

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

A. PHILIP RANDOLPH INSTITUTE OF OHIO, et al.,

Plaintiffs,

v.

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

Defendant.

Case No. 1:20-cv-01908

Hon. Dan Aaron Polster

**PLAINTIFFS' RESPONSE TO DEFENDANT SECRETARY OF STATE'S
NOTICE**

Plaintiffs respectfully submit this Response to Defendant Secretary of State LaRose's Notice regarding his efforts to comply with the Court's September 25 Order. The Court ordered Defendant LaRose to "work closely with the Cuyahoga County board of elections to develop and implement a plan to alleviate the looming crisis for voters who plan to personally deliver their ballots for the November 3 election rather than returning them by mail." (Doc. 77 at 6-7.) Defendant LaRose conceded in his report that he made no effort to "work closely" with the Board "to develop and implement a plan." Rather, Defendant LaRose's counsel merely "contacted Counsel for the Board and informed him that the Secretary approved the portion of the Board's Plan ('Plan') that proposes to have Board staff collect absentee ballots in the parking lot adjacent to the Board, the street address of which is 3100 Chester Avenue ('Chester Avenue Lot')." (Doc. 79 at 1.) The Secretary implicitly rejected the portions of the Plan that called for

additional collection locations at public libraries, but stated no basis for doing so. While adding the Chester Avenue Lot as a ballot collection location is a step in the right direction, it is far from “a plan to alleviate the looming crisis for voters” in Cuyahoga County. (Doc. 77 at 7.)

Significantly, Defendant LaRose undercut—if not completely abandoned—the statutory and practicality arguments he placed at issue in this litigation by approving the Cuyahoga Board’s use of the Chester Avenue Lot for ballot collection. The Chester Avenue Lot is an off-site ballot collection location, just like the off-site library locations the Cuyahoga Board unanimously approved and just like the off-site locations Plaintiffs have demonstrated the Secretary is constitutionally required to allow other Ohio counties to use. While the Secretary’s Notice described the Chester Avenue Lot as a “parking lot adjacent to the Board,” it is not the property of the Cuyahoga County Board of Elections, and is in reality a parking lot at the Cleveland Metropolitan School District’s Campus International High School that is not, in fact, “adjacent to” the Cuyahoga Board’s office. (*See* Exh. A, Cuyahoga Board of Elections Vote-By-Mail Ballot Collection Plan at 2.) Throughout this case, the Secretary has contended that he is statutorily prohibited from permitting off-site ballot collection locations. Yet he permitted the Cuyahoga Board to use the off-site Chester Avenue Lot. Similarly, the Secretary and his witnesses contended throughout the preliminary injunction hearing that security concerns, a lack of uniform standards, and the practicality of timely implementation made it impossible for Ohio counties to use off-site ballot collection locations, including locations where drop boxes had specified hours and were staffed instead of 24-hour, unstaffed drop boxes that were fixed to the ground and monitored by security cameras. Yet those concerns did not prevent the Secretary from approving an off-site ballot collection location at the Chester Avenue Lot that is staffed and open for specified hours, like the library sites in the Cuyahoga County plan. As the Secretary

acknowledged through his approval of part of Cuyahoga County's off-site ballot collection plan, Ohio counties are more than capable of implementing off-site ballot collection locations in time for the November 3 election, whether the drop boxes are 24-hour boxes monitored by security cameras or drop boxes that are open for specified hours and staffed. Neither Ohio statutes nor practicality concerns prevent the Secretary from authorizing counties to do so.

Given the Secretary's implicit waiver of his statutory and practicality arguments, Plaintiffs respectfully suggest that the Court need not wait for any further state court decisions on whether Ohio law permits county boards of elections to use off-site ballot collection locations. The Court can accept the fact that Defendant LaRose, through his approval of the Chester Avenue Lot, concedes and believes Ohio law does so. The Court can rule on Plaintiffs' Motion for Preliminary Injunction now, without waiting for the state court appellate process to run its course.¹

As recently as yesterday, the Cuyahoga County Board of Elections reaffirmed its willingness to implement the plan it passed on September 14 for off-site ballot collection locations at six libraries throughout the County if it received authorization to do so. The Cuyahoga Board held an emergency meeting on September 30 to consider, among other things, its "proposal regarding the drop-off of absentee ballots." (*See* Exh. B, Cuyahoga Board of Elections Meeting Agenda) While a transcript of the emergency meeting is not yet available, a video of the meeting is available on the Cuyahoga Board of Elections YouTube channel. (*See*

¹ Notably, Plaintiffs' un rebutted evidence in support of their motion for Preliminary Injunction demonstrates that additional off-premises ballot drop boxes and ballot collection locations in all 88 Ohio counties are needed to remedy the equal protection and other constitutional violations imposed through application of Directive 2020-16 and Ohio statutes, without regard to how the state appellate courts construe the relevant statutes.

<https://www.youtube.com/watch?v=vqyFMx2xghc> at 18:33-36:40.)² During the emergency meeting, Cuyahoga Board members expressed their intent to implement their September 14 bi-partisan plan for multiple ballot collection locations at libraries within Cuyahoga County if they were authorized to do so. (*See id.* at 24:25-25:21 (Statement of Robert S. Frost); *id.* at 28:34-29:18 (Statement of Inajo Chappell); *id.* at 36:09-36:32 (Statement of David J. Wondolowski).) Yet, the Secretary's Notice, which he filed immediately following the conclusion of the Cuyahoga Board's emergency meeting, was silent as to those remaining six locations. The Secretary offered no justification for allowing one staffed temporary off-site ballot collection location in Cuyahoga County but not the other six locations. Permitting one location while ignoring the other six serves no relevant and legitimate state interest, and does little to address the "looming crisis" the Court described in its September 25 Order, which Plaintiffs have shown imposes a substantial burden on their and their members' rights to vote.

Plaintiffs respectfully request an opportunity to discuss with the Court at its earliest convenience the Secretary's Notice and the issues it raises. Plaintiffs are prepared to submit a proposed order and/or proposed findings of fact and conclusions of law on short notice if the Court requests them.

Dated: October 1, 2020

Respectfully submitted,

/James Schuster/

² Plaintiffs have filed a Notice of Manual Filing (Doc. 81) and are in the process of manually filing and serving multimedia versions of the video of the September 30, 2020, Cuyahoga Board of Elections emergency meeting and the Board's September 14, 2020, meeting.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 21, 2020, a true and correct copy of the foregoing was furnished by electronic filing with the Clerk of the Court via CM/ECF, which will send notice of electronic filing to all counsel of record.

/James Schuster/