IN THE
SUPREME COURT OF OHIO

League Of Women Voters Of Ohio, *et al*.,	:	
		Case No. 2021-1193
Relators,	:	
		Original Action Pursuant to
v.	:	Ohio Const.,Art. XI
Ohio Redistricting Commission, *et al*.,	:	[Apportionment Case Pursuant
	:	to S. Ct. Prac. R. 1403]
Respondents.		

Bria Bennett, *et al*.,	:	
		Case No. 2021-1198
Relators,	:	
		Original Action Pursuant to
v.	:	Ohio Const., Art. XI
Ohio Redistricting Commission, *et al*.,	:	[Apportionment Case Pursuant to S. Ct. Prac. R. 1403]
Respondents.	:	

The Ohio Organizing Collaborative, *et al*.,	:	
		Case No. 2021-1210
Relators,	:	
		Original Action Pursuant to
v.	:	Ohio Const.,Art. XI
Ohio Redistricting Commission, *et al*.,	:	[Apportionment Case Pursuant to S. Ct. Prac. R. 1403]
Respondents.	:	

COMBINED RESPONSE OF RESPONDENT GOVERNOR MIKE DEWINE TO (A) PETITIONERS' RENEWED MOTION FOR AN ORDER DIRECTING RESPONDENTS TO SHOW CAUSE AND MOTION TO SCHEDULE CONTEMPT HEARING; AND (B) PETITIONERS' OBJECTIONS TO GENERAL ASSEMBLY DISTRICT PLAN ADOPTED ON MARCH 28, 2022

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	:	to S. Ct. Prac. R. 1403]
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Ohio Redistricting Commission, *et al*.,	:	[Apportionment Case Pursuant to S. Ct. Prac. R. 1403]
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TABLE OF CONTENTS

Page

Page

TABLE OF AUTHORITIES

Cases **Page(s)**

Cases **Page(s)**

Other Citations **Page(s)**

Other Citations **Page(s)**

INTRODUCTION

> "It is further ordered that the Ohio Redistricting Commission shall file the district plan with the secretary of state no later than March 28, 2022, and shall file a copy of that plan with this court by 9:00 a.m. on March 29, 2022. ...
>
> It is further ordered that ***no requests or stipulations for extension of time shall be filed, and the clerk of this court shall refuse to file any requests or stipulations for extension of time***."
>
> [*League of Women Voters, et al. v. Ohio Redistricting Commission, et al*., Case No. 2021-1139, Order Entry of 3/16/22 (emphasis added).]

The time requirements of this Court's Order created two impossible choices, which, in the end, was no choice at all. The first is whether the Redistricting Commission, in obvious derogation of its members' sworn oaths and express constitutional obligations, should simply have filed with the Court the ***incomplete draft and constitutionally non-compliant*** legislative maps tendered to it, in the case of the working draft House map, mere hours (or less) before the decreed cutoff, and in the case of the working draft Senate map, after the cutoff necessary to make a timely submission.

Under both Article XI and the separation of powers doctrine, the answer is necessarily "no." This is true in two key respects. First, Ohio voters affirmatively voted that the power to issue legislative maps lies exclusively with the Redistricting Commission. Like any legislative body, the Commission members cannot delegate to newly-hired map makers their discretion and constitutional decision-making responsibilities. Thus, although the independent map makers selected at this Court's urging failed to timely submit, despite their best efforts, a final set of legislative maps

within the strict time limitations imposed by this Court's Order, it ultimately remained incumbent upon the Commission to discharge its constitutional obligations, including undertaking a review of the new maps and evaluating whether they satisfied the many, (and, according to the map makers, likely impossible) constitutional considerations prescribed under Article XI and balance the countervailing interests where conflicts arise.

Second, even the most modest scrutiny readily identified significant constitutional infirmities with the newly-drafted, but yet incomplete, House map. Specifically, the mapmakers had purposefully made every effort to draw "safe Democratic districts," but by doing so the House map improperly:

- Deemphasized and eliminated competitive districts—even though that was the promise that induced voters to pass Issue 1 and enact Article XI.
- Violated the compactness requirements of Section 6(C), including by adopting a "hub and spoke" model and splitting of cities.
- Disenfranchised suburban Republican voters in violation of Section 6(A) by utilizing a gerrymandering tool to draw districts to appear as "hub and spokes."
- Was "drawn primarily to favor" Democrats in violation of Section 6(A).

Tellingly, even though the Democratic members demanded the Commission's summary adoption of the incomplete plans, they did so with the caveat that the Commission would retain the power to make "any necessary adjustments" (or, as Minority Leader Russo put it, "***fixe[s]***") to the maps at a later date. By any measure, the Commission acted properly in not adopting the incomplete, unconstitutional maps. The "end" result sought here, the formation of Democratic strongholds, does not justify the "means"—the trampling of constitutional requirements.

With no plans available, the second choice was whether to file any maps given this Court's specific command that completely new redistricting maps must be prepared, evaluated, and submitted in less than two weeks. This was no choice at all. The Commission therefore complied with the Court's order and adopted completed plans improving the symmetry measures in both the House and Senate maps and splitting fewer communities, thereby improving upon compact districts and ultimately avoiding many of the constitutional infirmities found in the independent map makers' drafts.

Petitioners predictably object, and will continue to do so until Article XI is emasculated to the point it bears no resemblance to the amendment Ohio voters originally approved. However, the Court's jurisdiction is confined to either rejecting Petitioners' objections or sustaining them and remanding this matter to the Commission. Ohio Const. Art. XI, Sec. 9(D)(3). What is beyond the Court's authority is the power to directly or indirectly, under the threat of contempt or otherwise, compel the implementation or adoption of any general assembly district plan. The express language of Article XI Section 9(D)(1)-(2) forecloses any suggestion to the contrary. But beyond this express constitutional limitation, the Commission members are shielded from any liability under a legislative privilege. The Commission is an independent legislative body that acts through deliberation and majority vote. "That legislative officers are not liable personally for their legislative acts is ***so elementary, so fundamentally sound, and has been so universally accepted, that but few cases can be found where the doctrine has been questioned and judicially declared***." *Kniskern v. Amstutz*, 144 Ohio App. 3d 495, 496-97, 760 N.E.2d 876 (8th Dist. 2001) (quoting *Hicksville v. Blakeslee*, 103 Ohio St. 508, 517–518, 134 N.E. 445 (1921) (italic

emphasis in original; bold emphasis added)). The Commission's "exercise of legislative discretion should not be inhibited by judicial interference or ***distorted by the fear of personal liability***." *Bogan v. Scott-Harris*, 523 U.S. 44, 52, 118 S.Ct. 966, 140 L.Ed.2d 79 (1998) (emphasis added); *see also Spallone v. United States*, 493 U.S. 265, 279, 110 S.Ct. 625, 107 L.Ed.2d 644 (1990) ("any restriction on a legislator's freedom undermines the 'public good' by interfering with the rights of the people to representation in the democratic process").

