

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

OHIO DEMOCRATIC PARTY

340 E. Fulton Street
Columbus, Ohio 43215

LEWIS GOLDFARB

4346 River Landings Ct.
Hilliard, Ohio 43026

Plaintiffs,

-v-

**FRANK LAROSE, in his official capacity as Ohio
Secretary of State.**

22 North Fourth Street, 16th Floor
Columbus, Ohio 43215

Defendant.

CASE NO.

JUDGE

**VERIFIED COMPLAINT FOR DECLARATORY JUDGMENT AND TEMPORARY
AND PERMANENT INJUNCTIVE RELIEF**

Plaintiffs Ohio Democratic Party and Lewis Goldfarb (collectively, “Plaintiffs”), by and through their counsel of record, for their Verified Complaint against Defendant Ohio Secretary of State Frank LaRose, alleges as follows:

INTRODUCTION

1. Defendant Secretary of State Frank LaRose (“Defendant LaRose”) has determined that Ohio’s county boards of elections may legally use secure drop boxes to facilitate the return of marked absentee ballots. Defendant LaRose announced this determination on August 12, 2020 in Directive 2020-16, which is attached hereto as Exh. A. At the same time, however, Defendant LaRose has also restricted the boards to having only one drop box and it must be placed outside of each county board of elections office. *See* Exh. A, Directive 2020-16.

2. Despite prohibiting boards of elections from installing a drop box at any location other than the boards' offices, Defendant LaRose has also reportedly stated that "If it's legal to add extra drop boxes, then I'm certainly open to that idea." Jo Ingles and Karen Kasler, *Ohio Democrats Want More Drop Boxes On Election Day*, WOSU, Aug. 6, 2020, available at <https://radio.wosu.org/post/ohio-democrats-want-more-ballot-drop-boxes-election-day#stream/0> (last accessed Aug. 24, 2020).

3. Similarly, Defendant LaRose has also reportedly stated that if "it's legal to [add more drop boxes], then I'd be happy to have the county bipartisan board of elections make that decision about whether that's best for their county or not to add additional drop boxes." Christian Hauser, *Counties wait for Ohio attorney general to issue opinion on offering more ballot boxes*, WKRC, Aug. 5, 2020, available at <https://local12.com/news/local/counties-wait-for-ohio-attorney-general-to-issue-opinion-on-offering-more-ballot-boxes-cincinnati> (last accessed Aug. 23, 2020).

4. Plaintiffs seek a declaration that Ohio law does not prohibit county boards of elections from having more than one secure drop box for the return of absentee ballots or from designating additional locations other than outside the board's office and does not limit Defendant from instructing the boards of elections that they may have more than one drop box at alternate locations. Plaintiffs also seek injunctive relief to enjoin Defendant LaRose's limitation of a single drop box in each county.

PARTIES

5. Plaintiff Ohio Democratic Party ("Plaintiff ODP") is one of Ohio's two legally recognized major political parties whose candidates for local, state, and federal offices will stand for election at the November 3, 2020 General Election.

6. Plaintiff Lewis Goldfarb (“Plaintiff Goldfarb”) is a qualified elector of Franklin County, Ohio. Plaintiff Goldfarb has already requested an absentee ballot for the November 3, 2020 General Election, and once he receives his ballot and marks his votes, he intends to personally deliver his absentee ballot to the Franklin County Board of Elections’ absentee ballot drop box closest to his residence.

7. Defendant LaRose is the Secretary of State for the State of Ohio, the State’s chief election officer (R.C. 3501.04), and is named in his official capacity only. The Ohio Secretary of State is charged with supervising the administration of the election laws statewide and “[i]ssu[ing] instructions by directives and advisories...to members of the boards as to the proper methods of conducting elections” and “[p]repar[ing] rules and instructions for the conduct of elections.” R.C. 3501.05(B)-(C).

