

In the
Supreme Court of Ohio

LEAGUE OF WOMEN VOTERS OF OHIO, et al., :
: *Relators*, : Case No. 2021-1193
: *v.* : Original Action Pursuant to
: Ohio Const., Art. XI
OHIO REDISTRICTING COMMISSION, et al., :
: *Respondents.* : Apportionment Case
:

BRIA BENNETT, et al., :
: *Relators*, : Case No. 2021-1198
: *v.* : Original Action Pursuant to
: Ohio Const., Art. XI
OHIO REDISTRICTING COMMISSION, et al., :
: *Respondents.* : Apportionment Case
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OHIO ORGANIZING COLLABORATIVE, et al., :
: *Relators*, : Case No. 2021-1210
: *v.* : Original Action Pursuant to
: Ohio Const., Art. XI
OHIO REDISTRICTING COMMISSION, et al., :
: *Respondents.* : Apportionment Case
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ARGUMENT

Ultimately, Article XI, Section 8(C)(1), does not impede this Court's "authority" to grant the relief requested in these cases. Rather, that section creates a 4-year/6 year map framework that would control elections for a decade when the Redistricting Commission does not adopt a ten-year map framework under Section 8(B). Both frameworks are subject to judicial review. Sections 8 and 9 need to be read together to discern the Court's "authority," as well as give full effect to all the language in Article XI. Specifically, Section 9(D)(3), which outlines the available remedies refers throughout to "the plan" or "a general assembly district plan" without mentioning the plan's duration.

But the reason that Section 8(C)(1) does not impede this Court's review authority underscores why Section 9(D)(3)(c) precludes the kind of claim alleged here, i.e., one that pleads no violation of Sections 2, 3, 4, 5, or 7, and instead pleads only a Section 6 violation. *See, e.g.,* Br. of Governor, et al., at 17–24. (The claims of Relators who allege violations under Section 3 fail for other reasons, *see id.* at 24–29, 35–36.) The Court's order to focus on Section 8(C)(1) highlights the importance of Section 9(D)(3)'s carefully tailored remedies. Without the specific language in Section 9(D)(3), the Court would lack authority to invalidate a map drawn under Section 8(C)(1)(a) at all. Read alone, Section 8(C)(1) *could* be read to support an argument that judicial review of four year maps is unavailable by parsing the differing language in 8(C)(1)(a) and (b). But that parsing would yield the surprising result that only six-year and ten-year maps are subject to judicial review.

At first glance, Section 8(C)(1)(a) precludes judicial remedies for four-year maps. That is because it makes no reference to Section 9's remedies, even though neighboring provisions explicitly cite Section 9. Section 8(C)(1)(a) addresses maps passed by "simple majority" vote. It provides that such maps last four years. That provision reads:

Except as otherwise provided in division (C)(1)(b) of this section, if the commission adopts a final general assembly district plan in accordance with division (A)(3) of this section by a simple majority vote of the commission, and not by the vote required to adopt a plan under division (B)(3) of Section 1 of this article, the plan shall take effect upon filing with the secretary of state and shall remain effective until two general elections for the house of representatives have occurred under the plan.

The very next provision is 8(C)(1)(b). It deals with maps passed by a simple majority that are necessary because the predecessor map lasted only four years. Such maps remain in effect for up to six years unless invalidated "as provided in Section 9." The full provision reads:

If the commission adopts a final general assembly district plan in accordance with division (A)(3) of this section by a simple majority vote of the commission, and not by the vote required to adopt a plan under division (B) of Section 1 of this article, and that plan is adopted to replace a plan that ceased to be effective under division (C)(1)(a) of this section before a year ending in the numeral one, the plan adopted under this division shall take effect upon filing with the secretary of state and shall remain effective until a year ending in the numeral one, except as provided in Section 9 of this article.

The section immediately before 8(C)(1)(a) deals with ten-year maps and also employs the "except as provided in Section 9" language as a carve-out to those map's default longevity. Ohio Const. Art. XI, §8(B).