As a matter of law, Petitioners' motions for contempt necessarily fails for this reason alone, although other grounds exist for doing so and they are outlined below. Unlawful contempt proceedings accomplish nothing for Ohio citizens. The only persons benefiting from any threatened contempt proceedings are the out-of-state partisan special interest groups who are now weaponizing litigation in an improper effort to thwart the will of Ohio voters, interfere with the legislative process, and unconstitutionally dilute opposition voters.

STATEMENT OF THE PROCEEDINGS

A. The Promise Made To Ohio Voters: Increased Competitive Districts.

When the proposed amendment that would become the Article XI redistricting procedure was presented to the public, Ohioans were promised increased competitive districts. Governor DeWine recalled that voters were told that the amendment "would end the p[artisan] process for drawing Ohio House, Senate and House and Senate districts and replace it with a bipartisan process with the goal of having district boundaries that are more compact and politically competitive." [Exh. I-7, Tr. 3/28/22, Pt.5, APP-000275.] And indeed this is exactly what the summary of Issue 1 presented to the voters explicitly stated: "[t]he proposed amendment would: . . . [have] the goal of

having district boundaries are more compact and politically competitive." One editorial in the Toledo Blade endorsing the amendment said "[t]he new system . . . would create legislative districts that are more geographically compact, politically competitive, and reflective of voters' party preferences." [Exh. J, Blade Endorsement.] Another from the Cincinnati Enquirer's Editorial Board observed that "[m]apping criteria include keeping communities together by not splitting cities, townships and counties when possible, and making the political distribution of the districts match the political preferences of voters statewide." [Exh. K, Enquirer Endorsement.] Based upon this promise, Ohio voters "overwhelmingly approved" the amendment by 71% margin. *League of Women Voters of Ohio v. Ohio Redistricting Comm'n (LWV I)*, __ Ohio St.3d __, 2022-Ohio-65, __ N.E.3d __, 2022 WL 110261, ¶ 4; [Exh. L, Ballotopedia Article.]

Importantly, as Governor DeWine recognized at the Commission's last meeting, the promise of increased competitiveness and more compact districts not only swayed voters, but was also reflected in Article XI's mandatory requirements. "The statewide proportion of districts whose voters . . . favor each political party" as reflected in the past ten years' of voting must "correspond closely to the statewide preferences of the voters of Ohio." Article XI, Sec. 6(B). "General assembly districts shall [also] be compact," *id.* at Sec. 6(C), and "composed of contiguous territory," *id.* at Sec. 3(B)(3). And outside a select number of counties, "[t]he remaining territory of the state shall be divided into representative districts by combining the areas of counties, municipal corporations, and townships," with "no county . . . be[ing] split more than once," "[w]here feasible." *Id.* at Sec. 3(C). "Senate districts shall [also] be composed of three contiguous house of representative districts." *Id.* at Sec. 4(A). They too are subject to ratio representation

and boundary requirements, with a similar caveat acknowledging that it may "**not [be] possible for the commission to draw representative districts that comply with all the requirements of this article**." *Id.* at Sec. 4(A)(3) (emphasis added).

B. How We Got Here: The Commission's Actions In Response To The Court's March 16 Order.

Following the Court's third rejection of the Commission's effort to draft a legislative map, the Commission reconvened with a focus on following this Court's decisions down to the letter (without prejudicing its stated objections to the Court's construction of Article XI). It began first with scheduling and time allocation. Previously, the Court criticized the commission for waiting days after its rejection of a particular map to "hold . . . substantive meeting[s]" again, "forcing the process to be rushed" once the Commission finally did meet. *League of Women Voters of Ohio v. Ohio Redistricting Comm'n (LWV II)*, __ Ohio St.3d __, 2022-Ohio-342, __ N.E.3d __, 2022 WL 354619, ¶ 44.

This time, however, the Commission reconvened on the Saturday immediately following the Court's March 16 ruling. It then "met every day, except for March 20, 2022" [Exh. I-2, Commission Section 8(C)(2) Statement, APP-000233], a day the Commission's members took off in part to permit research into hiring independent map drawers and mediators. [*See, e.g.*, Exh. A-2, Tr. 3/19/22, APP-000019-21.]

1. The Commission Engages Independent Mapmakers.

Another of the Court's criticisms was that "the commission itself did not engage in any map drawing," but instead relied on maps drawn by "the legislative caucuses of the two major political parties," a process culminating in the enactment of plans "controlled by one political party's legislative leaders." *LWV I*, 2022-Ohio-65, at ¶¶ 119-120. The

Court gave explicit advice on how to correct the problem in its March 16 decision: "The commission should retain an independent map drawer—who answers to all commission members . . . to draft a plan through a transparent process." *League of Women Voters of Ohio v. Ohio Redistricting Comm'n (LWV III)*, __ Ohio St.3d __, 2022-Ohio-789, __ N.E.3d __, 2022 WL 803033, ¶ 30.

This is what the Commission did. Following research, Doug Johnson for the Republicans and Michael McDonald for the Democrats were identified as experienced map drawers. [Exh. C-2, Tr. 3/21/22, APP-000028-30.] Johnson and McDonald's credentials and potential conflicts were presented to the Commission during its public meeting on March 21. [*Id.* at APP-000028-30, 35-40.] The Commission then took the opportunity to question Johnson and McDonald – about their qualifications, their understanding of Article XI's requirements and the transparency of their drafting processes – at another public meeting on March 23, before deciding to hire them. [Exh. E-4, Tr. 3/23/22, APP-000066-78, 82-88, 95-96; Exh. E-1, 3/23/22 Meeting Minutes, APP-000058-61.]

2. The Commission Ensures The Independent Mapmakers Follow A Transparent Process With Proper Instruction On Constitutional Mandates.