JURISDICTION AND VENUE

8. Plaintiff ODP has hundreds of thousands of members from across the state, including many eligible voters, who regularly support and vote for candidates affiliated with Plaintiff ODP; more than 800,000 ODP members participated in Ohio’s 2020 primary election. Many of Plaintiff ODP’s members are likely to request an absentee ballot for the November 3, 2020 general election.

9. Plaintiff ODP also regularly devotes substantial resources to voting activities, and this is especially so in a presidential election year, like 2020, when voter turnout is at its highest. Each election cycle, Plaintiff ODP’s staff and volunteers make calls and send mailings to inform registered Democrat and unaffiliated voters about the voting process, including providing voters with information about how to vote by absentee ballot. Additionally, Plaintiff ODP runs a voter protection program each election cycle to help voters with issues related to their efforts to vote,

including issues related to voters' attempts to vote by absentee ballot. Throughout the early voting period and on election day, paid and volunteer attorneys staff a hotline that voters can call to ask questions or report problems. Plaintiff ODP intends to spend its resources to continue these voter education and voter protection efforts in 2020.

10. Plaintiff ODP has an interest in knowing whether Ohio law limits boards of elections to a single drop box for the return of absentee ballots and whether Defendant LaRose may authorize the boards to have more than one secure drop box, so that Plaintiff ODP can properly inform its members and other voters as to how and where they can return their marked absentee ballots.

11. Plaintiff ODP's members in each county live varying distances from the location of their county's board of elections office. Thus, to personally deliver their absentee ballots to the board office drop box, some will have to travel very short distances, while others will have to travel much further.

12. By law, the county boards of elections are composed of four members, two from each of the two major political parties, including Plaintiff ODP. Many of the Democratic Party members of the boards favor their county boards offering voters at the 2020 general election multiple drop box locations for returning their absentee ballots to increase access and efficiency in the conducting of the 2020 general election.

13. Plaintiff Goldfarb similarly has an interest in knowing whether Ohio law limits boards of elections to a single drop box for the return of absentee ballots and whether Defendant LaRose may authorize the boards to have more than one secure drop box, so that Plaintiff Goldfarb will know how and where he can personally deliver his marked absentee ballot.

14. Jurisdiction and venue are proper in this Court because Defendant LaRose, as the

Ohio Secretary of State, has his principal place of business in Franklin County, Ohio.

15. This Court has jurisdiction to issue declaratory judgment under R.C. 2721.01-.15, and to grant a temporary restraining order and permanent injunctive relief under R.C. 2727.03.

16. Plaintiffs seek an award of reasonable attorneys' fees and costs pursuant to R.C. 2335.39.

FACTUAL ALLEGATIONS

17. Ohio's 2020 General Election is scheduled to take place on November 3, 2020.

18. The county boards of elections are required to distribute voters' absentee ballots beginning on October 6, 2020. *See* R.C. 3509.01 (non-UOCAVA voters). Thus, beginning on October 6, 2020 for non-UOCAVA voters, voters will be able to return their marked absentee ballots to their county boards of elections for the November 3, 2020 General Election.

Ohio's No-Fault Absentee Voting System

19. The Ohio Elections Code authorizes a system of no-fault absentee voting in which any qualified elector may vote by absentee ballot at an election. R.C. 3509.02(A).

20. A qualified elector desiring to cast an absentee ballot must "make written application" for an absentee ballot "to the director of elections of the county in which the elector's voting residence is located." R.C. 3509.03(A).

21. Upon receipt of a qualified elector's application for an absentee ballot that contains all the required information, the board of elections must deliver an absentee ballot, an unsealed identification envelope, and an unsealed return envelope to the qualified elector. R.C. 3509.04(B).

22. Once a voter has received their absentee ballot and marked their ballot, the voter must place and seal their ballot in the identification envelope, then they must complete and sign

the identification envelope, and then place and seal the identification envelope in the return envelope. R.C. 3509.05(A).

