, and three more days for responses. *Id.* at ¶ 46. With this briefing schedule, the

objections will not be decisional until April 4, just a day before the primary election ballots must be mailed for early voting. The Ohio Supreme Court has taken anywhere from four months to two weeks to rule on the various plans. A similar delay would, optimistically, mean a decision on or around April 18, 2022, about two weeks before the currently scheduled primary election.

The Fourth Plan will be challenged. All three plans have been challenged thus far. And when offered an opportunity to decline to challenge the Fourth Plan at the temporary restraining order hearing, counsel for the ACLU declined to do so.

According to Secretary LaRose, the Third Plan is still a viable option, and therefore ask this Court to order the Third Plan for the primary election and general election for 2022. Plaintiffs do not object to the use of the Fourth Plan, should it be adopted and be feasible. However, if the Fourth Plan is ordered by this court—with or without moving the start of in-person absentee voting—Plaintiffs would ask that the order require the Fourth Plan to be used for the May 3, 2022 Primary and the 2022 general election regardless of what the Ohio Supreme Court rules regarding what plan is to be used for future General Assembly elections.

II. LAW AND ARGUMENT

Because Plaintiffs' constitutional right to vote will be violated, this Court should order that Secretary LaRose carry out the Third Plan (or Fourth Plan) for the primary election and general election for 2022.[1]

A. Plaintiffs seek the implementation of the Third Plan to maintain the status quo of the May 3, 2022, primary election.

Plaintiffs seek the maintenance of a primary election for state legislative office. *C.K. v. Oakland Cmty. Health Network*, No. 20-13301, 2021 U.S. Dist. LEXIS 161615, at *36 (E.D. Mich.

[1] Plaintiffs reassert the same arguments in their motion, but because of the compressed schedule, combined with the Opposing Parties' decision to submit multiple opposition briefs instead of one, Plaintiffs selectively respond for the efficiency of this Court.

Aug. 25, 2021) (citing *United Food & Commer. Workers Union, Local 1099 v. Sw. Ohio Reg'l Transit Auth.*, 163 F.3d 341, 348 (6th Cir. 1998)); *NACCO Materials Handling Grp., Inc. v. Toyota Materials Handling USA, Inc.*, 246 F. App'x 929, 935 n.2 (6th Cir. 2007).

The status quo is that state law requires a primary election on May 3, 2022, and the Third Plan is the surest way to make sure state legislative races are on that primary ballot. Secretary LaRose directed the county boards of elections to begin implementing the Third Plan. (Affidavit of Amanda Grandjean ("Grandjean Aff."), ECF No. 88-1, ¶ 15). Despite the recent pause and then potential to use supplemental ballots, it remains the easiest plan to implement; however, Secretary LaRose may also indicate that the Fourth Plan is a viable option. (*See* ECF No. 104).

The Opposing Parties make two counters: (1) that a primary election will eventually be held and (2) a better preservation of the status quo is to move the primary election entirely. (*See, e.g.*, ECF No. 107, PageID # 2537). A primary election for state legislative offices does not currently exist. (LaRose Notice, ECF No. 97). Secretary LaRose took those races off the ballot. (*Id.*). And while it is possible the primary election, either entirely or for state legislative offices, could be moved by the General Assembly, that has not happened. As a result, there is no lawful way for a state legislative primary election to take place without action by this Court. This Court should find no comfort in the Opposing Parties' assurances that delay is the only harm at issue: six months without districts for state legislative office says otherwise.

As to moving the whole primary election or even just the state legislative races as advocated by the Opposing Parties, this is neither the status quo nor without disruption. (*See* ECF No. 107, PageID # 2537). Plaintiffs ask for this relief in the alternative, however, because it is better than having no primary election for state legislative offices.

For these reasons, Plaintiffs ask for the Third Plan (or the Fourth Plan), or in the alternative, moving statutory election deadlines.

