

**Case No. 20-4063**

**UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT**

A. PHILLIP RANDOLF INSTITUTE OF OHIO, et al.

Plaintiffs - Appellees

v.

FRANK LAROSE

Defendant – Appellant

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On Appeal from the United States District Court  
For the Northern District of Ohio, Eastern Division

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**AMICUS BRIEF OF THE CITIES OF COLUMBUS, CINCINNATI,  
CLEVELAND, AKRON, DAYTON, AND TOLEDO,  
AND THE BOARD OF LUCAS COUNTY IN OPPOSITION TO THE  
APPELLANT’S MOTION FOR AN EMERGENCY STAY**

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**Disclosure of Corporate Affiliations  
and Financial Interest**

Sixth Circuit

Case Number: 20-4063

Case Name: A. Phillip Randolph Institute of Ohio, et  
al. v. Frank LaRose

Name of counsel: Richard N. Coglianese

Pursuant to 6<sup>th</sup> Cir. R. 26.1, the City of Columbus makes the following disclosure:

1. Is said party a subsidiary or affiliate of a publicly owned corporation? If Yes, list below the identity of the parent corporation or affiliate and the relationship between it and the names party:

No.

2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? If yes, list the identity of such corporation and the nature of the financial interest:

No.

**CERTIFICATE OF SERVICE**

I certify that on October 9, 2020, the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by placing a true and correct copy in the United States mail, postage prepaid, to their address of record.

s/Richard N. Coglianese

## STATEMENT OF AMICI INTEREST

Amici, the Cities of Columbus, Cincinnati, Cleveland, Akron, Dayton, Toledo, and the Board of Lucas County have a direct stake in this dispute. As local governments, the Amici have been on the front line responding to COVID-19 and have an interest in ensuring that their residents can vote safely. Local health departments conduct critical contact tracing of the COVID-19 virus. Contact tracing involves identifying individuals who came into contact with an individual who has tested positive for the virus. Just like they do for other diseases, local departments of health will contact an individual who tests positive for the coronavirus and determine other individuals with whom that person had close contact. [Contact Tracing, Ohio Dep't of Health \(Apr. 28, 2020\), https://coronavirus.ohio.gov/wps/portal/gov/covid-19/responsible-restart-ohio/Contact-Tracing/](https://coronavirus.ohio.gov/wps/portal/gov/covid-19/responsible-restart-ohio/Contact-Tracing/).

Similarly, our local health departments have been at the forefront of approving business opening plans, school opening plans, and investigating allegations that individuals or businesses may be violating various health orders. These local health departments are essential in Ohio's COVID-19 mitigation plans.

Amici also have an interest in making sure that their residents are given free and fair access to cast their votes in the 2020 general election. Their residents already face challenges from COVID-19 and United States Postal Service

(“USPS”) changes. In an election that may break all records for absentee balloting in Ohio, Amici have an interest in seeing that their residents have a way to vote that is both safe and efficient.

Finally, many Amici have important local issues on the 2020 general election ballot. Whether it is a Charter Amendment to add a Civilian Review Board, local tax levies, zoning changes, or local liquor options, Amici have a direct stake in guaranteeing that the results of these elections accurately reflect the will of the electorate.

This brief was authored by counsel for the City of Columbus and no party, party’s counsel, or other person or entity contributed money to fund the drafting of this brief.

## INTRODUCTION

Defendant Secretary of State Frank LaRose simply refuses to take yes as an answer. He has repeatedly said that if Ohio law would allow for multiple drop box locations, he would allow them. A state trial court in Franklin County told him that the law allows such additional drop box locations. Not happy with the yes he was given, he appealed that decision to the Tenth District Court of Appeals. He was again told that State law allows for multiple drop box locations. Subsequently, the District Court in this case again recognized that State law allows multiple drop box locations. Never before has a State official fought so hard to claim that he has no power to do something that every court that has examined the issue says he can do. Amici respectfully request that this Court reject Secretary LaRose's motion for a stay pending appeal and allow additional drop box locations so that all Ohioans can vote in a way that is safe, secure, and convenient.

