

In the Supreme Court of Ohio

League of Women Voters, et al.,

v.

No. 2021-1193
Original Action

Ohio Redistricting Commission, et al.,

Bria Bennett, et al.,

v.

No. 2021-1198
Original Action

Ohio Redistricting Commission, et al.,

The Organizing Collaborative, et al.,

v.

No. 2021-1210
Original Action

Ohio Redistricting Commission, et al.,

**Merits Brief for Amici Curiae, Center for Competitive
Democracy (CCD), Professor Ruth Colker and Professor Mark Brown,
in Support of Petitioners**

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Pursuant to Supreme Court Practice Rule 16.06 Amici, Center for Competitive Democracy (CCD) and Law Professors Ruth Colker and Mark Brown, respectfully file this amici brief¹ in support of Petitioners. *See* S. Ct. Prac. R.16.06.

Interest of Amici Curiae

1. The Center for Competitive Democracy was founded in Washington, D.C. in 2005 to strengthen American democracy by increasing electoral competition. CCD works to identify and eliminate barriers to political participation and to secure free, open, and competitive elections by fostering active civic engagement in the political process. CCD has participated in numerous cases involving electoral barriers across the country as either amicus curiae or through direct representation. For example, CCD won a judgment on behalf of several minor political parties and their supporters, holding that Pennsylvania’s ballot access requirements were unconstitutional as applied to them. *See Constitution Party of Pa. v. Cortes*, 116 F. Supp. 3d 486 (E.D. Pa. 2015), *aff’d*, 824 F.3d 386 (3d Cir. 2016). More recently, CCD has won cases declaring ballot access laws unconstitutional in Michigan and in Maine. *See Graveline v. Benson*, 430 F. Supp. 3d 297 (E.D. Mich. 2019), *aff’d*, 992 F.3d 524 (6th Cir. 2021); *Baines v. Bellows*, __ F. Supp.3d __, 2021 WL 5362700 (D. Maine Nov. 17, 2021) (not appealed). CCD was also successful in its efforts during the Covid crisis in forcing Illinois to relax its ballot access restrictions for minor parties. *See Libertarian Party of Illinois v. Cadigan*, 824 Fed. App’x 415 (7th Cir. 2020). It has also participated in election litigation in Ohio to ensure proper participatory democracy in that State. *E.g., Citizens in Charge, Inc. v. Husted*, 810 F.3d 437 (6th

¹ No counsel for a party authored this brief in whole or in part and no such counsel nor any party made a monetary contribution intended to fund the preparation or submission of the brief.

Cir. 2016); *Thompson v. DeWine*, 7 F.4th 521 (6th Cir. 2021), *cert. denied*, 142 S. Ct. 1233 (2022).

2. Ruth Colker is the Distinguished University Professor and Heck Faust Memorial Chair in Constitutional Law at the Ohio State University Moritz College of Law. She is one of the leading scholars in the country in the areas of Constitutional Law and Disability Discrimination. She is the author of 16 books, two of which have won book prizes. She has also published more than 50 articles in law journals such as the *Boston University Law Review*, *Columbia Law Journal*, *Georgetown Law Journal*, *Harvard Law Review*, *Michigan Law Journal*, *University of Pennsylvania Law Review*, *University of Virginia Law Review* and *Yale Law Journal*. Her work has been cited by the United States Supreme Court. *See Tennessee v. Lane*, 541 U.S. 509, 527 n.15 (2004) (citing Colker & Milani, *The Post-Garrett World: Insufficient State Protection Against Disability Discrimination*, 53 Ala. L. Rev. 1075 (2002).)