The Court also faulted the Commission for failure to "instruct the [previous] map drawers to comply with Article XI, Section 6." *LWV I*, 2022-Ohio-65 at ¶¶ 36, 109; *LWV II*, 2022-Ohio-342 at ¶ 52. This time, however, the Commission provided their independent mapmakers with express instructions. During the same March 23 meeting wherein it chose to hire the experts, the Commission debated at length specific, written instructions for the independent map drawers, and formally adopted the following rules:

> The independent map drawers shall draft any General Assembly district plan at the direction of the Redistricting Commission and in accordance with the Ohio Constitution and Supreme Court of Ohio's orders.
>
> The independent map drawers shall answer to each of the Redistricting Commission members. . . .
>
> The independent map drawers shall draw a general assembly district plan that conforms with the Ohio Constitution including Article 11, Sections 1, 2, 3, 4, 5, 6, and 7, the Constitution of the United States and applicable federal laws.
>
> The independent map drawers shall draw a general assembly district plan that conforms with the opinions of the Ohio Supreme Court and the United States Supreme Court.

[Exh. F-1, Ground Rules for Map Drawers, APP-000100-101.]

Mindful of the Court's insistence that the Commission produce an "*entirely new plan*,"[1] the Commission's rules further mandated that Johnson and McDonald "shall produce ***an entirely new general assembly district plan*** that has not been previously submitted to the Redistricting Commission," without consideration of "any general assembly plan proposals or work product produced prior to . . . March 23, 2022[.]" [*Id.* (emphasis added.)]

Finally, the Commission ensured that, per the Court's request for a "transparen[t]" process wherein "drafting [that] should occur in public," *LWV III*, 2022-Ohio-789 at ¶ 44, the rules provided for a real-time livestream of the independent mapmakers' work:

> The Statehouse's Ohio Government TV will livestream the map making process in Room 116 [and] will stream the map drawers whenever they are working in the room.
>
> Commissioners or their designated staff shall have unlimited access to the map drawers . . .

[1] *See LWV II*, 2022-Ohio-342 at ¶¶ 35-36 (emphasis in original); *LWV III*, 2022-Ohio-789 at ¶ 44.

> The independent map drawers will provide regular progress updates to the Commission at each of the Commission's scheduled meetings, [during which] Commissioners can expect to provide feedback and guidance to the independent map drawers . . .
>
> Public access will be . . . available in a nearby room where video from the work room will be broadcast.

[Exh. F-1, 3/23/22 Ground Rules for Map Drawers, APP-000100-101.]

By clarifying the ground rules ahead of time, the Commission hoped to avoid repeating issues with members having "only hours" to review proposed maps before the filing deadline. *LWV III*, 2022-Ohio-789 at ¶¶ 16, 29. Of course, after completion of the proposed maps, the Commission members would still have to exercise their discretion and conduct their own independent review.[2]

3. The Commission Works Proactively With The Independent Map Drawers And Mediators.

The Commission received updates from the independent map drawers at every meeting it held following their hiring, up to and including the March 28 due date.[3] Even before they were hired, however, the Commission foresaw that possible disagreements could arise even when working with unbiased experts. Accordingly, to address any disputes regarding its mapmaker instructions, the Commission consulted with professional mediators from the United States Court of Appeals for the Sixth Circuit. [Exh. D-2, Tr. 3/22/22, APP-000047-54; Exh. G-1, Tr. 3/26/22, APP-000136-137.]

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[2] As Co-Chair Sykes later observed: "What we're doing now is giving them marching orders so that they can continue to work. ***We still have a vote to approve any plan that comes forward***. We [are] trying to make some preliminary decisions that they need to make at this particular time so that we can move forward. So I'm encouraging the members to do that because of the short timetable that we have, and we've taken some time to review the proposal. And once we have one united map will be better able in the position to make a decision about the total maps that we have before us. But I'm encouraging everyone to take a position to help us keep moving in the right direction to complete our task by tomorrow." [*See* Exh. H-25, Tr. 3/27/22, APP-000221 (emphasis added).]

[3] [*See generally* Exh. F-2, Tr. 3/24/22; Exh. F-3, Tr. 3/25/22; Exh. G-1, Tr. 3/26/22; Exh. H-25, Tr. 3/27/22; Exhs. I-3, I-4, I-5, I-6, I-7, Tr. 3/28/22 Pts. 1-5.]

4. The Independent Mapmakers Find That Ohio's Geography And Extensive Districting Requirements Create Unique Challenges—Just As the Court Previously Observed.

In its first *LWV* decision, the Court conceded that Ohio's geography and its political landscape posed significant challenges for even the most well-intentioned of drafters. *See LWV I*, 2022-Ohio-65 at ¶ 128 ("There is no dispute among the experts that Ohio's political geography poses challenges in the drawing of overall Article XI-compliant districts."). After only one day of work, independent map drawers Johnson and McDonald quickly agreed with this assessment.

Johnson opened his substantive remarks to the Commission on this issue at the March 24 meeting: "one[] [of the] first issues that we have spent a lot of time today discovering which you and your staff have been living with for throughout this process are issues of geography." [Exh. F-2, Tr. 3/24/22, APP-000104.] Democratic expert McDonald reported during the same meeting that the Court's mandate for "symmetry" made the task of dealing with Ohio's political geography all the more difficult and that "***it may not be possible***":

> We want to have . . . an equal number as much of that as possible, given the geography and other constraints of Democratic districts and Republican districts on either side of that 50 percent. . . . So if we look at 50 to 52 percent performance for Democratic Party or Republican Party, we went to about the same number of districts in that range. And if we look at 40, 52 to 55 or for either party, we want the same number of districts in that range. . . . That's when we're talking about symmetry. Looking at paragraph 32 and 33 [of the Court's decision], the court's extensively citing this as evidence of unfairness or violations of the Constitution. . . . I think the court wants us to do these calculations. . . . . And again, ***maybe it not may not be possible because***, you know, people live in certain places and we've got some very constraining geography and in Ohio. But as much as it's possible, we need to have a balance of Democratic and Republican leaning districts.

[Exh. F-2, 3/24/22, APP-000108 (emphasis added.)]

The issue took center stage again at the subsequent March 25 meeting, and ***every meeting*** thereafter:

- **March 25 Meeting**: The independent mapmakers noted that they had spent "most of yesterday [just] working on Franklin [County]," and had completed work only two other counties as of the 2:00 p.m. meeting that day. [Exh. F-3, Tr. 3/25/22, APP-000118.]

