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Sent via electronic mail

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Riffe Center
77 South High Street, 30th Floor
Columbus, Ohio 43215-6117

Auditor of State Keith Faber
The KeyBank Building
88 East Broad Street, 5th Floor
Columbus, Ohio 43215

Secretary of State Frank LaRose
180 East Broad Street
Columbus, Ohio 43215

House Speaker Jason Stephens
77 South High Street, 14th Floor
Columbus, Ohio 43215

Senate President Matt Huffman
Ohio Statehouse
1 Capitol Square, 2nd Floor
SH-201
Columbus, Ohio 43215

House Minority Leader Allison Russo
77 South High Street, 14th Floor
Columbus, OH 43215

Senate Minority Leader Nickie J. Antonio
Ohio Statehouse
1 Capitol Square, 3rd Floor
SH-303
Columbus, Ohio 43215

Re: Redistricting Commission

Statewide Office Holders and General Assembly Leaders:

Per the Ohio Constitution, each of you is either a member, authorized to appoint a member, and/or authorized to jointly appoint a co-chairperson of the Ohio Redistricting Commission. This letter explains the Ohio Constitution's procedural requirements relating to the Commission after a court of competent jurisdiction invalidates a redistricting map. When that occurs, the Commission must be "reconstituted." This means that the membership of the Commission going forward may be different than during the previous Commission meeting, and the Governor must convene the first meeting of the reconstituted Commission.

Currently, no map is in effect for future elections for State Senator or Representative. The Ohio Supreme Court invalidated every General Assembly map approved by the Commission. The federal court in *Gonidakis v. LaRose*, 599 F.Supp.3d 642 (S.D. Ohio 2022), ordered that the third map approved by the Commission on February 24, 2022, be used for the 2022 election. That order, however, made clear that it did not apply beyond the 2022 general election. *Id.* at 678-679

(“So if the State does not act before May 28[, 2022], we will order the primary be moved to August 2 and Map 3 be used for only the 2022 election cycle. After that, Ohio will have to pass a new map that complies with federal and state law.”).

Any time the Court invalidates a General Assembly map, the Ohio Constitution makes clear that the Commission must be “reconstituted.” If a General Assembly map is invalidated, Article XI, Section 9 provides that the Commission “shall be reconstituted as provided in Section 1 of this article, convene,” and take steps to approve a new map. Thus, when the Ohio Supreme Court invalidated General Assembly maps, it ordered that the Commission be “reconstituted.” *See, e.g., League of Women Voters of Ohio v. Ohio Redistricting Comm'n*, 168 Ohio St. 3d 374, 2022-Ohio-1235, 199 N.E.3d 485, ¶78 (“We further order the commission to be reconstituted, to convene, and to draft and adopt an entirely new General Assembly district plan that meets the requirements of the Ohio Constitution ... as we have explained those provisions in each of our four decisions in these cases.”).

Article XI, Section 1 (referenced in Article XI, Section 9) in turn governs the appointment and selection of members of the Commission, calling for the then-sitting Governor, Auditor, and Secretary of State to be members, along with four additional members selected by the Speaker of the House, Senate President, and the minority leaders of both chambers. Article XI, Section 1(A). It further states that the majority- and minority-party leaders of both chambers “acting jointly by political party, shall [each] appoint a member of the [C]ommission to serve as a co-chairperson of the [C]ommission.” *Id.* Section 1 further requires that the Governor “shall convene” the “first meeting of the [C]ommission,” which must occur in a year ending in the number 1 (e.g., 2021) “except as provided in . . . Section 9” (i.e., in a later year following Court invalidation of a redistricting map).

Thus, the Ohio Constitution requires that after the Ohio Supreme Court invalidates a General Assembly map, the Commission must be reconstituted, meaning that the members of the Commission must be determined anew, to include the then-sitting Governor, Auditor, and Secretary of State, as well as delegates of the then-sitting Speaker of the House, President of the Senate, and minority leaders of both chambers. The fact that an individual was a member of the Commission prior to the Court’s invalidation of a redistricting map does not necessarily mean that the same person will still be a member of the Commission when it is reconstituted. For example, when the Commission is reconstituted, the office of the Governor, Auditor, or Secretary of State may be occupied by someone new, and that newly elected person would be on the Commission rather than the previous statewide office holder. Likewise, the majority and minority leaders of the General Assembly may choose to delegate other people to serve on the Commission instead of the people they delegated previously. Further, one or both of the majority or minority leadership may choose to appoint a new co-chairperson of the Commission.

Thus, the current Governor is the Commission member who must convene the Commission’s “first meeting” following any reconstitution of the Commission. Given that the previous co-chairpersons of the commission may no longer be co-chairpersons, or may no longer be on the

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Commission at all, the Constitution calls for the current Governor to start Commission business following reconstitution.

Accordingly, given that the Commission must pass a new General Assembly map for 2024, the Commission must be reconstituted, with members and co-chairpersons determined anew pursuant to Article XI, Section 1, and with the Governor convening the first meeting of the reconstituted Commission.

Yours,



Dave Yost
Ohio Attorney General