EXHIBIT C

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Honorable Matt Huffman
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Honorable Robert Cupp
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The Ohio General Assembly
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Dear Colleagues:

What happens now? This letter is to outline some answers to that question, and to identify possible actions—and the probable outcome of inaction.

I am writing to you on behalf of my client, the State of Ohio. However, this is not a legal brief, and my aim is to lay out the law in plain English to assist you in your duties. You do not answer to me, but to the people of Ohio...as do I. We have parallel duties to the same superior.

Maps for the General Assembly have been rejected twice by the Ohio Supreme Court. The Court's deadline to produce a third came and went without a new map and last Friday the Court issued a short entry requiring the Redistricting Commission to show cause by this Wednesday as to why it failed to comply with the Court's earlier order to produce a new state legislative map proposal.

The Congressional map is not as far along, but the first federal map was rejected by the Ohio Supreme Court and time ran out on a second without action by the General Assembly. Though that matter is pending before the Redistricting Commission, no action has yet been taken.

The result: there are no maps as of today for state or federal legislative districts, or the offices that are dependent on them, such as the State Board of Education or the state central committees of the political parties. This presents an unusual legal problem, because lawfully enacted, Constitutional maps are what lawyers call a *condition precedent* to the ballot. That is, legislative district maps have to happen before the ballot.

That bit of legal logic takes on special importance today, because today is the statutory deadline for the Secretary of State to certify the ballot for the 2022 Primary Election. Without valid maps, he cannot certify candidates to county board of elections, because there is no way to tell which

precincts are in which districts—or, for that matter, which candidates are in which districts, because there are no districts.

Yet Ohio law requires a primary election to be held on May 3, and the General Assembly has reserved the power to move that date to itself—a decision properly within the Legislature's authority. Neither court nor executive may change that.

So, a primary election will be held, and the Secretary of State will certify a ballot today without legislative candidates, because no certification is possible without maps. For each and every one of you, your voters will go to the polls on May 3—and they will not see your name. Indeed, none of you even know who your voters are. The Secretary of State will have fulfilled his statutory duties, but few would view this outcome as sufficient.

The General Assembly granted the power to the Secretary of State to move certain statutory deadlines leading up to the primary election for races impacted by redistricting, and the ballot certification deadline is one of them. Statewide and county office races are not impacted by redistricting, the Secretary has no authority to move deadlines related to them and he will be certifying that ballot today. As for statehouse and congressional races, the Secretary of State informs me that necessary actions between these deadlines form a "critical pathway" of tasks that take a certain amount of time, and must be done in order. He does not feel he can move this deadline and still complete the necessary work prior to May 3, 2022. I have no reason to doubt him.

It has been suggested that the Secretary could use the existing 2011 maps until new maps are qualified. However, because of the decennial census, the 2011 maps are now "malapportioned"—some districts have too many voters and others have two few. This violates existing case law applying the Fourteenth Amendment to the United States Constitution.

It is true that the 2011 maps, perhaps, could be adjusted by a federal court, and there is a brand-new lawsuit seeking to invoke federal court jurisdiction. But that lawsuit seeks to use the map passed on January 22 and invalidated by the Ohio Supreme Court on state constitutional grounds, not the 2011 map. The federal court may not order the use of a map that was rejected by the Ohio Supreme Court, where the underlying provision of the state constitution has not been found to violate the federal constitution. In any event, any action by the federal court is unlikely to come early enough to cure the May 3 ballot.

The uncertainty does not end in May. Without a primary election decision on party nominations, it is unclear what the general election in November would look like. Assuming valid maps exist by then, do all candidates run in a field? A thousand other questions arise, and there is no clear view from this place in time of how it would sort out.

Unless you act.

The General Assembly has the authority to fix this. An obvious solution is to move the primary date, though that would take a two-thirds vote of both chambers and the Governor's signature because it would require an emergency clause. If a primary election ballot largely without one of the three branches of government does not constitute an emergency, what does? (Obviously, the maps do not impact primary races for the United State Senate.)

I personally have immense distaste for moving the date of the primary. Government should favor regular order, and predictability is one indicia of trustworthiness. Yet here we are, with an intractable situation not of your design that demands a solution.

Other, less-obvious solutions are possible. A second, separate primary process could be put in place for districted legislative offices only. Some sort of ranked-choice voting could be enacted, or a post-November runoff process. In federal law, the *in extremis* statutory provision is that all congressional candidates run at-large, state-wide.

Our constitution invests you—my distinguished colleagues in both parties—with the authority to act, and your good minds may find other solutions. But a solution must be found.

The federal deadline for mailing primary ballots to overseas and military voters is fast approaching. Obviously, the General Assembly is without authority to move it. I would urge you to consider it in your deliberations, and consider how it might be collaterally impacted by the current situation.

This is not fundamentally about the map-drawing process. Maps will eventually emerge as the legal reviews continue, and it is to be hoped, those charged with the responsibility continue to negotiate and deliberate toward a resolution.

This is about running a primary election that includes the nominating process for the legislative branch, which is most directly reflective of the will of the people. It is up to you to give them their voice.

cc: Frank LaRose, Secretary of State
Keith Faber, Auditor of State