3. Mark Brown holds the Newton D. Baker/Baker & Hostetler Chair at Capital University Law School. He has taught courses on Constitutional Law, Constitutional Litigation and Federal Civil Rights for thirty-five years at various law schools, including Stetson University, the University of Illinois, the Ohio State University, Florida State University and now Capital University. He has written extensively in the field of Constitutional Litigation, publishing works in the *Boston College Law Review*, the *Cornell Law Review*, the *University of Illinois Law Review*, the *Iowa Law Review*, and the *University of Michigan Journal of Law Reform*, among others. He, along with Professor Kit Kinports (Pennsylvania State University), authored CONSTITUTIONAL LITIGATION UNDER § 1983 (Lexis 2013), which continues to be used in law schools around the country.

* * *

CCD has a direct interest in this case because gerrymanders effectively preordain the outcomes of elections, thus undermining electoral competition and marginalizing the proper role of voters in selecting their elected representatives. Colker and Brown, law professors who teach federal constitutional law in Ohio, are interested in Ohio's courts properly entertaining federal constitutional claims and constitutional rights of Ohio's voters.

Statement of Facts

Amici adopt Petitioners' statement of the facts.

Introduction

In *League of Women Voters of Ohio v. Ohio Redistricting Commission*, __ Ohio St. 3d ___, 2022-Ohio-1235 (April 14, 2022), this Court for the fourth time invalidated Ohio's proposed maps for its House and Senate. Notwithstanding a pending Republican challenge in federal district court that seeks to force unconstitutional maps (previously rejected by this Court) on Ohioans, however, and a specific request that the Court "itself adopt a plan," *id.* at ¶ 64, the Court chose to once again return the impasse to the Commission. In doing so, it expressed a reasonable belief that the federal court would defer to its judgment. *Id.* at ¶ 64. It also expressed justified skepticism over any need at this time to adopt or draw maps by any fixed date. After all, "the so-called April 20 'deadline' for implementing a General Assembly–district plan," which was proposed by the Republican challengers in federal court, "appears to be an artificial deadline that is based on a speculative, potential primary-election date for state legislative races." *Id.* at ¶ 68. "It is unclear as to why August 2, 2022," moreover, "is the last available date for a primary election in Ohio." *Id.*

On April 20, 2022, the federal district court in *Gonidakis v. LaRose*, ___ F.Supp.3d ___, 2022 WL 1175617, *1 (S.D. Ohio April 20, 2022), unexpectedly selected a set of maps this Court had rejected and fixed an August 2, 2022, General Assembly primary date. The federal district court did so even though this Court had made clear that August 2, 2022, was not a proper date under Ohio law for the primary and that the rejected maps were unconstitutional under Ohio law. *See League of Women Voters of Ohio v. Ohio Redistricting Commission*, ___ Ohio St. 3d ___, 2022-Ohio-789 (March 16, 2022). The federal district court stated that it would employ these remedies if Ohio "does not act before May 28 ... to pass a new map that complies with federal and state law," *Gonidakis*, 2022 WL 1175617, at *30, and does not "set a new primary date or shorten the time it takes to conduct an election." *Id.* "If Ohio does this," the federal district court ruled, then "the Secretary [of State] must update the court on a new election timeline." *Id.*

Neither the General Assembly (which would need to set a primary date) nor the Redistricting Commission (which is charged with drawing maps), both of which are controlled by Republican super-majorities, have taken the needed action now that the federal district court has ruled. *See* Andrew J. Tobias, *Ohio Redistricting Commission fails to approve new map ahead of state court deadline*, Cleveland.com, May 5, 2022.² Republicans (whether they were in privity with the Respondents or not) were responsible for filing *Gonidakis* in federal district court, after all, and they are pleased with the result. They asserted that August 2, 2022, is a "drop-dead" date and specifically demanded that the third set of maps (and even the old 2010 maps) be used. They won everything they wanted in that federal court action and are now reported to be celebrating that success. *See* Andrew J. Tobias, *Republicans take victory lap after federal redistricting ruling, prospects unclear for future redistricting progress*, Cleveland.com,

² <https://www.cleveland.com/news/2022/05/ohio-redistricting-commission-fails-to-approve-new-map-ahead-of-state-court-deadline.html>.