B. Plaintiffs have standing.

The Bennett Petitioners continue to raise their standing objections despite bringing the same claims as Plaintiffs. (ECF No. 107, PageID # 2540). Plaintiffs, at least, have standing because they challenge their current districts, and without legislative districts they suffer an actual, concrete, particularized, and imminent harm to their right to vote and associate. In voting rights-related cases, plaintiffs have standing by identifying their specific districts impacted, the election-activity impacted, and suffering a risk that is imminent. *See, e.g.*, *Nemes v. Bensinger*, 467 F. Supp. 3d 509, 522 (W.D. Ky. 2020). While most voting cases concern malapportionment, there is no difference in the standing analysis for non-apportionment. *See Igartúa v. Obama*, 842 F.3d 149, 155 (1st Cir. 2016) (discussing *Adams v. Clinton*, 531 U.S. 941 (2000), and finding that malapportionment and non-apportionment are the same for standing purposes); *see also Adams v. Clinton*, 90 F. Supp. 2d 35, 45 (D.D.C. 2000) (dozens of Washington, D.C. residents had standing to challenge non-apportionment), *aff'd*, 531 U.S. 941.

That is true here. Secretary LaRose has removed the state legislative offices from the ballot. (ECF No. 97). Plaintiffs have expressed harm particularized to their legislative districts. (*See, e.g.*, FSC, ECF No. 86, ¶¶ 4, 72; Gonidakis Aff., ECF No. 84-1, ¶ 4, PageID # 1174). Plaintiffs have put forward evidence that they also engaged in other election activity based on the Third Plan. (Gonidakis Aff., ECF No. 84-1, ¶ 9).[2] As a result, Plaintiffs have standing to bring their claims.

[2] Mr. Gonidakis often engages in protected speech on key election issues and engages with voters. *See, e.g.*, Balmert, Jessie, *With U.S. Supreme Court decision looming, abortion access in Ohio is on the ballot*, THE COLUMBUS DISPATCH, January 18, 2022 available at https://www.dispatch.com/story/news/politics/elections/2022/01/19/election-2022-roe-v-wade-uncertainty-makes-abortion-key-primary-issue/9106039002/ (referencing Michael Gonidakis);

The Opposing Parties concede that Plaintiffs would have standing for a malapportionment claim but argue that they lack standing for their non-apportionment claim. (ECF No. 107, PageID # 2544). But this is a distinction without a difference. Just as dozens of Washington, D.C. residents had standing to challenge their non-apportionment of legislative representation, so do Plaintiffs here. *See Adams*, 90 F. Supp. 2d at 45. Moreover, agreeing with the Opposing Parties would close the federal courthouse door for all Ohioans—no primary election for state legislative offices would take place and, according to the Opposing Parties, the federal courts could not intervene. This conflicts with well-established law, and the Bennett Petitioners continued involvement here.

For these reasons, Plaintiffs have standing to bring their claims.

C. Plaintiffs are likely to succeed on the merits because their right to vote and right to associate will be denied absent relief from this Court.

Without the Third Plan (or even the Fourth Plan), Plaintiffs' right to vote will be violated, so Plaintiffs are likely to succeed on the merits *George v. Hargett*, 879 F.3d 711, 727 (6th Cir. 2018) (citing *Warf v. Bd. of Elections of Green Cty.*, 619 F.3d 553, 559 (6th Cir. 2010)); *Mich. State A. Philip Randolph Inst. v. Johnson*, 749 F. App'x 342, 363 (6th Cir. 2018) (quoting *Kusper v. Pontikes*, 414 U.S. 51, 57, 94 S. Ct. 303, 38 L. Ed. 2d 260 (1973)).

The Opposing Parties concede that not holding a primary election would violate the U.S. Constitution. (*See* ECF No. 90, PageID # 1347). So to avoid this conclusion, they invent new facts. (ECF No. 107, PageID # 2257). They claim, for example, that the "status quo is a primary election held on a later date . . . ." (*Id.*). That is not true. Secretary LaRose removed state legislative offices

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Schroeder, Kaitlin, *Ohio Judge again blocks enforcement of abortion fetal tissue disposal law*, February 2, 2022, SPRINGFIELD NEWS, available at https://www.springfieldnewssun.com/local/ohio-judge-again-blocks-enforcement-of-abortion-fetal-tissue-disposal-law/VPJ6OPTTXNCKHOYV3XJAAH24FA/ (referencing Michael Gonidakis).

from the primary election ballot. (LaRose Notice, ECF No. 97). No later date is currently scheduled. For these reasons, Plaintiffs are likely to succeed on the merits.

