

IN THE SUPREME COURT OF OHIO

League of Women Voters of Ohio, et al., :
 :
 Petitioners, : **Case No. 2021-1193**
 :
 v. : **Original Action Filed Pursuant to**
 : **Ohio Constitution, Article XI, Section 9(A)**
 :
 Ohio Redistricting Commission, et al., : **[Apportionment Case Pursuant to S. Ct.**
 : **Prac. R. 14.03]**
 Respondents. :

Bria Bennett, et al., :
 :
 Petitioners, : **Case No. 2021-1198**
 :
 v. : **Original Action Filed Pursuant to**
 : **Ohio Constitution, Article XI, Section 9(A)**
 :
 Ohio Redistricting Commission, et al., : **[Apportionment Case Pursuant to S. Ct.**
 : **Prac. R. 14.03]**
 Respondents. :

The Ohio Organizing Collaborative, et al., :
 :
 Petitioners, : **Case No. 2021-1210**
 :
 v. : **Original Action Filed Pursuant to**
 : **Ohio Constitution, Article XI, Section 9(A)**
 :
 Ohio Redistricting Commission, et al., : **[Apportionment Case Pursuant to S. Ct.**
 : **Prac. R. 14.03]**
 Respondents. :

**RESPONDENTS SYKES AND RUSSO'S
MOTION TO MOVE THE PRIMARY ELECTION DATE**

C. BENJAMIN COOPER (0093103)

Counsel of Record

CHARLES H. COOPER, JR. (0037295)

CHELSEA C. WEAVER (0096850)

Cooper & Elliott, LLC

305 West Nationwide Boulevard

Columbus, Ohio 43215

(614) 481-6000

(614) 481-6001 (fax)

benc@cooperelliott.com

chipc@cooperelliott.com

chelseaw@cooperelliott.com

Special Counsel for Respondents

Senator Vernon Sykes and

House Minority Leader C. Allison Russo

FREDA J. LEVENSON (0045916)
ACLU of Ohio Foundation, Inc.
4506 Chester Avenue
Cleveland, OH 44103
Tel: (614) 586-1972 x125
flevenson@acluohio.org

DAVID J. CAREY (0088787)
ACLU of Ohio Foundation, Inc.
1108 City Park Avenue, Suite 203
Columbus, OH 43206
Tel: (614) 586-1972 x2004
dcarey@acluohio.org

ALORA THOMAS (PHV 22010)
JULIE A. EBENSTEIN (PHV 25423)
American Civil Liberties Union
125 Broad Street
New York, NY 10004
Tel: (212) 519-7866
athomas@aclu.org
jebenstein@aclu.org

ROBERT D. FRAM (PHV 25414)
DONALD BROWN (PHV 25480)
JOSHUA GONZÁLEZ (PHV 25424)
DAVID DENUYL (PHV 25452)
JULIANA GOLDROSEN (PHV 25193)
Covington & Burling LLP
Salesforce Tower
415 Mission Street, Suite 5400
San Francisco, CA 94105
Tel: (415) 591-6000
rfram@cov.com

ALEXANDER THOMAS (PHV 25462)
Covington & Burling LLP
850 W. Tenth Street, NW
Washington DC 20001
Tel: (202) 662-5968
athomson@cov.com

ANUPAM SHARMA (PHV 25418)
YALE FU (PHV 25419)
Covington & Burling LLP
3000 El Camino Real
5 Palo Alto Square, 10th Floor
Palo Alto, CA 94306
Tel: (650) 632-4716
asharma@cov.com
yfu@cov.com

Counsel for Petitioners
League of Women Voters of Ohio, *et al.*

DONALD J. MCTIGUE (0022849)
DEREK S. CLINGER (0092075)
McTigue Colombo & Clinger LLC
545 East Town Street
Columbus, OH 43215
Tel: (614) 263-7000
dmctigue@electionlawgroup.com
dclinger@electionlawgroup.com

ABHA KHANNA (PHV 2189)
BEN STAFFORD (PHV 25433)
Elias Law Group
1700 Seventh Ave., Suite 2100
Seattle, WA 98101
Tel: (206) 656-0716
akhanna@elias.law
bstafford@elias.law