23. To return their absentee ballot and identification envelope to their county board of elections, a voter can either (1) “mail the identification envelope to the director from whom it was received in the return envelope, postage prepaid,” (2) or “personally deliver it to the director, or the spouse of the elector, the father, mother, father-in-law, mother-in-law, grandfather, grandmother, brother, or sister of the whole or half blood, or the son, daughter, adopting parent, adopted child, stepparent, stepchild, uncle, aunt, nephew, or niece of the elector may deliver it to the director.” R.C. 3509.05(A), third paragraph. The return envelope “shall be transmitted to the director in no other manner, except as provided in section 3509.08 of the Revised Code,” (*id.*) which concerns disabled, hospitalized, and confined absent voter’s ballots.

24. All marked absentee ballots that are delivered to the board of elections either personally by the voter or by an authorized close relative “shall be delivered to the director not later than the close of the polls on the day of an election.” R.C. 3509.05(A), fifth paragraph.

25. Nothing in R.C. 3509.05 or any other Revised Code section prescribes either the manner in which voters may personally “deliver” their absentee ballot or the manner in which the directors of the boards of elections are to personally receive “delivered” ballots.

County Boards of Elections’ Use of Drop Boxes for the Return of Absentee Ballots

26. In the absence of any language in the Ohio Elections Code limiting the manner in which voters may “deliver” their marked absentee ballots to the board of elections, some boards have, for many years, provided a secure drop box at their offices to facilitate the return of absentee ballots.

27. The Hamilton County Board of Elections, for instance, has had a drop box at their office since 2012.

28. The Butler County Board of Elections has had a drop box since Ohio's 2016 Presidential Primary Election. *See* Michael D. Ptiman, *Absentee Ballot Drop Box Posted for 24-Hour Curbside Drop Off*, Journal-News, Feb. 16, 2016, available at <https://www.journal-news.com/news/absentee-ballot-drop-box-posted-for-hour-curbside-drop-off/KwV3cJ8X104tRn0bxDYwbP/> (describing the Butler County Board of Elections' "new drop box" to allow for "curbside drop off of absentee ballots" for Ohio's 2016 Presidential Primary Election).

29. Other boards of elections had provided absentee ballot drop boxes before 2020, too. *See e.g.*, Cuyahoga County Board of Elections, *It's Election Day*, Nov. 5, 2019, available at <https://www.cuyahogaelectionaudits.us/boeblog/election-updates/its-election-day/> (informing Cuyahoga County voters that, for the 2019 general election, "[t]here is a ballot drop box located in our parking lot for your convenience"); Bob Finnan, *2 Polling Locations Changed in Medina Due to Coronavirus Concerns*, Medina Gazette, Mar. 11, 2020, available at <https://medina-gazette.com/news/205832/2-polling-locations-changed-in-medina-due-to-coronavirus-concerns/> (informing Medina County voters that, for Ohio's March 17, 2020 primary election, there was a drop box that would allow voters to submit their absentee ballots without getting out of their cars).

Projected Increased Use of Absentee Voting

30. Due to the ongoing COVID-19 pandemic, elections officials in Ohio are projecting a marked increase in the use of absentee voting compared to prior elections.

31. Defendant LaRose, for instance, has reportedly stated that he believes that as many as 50% of Ohio voters could request an absentee ballot for the 2020 General Election. *See* Rick

Rouan, *Could Ohio develop online absentee ballot requests in time for November election?*, Columbus Dispatch, June 10, 2020, available at <https://www.dispatch.com/news/20200610/could-ohio-develop-online-absentee-ballot-requests-in-time-for-november-election> (last accessed Aug. 23, 2020).

32. Local elections officials are also reporting large increases in the number of people requesting absentee ballots.

33. The Cuyahoga County Board of Elections, for instance, has reportedly received approximately 80,000 absentee ballot requests for the November 3, 2020 General Election as of August 23, 2020—an increase from the approximately 5,000 requests the Board had received at this point during the 2016 General Election. Rick Rouan, *Absentee ballot requests flooding Ohio elections boards like never before*, Columbus Dispatch, Aug. 23, 2020, available at <https://www.dispatch.com/news/20200823/absentee-ballot-requests-flooding-ohio-elections-boards-like-never-before/1>.