D. The Third Plan avoids Plaintiffs' irreparable harm—denial of the rights to vote and associate.

Implementing the Third Plan (or the Fourth Plan) secures Plaintiffs' rights to vote and associate in the May 3, 2022, primary election. *See ACLU of Ky. v. McCreary County, Ky.*, 354 F.3d 438, 445 (6th Cir. 2003); *Obama for Am. v. Husted*, 697 F.3d 423, 436 (2012) (citation omitted); *see also Williams v. Salerno*, 792 F.2d 323, 326 (2d Cir. 1986). That is the harm here, because there is not currently a primary election for state legislative offices scheduled. (*See* ECF No. 97).

The Opposing Parties claim that—at some point—there *could* be an election, so there is no harm. (*See, e.g.*, ECF No. 107, PageID # 2557). But that ignores the evidence before this Court. Ohio's Chief Election Officer just removed state legislative offices from the ballot. (LaRose Notice, ECF No. 97). He claims not to have legal authority to put them back on. (*Id.*; ECF No. 71). As a result, Plaintiffs will be irreparably harmed without this Court implementing the Third Plan (or even the Fourth Plan).

E. Maintaining the Third Plan will benefit Third Parties and the Public.

Plaintiffs are not the only Ohio voters disenfranchised by the failure of Ohio's redistricting process. Over 100,000 Ohioans live in each of the now malapportioned 2010 state legislative districts where Plaintiffs live. (ECF No. 86-1, FSC, Exhibit C, PAGEID # 1294). If those districts are still in effect, hundreds of thousands of Ohio voters are disenfranchised by malapportioned districts. To the extent no state legislative districts are in effect, all Ohio voters are disenfranchised, lacking any opportunity to vote for state legislators with an election just weeks away. Thus, a preliminary injunction will further the interests of all Ohio voters, not just Plaintiffs.

The Opposing Parties insist that implementing the Third Plan would render Article XI of the Ohio Constitution a nullity, harming the public. (ECF No. 107, PageID # 2558). But this narrowly focuses on just one Section of the Ohio Constitution. The Ohio Constitution also requires that the Redistricting Commission consider and adopt a plan. *See* Ohio Constitution, Article XI, Section 1. This has been fulfilled. The result has been a "historic" level of transparency. (*See* ECF No. 111, PageID # 2825) (quoting Senator Vernon Sykes). Additionally, in amending the Ohio constitution voters did not give up their right to vote. Those are the stakes here. The public interest overwhelmingly favors voting in imperfect districts instead of no districts at all.

F. The Opposing Parties' remaining arguments miss the mark.

The Opposing Parties raise other objections to Plaintiffs' motion. But all fail because Plaintiffs' constitutional rights are at imminent risk of denial.

1. The U.S. Constitution overcomes any state law barriers, including state constitutions.

Plaintiffs' remedy is available because the U.S. Constitution and 42 U.S.C. § 1983 protects their right to vote. *Reynolds v. Sims*, 377 U.S. 533, 584, 84 S. Ct. 1362, 1393 (1964). That is because, "When there is an unavoidable conflict between the Federal and a State Constitution, the Supremacy Clause of course controls." *Id.* Such unavailable conflict is what we have here. Under state law and the Ohio Constitution, there is no primary election for state legislators, contrary to federal law. (*See* ECF No. 97).