## ARGUMENT

### **A. The State has already recognized that COVID-19 presents at least some risk to in-person voting.**

The 2020 general election will be unlike any other election. The COVID-19 pandemic places strains and difficulties on voters, election workers, the Postal Service, and governments alike. Because of these issues, a responsible approach to voting is one that would assure voters that they can cast their ballot safely and that their ballot will be received in a timely manner. Multiple drop box locations are the obvious and legal way for that to happen.

The State has acknowledged the risks associated with in-person voting in light of the COVID-19 pandemic. Indeed, on March 16, 2020, Dr. Acton issued an Order providing as follows:

to avoid an imminent threat with a high probability of widespread exposure to COVID-19 with a significant risk of substantial harm to a large number of people in the general population, including the elderly and people with weakened immune systems and chronic medical conditions, I hereby **ORDER** all polling locations in the State of Ohio **closed** on March 17, 2020. This Order shall take effect immediately and remain in full force and effect until the State of Emergency declared by the Governor no longer exists, or the Director of the Ohio Department of Health rescinds or modifies this Order.

Ohio Dep't Public Health, Director's Order, p. 2 (March 16, 2020). As a result of Dr. Acton's Order, Ohio had no in-person voting for the March 17, 2020 primary. The Ohio General Assembly subsequently passed House Bill 197, which allowed Ohioans to continue to vote by mail only (with exceptions for individuals with

disabilities and those unable to receive mail) until April 28, 2020. *See* Ohio House Bill 197, § 32.

The State defended House Bill 197’s provision for all absentee/ mail-in voting in *League of Women Voters v. LaRose*<sup>1</sup>, noting that “coronavirus posed obvious risks to in-person voting, where asymptomatic virus carriers could nonetheless spread the virus to voters and often elderly poll workers.” *See* <https://fcdcfcs.co.franklin.oh.us/CaseInformationOnline/imageLinkProcessor.pdf?coords=ngrxeyJGBiyiNRseNxCQk%2BILowaTPbu7g9QNnwv4Vz%2BdgBnOEKEhN8xKULoFkhRGPdbNd%2FK7wMFz8tSt2NaSXhTTNOWYfSFT83MIcWU27Yf5rf5Y%2BBXz%2B24vyuER80nbgc%2BnK6KI4GgZN8VbCLecyQHCzISUIvAxeT%2B%2FlcnoxrE%3D>

The State argued that its “interest in conducting the March 17 primary, to the greatest extent possible, through absentee voting is simple: it seeks to save Ohioans’ lives,” and stated, “No one disputes Dr. Acton’s conclusion that in-person voting carries ‘a high probability of widespread exposure to COVID-19.’” (*Id.*, at p. 17.) In that case, the Court concluded that “the State has an interest in curbing the global COVID-19 pandemic,” and “in limiting in-person voting during this period of crisis.” *League of Women Voters v. LaRose*,

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<sup>1</sup> Secretary of State LaRose originally filed this in *League of Women Voters v. LaRose*, Southern District of Ohio Case No. 2:20-cv-1638.

No. 2:20-cv-1638, 2020 U.S. Dist. LEXIS 91631, at \*22 (S.D. Ohio Apr. 3, 2020).<sup>2</sup>

Although Ohioans are no longer subject to State-mandated stay-at-home orders, the COVID-19 pandemic is by no means “curbed.” On July 29, 2020, the Ohio Department of Health issued a press release stating that “Ohio’s hospitals saw their highest number of patients with COVID-19 this week since the pandemic began on March 9, 2020.” Ohio COVID-19 Hospitalizations Hit New High During Pandemic, Ohio Dep’t of Health, (July 29, 2020), <https://odh.ohio.gov/wps/portal/gov/odh/media-center/odh-news-releases/ohio-covid-19-hospitalizations-hit-new-high-during-pandemic>. As of October 8, 2020, Columbus recorded 22,274 COVID-19 cases and 483 deaths while Franklin County as a whole had 30,211 cases and 659 deaths.

