

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DISTRICT**

THE HONORABLE REVEREND	:	CASE NO. 4:22-cv-612
KENNETH L. SIMON, ET AL	:	
	:	
PLAINTIFFS,	:	RELATED CASE NOS. 2:21-CV-2267
	:	AND 4:88-CV-1104
	:	
VS.	:	CIRCUIT JUDGE JOAN L. LARSEN
	:	JUDGE SOLOMON OLIVER
GOVERNOR MIKE DEWINE, ET AL.	:	JUDGE JOHN R. ADAMS
	:	
DEFENDANTS.	:	“CLASS-ACTION ALLEGATIONS”
	:	
	:	“CLAIM OF
	:	UNCONSTITUTIONALITY”

**SIMON PLAINTIFFS’ RESPONSE TO MAY 10, 2024 ORDER, REQUEST FOR
APPOINTMENT OF A SPECIAL MASTER AND IMMEDIATE
IMPLEMENTATION OF THE “CITIZENS NOT POLITICIANS”
REDISTRICTING PLAN**

I. INTRODUCTION

In accordance with the directive within this Honorable Court’s May 10, 2024, Order to “file position statements detailing what they believe is the appropriate path to move this matter forward,” ECF Docket # 40, Page ID No. 1742, Plaintiffs’ Position Statement is set forth below.

II. PLAINTIFFS’ POSITION STATEMENT

Plaintiffs object to any future elections, including both the June 11, 2024 Special Election and November 5, 2024 General Election, being conducted for representative of the currently unlawfully configured 6th Ohio Congressional District. Plaintiffs seek an immediate declaration that Defendants’ Redistricting Rule 9, the blanket prohibition against consideration of racial demographic information in the redistricting process, renders the entire statewide Congressional Plan unlawful, not just District 6. Plaintiffs

fully appreciate the burden upon the electoral process that will accompany adoption by the Court of their position. However, due to Defendants deliberate unlawful policy choices, Ohio's current Congressional districts are racially discriminatory as well as violative of the anti-gerrymandering provisions of Ohio's Constitution. Plaintiffs should not be required to continue to endure the deleterious political consequences arising from Defendants' intentionally discriminatory act of ignoring the clear mandates of the Voting Rights Act and the Fourteenth Amendment in their conduct of Ohio's Congressional redistricting process.

The current Congressional Redistricting plan was enacted on March 2, 2022, as a response to invalidation by the Ohio Supreme Court of an earlier unlawful four-year version, signed into law on November 20, 2021, as Ohio Senate Bill 258, (hereinafter the 2021 Plan). The 2021 Plan was invalidated by the Ohio Supreme Court on January 14, 2022, in League of Women Voters v. Ohio Redistricting Commission, Ohio Supreme Court, Case No. 2022-0303 and Neiman v. LaRose, 169 Ohio St. 3d 365, 207 N.E. 3d 607 (2022), on grounds that the 2021 Plan failed to comply with the Ohio Constitution. The 2021 Plan was replaced by the Defendants with the current Plan enacted on March 2, 2022 (hereinafter the 2022 Plan). Both the 2021 and 2022 Plans were approved by a simple majority of the Ohio Redistricting Commission (hereinafter "the Commission"). Accordingly, under Ohio law, a new Congressional redistricting plan must be developed for the 2026 election cycle. Ohio Const. Art XIX §1(c)(3). Because Defendants have intentionally adopted redistricting policy choices that are stunning violations of both the Ohio Constitution and federal voting rights laws, immediate measures are warranted to mitigate the harm Defendants have caused to Plaintiffs. Defendants' Redistricting Rule 9, which purportedly prohibited the consideration of racial demographics in connection with

Congressional district configuration, was a conscious policy choice that violated both the federal Voting Rights Act and Fourteenth Amendment. Aside from implementing unlawful Rule 9 in connection with enactment of their Congressional Plans, Defendants have now adopted the extremist position reflected in Arkansas State Conference NAACP v. Arkansas Board of Appointment, 86 F. 4th 1204 (8th Cir. 2023) that the federal Voting Rights Act does not confer a private right of action. This extremist posture of Defendants, coupled with the repeated refusal to acknowledge their duty to comply with federal voting rights law, has seriously diminished Plaintiffs' confidence that Defendants can be trusted to respect their voting rights or craft lawful districts going forward. As a result of Defendants' continuing course of unlawful gerrymandering and racial discrimination, the legitimate voting rights of Plaintiffs are at risk of future injury by the Defendants who produced both the racially discriminatory 2021 and 2022 Plans. Despite Plaintiffs' prompt objection to these Plans, until now, Plaintiffs' plight and voting interests have either been ignored or regarded as low priority by Defendants. For this reason Plaintiffs oppose any further elections under the current Plan. Further Plaintiffs request the immediate appointment of a special master to reconfigure District 6 and any other district effected by Defendants' Rule 9 policy. Toward this end, Plaintiffs nominate prominent Columbus Ohio election attorney, Donald McTigue, as special master for reasons explained below.

III. SPECIAL MASTER

The Simon Parties moved under Fed. R. Civ. P. 53 for the appointment of a Special Master to complete the task of redistricting in a manner consistent with the Orders of the Ohio Supreme Court, the Ohio Constitution and the VRA, measures that Defendants have elected to intentionally ignore. The state is not entitled to multiple opportunities to remedy its unconstitutional districts. See, Reynolds v. Sims, 377 U.S. 533, 585-87 (1964)

(affirming remedial districting map drawn by a district court after district court found state legislature's first proposed remedial map failed to remedy constitutional violations). Additionally, the fast-approaching election deadlines necessitate an expedited schedule. In light of the need for an expedited schedule, the multiple opportunities Defendants have squandered to approve lawful plans, and the fact that a statewide Ohio Citizens Group has already started the process to change how 2026 Congressional lines are drawn, Plaintiffs request that this Honorable Court take control of the Congressional redistricting process and immediately implement the "Citizens not Politicians" process. The redistricting process being advanced by these citizen groups, "Citizens not Politicians", should be immediately implemented as an interim measure now. A special master, Mr. McTigue, should be appointed to implement the "Citizens not Politicians" Plan. . This is comparable to the approach followed in similar cases. See Order, Personhuballah v. Alcorn, No. 3:13-cv-678, Doc. No. 241 (E.D. Va. Sept. 25, 2015) (appointing special master approximately three weeks after first notifying parties of its intent to appoint to appoint special master); see also Order, Personhuballah v. Alcorn, No. 3:13-cv-678, Doc. No. 207 (E.D. Va. Sept. 3, 2015) (notifying parties of intent to appoint special master). In view of upcoming elections and upon consideration of the technical nature of determining an appropriate remedy when district lines are at issue, exceptional circumstances exist for appointment of a Special Master pursuant to Federal Rule of Civil Procedure 53. The Special Master should assist the Court in further evaluating and redrawing the Subject Districts by developing an appropriate plan remedying the constitutional violations that render the present Districts legally unacceptable.

IV. CONCLUSION

For the above reasons an injunction is requested as well as appointment of a special master to implement the “Citizens Not Politicians Plan” currently proposed by a wide cross section of Ohio citizens.

/s/ Percy Squire
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served by operation of the United States District Court, Northern District of Ohio electronic filing system, on May 14, 2024.

/s/ Percy Squire
Attorney for Plaintiffs (0022010)