

IN THE SUPREME COURT OF OHIO

Bria Bennett, et al.,

Petitioners,

v.

Ohio Redistricting Commission, et al.,

Respondents.

Case No. 2021-1198

Original Action Filed Pursuant to Ohio
Constitution, Article XI, Section 9(A)

*[Apportionment Case Pursuant to S.
Ct. Prac. R. 14.03]*

**PETITIONERS' MOTION TO ENFORCE THE COURT'S MAY 25, 2022 ORDER AND
REQUIRE RESPONDENTS TO EXPLAIN THEIR FAILURE TO COMPLY WITH
SUCH ORDER**

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On May 25, 2022, this Court ordered the Ohio Redistricting Commission (the “Commission”) “to be reconstituted, to convene, and to draft and adopt an entirely new General Assembly–district plan that meets the requirements of the Ohio Constitution, including Article XI, Sections 6(A) and 6(B).” *League of Women Voters of Ohio v. Ohio Redistricting Comm.* (“LWV V”), Slip Opinion No. 2022-Ohio-1727, ¶ 5. The Court instructed the Commission to “file the district plan with the secretary of state no later than 9:00 a.m. on June 3, 2022, and in this court by 12:00 p.m. on the same date.” *Id.* ¶ 6. The Commission violated this order.¹

During the period provided by this Court’s order, the Commission did not take *any* steps to comply with the Court’s order. It did not announce a single Commission meeting to discuss new proposals. It did not introduce any plans or solicit any public feedback. Indeed, to date, the Commission has not filed *anything*—a General Assembly districting plan, a motion for extension of time, or so much as an explanation to the Court for why the Commission violated the Court’s order—even though *four days* have now passed since the Commission’s June 3 deadline.

It is bad enough that the Commission has ignored an express order of this Court, but Petitioners respectfully submit that it is nothing less than shocking that the Commission has done so without even deigning to provide an excuse to this Court for its failure to comply with the Court’s deadline. The Court undoubtedly is authorized to set a deadline pursuant to its inherent power to manage its own docket and the progress of proceedings before it, *see, e.g., State ex rel. Davis v. Pub. Emps. Ret. Bd.*, 111 Ohio St. 3d 118, 2006-Ohio-5339, 855 N.E.2d 444, ¶ 18; Article IV, Section 2(B)(1)(f) of the Ohio Constitution, which “authorize[s] judgments . . . that are

¹ The Court had directed Petitioners to file objections, if any, to a new General Assembly plan no later than three days after the Commission’s adoption of a new plan. *LWV V* at ¶ 7. Given the Commission’s failure to comply with the Court’s order, Petitioners file this motion in lieu of objections.

necessary to achieve closure and complete relief in actions pending before the court,” *League of Women Voters of Ohio v. Ohio Redistricting Comm.* (“*LWV I*”), Slip Opinion No. 2022-Ohio-65, at ¶ 136; and R.C. 2503.40 (authorizing the Court to issue “other writs not specially provided for and not prohibited by law, when necessary to enforce the administration of justice”).

That is to say, the Court’s power to strike down General Assembly districting plans and order that a constitutional replacement plan be adopted by the Commission necessarily encompasses the power to order the Commission to do so in a timely fashion. Article XI, Section 9(B) not only empowers the Court to declare redistricting plans invalid, but provides that in the event the Court so finds, “then, notwithstanding any other provisions of this constitution, the commission *shall be reconstituted* as provided in Section 1 of this article, [to] convene, and ascertain and determine a general assembly district plan in conformity with such provisions of this constitution as are then valid[.]” (emphasis added). The Commission has no power to refuse to convene.

Indeed, the Commission’s actions illustrate the absurd results that would follow if the Court were *not* authorized to order the Commission to redraw a state legislative plan by a particular date. The Commission could refuse to reconvene following a Court order striking down a redistricting plan. By so doing, it could stall until “impasse” and then ask the federal courts to implement the previously adopted General Assembly plan that had been invalidated by the very institution that Ohio voters and the General Assembly itself authorized to review such plans. Namely, if the Court cannot set deadlines to ensure its orders are followed, its orders are nugatory. This Court does not interpret the Ohio Constitution to mandate such absurd results. *See State ex rel. Dispatch Printing Co. v. Wells*, 18 Ohio St.3d 382, 384, 481 N.E.2d 632 (1985) (“It is an axiom of judicial interpretation that statutes be construed to avoid unreasonable or absurd consequences.”); *Toledo*

City Sch. Dist. Bd. of Educ. v. State Bd. of Educ., 146 Ohio St.3d 356, 2016-Ohio-2806, 56 N.E.3d 950, ¶ 16 (applying statutory construction rules to constitutional provisions).

This litigation has seen the Commission behave more and more lawlessly. Outright ignoring court orders is the stuff of authoritarianism—and doing so subverts the legitimacy of this Court and its role in the constitutional structure. From missing its September 2021 constitutional deadlines, to arguing that Section 6 is entirely aspirational, to declaring impasse in the face of a Court order, to passing previously invalidated plans, to now refusing to acknowledge this Court’s order at all, the Commission has never given Article XI force. This Court should not do the same. *See State v. Moore*, 154 Ohio St.3d 94, 2018-Ohio-3237, 111 N.E.3d 1146, ¶ 13, citing *State ex rel. Myers v. Spencer Twp. Rural School Dist. Bd. of Edn.*, 95 Ohio St. 367, 373, 116 N.E. 516 (1917) (“[W]e avoid construing a statute in a way that would render a portion of the statute meaningless or inoperative.”); R.C. 1.47(B) & (C) (“In enacting a statute, it is presumed that . . . the entire statute is intended to be effective [and that a] just and reasonable result is intended.”); Scalia & Garner, *Reading Law: The Interpretation of Legal Texts* 63 (2012) (“A textually permissible interpretation that furthers rather than obstructs the document’s purpose should be favored.”); *see also Miami Cty. v. Dayton*, 92 Ohio St. 215, 223, 110 N.E. 726 (1915) (explaining that rules of construction for statutes apply to Constitution).

Accordingly, Petitioners respectfully request that this Court (1) order Respondents to show cause at a hearing as to why they did not comply with the Court’s order and (2) again order Respondents to pass a constitutionally compliant plan by a date certain. Because the Commission violated the Court’s order without explanation, Petitioners do not know what excuse, if any, Respondents will proffer to the Court. Petitioners therefore respectfully request an opportunity to respond, as the Court determines appropriate, at the hearing and/or by filing a reply, within three

days, to any response filed to this motion.

If the Court finds that Respondents' explanation for why they did not comply with the Court's order is inadequate, then, in addition to the Court directing Respondents to take further action to comply with the Court's order, the Court has additional tools to address their failure to comply, as detailed in Petitioners' prior submissions to this Court, including finding the Commission and, as the Court deems proper, individual Respondents in contempt pursuant to R.C. 2705 and its inherent contempt power. The Court has declined to take such additional measures to date. Regrettably, it seems Respondents have no intention of complying with the Court's orders without further action from this Court.

Dated: June 7, 2022

Respectfully submitted,

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