[https://public.tableau.com/views/COVID-19OutbreakSummary\\_15918845768300/COVID19Summary1?%3Adisplay\\_count=y&%3Aorigin=viz\\_share\\_link&%3AshowVizHome=no](https://public.tableau.com/views/COVID-19OutbreakSummary_15918845768300/COVID19Summary1?%3Adisplay_count=y&%3Aorigin=viz_share_link&%3AshowVizHome=no)

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<sup>2</sup> Studies have tied in-person voting to an increase in the spread of COVID-19. *See* Nicholas Reimann, Coronavirus Infections Spiked In Wisconsin After In-person Election, Study Says, *Forbes* (May 19, 2020, 1:23 PM), <https://www.forbes.com/sites/nicholasreimann/2020/05/19/coronavirus-infections-spiked-in-wisconsin-after-in-person-election-study-says/#648e3b4614b3> (quoting Chad D. Cotti, et al., The Relationship between In-Person Voting and COVID-19: Evidence from the Wisconsin Primary, NBER (Rev. Aug. 2020), <https://www.nber.org/papers/w27187.pdf>.)

**B. Certain communities are at a higher risk for both contracting COVID-19 and for more adverse reactions to the disease.**

Individuals accessing how they want to cast their ballot this November do so against a backdrop of the realities of COVID-19, including its disproportionate impact on certain communities. For example, even though the population of Columbus is 54% non-Hispanic White, non-Hispanic White individuals make up only 34% of the reported COVID-19 cases and 33% of the reported hospitalizations. Similarly, the population of Columbus is 29% non-Hispanic Black, yet non-Hispanic Black individuals make up 26% of all reported COVID-19 cases and 40% of all COVID-19 hospitalizations. *Id.* Similarly, even though Hispanics make up only 6% of the population of Columbus, they make up 13% of all cases and 11% of all hospitalizations. *Id.*

Income level has greatly affected how COVID-19 has impacted communities. CelebrateOne zip codes<sup>3</sup> report infections at 2,515.1/100,000

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<sup>3</sup> CelebrateOne is a program of the Columbus Department of Public Health to lower infant mortality. It focuses on the zip codes where infant mortality is the highest. The CelebrateOne zip codes are 43203, 43204, 43205, 43206, 43207, 43211, 43219, 43222, 43223, 43224, 43227, 43229, and 43232. This is made up of Franklinton, the Hilltop, Linden, the Southside, the near Eastside, the Northeast Side, and Northland. These are “neighborhoods in Columbus where higher unemployment, lower graduation rates, homelessness, lack of access to nutritious food, higher instances of crime and lower access to health coverage and timely access to pre-natal care contribute to babies being born too small or too soon, and not thriving during their first year of life.” CelebrateOne, City of Columbus, <https://www.columbus.gov/celebrate-one/Neighborhoods/> (last visited Aug. 31, 2020).

residents while non-CelebrateOne zip codes report an infections at a rate of 2,105.4/100,000 residents. *Id.* at p. 3. Likewise, CelebrateOne zip codes report a hospitalization rate of 253.6/100,000 residents while non-Celebrate One zip codes have a hospitalization rate of 124.4/100,000 residents. *Id.* Finally, the death rate per 100,000 residents is 56.0 in CelebrateOne zip codes and 46.8 in the other areas of the City of Columbus. *Id.*

