

IN THE SUPREME COURT OF OHIO

**LEAGUE OF WOMEN VOTERS OF
OHIO, et al.,**

Petitioners,

v.

**OHIO REDISTRICTING COMMISSION,
et al.,**

Respondents.

Case No. 2021-1193

**Original Action Filed Pursuant to
Ohio Const., Art. XI**

**PETITIONERS' MOTION FOR AN ORDER REQUIRING RESPONDENTS TO
EXPLAIN THEIR FAILURE TO COMPLY WITH THE COURT'S
MAY 25, 2022 ORDER**

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INTRODUCTION

On May 25, 2022, this Court *ordered* the Ohio Redistricting Commission (the “Commission”) to reconvene and draft a revised plan that complied with the Ohio Constitution and to “file the district plan with the secretary of state no later than 9:00 am on June 3, 2022 and in this court by 12:00 pm on the same date.” *League of Women Voters of Ohio v. Ohio Redistricting Comm’n.*, (“*League V*”), Slip Opinion No. 2022-Ohio-1727, ¶¶ 5–6. The Commission failed to do so. And, contrary to all law, rules, and norms, it not only defied the order; it ignored the Court, and filed nothing at all.

Instead, in a letter dated June 3, 2022, Co-Chair Jeff LaRe wrote to Co-Chair Vernon Sykes, stating that the Court’s June 3, 2022 deadline was “artificial” and that the Commission would respectfully decline the Court’s “*invitation*” to act, as set forth in the May 25, 2022 order. *See Ex. 1*, June 3, 2022 Letter from Co-Chair Jeff LaRe to Co-Chair Vernon Sykes (emphasis added).

Although the lawlessness of the Commission members may be grounded in some, far-fetched, substantive thought, they have never shared that thought with this Court or with Petitioners. Petitioners therefore request that this Court issue another *order* mandating that Respondents explain their failure to comply with the Court’s May 25, 2022 order. In particular, Petitioners ask that Respondents be directed to file a written statement explaining their conduct and that Petitioners be permitted to respond three days later. Respondents should be ordered (not “invited”) to appear in person (with counsel if they so choose) for a hearing before the Court to explain their lawless conduct.

FACTUAL BACKGROUND

On May 25, 2022, this Court invalidated the Ohio Redistricting Commission’s General Assembly–district plan for the fifth time. *League V*, ¶ 5. Accordingly, this Court ordered the Commission to convene and to draft and adopt an entirely new General Assembly–district plan, *id.*, and to file that new district plan with this Court by June 3, *id.* ¶ 6.

After this Court’s May 25 decision, the Democratic Commissioners, Senator Vernon Sykes and House Minority Leader Allison Russo, urged Republican Co-Chair Jeff LaRe to convene the Commission. Specifically, Commission Co-Chair Sykes wrote to Co-Chair Jeff LaRe on May 26 and May 31, reiterating this Court’s deadline and calling for the Commission to be convened. *See* Ex. 2, May 26, 2022 Letter from Co-Chair Vernon Sykes to Co-Chair Jeff LaRe; Ex. 3, May 31, 2022 Letter from Co-Chair Vernon Sykes to Co-Chair Jeff LaRe. Co-Chair Sykes emphasized that he and Leader Russo “stand ready to meet at the earliest possible time” to begin drawing constitutional legislative districts. Ex. 2, May 26, 2022 Letter from Co-Chair Vernon Sykes to Co-Chair Jeff LaRe.

But Co-Chair Sykes’s calls to convene went unanswered. On June 2—the day before the Court-ordered deadline—Co-Chair Sykes wrote a third letter to Co-Chair LaRe “to express [his] deep disappointment that the Redistricting Commission has failed in its charge to produce constitutional legislative district maps for the people of Ohio by the deadline imposed by the Ohio Supreme Court.” Ex. 4, June 2, 2022 Letter from Co-Chair Sykes to Co-Chair LaRe. He concluded that “[t]he Redistricting Commission has violated an order from the Supreme Court of Ohio,” but “[m]ore alarming is that the Commission continues to violate its constitutional imperative to produce legislative maps for Ohio.” *Id.*

The Republican Commissioners ignored Co-Chair Sykes’s calls to convene. They did not enact a map. They did not file the map (or an explanation as to why there was no map) with this Court. Instead, on June 3—after the Commission failed to file anything with the Secretary of State by this Court’s 9:00 a.m. deadline—Co-Chair LaRe finally wrote back to Co-Chair Sykes, stating that this Court had imposed an “artificial” deadline. *See Ex. 1, June 3, 2022 Letter from Co-Chair Jeff LaRe to Co-Chair Vernon Sykes.* Co-Chair LaRe then proceeded to “decline the *invitation* to try and adopt a new general assembly district plan by a specified time and on a specified date.” *Id.* (emphasis added).