- **March 26 Meeting**: Minority Leader Russo inquired as to how the Court's request for symmetry impacted competitiveness in proposed districts, and whether changes in competitiveness "better address[] the issue of proportionality that requirement of the Constitution, which is weighted equally, by the way, to compactness and some of the other requirements within that section." [*See* Exh. G-1, Tr. 3/26/22, APP-000138-140 ("I would remind my colleagues on the commission that Compactness 6C is considered equally with [6]A and B, according to the Constitution. So we can't consider one of them over the others.").] Expert Johnson admitted that ***"[i]n the quest to get as close to symmetry as we can, we really are kind of blowing through compactness***." [*Id.* at APP-000142 (Emphasis added.)] He asked that the Commission provide further guidance on "what balance you want us to strike between getting closer to symmetry and . . . compactness." [*Id.*]

- **March 27 Meeting**: McDonald echoed Johnson's request for confirmation that he was making the right judgment calls between these equally-weighted competing factors, and admitted that at times, ***he sacrificed competitiveness or compactness in the name of reaching Court's "magic number***."[4]

[4] As McDonald stated: "And that really highlight[s] . . . the question that we raised before and . . . it's one of the questions we have for you, which is the tradeoff between compactness and . . . partisan balance and symmetry. So I think that the court order is very clear on the magic number. You know, we need to hit the 45/54 and the 18/15, and we need to have good symmetry as well. But when we get into the do, we have three, we have two or three or four competitive Republican seats versus three or four Democratic seats. Does compactness come into that decision? I think the court made very clear in its earlier rulings when it was when there were five or eight competitive Democratic seats and noncompetitive Republican seats. You know, regardless of compactness, that was not acceptable. But when we start getting into these ranges of three, one or two, the then how far can we go in the compactness question to achieve better symmetry?" [Exh. H-25, Tr. 3/27/22, APP-000201, *see also* APP-000205 (exchange between Johnson and McDonald, Q: "Yeah, that's right. It's not competition that's driving that particular choice . . . It's symmetry, right?" A: "Symmetry. No, it's . . . the proportionality. . . .So I've got, you know, there's trying to balance out as best as I can, so I know I can get to proportional seats in there as well.")]

Finally, at the second meeting of March 28 – the Court-ordered deadline for the Commission to produce an "entirely new" map – Johnson informed the Commission that, in order to avoid partisan symmetry and achieve that "magic number," the map drafters had been required to do what Section 6(A) says they cannot; "draw[]" a "district plan . . . to favor [one] political party" over the other. Ohio Const. Article XI, Sec. 6(A). He stated:

> Yes, there [are] very few options under the proportionality and symmetry rules for how to meet those goals. It really forces in almost every case, as I noted before, it's not universal, ***but in almost every case where you can draw a democratic leaning or a safely Democratic seat within the community, county and township and city rules [w]e almost universally have to draw that in order to hit the proportionality and symmetry numbers***. . . .
>
> I would add to that this is part of the natural result of . . . complying with symmetry in the way we get to the symmetry was number one, obviously bringing a few Republican seats into that 40 to [42] range. And then once there really weren't many more options for that. ***Pushing Democratic seats that were in the range out of it to achieve symmetry is as described by the court***. . . . And given that the natural results of the other rules would have meant it makes it difficult to reach the democratic magic number . . .

[Exh. I-4, Tr. 3/28/22, Pt.2, APP-000249-250 (emphasis added.)]

5. The Independent Mapmakers Fail To Produce An Article XI-Compliant Map In Time To Permit Commission Deliberation.

Notwithstanding the foregoing revelation, the Commission still undertook best efforts to come up with a constitutional map on March 28, with a marathon day of meetings starting at 10:00 a.m. and ending well after 10:00 p.m. They even impermissibly used, in contravention of the instructions for the Commission to use "an

independent map drawer" *LVW III*, 2022-Ohio-789 at ¶ 30, a map prepared by Democratic map maker Glassburn for seven counties in an effort to expedite their work.

By that morning, Johnson and McDonald had "merged" their respective drafts together into single, unified House and Senate maps and had incorporated a number of revisions suggested at the March 27 meeting but they did not have a final House or Senate map to share with the Commission. [Exh.I-3 Tr. 3/28/22, Pt.1, APP-000235-237.] The Commission agreed to their request to permit more time and regroup at 3:00 p.m. to discuss progress. [*Id.* at 239.]

a. The Independent Mapmakers Acknowledge Their Unfinished Drafts Remained Unconstitutional Only Hours Before The Deadline.

At 3:00 p.m. the map drawing experts reported that it would "probably [be] still a couple of hours, at least" before final maps would be available. [Exh.I-4, Tr. 3/28/22, Pt.2, APP-000241.] Compounding the delay, they explained, was the fact that "Ohio has . . . some of the most complicated geographic challenges, certainly the most strict geographic rules and also the most complicated Senate rules for how this process is handled," resulting in a "slow process" even as Johnson and McDonald worked "as fast as [they] can."[5] [*Id.*]

The 3:00 p.m. meeting was also where the map drafters explicitly confirmed to the Commission that, yes, they had intentionally drawn "democratic leaning or . . . safely Democratic seat[s] . . . in order to hit the proportionality and symmetry numbers" dictated by the Court. [Exh. I-4, Tr. 3/28/22, Pt.2, APP-000249-250.]

[5] Map drafter McDonald had to stop working around 5:00 p.m. on March 28 due to a prior commitment, but expressed confidence that Johnson was "down to [working on] issues that should not affect the constitutionality issues in terms of the proportionality and the symmetry," and that Johnson "should be able to complete whatever work needs to be done." [Exh. I-4, Tr. 3/28/22, Pt.2, APP-000244.] Johnson later reported that he had consulted with McDonald by phone at least twice after his departure to continue discussing map revisions. [Exh. I-6, Tr. 3/28/22, Pt.4, APP-000258.]

But there were other problems. Auditor Faber observed that, in several urban areas on the still unfinished maps, the drafters "have adopted what has sometimes become the hub and spoke model where you take the hub and then you take the urban core center and you divide it out and spokes through the tap through the suburbs to create Democrat districts." [Exh. I-4, Tr. 3/28/22, Pt.2, APP-000245.] This, he noted, was a "classic" form of gerrymandering, "cracking a population to try and divide those voters across multiple districts to reach an achieved result." [*Id.* at APP-000246-247.] A map depicting Lucas County, for example, "essentially mov[ed] urban voters [from Toledo] into suburban areas," which had the effect of "diluting the city of Toledo vote across multiple districts to create more Democrat districts in that area." [*Id.*] Johnson agreed that Auditor Faber's "description of the result of what happens is ***not inaccurate***," but said that the effect was not intentional. Rather, it was among "the dynamics that play in when we're following their constitutional requirements and the [C]ourt order." [*Id.* at APP-000246 (emphasis added).]