JYOTI JASRASARIA (PHV 25401)
SPENCER W. KLEIN (PHV 25432)
Elias Law Group
10 G Street NE, Suite 600
Washington, DC 20002
Tel: (202) 968-4490
jjasrasaria@elias.law
sklein@elias.law

Counsel for Petitioners
Bria Bennett, *et al.*

ALICIA L. BANNON (PHV 25409)
YURIJ RUDENSKY (PHV 25422)
HARRY BLACK (PHV 25544)
Brennan Center for Justice at NYU School
of Law
120 Broadway, Suite 1750
New York, NY 10271
Tel: (646) 292-8310
alicia.bannon@nyu.edu

PETER M. ELLIS (0070264)
M. PATRICK YINGLING (PHV 10145)
NATALIE R. SALAZAR
Reed Smith LLP
10 South Wacker Drive, 40th Floor
Chicago, IL 60606
Tel: (312) 207-1000
pellis@reedsmith.com

BRIAN A. SUTHERLAND (PHV 25406)
Reed Smith LLP
101 Second Street, Suite 1800
San Francisco, CA 94105
Tel: (415) 543-8700
bsutherland@reedsmith.com

BEN R. FLIEGEL (PHV 25411)
Reed Smith LLP
355 South Grand Avenue, Suite 2900
Los Angeles, CA 90071
Tel: (213) 457-8000
bfliegel@reedsmith.com

BRAD A. FUNARI (PHV 3139)
DANIELLE L. STEWART (0084086)
Reed Smith LLP
225 Fifth Avenue
Pittsburgh, PA 15222
Tel: (412) 288-4583
bfunari@reedsmith.com
dstewart@reedsmith.com

Counsel for Petitioners
The Ohio Organizing Collaborative, *et al.*

JOHN W. ZEIGER (0010707)
MARION H. LITTLE, JR. (0042679)
CHRISTOPHER J. HOGAN (0079829)
Zeiger, Tigges & Little LLP
3500 Huntington Center
41 South High Street
Columbus, Ohio 43215
Tel: (614) 365-9900
zeiger@lito.com
little@lito.com
hogan@lito.com

**Counsel for Respondent
Governor Mike DeWine**

BRIDGET C. COONTZ (0072919)
JULIE M. PFEIFFER (0069762)
MICHAEL A. WALTON (0092201)
MICHAEL HENDERSHOT (0081842)
Ohio Attorney General
30 E. Broad Street, 16th Floor
Columbus, OH 43215
Tel: (614) 466-2872
bridget.coontz@ohio.gov
julie.pfeiffer@ohio.gov
michael.walton@ohio.gov
michael.hendershot@ohio.gov

**Counsel for Respondents
Secretary of State Frank LaRose and
Auditor Keith Faber**

ERIK J. CLARK (0078732)
ASHLEY MERINO (0096853)
Organ Law LLP
1330 Dublin Road
Columbus, OH 43215
Tel: (614) 481-0900
ejclark@organlegal.com
amerino@organlegal.com

**Counsel for Respondent
Ohio Redistricting Commission**

W. STUART DORNETTE (0002955)
BETH A. BRYAN (0082076)
PHILIP D. WILLIAMSON (0097174)
Taft Stettinius & Hollister LLP
425 Walnut St., Suite 1800
Cincinnati, OH 45202
Tel: (513) 381-2838
dornette@taftlaw.com
bryan@taftlaw.com
pwilliamson@taftlaw.com

PHILLIP J. STRACH (PHV 25444)
THOMAS A. FARR (PHV 25461)
JOHN E. BRANCH, III (PHV 25460)
ALYSSA M. RIGGINS (PHV 25441)
GREG MCGUIRE (PHV 25483)
Nelson Mullins Riley & Scarborough LLP
4140 Parklake Ave., Suite 200
Raleigh, NC 27612
Tel: (919) 329-3812
phil.strach@nelsonmullins.com
tom.farr@nelsonmullins.com
john.branch@nelsonmullins.com
alyssa.riggins@nelsonmullins.com
greg.mcguire@nelsonmullins.com