April 21, 2022.³ By all appearances, one might reasonably conclude that Gonidakis was an orchestrated and successful Republican effort to circumvent the decisions of this Court. Such a picture is not pretty for the integrity of this Court or the people of Ohio.

The ball is thus squarely back in this Court. For the overwhelming majority of Ohioans who voted in favor of proportional representation, this Court must take action before May 28, 2022. It must both adopt a set of compliant maps and fix deadlines needed to facilitate their implementation in order for Article XI to have its intended effect. Can it? Does it possess the needed authority to bring Ohio into compliance with its own and the United States Constitutions?

The answer, as explained below, is yes. Were Ohio's grant of jurisdiction to this Court under Article XI to be interpreted to allow only state constitutional claims, it would necessarily violate the Supremacy Clause. *See* U.S. Const., art. VI. Denial of the needed relief in the face of an impending Fourteenth Amendment violation, meanwhile, would itself violate the Fourteenth Amendment's "one-person-one-vote" principle. *See Reynolds v. Sims*, 377 U.S. 533 (1964). The parties in this case therefore must be allowed to raise or otherwise litigate,⁴ on an equal basis

³ <https://www.cleveland.com/news/2022/04/republicans-take-victory-lap-after-federal-redistricting-ruling-prospects-unclear-for-future-redistricting-progress.html>.

⁴ Federal constitutional claims need not be specifically pleaded as causes of action in a complaint in order to fall under the jurisdiction of, and be properly litigated in, state court. They may present defenses or excuses, for example, or arise as ancillary questions during the course of litigation. *See Mikurski v. Centerior Energy Corp.*, 501 F.3d 555, 565-68 (6th Cir. 2007) (describing several instances where federal issues arise in state court even though not pleaded as causes of action). For this reason, the presence of federal claims in state court proceedings might not even support removal to federal court. *Id.* at 565 ("The mere presence of a federal issue in a state law cause of action does not automatically confer federal question jurisdiction, either originally or on removal."). The point Amici make here is that federal questions, including federal constitutional matters, cannot be categorically prohibited in state courts that entertain state constitutional questions -- either by jurisdictional restrictions or limitations on remedies. The federal constitutional questions must be entertained equally.

with state constitutional claims, their federal constitutional arguments. They must be allowed to seek federally mandated relief.

Argument

Proposition of Law I: The Court is Required to Entertain and Remedy Federal Constitutional Violations.

When asked by petitioners "to itself adopt a plan," this Court in its April 14, 2022 decision responded that it "decline[d] to do so because [it] lack[s] the constitutional authority to grant that relief." *League of Women Voters of Ohio*, 2022-Ohio-1235, at ¶ 64. The Court questioned both its power to rule on whether the continuing redistricting impasse (created by the Redistricting Commission) violated the Fourteenth Amendment to the United States Constitution, and whether it had authority to take the steps needed to redress that impending violation. "The Ohio Constitution," it explained, "expressly forbids this court from 'order[ing], in any circumstance, the implementation or enforcement of any general assembly district plan that has not been approved by the commission in the manner prescribed by this article.'" *Id.* (quoting Ohio Const., art. XI, § 9(D)(1)).

The Court grounded its concerns not only in Article XI's limitations on the Court's remedial powers, but also in Article XI's limited grant to it of original jurisdiction. That Article, the Court observed, only grants the Court jurisdiction to address "cases arising *under Article XI*." *Id.* at ¶ 66 (emphasis original). Further, "such a [federal] claim would conflict with the Ohio Constitution's conferred standing in original jurisdiction that appears in Article IV, Section 2(B)(1), which defines this court's original jurisdiction." *Id.*

Contrary to the Court's expressed concerns, neither Article XI's jurisdictional grant nor its limitations on the Court's remedial powers can overcome the Court's obligation under the United