And of course, the filing deadline was only hours away. Acknowledging that creating an entirely new map required the experts to "tak[e] a process that the under the Constitution typically would take seven to eight to 10 weeks in trying to do that in five days," which was "a nearly impossible feat," Senate President Huffman confirmed that, "as of five o'clock [p.m.]," the Commission still "d[id] not have a Senate map to consider," nor a "constitutional house map with maybe five hours or so to go in our process." [Exh. I-4, Tr. 3/28/22, Pt.2, APP-000252.] Members remained sensitive to the Court's instruction "in paragraph 47 [i]t says specifically, no requests or stipulations for extension of time shall be filed[.]" [Exh. I-5, Tr. 3/28/22 Pt.3, APP-000256; *see also*

Exh. I-4, Tr. 3/28/22, Pt.2, APP-000252 ("obviously, the court is very, very serious about getting these maps, getting a map to them on time").]

b. Out Of Options And Out Of Time, The Commission Proposes A Necessity-Driven Backup Plan.

With the hard deadline looming, and knowing that the Commission would have precious few hours (or minutes) to review the final independent maps should they even be timely completed, Senate President Huffman recommended a "failsafe" plan that would give the Commission "something else . . . to vote on" if need be. [Exh. I-4, Tr. 3/28/22, Pt.2, APP-000252.] He moved that Johnson continue his current project, but also work with Commission staff "to draft constitutional changes to the map passed by the Commission on February 24th," to make it "closely comport with the decisions of the Supreme Court." [*Id.*] He emphasized that though "[w]e don't want [Johnson] to stop working on" the entirely new maps, the Commission must "have a product to vote on," and that suggested that such edits should "be given to this commission" in time for review and debate.[6] [*Id.*] While the minority members derided the suggestion as "ridiculous," [*Id.* at APP-000253], Secretary LaRose saw the "pruden[ce] [in] hav[ing] a backup plan in place." [Exh. I-5, Tr. 3/28/22, Pt.3, APP-000256.] "I'll be voting in favor of the . . . motion here because I think that wh[ile] we should continue pursuing this track of the independent mapmaker and that would be the plan A . . . it would be unwise of us to not be prepared with a Plan B and therefore find ourselves at risk of being in

[6] After a short recess, Senate President Huffman repeated that his motion "includes moving forward, the Independent or the commission's map maker continuing to work on this very complex problem as I described at the moment," but was meant to address the fact that "no Senate map has been produced and no confirmation of a constitutional House map Move forward." [Exh. I-5 Tr. 3/28/22, Pt.3, APP-000255.]

violation of the court's order after midnight tonight." [*Id.*] The motion carried 5-2, and the Commission agreed to reconvene at 9 p.m. for an update. [*Id.* at APP-000257.]

c. The Commission Receives A Still Unfinished Redistricting Map For The House At 8:00 p.m. And No Redistricting Map For The Senate.

At 9:00 p.m., Johnson reported he had not yet completed any final Senate redistricting map. He did present the Commission with a "final" redistricting map for the House around 8:00 p.m. – albeit with caveats demonstrating the map was not, in fact, final at all.

First, even before questioning from any Commission members, Johnson volunteered that there were still "expected roadblocks" that had to be "clear[ed]" in the House map, including "some changes, mostly in the northwest." [Exh. I-6, Tr. 3/28/22, Pt.4, APP-000258.]

Second, Senate President Huffman noted another "constitutional infirmit[y]" in the map. He pointed out that, in addition to "other[] splits," "Cleveland Heights [and] Cleveland are both split in the same house district, and that's significant because we've had this problem before in the last several months doing it, because when you fix that by taking one out, it's going to cause a district to be more than five percent under the population requirement, which . . . has rippling effects throughout the rest of that northeast area." [Exh. I-6, Tr. 3/28/22, Pt.4, APP-000259.] Johnson acknowledged that this was one of the areas where he "ran into what we call . . . a brick wall," and "[w]e can't solve it." [*Id.*]

Third, Johnson likewise could not incorporate the edits from Auditor Faber, which were "more fundamental, larger scale changes" that "address fairly fundamental concerns." Despite "mak[ing] every effort humanly possible to get this map done and . .

. make those edits . . . there[] [was simply] no way [Johnson could] get to those before midnight." [Exh. I-6, Tr. 3/28/22, Pt.4, APP-000259-260.] Given time constraints, he could incorporate only "edits that fit into the current kind of map schema," even if there were fundamental objections to it. [*Id.*] Still, Johnson estimated he was between 45 minutes and one hour away from completing a Senate map draft. Wanting to give him every opportunity to complete his herculean task, the Commission dismissed him less than 10 minutes into the meeting so he could continue his work. [*Id.* at APP-000260.]

Co-Chair Sykes acknowledged that there would not be time to offer amendments or necessary fixes to Johnson's House map, suggesting instead "that the Supreme Court cannot hold us in contempt at two o'clock, one o'clock in the morning," or, in the alternative, that Commission move to direct its lawyer "to prepare an emergency motion, asking the court for an extension of 12 hours." [Exh. I-5, Tr. 3/28/22, Pt.3, APP-000255; Exh. I-6, Tr.3/28/22, Pt.4, APP-000268.] Yet Senate President Huffman reminded him that the Court's order was clear; it declared "no extensions" would be granted. "I don't know . . . how much clearer the court could be." [*Id.* at APP-000268.]

6. Having No Other Acceptable Maps, The Commission Passes The 3-28 Cupp Plan.

The Commission also weighed the revised backup map – referred to as the 3-28 Cupp plan – at the 9:00 p.m. meeting. Co-Chair House Speaker Cupp explained how the map "improve[d] the symmetry measures in both the House and the Senate plan by shifting to House districts from asymmetrical to Democrat leaning and one Senate district from asymmetrical to Democrat leaning." It also "split[] less communities" and was "comprised of more compact districts." [Exh. I-6, Tr.3/28/22, Pt.4, APP-000261,

267-268.] In short, it remedied or lessened the constitutional defects in Johnson's House map.

Ultimately, after 10:00 p.m., having been told by Johnson (the independent expert that majority members themselves recommended hiring) that none of the constitutionally-necessary changes could be made to his draft House plan, and that there would be no draft Senate map for them to review at all, the Commission held vote on the 3-28 Cupp plan. It passed by a four-to-three margin, with Governor DeWine joining the majority.[7] [Exh. I-6, Tr. 3/28/22, Pt.4, APP-000269-271.]