**Counsel for Respondents
Senate President Matt Huffman and
House Speaker Robert Cupp**

**RESPONDENTS SYKES AND RUSSO'S
MOTION TO MOVE THE PRIMARY ELECTION DATE**

The Court is no doubt aware of *Gonidakis et al. v. LaRose*, S.D. Ohio No. 2:22-cv-773, the federal court case involving an apportionment challenge to the General Assembly districts at issue in this case. On Friday evening, Chief District Judge Marbley vacated the stay in that case, Op. & Order, *id.*, ECF No. 82 (Mar. 18, 2022), and Chief Circuit Judge Sutton appointed a three-judge panel to hear the case as it moves forward, Order, *id.*, ECF No. 83 (Mar. 18, 2022).

This morning, the *Gonidakis* plaintiffs moved for a temporary restraining order, asking the federal court to implement the Ohio Redistricting Commission's February 24 Plan—the plan this Court just found to be an unconstitutional partisan gerrymander—in the upcoming primary and general elections. Pls.' Mot. for a TRO to Maintain the Third Plan, *id.*, ECF No. 84 (Mar. 21, 2022). The three-judge panel is expected to convene quickly and issue a briefing schedule on the TRO motion, as well as plaintiffs' earlier motion for a preliminary injunction.

The *Gonidakis* plaintiffs argue that the federal court must implement the February 24 Plan given the primary election's current date. Pls.' Mot. for a TRO to Maintain the Third Plan, *id.*, ECF No. 84 at PageID #1156 (Mar. 21, 2022). Before this Court issued its decision on that Plan, Secretary LaRose informed the federal court of his position that, "if the Ohio Supreme Court invalidates the [February 24] Plan, there will be insufficient time for the county boards of election to once again complete all of the mandatory pre-election processes using new a fourth plan in time for the May 3rd primary." Notice by LaRose, *id.*, ECF No. 71 at PageID #1040 (Mar. 16, 2022). Since then, LaRose has told the court that, "[b]ased on the Supreme Court's [March 16] ruling, there are currently no state legislative districts for which a primary election can be held on May 3." LaRose's Response to Pls.' Emergency Mot., *id.*, ECF No. 76 at PageID #1107 (Mar. 18, 2022). The *Gonidakis* plaintiffs, for their part, argue that an election

on May 3 with no General Assembly maps violates the U.S. Constitution, and that, as a practical matter, the February 24 Plan is the only set of maps that can be implemented in time for a May 3 election. Pls.’ Mot. for a TRO to Maintain the Third Plan, *id.*, ECF No. 84 at PageID #1160-62 (Mar. 21, 2022).¹

Senator Sykes and Leader Russo ask this Court to move the primary election date, which would accomplish two important things: (1) it would ensure that this Court can continue working with the Commission to make progress on adopting and implementing a plan that satisfies *both* state and federal constitutional requirements, and (2) it would allow that process to continue unimpeded by the federal litigation in *Gonidakis*, in keeping with our federal constitutional scheme, under which “reapportionment is primarily the duty and responsibility of the State”—not “of a federal court.” *Grove v. Emison*, 507 U.S. 25, 33, 113 S.Ct. 1075, 122 L.Ed.2d 388 (1993). Under the U.S. Supreme Court’s unanimous decision in *Grove v. Emison*, the general rule is that “federal judges [must] defer consideration of disputes involving redistricting where the State, through its legislative *or* judicial branch, has begun to address that highly political task itself.” *Id.* The *Gonidakis* plaintiffs now claim that this rule no longer applies, invoking an exception for cases where the record shows that “these state branches will fail timely to perform that duty” of apportionment of state legislative districts. *Id.* at 34. But undoubtedly with a later primary election, it cannot be said that the state branches are “unwilling or unable” to “timely” perform their redistricting duties, and the federal court should continue to refrain from involving itself in the process and deny the requested relief. *Id.* at 37.