The Opposing Parties concede that any plan adopted by this Court should adhere to Ohio's policies, but argue that the Ohio Supreme Court rather than the Redistricting Commission best reflects those policies. (ECF No. 107, PageID # 2548). Not so. Redistricting, including redistricting performed by a redistricting commission, is a legislative function. *Ariz. State Legis. v. Ariz. Indep. Redistricting Comm'n*, 576 U.S. 787, 808 (2015) (redistricting legislative authority properly

delegated to redistricting commission). District courts should be "guided by the *legislative* policies underlying a state plan—even one that was itself unenforceable . . . ." *Perry v. Perez*, 565 U.S. 388, 393 (2012) (emphasis added) (citation and quotation omitted). "[S]tate legislatures have 'primary jurisdiction' over legislative reapportionment." *White v. Weiser*, 412 U.S. 783, 795 (1973) (citations omitted).

Here, the Redistricting Commission is an appendage of the state legislature, so the Third Plan should guide this Court. The majority of the Redistricting Commission is from the state legislature, meaning this Court should be guided by this body exercising primary jurisdiction over drawing districts. While the Ohio Supreme Court may say whether any plan developed by the Redistricting Commission passes muster, it is not a legislative body. It cannot even draw its own maps or move the primary election. *See* Ohio Constitution, Article XI, Section 9(D). Thus, it cannot make the difficult district-drawing policy decisions that deserve deference.

The Tenth Circuit decision *Large v. Fremont County* is instructive. 670 F.3d 1133, 1146 (10th Cir. 2012). In *Large*, the court found that a district court's "deference must run first and foremost to the legislative decision-making of the sovereign State . . . ." *Id.* at 1146. This contrasts with an inferior political subdivision that tried to adopt a plan contrary to state law. *Id.* at 1148 ("We hold that where a local governmental body's proposed remedial plan . . . conflicts with state law, it is not a legislative plan entitled to deference by the federal courts.").

Here, we do not have an inferior political subdivision. Instead, the Redistricting Commission is *at least* one of the co-equal branches of government.[3] And it is the branch best suited to the tough policy decisions related to creating legislative districts, unlike the Ohio

[3] "At least" seems appropriate because this legislative activity is also being carried out with Ohio's Governor, Auditor of State, and the Secretary of State sitting on the Redistricting Commission.

Supreme Court.[4] As a result, this Court should defer to the work of the Redistricting Commission as the legislative body that reflects Ohio's policies.

2. Imposing the "Rodden III" plan would violate principles of federalism and the plan is defective, regardless.

The Bennett Petitioners also argue that this Court should adopt the "Rodden III" plan, an argument that requires conceding that Plaintiffs' rights have been or are at imminent risk of denial. (ECF No. 107, PageID # 2554). According to the Bennett Petitioners, the Rodden III plan complies with "all the requirements set forth in Article XI of the Ohio Constitution . . . ." (*Id.*, PageID # 2555). Not true.

First, a requirement of the Ohio Constitution is adoption by the Redistricting Commission. *See* Ohio Constitution, Article XI, Section 1(A). Because the Rodden III plan was not adopted by the Redistricting Commission, it fails this test. This is a significant failure because the Redistricting Commission is the primary legislative authority that this Court owes deference. More troubling, the Rodden III plan was developed by a hired gun from a different time zone who, unlike members of the Redistricting Commission, has no power under the Ohio Constitution and no accountability to Ohio voters. So the idea that the Rodden III plan represents a "safe alternative" to the Third Plan is a red herring.

Second, while the Ohio Supreme Court has provided shifting goal posts, it revealed that the Ohio Constitution requires a split that is "54 percent in favor of the Republican Party and 46 percent in favor of the Democratic Party." *League of Women Voters of Ohio v. Ohio Redistricting Comm'n*, 2022-Ohio-342, ¶ 64. Yet the individual behind the Rodden III plan concedes that the Rodden III plan fails this ratio: "[A]dmittedly, the Rodden III plan does not achieve the perfect

[4] "We rule narrowly on the issues before us, leaving public-policy matters to the General Assembly." *Hope Acad. Broadway Campus v. White Hat Mgmt.*, L.L.C., 2015-Ohio-3716, ¶ 2, 145 Ohio St. 3d 29, 31, 46 N.E.3d 665, 668.