7. Minority Members Again Push For Still-Incomplete, Still Unconstitutional Maps.

The Commission reconvened a final time after the minority members drafted their statement and the majority members drafted their Section 8(C) statement. In a final hail Mary, Minority Leader Russo and Co-Chair Sykes moved to "adopt and pass the math" of the draft House and Senate maps that Johnson had by that time produced, but with the condition that the Commission would have up to ***four additional weeks after*** adoption to make "any necessary adjustments" to the maps. [Exh. I-7, Tr.3/28/22, Pt.5, APP-000273-275.] These revised Johnson maps included a House map completed around 10:23 p.m., and a Senate map completed around 11:25 p.m. Under the proposal, the Commission would be sending the latest Johnson maps and the 3-28

[7] Although the Commission's conducted their vote at approximately 10:17 p.m., and the Court's order called for filing of the map with the Secretary of State by the end of the day on March 28, practical realities meant that the Commission ***could not have*** waited till midnight. Rather, "once the commission says we have a map [it] takes [staff] about an hour to prepare all" the filings for the Secretary of State. [Exh. I-4, Tr. 3/28/22, Pt.2, APP-000251-252.] "So [of the Commission's] goal is to get it to the secretary of state by 11:30," it would "have to pass [a map] by 10:30." [*Id.*]

Cupp plan to the Secretary of State. [*Id.* at APP-000274-275.] Their motion failed by a five-to-two vote.[8]

LAW AND ANALYSIS

A. The Redistricting Commission Is A Legislative Body.

"The people of Ohio, in exercising their inherent political power, have on numerous occasions used the ballot box to effect the change they wish to see in their government." *LWV I*, 2022-Ohio-65 at¶ 183 (Brunner, J., concurring). One such change came in November 2015, when "Ohio voters overwhelmingly approved" a constitutional amendment creating the Ohio Redistricting Commission. *Id.* at ¶ 4. The Commission, comprised of diverse members charged with deliberating, voting on, and thus enacting plans, is a legislative body.

B. Commission Members Are Constitutionally Obligated To Exercise Their Legislative Discretion In Conducting Legislative Reapportionment.

1. Commission Members Have Taken An Oath To Faithfully Discharge The Duties Of Their Office As A Member Of The Ohio Redistricting Commission And To Support The Constitutions Of The United States And State of Ohio.

Like their counterparts in the judiciary, the members of the Commission took an oath to uphold and discharge their duties "according to the best of [their] . . . understanding, agreeably to the constitution." *Marbury v. Madison*, 5 U.S. 137, 180, 1 Cranch 137, 2 L.Ed. 60 (1803). And a "disregard [of that oath] is no more to be imputed

[8] Secretary LaRose's remarks best explained the Commission's hesitancy regarding this proposal. He noted that Minority Leader Russo's statement about "map[s] just now showing up" applied more aptly with regard to the Johnson maps which "had not been prepared" as of "an hour or so ago." [*Id.* at APP-000274.] And, unlike the 3-28 Cupp plan, which was based on the past map "which we're all very familiar with," this is an "entirely new [Johnson] proposal and by the commission, likely has multiple flaws" according to both the Commission and the "mapmaker[']s own statements, so I can't support it." [*Id*.] His concerns added to a more fundamental problem Auditor Faber identified: "Look, I'm not sure how you pass a map and then say, but we want to keep working on it." [*Id.* at APP-000276.]

to the [Commission] than to the judicial department of the government, and ought not to be imputed to either." *Miller v. State*, 3 Ohio St. 475, 484 (1854), *overruled in part on other grounds by State v. Morello*, 169 Ohio St. 213 (1959); *see also State ex rel. Chatfield v. Kiesewetter*, 45 Ohio St. 254, 262 (1887) ("It is not to be presumed that men selected to fill places of such high trust will intentionally violate the constitution, and prove false to their oaths."). Under Ohio's Constitution, this Court has said that it is "***not at liberty to assume that the sense of duty, and of the obligation of an oath, is weaker in the one than in the other***." *Miller*, 3 Ohio St. at 484 (emphasis added); *accord: State ex rel. Herron v. Smith*, 44 Ohio St. 348, 398–99 (1886) (Spear, J., concurring).

2. The Legislative Discretion Granted The Commission Is Made Clear By The Express Language of Article XI.

Of course, the plain language of Article XI makes clear that ***voters intended*** for the Commission's members to exercise their independent judgment in drafting district maps – and not just by virtue of the fact that the voters have "selected" these particular state officials to serve on the Commission – though such selection necessarily supports that conclusion. Article XI, Sec. 1(A). *See also Voinovich v. Ferguson*, 63 Ohio St. 3d 198, 204 (1992) (Holmes, J., concurring) ("The very fact that the governor, auditor and secretary of state are consociated as a board to apportion the state for members of the general assembly, shows of itself, that . . . in applying the rules prescribed, ***a discretion would have to be exercised***, and ***these officers were selected to exercise it***." (Cleaned up; emphasis added)).

Section 6, for example, instructs the Commission to "attempt" to comply with certain standards, but "acknowledges that there might be circumstances that make it

impossible for the commission to meet the standards of Section 6 while also following the [other] map-drawing requirements[.]" *LWV I*, 2022-Ohio-65 at ¶ 88. "[A]ttempt" requires members "to make an effort to" draw compliant maps, even if they do not succeed at it. *Id.* at ¶ 86 (quoting Webster's Third New International Dictionary 140 (2002)); *see also id.* at 90 ("Section 6 contemplates that the standards set forth in it may not come to fruition"). Recognizing that discretion may prohibit a consensus, Section 8 provides that if the Commission cannot "adopt a plan by the requisite bipartisan vote" by the September 1 deadline, they may pursue an "alternative route" known as the "impasse procedure." *Id.* at ¶ 7.

Within the impasse procedure is further room for discretion, in the form of two possible outcomes; the first of which would result in the adoption of new districts for a ten-year period, and the second of which would result the adoption of the new districts for a four-year period. *Id.* at ¶ 8. Should the Commission reach the latter option, the procedure calls for it to "include a statement explaining" how it exercised its discretion to reach that result. *Id.* (citing Ohio Const. Art. XI, Sec. 8(C)(2)).

Under Section 1 of Article XI, the Commission "shall [then] release to the public a proposed general assembly district plan," and hear voter opinion in response to it – just as its members would in deciding whether to vote in favor of a bill or sign it into law. *See* Ohio Const. Art. XI, Sec. 1(C) ("Before adopting, but after introducing, a proposed plan, the commission shall conduct a minimum of three public hearings across the state to present the proposed plan and shall seek public input regarding the proposed plan."). Finally, topping it all off is the voter-driven mandate that Commission discretion should never be transferred to the judiciary through litigation. *See id.* at Sec. 9(D)(1) ("No court

shall order the commission to adopt a particular general assembly district plan or to draw a particular district."). The only remedy this Court can order, in fact, in the event that a proposed map is improper, is remand back to the Commission. *Id.* at Sec. 9(D)(3). Never, "***in any circumstance***" can this or any other court order implementation of a plan "that has not been approved by the commission," acting in its discretion, "in the matter prescribed by this article." *Id.* at Sec. 9(D)(2) (emphasis added).