¹ Secretary LaRose has suggested that even under the February 24 Plan, the primary election cannot be held on May 3. *See, e.g.*, LaRose’s Response to Pls.’ Emergency Mot., *Gonidakis*, ECF No. 76 at PageID #1108 (Mar. 18, 2022) (“And *although the May 3, 2022 primary election is no longer looming for the state legislative races*, the need for final state legislative districts to be used in this year’s elections remains.”) (emphasis added).

Specifically, Senator Sykes and Leader Russo respectfully ask this Court to move the primary election date from May 3 to June 28, or to any other date that indisputably allows sufficient time for the Commission to adopt and implement a new, constitutional set of maps. June 28 would afford plenty of time to have a primary election completed for the general election in November. It would also give sufficient time for a primary election’s necessary preparations, including adopting and implementing a new set of maps, allowing 30 days for candidates to move after the maps’ effective date, proofing and printing ballots, and allowing 45 days of early voting for military and overseas voters.²

This Court has the authority to move the primary election date. It has inherent authority to issue injunctions and “do all things reasonably necessary to the administration of justice in the case before it.” *See City of Norwood v. Horney*, 110 Ohio St.3d 353, 2006-Ohio-3799, 853 N.E.2d 1115, ¶ 119, quoting *Smothers v. Lewis*, 672 S.W.2d 62, 64-65 (Ky. 1984). It also has inherent authority to enforce its judgments and decrees, *Infinite Sec. Sols., L.L.C. v. Karam Properties, II, Ltd.*, 143 Ohio St.3d 346, 2015-Ohio-1101, 37 N.E.3d 1211, ¶ 27, and to facilitate “orderly and efficient exercise of [its] jurisdiction,” *Hale v. State*, 55 Ohio St. 210, 45 N.E. 199 (1896). In its March 16 opinion, the Court invalidated the February 24 Plan, ordered the Commission to draft and adopt an entirely new General Assembly-district plan, and retained jurisdiction “for the purpose of reviewing the new plan.” *League of Women Voters of Ohio v. Ohio Redistricting Comm.*, Slip Opinion No. 2022-Ohio-789, ¶ 44-45. Federal intervention to implement the February 24 Plan would render the Court’s March 16 order meaningless.³

² Legislation to move the primary election date has been introduced in the General Assembly, but neither Speaker Cupp nor President Huffman has allowed the legislation to proceed.

³ Other state high courts have recently suspended or modified election-related deadlines to ensure that voters may vote under constitutional maps. *See, e.g., Carter v. Chapman*, No. 7

The Court has worked diligently to protect the will of Ohio voters, who adopted Article XI of the Ohio Constitution and want to see it vindicated. And the Court’s orders have had real impact in moving the Commission toward a constitutional map. Even this weekend the Commission worked to respond to the Court’s most recent decision and order, including by meeting on Saturday, scheduling additional meetings, and planning to have the Commission itself hire experts and a mediator. *See* Ohio Redistricting Comm. Mtg. (Mar. 19, 2022), available at <https://ohiochannel.org/video/ohio-redistricting-commission-3-19-2022>. Senator Sykes and Leader Russo want these state processes to continue unimpeded under our state constitutional scheme so that the will of the Ohio voters may be vindicated. The federal court lawsuit asks that the process be taken away from the state and seeks to impose a map that this Court held was unconstitutional—all because of a looming primary date. To protect its own orders, its authority, and the will of the Ohio voters, this Court should move the primary.

CONCLUSION

To ensure that this Court may continue to oversee the process for adopting and implementing a new, constitutional Plan, Senator Sykes and Leader Russo respectfully ask this Court to move the primary election date to June 28, or to any other date that indisputably allows sufficient time for the Commission to adopt and implement a new, constitutional set of maps.

MM 2022, 2022 WL 549106 (Pa. Feb. 23, 2022) (modifying congressional and statewide election calendar due to impasse and noting the suspension of state legislative election deadlines until resolution of litigation); *In the Matter of 2022 Legislative Districting of the State*, Misc. Nos. 21, 23, 25, 26, 27, Sept. Term 2021 (Md. Mar. 15, 2022) (modifying primary election calendar), available at <https://perma.cc/LLX6-LZET>; *Harper v. Hall*, 379 N.C. 656 (N.C. Dec. 8, 2021) (moving primary election date to give sufficient time to resolve litigation challenging state legislative maps).