Other Republican Commissioners have also expressed support for this view. Senator Rob McColley has stated that enacting a plan by the court-ordered deadline would “confuse Ohioans” and that “we should not rush to produce a plan under a highly constrained time frame.” Jessie Balmert, *Republicans: Wait until after the November election to draw new legislative maps for 2024*, Cincinnati Inquirer, <https://bit.ly/3NoIIIt0> (Jun. 3, 2022).

ARGUMENT

A. This Court Has the Inherent Authority to Order Respondents to Enact a Districting Plan By a Specific Deadline.

It is within the inherent authority of this Court to set deadlines to effectuate compliance with its orders. It is fundamental to the rule of law that “courts have inherent authority—authority that has existed since the very beginning of the common law—to compel obedience of their lawfully issued orders.” *Cramer v. Petrie*, 70 Ohio St.3d 131, 133, 637 N.E.2d 882 (1994).

Ohio courts have repeatedly found that setting deadlines to comply with court orders is a part of a court’s inherent authority. *See, e.g., Brown v. Mossop*, 139 Ohio St. 24, 28, 37 N.E.2d 598 (1941) (“The inherent power of courts to make such reasonable rules as are deemed necessary to regulate and expedite proceedings is generally recognized. Rules prescribing the

time within which certain acts must be done or certain proceedings taken are very familiar and are absolutely indispensable to the prevention of needless delays and to the orderly and speedy discharge of business.”) (internal citations omitted); *see also Pope v. University Settlement, Inc.*, 8th Dist. Cuyahoga No. 73946, 1999 WL 166033, at *1 (Mar. 25, 1999); *cf.* 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”).

This Court has previously noted that this power extends to the redistricting dispute at issue here. *See League of Women Voters of Ohio v. Ohio Redistricting Comm’n.*, Slip Opinion No. 2022-Ohio-65, ¶ 136 (noting that Article IV, Section 2(B)(1)(f) of the Ohio Constitution “authorize[s] judgments . . . that are necessary to achieve closure and complete relief in actions pending before the court”) (internal citation omitted).

Were the Court powerless to set deadlines, then the Commission could merely run out the clock. It could fail to take action until after the composition of this Court has shifted. Indeed, that appears to be precisely what Respondents have in mind. (See Ex. 1, June 3, 2022 Letter from Co-Chair Jeff LaRe to Co-Chair Vernon Sykes (“ . . . it is not possible to draw a new general assembly district plan until the results of the November elections are known.”)).

B. The Commission Has, Until Now, Ultimately Obeyed this Court’s Orders Related to Map-Drawing Deadlines Throughout this Litigation, Yet Refuses to Do So Here In Order to Run Out The Clock.

Only now, for the first time, is the Commission questioning this Court’s authority to mandate remedial deadlines. Before now, the Commission has ultimately complied with this Court’s map-drawing deadlines. In fact, it has done so no fewer than four times. *See* June 8, 2022 Affidavit of Alexander Thomson ¶¶ 3–6 (setting forth the history of this Court’s prior scheduling orders and the Commission’s compliance).

According to Commissioner LaRose’s retelling of history, the Commission has only “accommodated” these previous Court deadlines “in the interest of reaching finality,” rather than out of respect for this Court’s authority. Ex. 5, June 3, 2022 Letter from Frank LaRose to the Ohio Redistricting Commission. This is after-the-fact bit of revisionist history. The Commission has evolved from purporting to comply with this Court’s orders to flatly refusing to even provide the Court with the decency of a response. Such conduct is inexcusable.

The Commission’s willful defiance is strategic. As noted above, the Republican Commissioners wish to run out the clock until after the November elections. See Ex. 1, June 3, 2022 Letter from Co-Chair Jeff LaRe to Co-Chair Vernon Sykes. “Not now” simply means never.