54/46 split . . . .” (Affidavit of Jonathan Rodden, ECF No. 107-3, ¶ 30, PageID # 2614). So the Rodden III plan should be disqualified for this reason, too.

For these reasons, this Court should not consider the Rodden III plan as an option.

3. The Ohio Supreme Court cannot move the primary election date.

On March 21, 2022, Intervenors-Defendants Senator Vernon Sykes and House Minority Leader C. Allison Russo filed a motion with the Ohio Supreme Court asking the Court to move the primary election date based on the Court’s “inherent authority” to do so. The Ohio Supreme Court denied the motion on March 24, 2022. *See* 03/24/2022 Case Announcements #2, 2022-Ohio-957.

Along with denying of the motion, Justice Fischer wrote a concurring opinion that emphasized that there was no basis for this argument:

> I am saddened, disappointed, and concerned that respondents’ motion and supporting memorandum fail to mention the case law directly contrary to their position. Respondents request that this court move the date of the primary election. However, respondents fail to mention that in *League of Women Votes of Ohio v. Ohio Redistricting Commission*, __ Ohio St.3d ___, 2022-Ohio-243, __ N.E.3d ___, ¶ 65-66 (“*League II*”), a case in which respondents were parties, **the majority opinion clearly sets forth the fact that this court lacks the authority to alter the date of an election.** The *League II* majority opinion specifically states that “[t]he General Assembly established the date of the primary election, *see* R.C. 3501.01(E)(1), and it has the authority to ease the pressure that the commission’s failure to adopt a constitutional redistricting plan has placed on the secretary of state and on county boards of elections by moving the primary election, should that action become necessary.” *Id*. at ¶ 66.

Id. at ¶ 4 (Fischer, J., concurring) (emphasis added).

Despite the Ohio Supreme Court holding twice that it cannot move the date of the primary election, the Bennett Petitioners still argue that this option is available (ECF No. 107, n. 6, PageID # 2251) as do Senator Sykes and Leader Russo (ECF No. 110, PageID # 2815). Therefore, this Court should know that the Ohio Supreme Court cannot move the date of the primary election.

4. This Court should adopt the Third Plan even if the Redistricting Commission adopts the Fourth Plan, unless Secretary LaRose indicates that the Fourth Plan can be timely implemented.

Plaintiffs are asking this Court to order the Third Plan because, right now, there is no Fourth Plan, and the feasibility of implementing a Fourth Plan is hypothetical at best.

If, as expected, the Ohio Redistricting Commission eventually files a Fourth Plan with the Secretary of State on Monday, we will not know until Monday at 5:00 pm whether changing from the Third Plan to the Fourth Plan will protect Plaintiffs' right to vote for general assembly candidates at the May 3, 2022, primary—with or without an order from this Court pushing back the start of early voting.

If, perhaps with shortening the early voting days, the Fourth Plan could be used to ensure Plaintiffs' right to vote at the May 3 primary election, there is little reason to believe that the Fourth Plan will not be struck down by the Ohio Supreme Court when it is too late to adopt any other plan in time for the May 3, primary election.

Thus, if this court were inclined to use the Fourth Plan instead of the Third Plan, Plaintiffs' rights would not be protected absent an order from this Court that the Fourth Plan will be used at the May 3 primary unless and until the state authorities *fully* approve a different plan in time for it to be used at the May 3 primary (or in time to be used at another primary date if the general assembly should change the primary date for all primary elections).

5. Plaintiffs bring an as-applied to challenge to Ohio election law.

The Opposing Parties make much noise that the U.S. Constitution and the Ohio Constitution, in the abstract, could be read together without conflict. (*See, e.g.*, ECF No. 111, PageID # 2842). That is not disputed here. Instead, Ohio's election process as applied to Plaintiffs failed to create state legislative districts. (LaRose Notice, ECF No. 97). This violates the U.S.

Constitution, and the Supremacy Clause requires that Ohio law, including the Ohio Constitution, yield. *See Espinoza v. Mont. Dep't of Revenue*, 140 S. Ct. 2246, 2288 (2020).