Respectfully submitted,

/s/ C. Benjamin Cooper

C. Benjamin Cooper (0093103)

Counsel of Record

Charles H. Cooper, Jr. (0037295)

Chelsea C. Weaver (0096850)

Cooper & Elliott, LLC

305 West Nationwide Boulevard

Columbus, Ohio 43215

(614) 481-6000

(614) 481-6001 (fax)

benc@cooperelliott.com

chipc@cooperelliott.com

chelseaw@cooperelliott.com

*Special Counsel for Respondents Senator Vernon
Sykes and House Minority Leader Allison Russo*

CERTIFICATE OF SERVICE

I hereby certify that on March 21, 2022, the foregoing *Respondents Sykes and Russo's Motion to Move the Primary Election Date* was filed electronically and sent via email to the following counsel of record:

FREDA J. LEVENSON, flevenson@acluohio.org
DAVID J. CAREY, dcarey@acluohio.org
ALORA THOMAS, athomas@aclu.org
JULIE A. EBENSTEIN, jebenstein@aclu.org
ROBERT D. FRAM, rfram@cov.com
ALEXANDER THOMAS, athomson@cov.com
YALE FU, yfu@cov.com
ANUPAM SHARMA, asharma@cov.com

Counsel for Petitioners
League of Women Voters of Ohio, *et al.*

DONALD J. MCTIGUE, dmctigue@electionlawgroup.com
DEREK S. CLINGER, dclinger@electionlawgroup.com
ABHA KHANNA, akhanna@elias.law
WILLIAM B. STAFFORD, bstafford@elias.law
ARIA C. BRANCH, abranch@elias.law
JYOTI JASRASARIA, jjasrasaria@elias.law
SPENCER W. KLEIN, sklein@elias.law

Counsel for Petitioners
Bria Bennett, *et al.*

ALICIA L. BANNON, alicia.bannon@nyu.edu
PETER M. ELLIS, pellis@reedsmith.com
M. PATRICK YINGLING, mpyingling@reedsmith.com
BEN R. FLIEGEL, bfliegel@reedsmith.com
BRAD A. FUNARI, bfunari@reedsmith.com
DANIELLE L. STEWART, dstewart@reedsmith.com
BRIAN A. SUTHERLAND, bsutherland@reedsmith.com

Counsel for Petitioners
The Ohio Organizing Collaborative, *et al.*

ERIK J. CLARK, ejclark@organlegal.com
ASHLEY MERINO, amerino@organlegal.com

**Counsel for Respondent
Ohio Redistricting Commission**

JOHN W. ZEIGER, zeiger@litohio.com
MARION H. LITTLE, JR., little@litohio.com
CHRISTOPHER J. HOGAN, hogan@litohio.com

**Counsel for Respondent
Governor Mike DeWine**

BRIDGET C. COONTZ, bridget.coontz@ohioago.gov
JULIE M. PFEIFFER, julie.pfeiffer@ohioago.gov
MICHAEL A. WALTON, michael.walton@ohioago.gov
MICHAEL HENDERSHOT, michael.hendershot@ohioago.gov

**Counsel for Respondents
Secretary of State Frank LaRose and Auditor Keith Faber**

W. STUART DORNETTE, dornette@taftlaw.com
BETH A. BRYAN, bryan@taftlaw.com
PHILIP D. WILLIAMSON, pwilliamson@taftlaw.com
PHILLIP J. STRACH, phil.strach@nelsonmullins.com
THOMAS A. FARR, tom.farr@nelsonmullins.com
JOHN E. BRANCH, III, john.branch@nelsonmullins.com
ALYSSA M. RIGGINS, alyssa.riggins@nelsonmullins.com
GREG MCGUIRE, greg.mcguire@nelsonmullins.com

**Counsel for Respondents
Senate President Matt Huffman and House Speaker Robert Cupp**

/s/ C. Benjamin Cooper

C. Benjamin Cooper