C. The Commission Must Provide an Immediate Explanation for its Failure to Comply with this Court’s May 25, 2022 Order.

In light of Respondents shocking behavior, Petitioners respectfully request that this Court order Respondents to file an explanation, with evidence, for their noncompliance with this Court’s May 25, 2022 order. Petitioners request the opportunity to respond three days later. Respondents should be directed to appear before this Court to explain to the Court and to Petitioners why they have refused to comply with this Court’s May 25, 2022 order.

Dated: June 8, 2022

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6.8.22 Thomson Affidavit.pdf

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June 08, 2022 07:44:43 -8:00 [FBD03C026B07] [65.60.141.105]
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I, Theresa M Sabo, did witness the participants named above electronically sign this document.



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Case No. 2021-1193

**Original Action Filed Pursuant to
Ohio Const., Art. XI**

**AFFIDAVIT OF ALEXANDER THOMSON IN SUPPORT OF
PETITIONERS' MOTION FOR AN ORDER REQUIRING RESPONDENTS TO
EXPLAIN THEIR FAILURE TO COMPLY WITH THE COURT'S
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Affidavit of Alexander Thomson

I, Alexander Thomson, having been duly sworn and cautioned according to law, hereby state that I am over the age of eighteen years and am competent to testify as to the facts set forth below based on my personal knowledge and having personally examined all records referenced in this affidavit, and further state as follows:

1. I am one of the counsel for Petitioners in the above-captioned case, No. 2021-1193.
2. The Ohio Redistricting Commission (“Commission”) has filed its redistricting plans with the Supreme Court of Ohio as set forth below.
3. On January 12, 2022, this Court invalidated the Commission’s first General Assembly—district plan and ordered the Commission to adopt a new plan within 10 days. *League of Women Voters of Ohio v. Ohio Redistricting Comm.*, (“*League I*”), Slip Opinion No. 2022-Ohio-65, ¶ 2 (“[w]e order the commission to be reconstituted and, within ten days of this judgment, to adopt a new plan in conformity with the Ohio Constitution”). Accordingly, the Commission enacted the Second Plan on January 22, 2022. Ohio Redistricting Commission, Minutes-Thursdays at 2, January 20, 2022, <https://bit.ly/3NTjh2l>.
4. On February 7, 2022, this Court invalidated the Commission’s second General Assembly—district plan and ordered the Commission to adopt a new plan within 10 days. *League of Women Voters of Ohio v. Ohio Redistricting Comm.*, (“*League II*”), Slip Opinion No. 2022-Ohio-65, ¶ 2 (“We order the commission to be reconstituted and, within ten days of this judgment, to adopt a new plan in conformity with the Ohio Constitution.”). The Commission missed this February 17 deadline. Following this Court’s order to Respondents to show cause for why they should not be held in contempt,

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02/18/2022 Case Announcements #2, 2022-Ohio-498, the Commission enacted the Third Plan on February 24, 2022. Respondent The Ohio Redistricting Commission’s Notice Of Filing Of Adopted General-Assembly Plan, Case No. 2021-1193, Feb 25, 2022.

5. On March 16, 2022, this Court invalidated the Commission’s third General Assembly—district plan and ordered the Commission to file a new district plan with the Secretary of State by March 28, 2022, and to file a copy of that plan in this Court by 9:00 a.m. on March 29, 2022. *League of Women Voters of Ohio v. Ohio Redistricting Comm.*, (“*League III*”), Slip Opinion No. 2022-Ohio-789, ¶ 45. Accordingly, the Commission adopted the Fourth Plan on March 28, 2022, filed it with the Secretary of State, and then filed a copy with the Court on March 29, 2022. Respondent The Ohio Redistricting Commission’s Notice Of Filing Of Adopted General-Assembly Plan, Case No. 2021-1193, Mar. 29, 2022, 1.
6. On April 14, 2022, this Court invalidated the Commission’s fourth General Assembly-district plan and ordered the Commission to file a new plan with both the Secretary of State and this Court by May 6, 2022. *League of Women Voters of Ohio v. Ohio Redistricting Comm.*, (“*League IV*”), Slip Opinion No. 2022-Ohio-1235, ¶¶ 78–79. On May 6, 2022, the Commission resubmitted the unconstitutional Third Plan (“the Resubmitted Third Plan”) to the Court. Respondent The Ohio Redistricting Commission’s Notice Of Resubmission Of The February 24, 2022 General-Assembly Plan, Case No. 2021-1193, May 6, 2022.