6. This Court should not be concerned by the Simon Parties' claims.

This Court should disregard the Simon Parties' challenges to the Third Plan (and possibly the Fourth Plan), including claims under Section 2 of the Voting Rights Act ("VRA"). "[A] court, as a general rule, should be guided by the legislative policies underlying the existing plan, to the extent those policies do not lead to violations of the Constitution or the Voting Rights Act." *Abrams v. Johnson*, 521 U.S. 74, 79 (1997). "Where a State's plan faces challenges under the Constitution or § 2 of the Voting Rights Act, a district court should still be guided by that plan, except to the extent those legal challenges are shown to have a likelihood of success on the merits." *Perry v. Perez*, 565 U.S. 388, 394 (2012). A Section 2 claim requires showing discrimination in the *results* of a state's electoral procedures. 52 U.S.C. § 10301(a); *see also Thornburg v. Gingles*, 478 U.S. 30, 35 (1982). This means demonstrating "under the totality of the circumstances, the [challenged electoral law] results in unequal access to the electoral process." *Thornburg*, 478 U.S. at 46. "[N]o court has ever construed the Voting Rights Act as prohibiting the use of any particular method of redistricting." *Bonilla v. City Council of Chi.*, 809 F. Supp. 590, 596 (N.D. Ill. 1992) (emphasis in original).

The Simon Parties challenge the Redistricting Commission's method. But a methodology challenge, specifically a failure to consider race at all by the Redistricting Commission, fails the "results test" required by Section 2. The Simon Parties have not raised a single factual allegation about the results of the Third Plan, or of any plan. The Simon Parties have also failed to put forward evidence that demonstrates, under the totality of the circumstances, there is unequal access to the electoral process as required by this stage of litigation.

Nor can the Simon Parties rely on *Armour v. Ohio* to establish the foundation for a Section 2 violation. *Armour* made very specific findings invalidating two specific electoral districts nearly 31 years ago. 775 F. Supp. 1044 (N.D. Ohio 1991).[5] A three-decades old analysis of two electoral districts that no longer exist cannot serve as the basis to demonstrate that different districts drawn just months ago violate the VRA. This is particularly true concerning how significantly the area has changed. For example, the area's largest city, Youngstown, Ohio, dropped from around 95,000 people to 60,000 people in the intervening years, a population change of nearly 40%. The opinion also relies on institutions that have changed significantly, such as the Youngtown City School District, which has undergone multiple fiscal emergencies and academic distress commissions. *See* O.R.C. § 3302.10. The Mahoning Valley of 1991 is the not the same as the Mahoning Valley of today—and there is nothing in the record to close this multiple decade gap.

As a result, this Court should not be concerned by the Simon Parties' allegations in terms of adopting the Third Plan, or the Fourth Plan, if possible.

G. Addendum in light of Secretary LaRose's filing (ECF No. 113).

On March 25, 2022, Secretary LaRose made a party admission that it was possible conduct the primary election on May 3, 2022, with the Third Plan on a supplemental ballot. On March 28, 2022, Secretary LaRose filed a statement indicating that it is no longer possible. (ECF No. 113). Perhaps this inconsistency can be explained at the preliminary injunction hearing.

[5] "Because *Armour* based its decision, at least in part, on a finding that *Gingles* did not apply to single-member-district claims, the validity of *Armour* was put in doubt by *Growe v. Emison*, 507 U.S. 25, 122 L. Ed. 2d 388, 113 S. Ct. 1075. Moreover, *Armour* has been heavily criticized by other courts. *See, e.g.*, *DeBaca*, 794 F. Supp. at 996-97; *Hastert*, 777 F. Supp. at 652-53." *Rodriguez v. Pataki*, 308 F. Supp. 2d 346, 383 n.42 (S.D.N.Y. 2004)

III. CONCLUSION

For all these reasons, Plaintiffs respectfully request that this Court require that Secretary of State Frank LaRose maintain the Third Plan (or the Fourth Plan) to carry out the 2022 primary and general election.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 28, 2022, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/Donald C. Brey
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