States Constitution to entertain and redress federal constitutional violations. *See Testa v. Katt*, 330 U.S. 386, 391 (1947) (“[T]he Constitution and the laws passed pursuant to it are the supreme laws of the land, binding alike upon states, courts, and the people, ‘any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.’”) (citing *Ex parte Siebold*, 100 U.S. 371 (1879)). *See also Claflin v. Houseman*, 93 U.S. 130 (1876)). Simply put, this Court, once charged with jurisdiction over state constitutional claims, must entertain federal constitutional challenges to Ohio's redistricting maps that are lodged under Article XI's jurisdictional grant.. *See Testa v. Katt*, 330 U.S. 386. It must also take whatever remedial steps are necessary to correct or avoid a violation of the Fourteenth Amendment.

A. Discrimination Against Federal Claims Violates the Supremacy Clause.

Ohio's Constitution cannot be interpreted to prohibit the Court from entertaining federal constitutional claims. If it could, such a discriminatory interpretation would necessarily violate the Supremacy Clause. *See* U.S. Const., art. VI. "Since at least 1934, the Supreme Court has consistently found that a state may not discriminate against federal claims, regardless of whether the discrimination takes a substantive, procedural, or jurisdictional form." Samuel P. Jordan, *Reverse Abstention*, 92 B.U.L. REV. 1771, 1774 (2012). This "rule against jurisdictional discrimination requires state courts to adjudicate federal claims brought against state defendants where those defendants would be subject to suit under an analogous state law." Ellen D. Katz, *State Judges, State Officers, and Federal Commands After Seminole Tribe and Printz*, 1998 WIS. L. REV. 1465, 1506 (footnote omitted).

The Supreme Court has applied the Supremacy Clause's anti-discrimination principle to both constitutional and statutory matters, so that a refusal to entertain claims arising under either the United States Constitution or the United States Code is impermissible. In *Howlett v. Rose*,

496 U.S. 356 (1990), for example, the Supreme Court overruled a Florida court's refusal to entertain a § 1983 claim brought against school board officials under the Fourth and Fourteenth Amendments. "A state policy that permits actions against state agencies for the failure of their officials" under state law, the Court reasoned, "but yet declines jurisdiction over federal actions for constitutional violations by the same persons can be based only on the rationale that such persons should not be held liable for [42 U.S.C.] § 1983 violations in the courts of the State." *Id.* at 380. "That reason, whether presented in terms of direct disagreement with substantive federal law or simple refusal to take cognizance of the federal cause of action, flatly violates the Supremacy Clause." *Id.* at 380-81.

In *Hilton v. South Carolina Public Railways Commission*, 502 U.S. 197, 207 (1991), the Supreme Court ruled that South Carolina's courts were required to entertain federal claims under the Federal Employer's Liability Act (FELA) even though those claims could not be heard in federal court: "the Supremacy Clause makes that statute the law in every State, fully enforceable in state court." *See also Testa*, 330 U.S. 386 (holding that state courts must entertain federal statutory price control litigation).

In *Haywood v. Drown*, 556 U.S. 729 (1999), the Court applied this same Supremacy Clause principle to bar an ostensibly neutral jurisdictional rule that shifted federal constitutional claims, along with similar state-law claims against the same defendants, to a special court. New York law directed that actions (of any sort) against corrections officers be filed in the state's court of claims rather than in its courts of general jurisdiction. This meant that constitutional claims under 42 U.S.C. § 1983, along with state-law claims against those same corrections officers, could not proceed in New York's courts of general jurisdiction. The Court held this impermissible under the Supremacy Clause: "although States retain substantial leeway to

establish the contours of their judicial systems, they lack authority to nullify a federal right or cause of action they believe is inconsistent with their local policies." *Id.* at 736. *Haywood* made clear, moreover, that the presumption in favor of state court jurisdiction over federal issues is so strong that even "equality of treatment does not ensure that a state law will be deemed a neutral rule of judicial administration and therefore a valid excuse for refusing to entertain a federal cause of action." *Id.* at 556 U.S. at 738.