**C. COVID-19 has impacted the way in which Ohioans will vote in the 2020 general election.**

Secretary LaRose understands that “[b]oards of elections will see high voter turnout this November.” Ohio Sec’y of State, Directive 2020-11, at p. 6 (July 6, 2020), <https://www.sos.state.oh.us/globalassets/elections/directives/2020/dir2020-11.pdf>. In Directive 2020-11, LaRose stated that the boards “must prepare to hire additional staff to account for *significant increases in absentee voting, voter turnout, questions from voters, early in-person voting, social distancing and cleaning protocols*, and voter registration.” *Id.* (emphasis added). In fact, “[b]oards must take into consideration the amount of staff the board requires to successfully administer an election under normal circumstances and account for higher voter turnout, higher percentage of absentee ballots, and additional social distancing and cleaning protocols that will require more staffing for compliance.” *Id.* Thus, it is clear that more people will vote absentee during the 2020 general election.

As the state trial court found, Secretary LaRose has mailed approximately 7.8 million absentee ballot applications to registered voters.

<https://fcdfcjs.co.franklin.oh.us/CaseInformationOnline/imageLinkProcessor.pdf?coords=D6V%2F9%2F7MGT9%2FIgEDgC8v%2FC1wdkFodP9F6kAK%2FBd7C5bMb6oBL2iNznTDlanRBAKxJoxVITpZVH0SgTVAAAdwrToEu%2F7SFxdziTarxkvMrax%2BQG9toy31WDU2ZV6CqOZz16NR9H%2Fg6quj%2FhqsX%2FycAOjGMaxJCZZ8F0IVnEzZhr0Y%3D> Opinion at 4. Further, as of September 4,

2020, approximately 1 million voters have already requested a mail-in absentee ballot. *Id.* In fact, LaRose has stipulated that “election officials expect a major increase in mail-in voting this year due to the coronavirus.” *Id.* And, while in a normal election year around 20% of Ohioans vote by mail, LaRose predicted that could be as high as 50% this year. *Id.*

While more electors will choose to cast an absentee ballot, USPS recently informed Secretary LaRose that “under [USPS’s] reading of Ohio’s election laws, certain deadlines for requesting and casting mail-in ballots are incongruous with the Postal Services’ delivery standards.”

<https://fcdfcjs.co.franklin.oh.us/CaseInformationOnline/imageLinkProcessor.pdf?coords=dA3KyYFPeZV1RojURaDeajY%2Bt7KQfn1Wci3NrfNMw0qoy1Mx0e6m9iRkTHKKtPj7NQkEfmBsul3FGoycH50o2Sbbmq%2FSGMjmXF98czqaaC09aagYiYcGx2I%2FRVRIEAvqfZfq89o0XWfv0yANcM9B0HlosKiX0kC28tvlfz2uK>

[aY%3D](#) The USPS informed LaRose that “[t]o allow enough time for ballots to be returned to election officials, domestic voters should generally mail their completed ballots at least one week before the state’s due date.”

<https://fcdcfjs.co.franklin.oh.us/CaseInformationOnline/imageLinkProcessor.pdf?coords=D6V%2F9%2F7MGT9%2FIgEDgC8v%2FC1wdkFodP9F6kAK%2FBd7C5bMb6oBL2iNznTDlanRBAKxJoxVITpZVH0SgTVAAAdwrToEu%2F7SFxdziTarxkvMrax%2BQG9toy31WDU2ZV6CqOZz16NR9H%2Fg6quj%2FhqsX%2Fyc>

[AOjGMaxJCZZ8F0IVnEzZhr0Y%3D](#) Opinion at 6. Accordingly, many Ohio voters will likely—unknowingly—miss the deadline due to postal service delays and delivery standards beyond their control.

Additionally, in an August 16, 2020 letter to President Trump, Attorney General Dave Yost recognized reported changes to the USPS, including “removal of sorting equipment and mail boxes,” and noted the effect that those changes may have on the election<sup>4</sup>.

