

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Michael Gonidakis, *et al.*, :
Plaintiffs, : Case No. 2:22-cv-773
v. :
Frank LaRose, : Chief Judge Algenon Marbley
Defendant. : Magistrate Judge Elizabeth Deavers
: Three-Judge Panel Requested
:

**PLAINTIFFS’ EMERGENCY MOTION TO VACATE STAY AND
FOR IMMEDIATE APPOINTMENT OF A THREE-JUDGE PANEL**

The Ohio Supreme Court has “decree[d] electoral chaos.” *League of Women Voters of Ohio v. Ohio Redistricting Comm.*, Slip Opinion No. 2022-Ohio-789, ¶ 58 (Ohio 2022) (Kennedy, J., dissenting). With a state primary election less than seven weeks away, Ohio has no redistricting map, no state legislative districts, and no hope of a solution. The state redistricting process has failed. This Court is the only avenue left to protect the constitutional voting rights of Plaintiffs and millions of Ohioans. Accordingly, Plaintiffs urge the Court to immediately lift its stay of this case and appoint a three-judge panel. If the Court defers any longer, it will be too late.

I. The Court should immediately vacate its stay in light of the Ohio Supreme Court’s rejection of the Ohio Redistricting Commission’s most recent plan.

On March 14, 2022, the Court granted a “brief” stay of this case pursuant to *Growe v. Emison* “while the Ohio Supreme Court enters its decision on the third map.” (ECF No. 68, PAGEID # 964.) The Supreme Court has now entered its decision and rejected the third map. *League of Women Voters of Ohio v. Ohio Redistricting Comm.*, Slip Opinion No. 2022-Ohio-789

(Ohio 2022). Ohio is no farther along than it was when the redistricting process began in September 2021. Moreover, Defendant Secretary of State Frank LaRose, has already informed the Court that Ohio was proceeding with preparations to use the third map in the upcoming primary and “[t]here is no time in Ohio’s current election schedule for Ohio’s county boards of elections to implement a *fourth* state legislative district plan.” (ECF No. 71, PAGEID #1038.)

Grove requires a stay only “[a]bsent evidence that...state branches will fail timely to perform [reapportionment.]” The state branches’ failure in this case could hardly be starker. There is no constitutional district map in place, and Ohio’s chief elections officer admits there is no time to implement a new map before the election. Accordingly, the Court should lift the stay so Plaintiffs can seek the relief they now request—an election using the third map. (ECF No. 72, Gonidakis Plaintiffs’ Additional Notice That They Seek the Third Plan.) There is no basis for continued delay, which will be fatal to Plaintiffs’ constitutional voting rights.

II. A three-judge panel must immediately be appointed to protect Plaintiffs’ constitutional voting right.

Similarly, the appointment of a three-judge panel can be delayed no longer. The appointment of a three-judge panel is required by 28 U.S.C. § 2284(a) when a plaintiff challenges the constitutionality of the apportionment of a state body. When a plaintiff raises such a challenge, the District Court *must* appoint a three-judge panel. “[A]ll the district judge must determine is whether the request for three judges is made in a case covered by § 2284(a) – no more, no less.”

Shapiro v. McManus, 577 U.S. 39, 44 (2015.)

Plaintiffs’ Amended Complaint unquestionably falls within the ambit of 28 U.S.C. § 2284(a), as Plaintiffs specifically challenge the apportionment of the Ohio state legislature. Moreover, any allegation that Plaintiffs’ apportionment challenge is not ripe cannot be seriously entertained. An election mandated by statute is just weeks away *and there is no apportionment.*

Nor is there any hope of apportionment by Ohio's institutions. Any conceivable "drop-dead date" has clearly passed. The time for a three-judge panel is now.

III. Conclusion.

FOR THE FORGOING REASONS, Plaintiffs respectfully request the Court immediately vacate the stay issued in this case and appoint a three-judge panel.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 17, 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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