34. As another example, the Hamilton County Board of Elections has reported processing 23,042 absentee ballot applications as of August 20, 2020—an increase from the 496 absentee ballot applications it had processed as of the same time during the 2016 Presidential Election. Scott Wartman, *In Ohio, ballot requests streaming in at record pace, mostly from Democrats and independents*, Cincinnati Enquirer, Aug. 20, 2020 available at <https://www.cincinnati.com/story/news/politics/2020/08/20/election-2020-ohio-democrats-and-nonpartisans-driving-high-number-ballot-requests/5611781002/>.

35. Additionally, the Franklin County Board of Elections had reported receiving approximately 46,000 absentee ballot requests as of August 20, 2020; a spokesperson for the board

stated that they have never tracked absentee ballot requests this early in the process, but that “anecdotally I can tell you this is the most we’ve received 76 days out from an election.” *Id.*

36. The increase in absentee ballot requests is also being seen in Ohio’s less populous counties.

37. The Clinton County Board of Elections, for instance, has reportedly already received more absentee ballot requests for the November 3, 2020 General Election than the total number of absentee ballots it received during the 2016 General Election. Rick Rouan, *Absentee ballot requests flooding Ohio elections boards like never before*, Columbus Dispatch, Aug. 23, 2020, available at <https://www.dispatch.com/news/20200823/absentee-ballot-requests-flooding-ohio-elections-boards-like-never-before/1>.

Delays in USPS Mail Delivery

38. At the same time as elections officials are projecting—and seeing—a massive increase in the number of voters choosing to vote by mail, the COVID-19 pandemic and internal policy changes within the USPS have led to delays in mail delivery that may result in absentee ballot applications not being delivered to boards of elections on time.

39. For instance, during Ohio’s 2020 primary election, Defendant LaRose, in a letter to Ohio’s congressional delegation, reportedly wrote that “First-class mail that normally would take one to three days for delivery now is taking as many as seven to nine days,” and that “these delays mean it is very possible that many Ohioans who have requested a ballot may not receive it in time.” See Rick Rouan, *Mail delays during coronavirus outbreak hurting Ohio election, Secretary of State Frank LaRose says*, Columbus Dispatch, April 23, 2020, available at <https://www.dispatch.com/news/20200423/mail-delays-during-coronavirus-outbreak-hurting-ohio-election--secretary-of-state-frank-larose-says>.

40. Similarly, it was reported that during Ohio’s 2020 primary election, more than 300 absentee ballots in one county alone in Ohio were delivered to the respective board of elections too late by the USPS for the votes to be counted, despite the ballots having been timely postmarked. See Jessie Balmert, *More than 300 Butler County ballots delivered late won't count in Ohio primary*, Cincinnati Enquirer, May 12, 2020, available at <https://www.cincinnati.com/story/news/2020/05/12/more-than-300-butler-county-ballots-delivered-late-wont-count-ohio-primary/3119026001/>.

41. Due to projected delays, the USPS recommends that if voters plan to submit their absentee ballot requests by mail, then the requests should be made at least 15 days before Election Day. See Michelle Ye Hee Lee and Jacob Bogage, *Postal Service backlog sparks worries that ballot delivery could be delayed in November*, Washington Post, July 30, 2020, available at https://www.washingtonpost.com/politics/postal-service-backlog-sparks-worries-that-ballot-delivery-could-be-delayed-in-november/2020/07/30/cb19f1f4-d1d0-11ea-8d32-1ebf4e9d8e0d_story.html.

Directive 2020-16

42. On August 12, 2020, Defendant LaRose issued Directive 2020-16 to the county boards of elections to, in part, “provide instructions on the continuing use of a secure drop box at each board of elections.” Exh. A.