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<sup>4</sup> The United States Postal Service has removed high capacity mail sorters from use. The Columbus Dispatch reported, “The Columbus area was among the hardest hit in the country, with a reduction of 327,000 pieces of mail per hour, according to the Post. The only cities with bigger reductions were Los Angeles (577,000 pieces per hour), Houston (470,000) and Pontiac, Michigan (394,000). Pontiac is near Detroit.” Rick Rouan, [Postal Service reduces mail sorting capacity, warns Ohio some absentee ballots may not be delivered in time to count](https://www.dispatch.com/news/20200814/postal-service-reduces-mail-sorting-capacity-warns-ohio-some-absentee-ballots-may-not-be-delivered-in-time-to-count), Columbus Dispatch (Aug. 14, 2020, 6:26 PM), <https://www.dispatch.com/news/20200814/postal-service-reduces-mail-sorting-capacity-warns-ohio-some-absentee-ballots-may-not-be-delivered-in-time-to-count>.

<https://fcdfcjs.co.franklin.oh.us/CaseInformationOnline/imageLinkProcessor.pdf?coords=yas3qwY5ymvZUOifryA80foK3rd7OWNpGhBHpBF3Cox0JUICBcMJJsS%2BLia6F20GBKeeRnd7Ou9R1DghVx%2Fh2Rt9WQbrZf2RXiJ7AkS6sL0nppqG4MkMWxmhVc8dFXF59kc%2FUwP1dCWeBHXpkDuBK0MzkLvoywwF5dv7gX%2BwPhc%3D>

Attorney General Yost recognized that the COVID-19 pandemic means that “many of our senior citizens and other people who are medically vulnerable will vote absentee this year.” *Id.* He asked President Trump to postpone any changes to the postal service until after the election “to avoid slowing the mail or creating uneven levels of service across the country,” emphasizing “the people of this country, for the good of the country, *need* to know that all lawfully cast votes will be timely delivered so that they can be counted.” *Id.* (emphasis in original).

When faced with the question of whether Ohio law allowed multiple drop box locations in each court, the state trial court properly concluded that “voter apprehension [about delivery of absentee ballots in the mail] has been proven, and is not irrational. Voter concern about mail service is, therefore, another factor weighed by boards of elections if they have the legal authority to implement additional drop boxes or other methods to receive absentee ballots.”

<https://fcdfcjs.co.franklin.oh.us/CaseInformationOnline/imageLinkProcessor.pdf?coords=D6V%2F9%2F7MGT9%2FIgEDgC8v%2FC1wdkFodP9F6kAK%2FBd7>

[C5bMb6oBL2iNznTDlanRBAKxJoxVITpZVH0SgTVAAAdwrToEu%2F7SFxdziT  
arxkvMrax%2BQG9toy31WDU2ZV6CqOZz16NR9H%2Fg6quj%2FhqsX%2Fyc  
AOjGMaxJCZZ8F0IVnEzZhr0Y%3D](#) Opinion at 6.

**D. Disparities between Ohio’s 88 counties.**

There is a huge disparity between Ohio’s 88 counties . Both Franklin and Cuyahoga counties have over 1.2 million residents and approximately 900,000 registered voters. *Id.* at 7. Meanwhile, the State’s three least populous counties – Vinton, Monroe, and Morgan counties – have less than 15,000 residents and 10,000 voters each. Similarly, Ashtabula county covers over 700 square miles while Ottawa, Erie, and Lake Counties each cover 255 square miles or less. *Id.* at 7-8.