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Alexander Thomson

Signed on 2022/06/08 07:44:43 -8:00

Alexander J. Thomson

Columbus, Franklin, Ohio

Signed at _____, _____, _____.


City

County

State

06/08/2022

Sworn to and subscribed before me this _____ day of June, 2022


Signed on 2022/06/08 07:44:43 -8:00

Notary Public



Notarial act performed by audio-visual communication

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EXHIBIT 1



Representative Jeff LaRe
Ohio's 77th House District

June 3, 2022

Dear Co-Chair Sykes:

Thank you for your correspondence dated June 2, 2022. Respectfully, I decline the invitation to try and adopt a new general assembly district plan by a specified time and on a specified date.

Article XI of the Ohio Constitution undoubtedly empowers the Ohio Supreme Court with the exclusive jurisdiction to review a general assembly district plan. Consequently, the Court is clearly authorized to determine whether such a plan complies with the requirements of Article XI. On May 25, 2022, the Court did that when it concluded that the Redistricting Commission's general assembly district plan adopted on May 5, 2022 was incompatible with Article XI. Although I disagree with the majority's decision, I respect that outcome and fully intend for the Commission to reconvene and adopt a constitutionally compliant plan. However, doing so by an artificial date and time is not appropriate at this time for a number of reasons.

First, it is the Ohio Constitution, not the Court, which dictates when and how the Commission must respond to a plan that is invalidated by the Court. Specifically, Section 9(B) of Article XI tells us that the Commission "shall be reconstituted..., convene, and ascertain and determine a general assembly district plan in conformity with such provisions of this constitution as are then valid ..." Nowhere in the language of the Constitution does it place a time limit on the Commission to do that. Further, the Constitution does not empower the Court with the authority to tell the Commission when it must do that. There is sound reason for that; namely, the separations of powers inherent in our Constitution prevents such action.

Second, as you know, the federal court has imposed a map for the 2022 election. Accordingly, adopting yet another new plan immediately before an impending election will do nothing but continue to sow confusion among Ohioans. A primary election for General Assembly districts is now set to proceed on August 2, 2022 under defined district lines. It would be foolish for the Commission to take any further action that would disrupt that election, or the general election that is scheduled a mere 3 months later.

Finally, there are logistical problems with adopting a new plan at this time. For example, under Section 5 of Article XI, now that a map is in place for the 2022 elections, it is not possible to draw a new general assembly district plan until the results of the November elections are known.

As I said above, I respect the Court and its decision. I fully expect the Commission to adopt a constitutionally compliant general assembly district plan in advance of the 2024 elections.

Respectfully,

A handwritten signature in black ink, appearing to read "J LaRe", is written over a light blue horizontal line.

Jeff LaRe
Ohio's 77th House District

EXHIBIT 2



STATE SENATOR VERNON SYKES
28th District

May 26, 2022

The Honorable Jeff LaRe
District 77
Ohio House of Representatives
Columbus, Ohio 43215

Dear Co-Chair LaRe,

I write today to emphasize the need to reconvene the Ohio Redistricting Commission as soon as possible in order to chart a path forward to fulfill the Ohio Supreme Court's order to adopt constitutional state legislative maps.

Leader Russo and I stand ready to meet at the earliest possible time to begin, once again, the task of drawing constitutional legislative districts. The Court has set a new deadline of June 3, 2022 – a date already fast approaching.

Although a proper and constitutional map has eluded us thus far, the fact remains that the Commission is under an order from the Supreme Court to act by the end of next week. We must fulfill our obligations to the Court and the Constitution and reconvene to pass a proper map.

As I have advocated from the start of this elongated process, we must work together to fulfill the edicts of the Constitution's reform language and the demands of the voters that approved the reforms.

Sincerely,

A handwritten signature in black ink, appearing to read "Vernon Sykes".

Senator Vernon Sykes
Co-Chair, Ohio Redistricting Commission
Senate District 28

CC: Members, Ohio Redistricting Commission

EXHIBIT 3



May 31, 2022

The Honorable Jeff LaRe
District 77
Ohio House of Representatives
Columbus, Ohio 43215

Dear Co-Chair LaRe,

We write today to again call for the reconvening of the Ohio Redistricting Commission. The Supreme Court of Ohio has set a deadline of June 3, 2022 at 9:00 a.m. for us to draw constitutional state legislative maps. This necessitates that the Commission meet as soon as possible to fulfill our constitutional duty to the people of Ohio.