Most recently, the Supreme Court of the United States implicitly reiterated this Supremacy Clause understanding in the context of redistricting. In *Wisconsin Legislature v. Wisconsin Election Commission*, 142 S. Ct. 1245, 1247 (2022), an impasse over State Assembly redistricting led the Wisconsin Supreme Court to select the maps to be used in the 2022 election. Although the Wisconsin court's chosen maps did not violate state law, the United States Supreme Court threw them out. The reason? They potentially violated the Equal Protection Clause's ban on racial discrimination. The lesson from *Wisconsin Election Commission* is clear; legislative maps must satisfy both the United States Constitution and state law. State supreme courts charged with measuring the validity of redistricting must ensure that maps satisfy both state law and the federal Constitution.

Application of the Supremacy Clause's anti-discrimination rule is thus clear in cases like the one at hand, whether the Ohio Supreme Court's jurisdiction is deemed general or limited. Either way, when "a state court has jurisdiction over state constitutional issues, then it should adjudicate federal constitutional questions." Neal Devins & Saikrishna Bangalore Prakash, *Fifty States, Fifty Attorneys General, and Fifty Approaches to the Duty to Defend*, 124 YALE L.J. 2100, 2118 (2015).

B. Article XI Could Not Have Been Meant to Discriminate Against the Federal Constitution.

Ohio's constitutional grant of original jurisdiction to this Court in section 3(B)(2) of Article XI states that “[a]ny general assembly district plan adopted by the commission shall comply with all applicable provisions of the constitutions of Ohio *and the United States and of federal law.*” *League of Women Voters of Ohio v. Ohio Redistricting Commission*, __ Ohio St. 3d __, 2022-Ohio-65, ¶ 132 (Jan. 12, 2022) (emphasis added). The framers of Article XI thus plainly expected Ohio's maps to comply with both federal and state law, and appear to have envisioned original jurisdiction in this Court to consider both.

This Court, moreover, recognized previously in this case that Section 9(A) of Article XI is a "broad grant of jurisdiction [that] is not limited to claims alleging violations of certain sections of Article XI." *Id.* at ¶ 93. "Article XI, Section 9(B)," this Court stated, "recognizes this court's authority to determine whether a plan is invalid for *any* reason and specifies what must happen if it does." *Id.* at ¶ 98 (emphasis original). Acting pursuant to this logic, the Court readily entertained (though it did not decide) petitioners' claims under "the Ohio Constitution's guarantees of equal protection (Article I, Section 2), assembly (Article I, Section 3), and free speech (Article I, Section 11)." *Id.* at ¶ 132. Interpreting Article XI to bar analogous claims arising under the federal Constitution would not only violate the Supremacy Clause, therefore, it also would impose a jurisdictional limitation that the text of Article XI itself does not support.

Such an interpretation, moreover, would be inconsistent with the past practices of this Court. This Court has recognized that with its original jurisdiction comes the power and duty to entertain federal claims. *See, e.g., State ex rel. Keefe v. Eyrich*, 22 Ohio St.3d 164, 165, 489 N.E.2d 259, 260 (1986) (original mandamus action presenting federal claim under Fourteenth Amendment); *State ex rel. Toledo Blade Co. v. Henry County Court of Common Pleas*, 125 Ohio

St.3d 149, 2010-Ohio-1533, 926 N.E.2d 634 (original mandamus action presenting federal claim under First Amendment); *State ex rel. Brown v. Ashtabula County Board of Elections*, 142 Ohio St. 3d 370, 2014-Ohio-4022, 31 N.E.3d 596 (original mandamus action presenting claim under First and Fourteenth Amendments). One must assume that the framers of Article XI's jurisdictional grant were aware of these past practices and the Ohio Supreme Court's obligation to follow the United States Constitution. They would not have meant to prevent this Court from fully resolving the legality of legislative districts by unconstitutionally stripping it of jurisdiction over federal constitutional claims.

Proposition of Law II: Ohio's Constitution Cannot Restrict Federally-Required Remedies.