43. As to the “continued use” of drop boxes, Directive 2020-16 directs, in full:

On March 25, 2020, the Ohio General Assembly passed H.B. 197. Governor DeWine signed H.B. 197 into law on March 27, 2020. The legislation contained many provisions concerning Ohio’s response to COVID-19, including changes to the 2020 Primary Election. Those changes related to the 2020 Primary Election were temporary, uncodified law and do not appear in the Ohio Revised Code.

Specifically, H.B. 197 required boards to have a secure receptacle outside the office for the return of ballots. As such, each board of elections procured and installed a secure receptacle outside of their offices. This directive requires the continuing use of that secure receptacle for the return of ballots and expands its use to include absentee ballot application forms. The drop box must be monitored 24/7, and at least one Republican and one Democratic member of the board or board staff must together retrieve the drop box's contents at least once daily. Boards of elections must also retrieve the contents at noon on October 31, 2020 and 7:30 p.m. on November 3, 2020.

Boards of elections must continue to use the drop box that was installed outside each board of elections pursuant to H.B. 197 for the 2020 Primary Election for the November 3, 2020 election cycle for the return of absentee ballot applications and ballots. Beginning September 1, 2020, boards of elections must begin to provide voters with 24/7 access to the drop box, which will of course, already be securely monitored. **Boards of elections are prohibited from installing a drop box at any other location other than the board of elections.**

Exh. A (emphasis added).

44. As is apparent, Defendant LaRose concluded that Ohio law allows the county boards of elections to continue using secure drop boxes for the return of absentee ballots even without a law expressly authorizing the use of drop boxes, but he also prohibited boards of elections from installing a drop box at any other location other than the board of elections' office.

45. Defendant LaRose, in Directive 2020-16, did not provide any legal authority for his conclusion that boards of elections may only employ a single drop box, nor for limiting the placement.

46. Nothing in Ohio law limits the number or locations for secure drop boxes that boards of elections may choose to make available to the voters in their counties.

47. Defendant LaRose, in limiting boards of elections to having a single drop box and from installing a drop box at any other location than outside the board of elections, has impermissibly inserted limitations into Ohio law where they do not exist.

48. Further, by announcing that boards of elections may install a secure drop box for absentee ballots only at the boards' offices, Defendant LaRose has upended many boards of elections' plans to address the surge in absentee voting by having multiple drop boxes located throughout their respective counties.

49. The Hamilton County Board of Elections, for instance, was reportedly in the process of exploring the option of adding four new drop boxes throughout the county when Defendant LaRose announced Directive 2020-16. *See Wilkinson, supra*. During Ohio's 2020 Primary Election, the Hamilton County Board of Elections saw long lines of traffic extending onto a nearby highway that resulted in some voters having to wait hours to deliver their absentee ballots. *Id.* One Member of the Hamilton County Board of Elections, who supports adding four more drop boxes throughout the county, stated "[t]here's likely to be two or three times as many people voting absentee in November," and that "[i]t will be an incredible traffic mess" if there is only one drop box. *Id.*

50. A Hamilton County Commissioner has also expressed similar concerns that the Hamilton County Board of Elections' office, where the county's drop box is located, is hard to get to, especially for people without cars, and that even for those who have transportation and are able to get there, experience has shown that there is usually a traffic jam. Jo Ingles, *Ohio Secretary of State's Decision Leaves Ballot Drop Boxes Hard To Get To*, WOSU, Aug. 18, 2020 (available at <https://radio.wosu.org/post/ohio-secretary-states-decision-leaves-ballot-drop-boxes-hard->

[get#stream/0](#)) (last accessed Aug. 23, 2020). She said that the parking lot and streets that surround the board of elections, during the early voting period, is “just a mess.” *Id.*

51. The Lucas County Board of Elections was also reportedly exploring the option of adding additional drop boxes when Defendant LaRose announced Directive 2020-16. *See* Jay Hannah, *Secretary of State LaRose updates election guidelines, Lucas County getting ready to go*, WNWO, Aug. 12, 2020, available at <https://nbc24.com/news/local/secretary-of-state-larose-updates-election-guidelines-lucas-county-getting-ready-to-go> (last accessed Aug. 23, 2020).