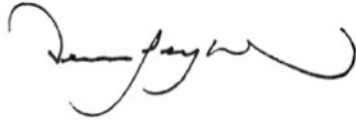
The Redistricting Commission has at least four items of business that need to be addressed: First, we must decide on meeting dates and times. Second, we should bring back the Independent Mapmakers so they may perform the final adjustments to their previous maps. These adjustments should not take longer than a few hours to complete. Third, we must live stream all mapmaking progress for the people of Ohio to witness in real time. Finally, we must come to an agreement on constitutional maps. We remain eager to get restarted on the path to constitutional maps.

In the interest of compromise, we could consider starting from Auditor Faber's version of the Independent Mapmakers' maps. Our respective map drawing staff members, who are often cited as experts by the majority party's commissioners, should begin work in public as soon as Wednesday, June 1. The Redistricting Commission can then meet twice on Thursday, June 2. A morning meeting can be used to review the progress made by staff and provide feedback and amendments on Auditor Faber's version of the Independent Mapmakers' map. An evening meeting can serve as a chance to review Commissioners' changes and to vote on a finalized map.

There is still time to adequately perform our constitutional and Supreme Court-ordered duty to draw constitutional maps by Friday, June 3.

We should not waste any more time in pursuing this process.

Sincerely,



Senator Vernon Sykes
Co-Chair, Ohio Redistricting Commission
Senate District 28



C. Allison Russo
Commissioner, Ohio Redistricting Commission
House Minority Leader
House District 24

CC: Members, Ohio Redistricting Commission

EXHIBIT 4



STATE SENATOR VERNON SYKES
28th District

June 2, 2022

The Honorable Jeff LaRe
District 77
Ohio House of Representatives
Columbus, Ohio 43215

Dear Co-Chair LaRe,

I write today to express my deep disappointment that the Redistricting Commission has failed in its charge to produce constitutional legislative district maps for the people of Ohio by the deadline imposed by the Ohio Supreme Court.

Leader Russo and I have been prepared to meet at any time since the latest Ohio Supreme Court ruling invalidated the latest set of unconstitutional maps. However, my inquiries – letters and calls – to schedule meetings and draw maps went unanswered. Unfortunately, the deadline for producing maps by tomorrow at 9:00 a.m. is now unachievable for the Commission.

The Redistricting Commission has violated an order from the Supreme Court of Ohio. More alarming is that the Commission continues to violate its constitutional imperative to produce legislative maps for Ohio.

Sincerely,

A handwritten signature in black ink, appearing to read "Vernon Sykes".

Senator Vernon Sykes
Co-Chair, Ohio Redistricting Commission
Senate District 28

CC: Members, Ohio Redistricting Commission

EXHIBIT 5



3 June 2022

Fellow Commission Members,

As I've stated repeatedly in recent months, I believe the Ohio Redistricting Commission has adopted five district plans (four legislative and one congressional) that meet the standards set forth by the citizens of our state in the Ohio Constitution.

While a slim majority of the justices on the Ohio Supreme Court hold a different view, their authority is limited to that disagreement. I concur with Co-Chair LaRe that the Constitution empowers the Court to invalidate a district plan, but it does not give the Court the authority to mandate a timeline for remediation. Nevertheless, the Commission has accommodated the Court's previous deadlines in the interest of reaching finality on district plans for use in the 2022 elections. Last week, a federal court order gave Ohio that finality only for this year's elections, clearly stating that the process of adopting a constitutional General Assembly district plan would need to be revisited for 2024 and beyond. Therefore, I concur with the co-chair's assessment that there is no immediate need to draw new districts that will not apply to this year's elections.

I acknowledge the Court's authority to review and, if necessary, invalidate a General Assembly district plan, and I recognize the need to reconvene the Ohio Redistricting Commission for the purpose of adopting a new plan for use in future statewide elections. The timeline for doing so will be established by the Commission, according to the co-equal authority granted to it by the Ohio Constitution.

Yours in service,

A handwritten signature in blue ink that reads "Frank LaRose". The signature is fluid and cursive, written in a professional style.

Frank LaRose
Ohio Secretary of State

CERTIFICATE OF SERVICE

I, Freda J. Levenson, hereby certify that on June 8, 2022, I caused a true and correct copy of the forgoing to be served by email upon the counsel listed below:

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