Also proving that Commission discretion is essential to apportionment is the fact that voters have chosen members who are subject to "the ultimate check on legislative abuse—the electoral process[.]" *Bogan*, 523 U.S. at 53.

3. The Commission Members Cannot Leave Their Discretion At The Door When Reviewing Redistricting Plans.

Recognition for the Commission members' indelible obligation to exercise their own judgment is thus clear. "It is a maxim in constitutional law that power conferred by a Constitution upon a [legislative body] cannot be delegated by such body to any other body or authority. ***The legislative prerogative is one which involves judgment, wisdom, and discretion of a high order, and the trust thus imposed cannot be shifted to other shoulders***; ***neither can the judgment and discretion of any other body be substituted for that of the [legislative body] itself***." *State ex rel. Bryant v. Akron Metro. Park Dist. for Summit Cty*., 120 Ohio St. 464, 478 (1929), *aff'd sub nom*. *State of Ohio ex rel. Bryant v. Akron Metro. Park Dist. for Summit Cty*., 281 U.S. 74, 50 S.Ct. 228 74 L.Ed. 710 (1930) (emphasis added).[9]

[9] To the extent Governor DeWine's role on the Commission falls within the umbrella of his executive duties, the same reasoning still holds. Governor DeWine derives his power, his executive power, from the constitution of the state. He derives it from the people of the state through and by the

C. Petitioners Should Not Be Permitted To Usurp The Commission's Constitutionally-Mandated Discretion Through Abusive Litigation Tactics.

Notwithstanding all the foregoing, Petitioners (once again) urge this Court to encroach upon the discretionary role that Ohio's voters have reserved for the Commission. Equally concerning, they would have the Court hold Commission members in contempt in part of their continual attempt to usurp not only the procedures that Ohioans "overwhelmingly" approved, but also this Court's oversight role – both in this litigation and as dictated by Article XI Sec. 9. *LWV I*, 2022-Ohio-65 at ¶ 69.

The Court has no authority to order such relief for a multitude of reasons.

1. Members Of The Commission Are Legislatively Immune From Contempt Citations For Votes and Actions Taken As Members Of The Commission.

"Regardless of the level of government, the exercise of legislative discretion should not be inhibited by judicial interference or ***distorted by the fear of personal liability***." *Bogan*, 523 U.S. at 52 (emphasis added); *see also Spallone v. United States*, 493 U.S. 265, 279, 110 S.Ct. 625, 634, 107 L.Ed.2d 644 (1990) ("any restriction on a legislator's freedom undermines the 'public good' by interfering with the rights of the people to representation in the democratic process"). "That legislative officers are not liable personally for their legislative acts is ***so elementary, so fundamentally sound, and has been so universally accepted, that but few cases can be found where the doctrine has been questioned and judicially declared***." *Kniskern*, 144 Ohio App. 3d at 496–97 (quoting *Hicksville v. Blakeslee*, 103 Ohio St. 508, 517–518, 134 N.E. 445 (1921) (emphasis in original)). Immunity, it must be remembered, is not for the benefit

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constitution, and in the exercise of his executive functions under it, he acts according to his *own judgment and discretion*.

of the immune, but for their constituents. "Legislators are immune from deterrents to the uninhibited discharge of their legislative duty, not for their private indulgence but for the public good." *Kniskern v. Amstutz*, 144 Ohio App. 3d 495, 496 (2001) (quoting *Tenney v. Brandhove*, 341 U.S. 367, 377, 71 S.Ct. 783, 788, 95 L.Ed. 1019 (1951)). Without freedom to make the choices they deem best, Commission members are hamstrung by will of aggressive litigants staking out positions for the benefit of their own personal and political interests.

And the present case should be no exception. "Ohio courts have . . . long recognized that when a legislator votes on a proposed bill or ordinance, he is performing a quintessentially legislative function and thus enjoys absolute immunity arising out of the casting of that vote." *Id.* at 496. Were it otherwise, a legislator could be hauled into court for his decision in favor of a statute later found to be unconstitutional – "yet no one would claim that a legislator would be liable either in his official or in his individual capacity for the exercise of his judgment and discretion in voting for such void statute." *Hicksville*, 103 Ohio St. at 518–19.

A Commission member's choice of voting districts is no different. "Under our form of government, legislators have a duty to exercise their judgment" in all tasks. *Brnovich v. Democratic Nat'l Comm*., __ U.S. __, 141 S. Ct. 2321, 2350, 210 L.Ed.2d 753 (2021). "It is insulting to suggest" – as Petitioners do – "that they are mere dupes or tools" toeing the party line. *Id.* Nor could such an assumption serve as grounds for holding any Commission member in contempt. If, after all, ***"legislative immunity were . . . conditioned upon favorable review of legislation in the courts, the doctrine would be rendered nearly meaningless and both the legislature and the judiciary***

***would become increasingly politicized*."** *Kniskern*, 144 Ohio App. 3d at 497 (emphasis added.)).

Threat of contempt (especially the now "serial" threats advanced by Petitioners) necessarily restricts this discretion to the detriment of the Ohioans who, not only voted for the composition of Commission, but ***also*** voted for its members to exercise their discretion in mapping voting districts. *See Spallone*, 493 U.S. at 279 ("Sanctions directed against the city for failure to take actions such as those required by the consent decree coerce the city legislators and, of course, restrict the freedom of those legislators to act in accordance with their current view of the city's best interests."). What Petitioners want is for this Court to ***"say to [the members of the Commission], 'You are in contempt of court and subject to personal fines and may eventually be subject to personal imprisonment because of a manner in which you cast a vote,'"*** which is both ***"extraordinary"*** and unconstitutional. *Id.* (emphasis added, citation omitted).

Fortunately, the legislative privilege precludes the very abusive litigation tactics waged by Petitioners.