The purported limitations contained in Article XI, Section 9(D) – *i.e.*, that "[n]o court shall order, in any circumstance, the implementation or enforcement of any general assembly district plan that has not been approved by the commission in the manner prescribed by this article" and "[n]o court shall order the commission to adopt a particular general assembly district plan or to draw a particular district" – cannot constitutionally bar relief required under the Fourteenth Amendment. The United States Constitution is the supreme law of the land. *See Testa*, 330 U.S. 386. To the extent Ohio law would prevent its courts from performing their duties under the Supremacy Clause and ordering the remedies required to correct violations of the federal Constitution, Ohio law must give way. *See, e.g., Hoffman v. Wagner*, 149 Ohio St. 50, 77 N.E.2d 467, 468 (1948) ("By virtue of the supremacy clause of the federal Constitution, a state court is required to entertain an action brought therein under ...the Emergency Price Control Act of 1942, ... for the recovery of damages.") (syllabus) (citing *Testa*, 330 U.S. 386); *see also Mondou v. New York, New Hampshire & H.R. Co.*, 223 U.S. 1 (1912) (holding that state court must enforce remedies provided by federal law).

At this time, it may be that a court must exercise its equitable constitutional authority and select or draw maps. *Gonidakis v. LaRose*, ___ F. Supp.3d ___, 2022 WL 1175617 (S.D. Ohio April 20, 2022) where the district court provisionally decided that a map rejected by this Court would be used, is illustrative. Ohio's "no court" clauses plainly cannot prevent that court from correcting an impending violation of the Fourteenth Amendment. And if the "no court" clauses in Article XI, § 9(D) cannot tie the hands of a federal court seeking to correct a violation of the Fourteenth Amendment, then they cannot bind the hands of this Court, either. This Court (as established above) has concurrent jurisdiction over federal constitutional claims. It must entertain them. It must provide remedies.

Further, the Supreme Court has made clear that state courts, acting under the federal Constitution as well as state constitutions, are preferred over federal courts in terms of adjudicating reapportionment matters. "The power of the judiciary of a State to require valid reapportionment or to formulate a valid redistricting plan has not only been recognized by this Court but appropriate action by the States in such cases has been specifically encouraged." *Scott v. Germano*, 381 U.S. 407, 409 (1965). "[T]he Constitution leaves with the States primary responsibility for apportionment of their federal congressional and state legislative districts." *Grove v. Emison*, 507 U.S. 25, 34 (1993). Ohio could not have meant to reverse this principle to prefer federal court resolution of Ohio's required redistricting over that of its own high Court. Article XI could not have been intended to surrender state power in that fashion.

This Court possesses authority equal to that of the federal district court to entertain Fourteenth Amendment violations and correct them. Like the federal district court, it has the authority to adopt or draw maps needed to avoid a Fourteenth Amendment violation. To the

extent state jurisdictional restrictions and limitations on power get in the way, they are unconstitutional under the Fourteenth Amendment and the Supremacy Clause.

Proposition of Law III: The Court Possesses the Power to Ignore or Change Deadlines in Order to Redress Violations of the Fourteenth Amendment.

As argued above, this Court has authority under the United States Constitution to draw or adopt the maps needed to avoid an imminent violation of the Fourteenth Amendment. This authority necessarily brings with it the ancillary, lesser power under the Fourteenth Amendment to make needed changes to deadlines. Employing properly apportioned maps requires properly defined procedures. *Gonidakis v. LaRose*, 2022 WL 1175617, illustrates the point.