Without looking outside Section 8(C), the difference in language between Sections 8(B) and 8(C)(1)(b) on one hand and Section 8(C)(1)(a) on the other would require giving the different provisions different meanings. That is because the Court generally interprets the Constitution by using “the same rules of construction” used “in construing statutes.” *Athens v. McClain*, 163 Ohio St. 3d 61, 2020-Ohio-5146, 168 N.E.3d 411, ¶ 29, quoting *Toledo City School Dist. Bd. of Edn. v. State Bd. of Edn.*, 146 Ohio St. 3d 356, 2016-Ohio-2806, 56 N.E.3d 950, ¶ 16. The basic rule for statutes and Constitutions alike is that different language conveys different meaning. That rule is strongest when a law “includes particular language in one section ... but omits it in another.” *Loughrin v. United States*, 573 U.S. 351, 358 (2014) (internal quotation marks omitted); see also *State v. Bryant*, 160 Ohio St. 3d 113, 2020-Ohio-1041, 154 N.E.3d 31, ¶ 18. So the absence of a reference to the Section 9 remedies for four-year maps is best read “to impose different legal standards” in these neighboring parts of the Constitution. *Miracle v. Ohio Dep’t of Veterans Servs.*, 157 Ohio St. 3d 413, 2019-Ohio-3308, 137 N.E.3d 1110, ¶ 19; see also *State v. Jones*, 163 Ohio St. 3d 242, 2020-Ohio-6729, 169 N.E.3d 649, ¶¶ 28, 31; *State v. Noling*, 153 Ohio St. 3d 108, 2018-Ohio-795, 101 N.E.3d 435, ¶ 42. In other words, because Division (C)(1)(a) omits what Division (C)(1)(b) and Section (B) include, the meaning of (C)(1)(a) is “underscored by what the [Constitution] does not say.” *Ayers v. City of Cleveland*, 160 Ohio St. 3d 288, 2020-Ohio-1047, 156 N.E.3d 848, ¶ 21. And what the Constitution conspicuously does not say is that a four-year map enacted under Section 8(C)(1)(a) can be invalidated

pursuant to Section 9. That is, Section 8(C)(1)(a) “could have” included Section 9 remedies, but the drafters of the provision “chose not to” include them. *Bryant* at ¶ 18. If we stopped there, Section 8(C)(1)(a) would be best read to afford no judicial review of maps passed under its authority. In other words, reading Section 8(C) alone would mean that the only remedies available against four-year maps would be political.

But Section 8(C)(1) is not an island. The Constitution, “like any document, is designed to be understood as a whole.” *State v. Porterfield*, 106 Ohio St. 3d 5, 2005-Ohio-3095, 829 N.E.2d 690, ¶ 12. So understanding Section 8(C) means reading it along with Section 9(D)(3)(c). And that Section explicitly contemplates this Court’s review of maps enacted under Section 8(C). So any lesson from reading 8(C) alone must be tempered with this explicit language in Section 9(D)(3)(c) that speaks to this Court’s review of Section 8(C) maps.

“Where provisions of the Constitution address the same subject matter, they must be read *in pari materia* and harmonized if possible.” *State ex rel. Toledo v. Lucas Cty. Bd. of Elections*, 95 Ohio St.3d 73, 78, 2002-Ohio-1383, 765 N.E.2d 854 (internal quotation marks omitted). Reading different parts of the Constitution together triggers a “duty to give a construction to the Constitution as will make it consistent with itself, and will harmonize and give effect to all its various provisions.” *Hill v. Higdon*, 5 Ohio St. 243, 247 (1855); *Smith v. Leis*, 106 Ohio St. 3d 309, 2005-Ohio-5125, 835 N.E.2d 5, ¶ 59.

Reading Sections 8 and 9 together requires a reading of Section 8 that preserves this Court’s review of maps “under Division (C) of Section 8.” Ohio Const., Art. XI, §9(D)(3)(c); *see also id.* §9(D)(3) (imposing required predicate violation of Sections 2, 3, 4, 5, or 7 for such review). And that means reading Section 8(C)(1)(a)’s “except as otherwise provided in division (C)(1)(b)” clause to incorporate into Section 8(C)(1)(a) the Section 9 reference in Section 8(C)(1)(b). Read that way, even maps passed under Section 8(C)(1)(a) are reviewable under Section 9(D)(3)(c).

This tour through Sections 8 and 9 underscores a point the Statewide officeholders made in their opening brief: allegations that a map violates the standards in Article XI, Section 6 are only actionable if the challenger pleads and proves a predicate violation of Sections 2, 3, 4, 5, or 7. That is plain from reading Section 9(D)(3) alone. But it is even more obvious when the language of Section 9(D)(3) is the only reason the Constitution affords a judicial remedy for four year maps at all.

CONCLUSION

The Court should not read Section 8(C)(1) as an absolute barrier to judicial relief against a four-year map. But it should dismiss all three complaints here because they fail to plead and prove a predicate violation of Section 2, 3, 4, 5, or 7 (or, in the case of one set of Relators, invoke plainly inapplicable parts of the Bill of Rights).

Respectfully submitted,
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CERTIFICATE OF SERVICE

I hereby certify that on December 17, 2021, the foregoing *Supplemental Brief Of Governor Mike DeWine, Secretary Of State Frank LaRose, And Auditor Keith Faber* was filed electronically. I further certify that a copy of the foregoing has been served via the electronic mail upon the following counsel for Relators.

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