

**IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
CIVIL DIVISION**

OHIO DEMOCRATIC PARTY <i>et al.</i> ,	:	
	:	
Plaintiffs,	:	
	:	Case No. 20CV-5634
vs.	:	(Judge Frye)
	:	
FRANK LAROSE, Secretary of State,	:	
<i>et al.</i>	:	
	:	
Defendants.	:	

**Entry Granting Preliminary Injunction, and
Granting Stay Pending Appeal.**

1. A Preliminary Injunction is Necessary.

In an Opinion released Tuesday morning September 15, 2020 at 10:41 a.m. the court granted a declaratory judgment relative to the meaning of R.C. 3509.05(A) and the Secretary of State’s Directive 2020-16. This case was handled expeditiously because it pertains to the delivery of absentee ballots by voters across Ohio for the November 3 general election. Absentee ballots will start to be distributed to voters on or about October 6. Allowing boards of elections to use more than one ballot drop box per county, or other suitable means to safely accept ballots, is lawful as explained in the court’s Opinion. The court’s Opinion found that the Secretary’s Directive 2020-16 was legally unsupportable insofar as it prohibited individual boards of elections from using more than one drop box in their county.

In issuing the Opinion, the court purposely did not include an injunction because the court understood the Secretary favored allowing additional ballot drop boxes and would follow a legal ruling recognizing them as lawful. As reviewed in the Opinion at page 3, a lawyer representing the Secretary in a parallel case before the United States District Court for the Northern District of Ohio appeared to indicate to that court (on the record on August 31) that the Secretary would follow a court ruling clarifying Ohio law. However, public statements of a “spokesperson” for the Secretary after the Opinion issued as reported by news media (and now in the record) that the Secretary would not comply with

the declaratory judgment without also being under an injunction required the court to reevaluate the matter. On the morning of September 16, the court ordered the Secretary to explain his position. In response, the court has been advised the Secretary will not abide by the declaratory judgment alone. (Response to Show Cause Order, filed September 16, 2020.) The Secretary urges the court to grant an injunction so that he may appeal.

2. *The Preliminary Injunction.*

Following consideration of the evidence produced by the parties, and the legal arguments of the parties and those filing briefs as *amicus curia*, and for the reasons explained in the Opinion released on September 15, 2020, the court finds that plaintiffs are entitled to a preliminary injunction enjoining the Secretary as set out below. The first criterion for issuance of a preliminary injunction – a substantial likelihood that plaintiffs will prevail on the merits – is met, as explained in the Opinion.

There is proof by clear and convincing evidence that plaintiff Goldfarb, plaintiff Ohio Democratic Party, and members of the ODP will be irreparably injured absent an injunction. A plaintiff's harm from denial of a preliminary injunction is irreparable if it is not fully compensable by monetary damages. Beyond that, public legal rights are at stake. The Secretary's actions contrary to law have created a situation in which irreparable injury may be presumed absent an injunction.

There is no evidence of harm to other parties. The Secretary's foremost obligation is to follow Ohio law. There is also no evidence that a preliminary injunction will harm defendant Ohio Republican Party. Voters of both major parties (and independent voters) all will benefit from easier and safer access to absentee ballot drop box locations or other measures that individual boards may adopt allowing voters to securely deliver their ballots without using the U.S. Postal Service. It is impossible to conceive of any possible harm to ORP because each board of elections operates only through two members of ORP and two members from ODP, precluding as a practical matter action that gives partisan advantage to either major party.

The final factor is whether the public interest will be served by issuance of an injunction. The public interest is always served by clarifying and enforcing laws that

enhance the opportunity to vote, in-person or absentee, and have all ballots secured and counted in determining the outcome of an election.

The **Preliminary Injunction** now issued by this court is as follows:

The Secretary of State, his agents, employees, attorneys and all those persons in active concert or participation with him who receive actual notice of this order, must immediately cease enforcing the limitation of one absentee ballot drop box per county set out in the Secretary's August 12, 2020 Directive 2020-16, or any variant of that Directive imposing any arbitrary limitation on the number or location of secure drop boxes that individual county boards of election may employ for the November 3, 2020 general election.

Further, the Secretary shall not issue any new Directive or restriction to boards of elections which circumvent this order, or prevent individual boards from considering and adopting arrangements other than drop boxes that a board concludes are secure and appropriate to enhance absentee voting in their individual county.

Pursuant to Civ. R. 65(C), this injunction is effective without bond or other security required from plaintiffs.

3. *Ohio Law requires this Court to Stay the Injunction Pending Appeal.*

Even before the court issued the Opinion on September 15, the Secretary moved for "a stay of any preliminary injunction that may be entered by this court pending the outcome of an appeal." (Motion filed September 14, 2020, at 6:05 p.m.) Although an appeal has not been noticed (and would be premature until this preliminary injunction is actually issued) counsel have represented to the court that the "Secretary anticipates

immediately appealing any preliminary injunction.” (Memorandum filed Sept. 14, at p. 2.)

Civ. R. 62(C) obligates an Ohio court to stay a judgment when appeal is taken by a state agency or officer. Several Ohio Supreme Court decisions make it clear that lower courts have no discretion to deny a stay, even in urgent circumstances. Accordingly, the motion by the Secretary to stay enforcement of the preliminary injunction is **GRANTED** with the understanding that he will notice his appeal **within 24 hours** of this Entry so as not to delay final resolution of the case.

While obviously outside this court’s control once appeal begins, the court urges expedited work by counsel on this appeal. This case has already been fully briefed and argued in this court, so parties should not need significant time for briefing or other work in the Tenth District Court of Appeals. It is in the public interest for all parties to assist in resolving the issues promptly so that individual boards of elections may address delivery of absentee ballots and discharge their independent obligations to voters across Ohio.

IT IS SO ORDERED.

Franklin County Court of Common Pleas

Date: 09-16-2020
Case Title: OHIO DEMOCRATIC PARTY ET AL -VS- FRANK LAROSE
Case Number: 20CV005634
Type: PRELIMINARY INJUNCTION

It Is So Ordered.

A handwritten signature in cursive script, reading "Richard A. Frye", is written over a circular official seal. The seal is partially obscured by the signature but appears to contain text around its perimeter.

/s/ Judge Richard A. Frye

Court Disposition

Case Number: 20CV005634

Case Style: OHIO DEMOCRATIC PARTY ET AL -VS- FRANK
LAROSE

Final Appealable Order: Yes

Motion Tie Off Information:

1. Motion CMS Document Id: 20CV0056342020-09-1499900000
Document Title: 09-14-2020-MOTION - DEFENDANT: FRANK
LAROSE - MOTION OF DF TO STAY ANY PRELIMINARY INJ
Disposition: MOTION GRANTED
2. Motion CMS Document Id: 20CV0056342020-08-2599880000
Document Title: 08-25-2020-MOTION FOR TEMPORARY
RESTRAINING ORDER - PLAINTIFF: OHIO DEMOCRATIC PARTY
Disposition: MOTION GRANTED