2. The Court Can Remand To the Commission – And Do Nothing More.

But that does not stop Petitioners' gamesmanship. They know the Court cannot "order the commission to adopt a particular general assembly district plan," or implement a district plan that the Commission "has not . . . approved." Ohio Const. Art. XI, Sec. 9(D)(1)-(2). So instead, they ask the Court to achieve those same ends indirectly, through the "extraordinary" decision to punish Commission members with contempt for the manner in which they exercised their discretion. *Spallone*, 493 U.S. at

279. But irrespective of a legislative privilege, the Court cannot do indirectly what the constitution says it cannot do directly. *See Kent v. Mahaffy*, 2 Ohio St. 498, 498–99 (1853) ("We can exercise only such powers as the constitution itself confers, or authorizes the legislature to grant. We can derive no power elsewhere."); *see also New Orleans Water Works Co. v. City of New Orleans*, 164 U.S. 471, 481, 17 S.Ct. 16141 L.Ed. 518 (1896) (rejecting request for a bill enjoining legislative functions, as a court "ought not to attempt to do indirectly what it could not do directly"). If the Court should find the most recent map noncompliant, Article XI Section 9(D)(3) authorizes it to order remand to the Commission – and ***only*** remand to the Commission. The Court cannot interpret its way into "expand[ing]" its remedies "beyond the constitutional grant" the constitution permits it. *See Scott v. Bank One Trust Co., N.A.*, 62 Ohio St. 3d 39, 41, 577 N.E.2d 1077 (1991) ("It is well settled, of course, that neither statute nor rule of court can expand our jurisdiction beyond the constitutional grant."). And the Constitution does not permit it to order contempt.

3. Governor DeWine, As An Independent Commission Member, Is Not Liable For The Acts Of Other Members.

Petitioners' motions fall on other legal grounds as well. A contemnor must, as a matter of due process, retain the "opportunity to purge himself of contempt" by complying with the court's order. *Shillitani v. United States*, 384 U.S. 364, 371 (1966); *see also State ex rel. Johnson v. Cty. Ct. of Perry Cty.*, 25 Ohio St. 3d 53, 55, 86 S.Ct. 1531 16 L.Ed.2d 622 (1986) ("the purpose of sanctions in a case of civil contempt is to coerce the contemnor in order to obtain compliance with the lawful orders of the court"). Only then can he be said to "carry the key of his prison in his own pocket." *Johnson*, 25 Ohio St. 3d at 55 (citation omitted).

Here, Governor DeWine could not. Nothing in constitution grants him power over the Commission, which can adopt new voting districts only by majority vote. Ohio Const. Art. XI, Sec. 1(B)(1). The Court's March 16 Order implicitly recognized this inasmuch as it ordered action only by the "Commission," not the individual members. Use of the contempt power to force the Governor to overstep his legal authority is, therefore, impermissible and well as violative of due process. *See New York State Ass'n for Retarded Child., Inc. v. Carey*, 631 F.2d 162, 166 (2d Cir. 1980) ("the court cannot compel the Governor to act unlawfully" to expend funds where "New York law forbids [him] from expending funds for that purpose"); *Newman v. Graddick*, 740 F.2d 1513, 1528–29 (11th Cir. 1984) (the Attorney General's actions "could not be the basis for a contempt holding" where "he does not have the ability to bring the Alabama prison system into compliance with previous orders of the district court"). Nor should a contempt order hold the Governor "as a 'hostage' to put pressure on" other Commission members to draft new districts in order to secure "his release from contempt." *United States v. Int'l Bhd. of Teamsters, Chauffeurs, Warehousemen & Helpers of Am., AFL-CIO*, 899 F.2d 143, 147–48 (2d Cir. 1990); *Newman*, 740 F.2d at 1528. As one court aptly explained:

> Were the law otherwise, one of two results could follow. A third person might assert his right not to accede, and the contemnor, in order to avoid contempt sanctions, would then have to exercise unlawful authority to satisfy the conditions imposed by the contempt order. Or a third person might, in order to spare the contemnor the heavy burden of contempt penalties, accede to the contemnor's demand even though he was not legally obliged to accede. Neither result is tolerable. A contempt order should not use the contemnor as a "hostage" to put pressure on third parties interested in his release.

Int'l Bhd. of Teamsters, 899 F.2d at 147.[10]

4. Governor DeWine's Performance Is Constitutionally Impossible.

Relatedly and for similar reasons, impossibility of performance is a complete defense to contempt, *Courtney v. Courtney*, 16 Ohio App. 3d 329, 334 (1984), *see also United States v. Rylander*, 460 U.S. 752, 756-757, 103 S.Ct. 1548 75 L.Ed.2d 521 (1983), even where the contemnor is a government actor. *State ex rel. DeWine v. Washington C.H.,* 12 Dist. Fayette No. 2013–12–030, 2014-Ohio-3557, ¶¶ 29-38.

Impossibility is a total defense here, not only because the Governor cannot unilaterally issue new redistricting maps or dictate the Commission's decisions, but also because the expert-drawn maps were never completed with the required time frame despite their best efforts. Mr. Johnson's affidavit makes clear that this impossibility arose from a combination of Ohio's extremely complex geographic features, its complex rules for pairing and uniting those geographic features, and extremely limited period for preparing the maps.

5. The Separation-of-Powers Doctrine Precludes One Branch Of Government From Asserting Control Over, Or Dictating The Performance Of, Duties Vested In Another Branch of Government.

Finally, the doctrine of Separation of Powers also precludes a contempt finding against the Governor. The Redistricting Commission is entitled to the same autonomy and independence constitutionally afforded other branches of government in the discharge of their duties. Instructive, given the particulars of this case, is this Court's

[10] The Governor identified several of these legal propositions fatal to Petitioners' position in his opposition to Petitioners' first round of contempt motions. Yet, having no response to offer, Petitioners just ignore the law and do not even attempt to address these defenses. This speaks volumes as to Petitioners baseless rhetoric and abusive tactics.

recent decision in *Toledo v. State,* 154 Ohio St.3d 41, 2018-Ohio-2358, 110 N.E.3d 1257, ¶¶ 24-29*,* wherein it held a trial court abused its discretion when it enjoined the state from enacting new statutes as punishment for ***contempt of court***. *Toledo* recounts and applies the key propositions of law emphasizing the separation of powers between the judiciary and the legislative branch—legal principles well established under Ohio jurisprudence and repeated throughout literally decades of this Court's decisions. *See also New Orleans Water Works*, 164 U.S. at 481 (the courts "will pass the line that separates judicial from legislative authority if by any order, or in any mode, they assume to control the discretion with which municipal assemblies are invested when deliberating upon the adoption or rejection of ordinances proposed for their adoption.). Of import here, the *Toledo* Court noted that "[a] court can no more prohibit the General Assembly from enacting a law ***than it can compel the legislature to enact, amend, or repeal a statute***." 2018-Ohio-2358 at ¶ 27. *See also State ex rel. Slemmer v. Brown*, 34 Ohio App.2d 27, 28, 295 N.E.2d 434 (10th Dist.1973) ("The judiciary has no right or power to command the General Assembly to adopt joint resolutions"). Under this Court's holding in *Toledo* the Commission cannot be compelled to act or punished for failing to do so.

CONCLUSION

For these many reasons, Petitioners' motions should be denied and their objections overruled.

Respectfully submitted,

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