COUNT ONE

(Ohio law, including, R.C. 3509.05, does not limit the number or locations of secure drop boxes that the county boards of elections may provide to the voters of their respective counties; nor does Ohio law limit Defendant from instructing boards of elections that they may have multiple drop boxes at alternate locations)

52. The preceding and subsequent allegations are incorporated into Count One, as though fully set forth herein.

53. Court “must avoid unduly technical interpretations of an elections statute that impede the public policy favoring free, competitive elections.” *State ex rel. Myles v. Brunner*, 120 Ohio St.3d 328, 2008-Ohio-5097, ¶ 22 (internal quotations and citations omitted).

54. Further, courts have a duty to “liberally construe election laws in favor of the right to vote.” *Id.*, ¶ 26.

55. Plaintiffs are entitled to a declaration that R.C. 3509.05 does not limit the number and locations of secure drop boxes that the county boards of elections may provide to the voters of their respective counties, and does not limit Defendant from instructing boards of elections that they may have multiple drop boxes at alternate locations in their respective counties.

56. Plaintiffs have a likelihood of success on the merits of their claim.

57. Absent the relief requested herein, the enforcement of Defendant LaRose's directive limiting the county boards of elections to having a single drop box and single location for the return of absentee ballots will cause irreparable harm to Plaintiffs and Plaintiff ODP's members.

58. There will be no injury to others caused by the granting the relief requested herein.

59. The public interest will be served by granting the relief requested herein.

60. Plaintiffs affirmatively alleges that they have acted with the utmost diligence in bringing the instant action, that there has been no unreasonable delay or lapse of time in asserting their rights sought herein, and, further, there is no prejudice to Defendant.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court:

- (1) Declare that Ohio law, including, R.C. 3509.05, does not limit the number or locations of secure drop boxes that the county boards of elections may provide to the voters of their respective counties, and does not limit Defendant Secretary from instructing boards of elections that they may have multiple drop boxes at alternate locations in the respective counties.
- (2) Enter a temporary restraining order and preliminary injunction, as well as a permanent injunction, enjoining the enforcement of Defendant LaRose's instruction in Directive 2020-16 that prohibits the county boards of elections from installing additional drop boxes at locations other than the boards' offices to facilitate the return of voters' absentee ballots.

- (3) Order Defendant LaRose to convey and/or communicate notice of this Court's judgment and order, along with a copy of the Court's judgment and order, to all of Ohio's county boards of elections;
- (4) Award Plaintiffs their reasonable attorneys' fees and costs pursuant to R.C. 2335.39;
and
- (5) Award all such other relief that this Court deems just and proper.

Respectfully submitted,

/s/ Derek S. Clinger

Derek S. Clinger* (0092075)

*Trial Attorney

J. Corey Colombo (0072398)

McTigue & Colombo, LLC

545 East Town Street

Columbus, OH 43215

(614) 263-7000

dclinger@electionlawgroup.com

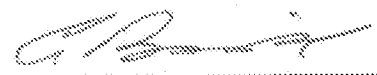
ccolombo@electionlawgroup.com

Counsel for Plaintiffs

VERIFICATION


STATE OF OHIO)
) ss:
COUNTY OF FRANKLIN)

I, Gregory Beswick, being first duly cautioned and sworn, states that he is the Executive Director of Plaintiff Ohio Democratic Party, and that he has read the foregoing Complaint and that the matters stated therein are true to his own knowledge, information, and belief, and so far as upon information and belief, he believes such information to be true.



Gregory Beswick

Sworn to and subscribed before me this
24th day of August 2020.



Notary Public
James L. Notary, Notary Public
Notary Public - State of Ohio
My commission expires on 08/31/2021
Section 147.03 B.C.