This is especially true in the present case, where no remaining deadlines exist. Nothing relevant at this late date remains in the Election Code to dictate when or whether primaries be held. "[E]veryone agrees that legal and practical requirements preclude Ohio from holding a primary election for its state legislature on May 3, the date provided by statute." *Gonidakis v. LaRose*, 2022 WL 1175617, at *1. As this Court previously stated, "[i]t is unclear as to why August 2, 2022, is the last available date for a primary election in Ohio." *League of Women Voters of Ohio*, 2022-Ohio-1235, at ¶ 68. Further, "the so-called April 20 'deadline' for implementing a General Assembly–district plan appears to be an artificial deadline that is based on a speculative, potential primary-election date for state legislative races." *Id.*

Even when election deadlines exist, this Court has exercised its equitable authority to ignore or override them to provide needed relief. In *State ex rel. Scott v. Franklin County Board of Elections*, 139 Ohio St. 3d 171, 2014-Ohio-1685, 10 N.E.3d 697, for example, the Court ordered a candidate's name placed on a ballot even though voting was already well under way. The Court did the same in *State ex rel. Owens v. Brunner*, 125 Ohio St.3d 130, 2010-Ohio-1374,

926 N.E.2d 617, notwithstanding that election deadlines had passed for obtaining absentee ballots. As demonstrated by these cases (and others), this Court necessarily possesses power when necessary to override or ignore voting and election deadlines.

Federal law imposes no limitation on this Court's power to alter Ohio's election dates for state offices. Federal law does not mandate a primary election for Ohio's General Assembly. Nor does it impose any sort of deadline on Ohio elections for state office. To the extent federal law imposes deadlines, they are for the general election and for federal offices only. *See* 3 U.S.C. § 1 (President); 2 U.S.C. §§ 1, 7 (Congress). The federal overseas voting laws (*e.g.*, UOCAVA), meanwhile, do not apply to General Assembly elections. *See, e.g., Voting Integrity Project, Inc. v. Boner*, 199 F.3d 773, 777 (5th Cir. 2000) ("The Uniformed and Overseas Citizens Absentee Voting Act ... requires states to accept absentee ballots in federal elections from certain voters."). *See generally* Eric S. Fish, Note, *The Twenty-Sixth Amendment Enforcement Power*, 121 YALE L. J. 1168, 1218 (2012). To the extent Ohio has chosen to comply with UOCAVA deadlines, it is a choice made by Ohio under state law. *See, e.g.*, O.R.C. § 3511.011 (providing for overseas voting in Ohio general and special elections).

Ohio's Constitution does not mandate primary elections either, *see Libertarian Party of Ohio v. Husted*, 2017-Ohio-7737, 97 N.E.3d 1083 (10th Dist.) (holding that Ohio Constitution permits legislature to prescribe either primary or petition for political parties), let alone any particular timeline for conducting primary elections.

Because nothing in federal law and little (if anything) under Ohio law is left to stand in the way of this Court's remedial powers, it has a free equitable hand to structure relief as it sees fit under the federal Constitution. While it must timely construct or adopt maps that comply with

the Fourteenth Amendment, it has discretion to both fix deadlines and otherwise comply to the extent possible with Article XI and the Ohio Election Code.

Conclusion

Let there be no mistake. The Court's legitimacy is under attack. One Respondent, the chief election officer in the State, has been reported to support impeaching this Court's Chief Justice. *See* Andrew J. Tobias, *Ohio Secretary of State Frank LaRose says he wouldn't oppose impeaching Supreme Court Chief Justice Maureen O'Conner over redistricting rulings*, Cleveland.com, April 1, 2022.⁵ The Ohio Redistricting Commission has repeatedly and openly flouted the Court's commands. The Court should not let this happen. It has the authority and obligation under the United States Constitution to bring Ohio into compliance with federal law. It should exercise that authority by adopting constitutional maps and setting the needed deadlines.

Respectfully submitted,

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Filed May 6, 2022

⁵ <https://www.cleveland.com/news/2022/04/ohio-secretary-of-state-frank-larose-says-he-wouldnt-oppose-impeaching-supreme-court-chief-justice-maureen-oconner-over-redistricting-rulings.html>.

Certificate of Service

I, Mark G. Kafantaris, hereby certify that on May 6, 2022, I caused a true and correct copy of this document to be served by email upon the counsel listed below:

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