Likewise, different counties have different transportation issues. Voters who rely on public transportation could save substantial time if public libraries had ballot drop boxes. *Id.* at 8. Further, despite having a drop box inside the board of elections and a second drop box for drive through traffic, Hamilton County experienced substantial traffic safety problems during the 2020 primary election. *Id.* at 8. “[O]n the last day of primary voting lines of vehicles waiting to get to the drop box extended onto a nearby four-lane state highway, and were estimated to be as long as a mile in both directions.” *Id.*

After Montgomery County realized that their drop box led to traffic congestion on Dayton's main thoroughfare, their board of elections moved the drop box to the loading dock of the county building. *Id.* at 9. That change, however, will not alleviate traffic problems. "[O]nly a small number of vehicles can wait in line \*\*\* to use the exterior drop box before traffic backs up on to Third Street." *Id.*

The Franklin County Board of Elections is located in the northern portion of the county. Its board had been exploring adding another 4 or 5 locations in the west, south, and east sides of the county including at libraries, other county buildings, or at branch offices for the sheriff's department. *Id.* at 9-10. This is especially important since as of September 4, 2020, the Franklin County Board of Elections had received over 145,000 mail-in absentee ballot requests, nearly equal to the total number of absentee ballots cast in the county in the 2016 general election. *Id.* at 10.

Mahoning County, a county that has to deal with lag time in mail because local mail gets sent from the county to Cleveland to be sorted and then sent back to Mahoning county, had been looking at adding 10 drop box locations. *Id.* Mahoning recognizes that the way its mail is delivered means that it generally takes five to seven days to go from one local address to another. Since ballots

must be returned to the boards of elections no later than 10 days after the election, voters in Mahoning County run the real risk of being disenfranchised.

Likewise, Huron County, having experienced problems with the mail service during the 2020 primary election, was also interested in adding a second drop box location so that voters in both the northern and southern parts of the county could conveniently use that option. *Id.* at 10-11.

Given the varying circumstances in Ohio's 88 counties, the local boards of elections should be permitted to decide where to place additional drop boxes throughout their counties. These additional drop boxes are not onerous to install. Each new box costs about \$2,000 and requires only two weeks to deliver. *Id.* at 11. This is a simple and cost effective solution allowing more voters to safely cast their ballots while ensuring that such ballots are timely received by the boards of elections.

It is unfortunate that litigation was necessary in order to guarantee the right of *all* Ohioans to cast a ballot in a safe and effective manner. It is even worse when the State's Chief Elections Officer claimed to be in support of additional drop box locations if Ohio law allowed them. Ohio law clearly does. LaRose has been fighting against that answer in several courts despite each and every court telling him that such drop boxes are allowed.

## CONCLUSION

For the foregoing reasons, this Court should affirm the decision of the District Court.

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE**

Pursuant to 6th Cir. R. 32(a)(7)(C), the undersigned certifies that this brief complies with the type-volume limitations of 6th Cir. R. 32(a)(7)(B).

1. EXCLUSIVE OF THE EXEMPTED PORTIONS OF THIS BRIEF AS DESCRIBED BY 6TH CIR. R. 32(a)(7)(B)(iii), THIS BRIEF CONTAINS 3,005 WORDS.
  
2. THIS BRIEF HAS BEEN PREPARED IN PROPORTIONATELY SPACED TYPEFACE USING:  
  
Software Name and Version: Microsoft Word 2016  
In (Typeface Name and Size): Times New Roman 14 Point
  
3. IF THE COURT SO REQUESTS, THE UNDERSIGNED WILL PROVIDE AN ELECTRONIC VERSION OF THIS BRIEF.
  
4. THE UNDERSIGNED UNDERSTANDS THAT MATERIAL MISREPRESENTATIONS IN COMPLETING THIS CERTIFICATE, OR CIRCUMVENTION OF THE TYPE-VOLUME LIMITS FOUND IN 6TH CIR. R. 32(a)(7), MAY RESULT IN THE COURT STRIKING THE BRIEF AND IMPOSING SANCTIONS AGAINST THE UNDERSIGNED.

s/Richard N. Coglianese  
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**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing Amicus Brief of the Cities of Columbus, Cincinnati, Cleveland, Akron, Dayton, Toledo, and the Board of Lucas County has been served upon counsel by electronic filing this 9<sup>th</sup> day of October 2020.

s/Richard N. Coglianes  
Richard N. Coglianes