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' NOTICE OF OHIO 10TH DISTRICT COURT OF APPEALS DECISION IN *OHIO DEMOCRATIC PARTY V. LAROSE*

The Ohio 10th District Court of Appeals rendered its decision yesterday, October 2, 2020, in *Ohio Democratic Party v. LaRose*, No. 20AP-432. The decision is attached as Exhibit A. Consistent with this Court's oral ruling and Plaintiffs' position, the 10th District ruled that the Ohio Revised Code is silent on the issue of ballot drop box locations. (*See* Exh. A at 10, 11) The court further held that the Secretary of State had the authority under Ohio law to issue Directive 2020-16 but also has the authority to rescind it and allow county boards of election the discretion to utilize additional ballot drop box locations:

> Based on the foregoing reasons, we agree with the trial court that the Secretary of State's interpretation of R.C. 3509.05 is not reasonable and that the statute neither prescribes nor prohibits ballot drop boxes at locations other than the boards of elections. However, the trial court abused its discretion in granting a preliminary injunction against enforcement of the directive as the directive does not violate R.C. 3509.05. Thus, we find that while the Secretary was not statutorily required to limit the location of drop boxes, as he did in Directive 2020-16, he was also not statutorily required to allow for additional drop boxes. ***If the Secretary wants to permit additional drop boxes as allowed by statute, he has the authority to do so, and nothing in this decision prohibits him from rescinding Directive 2020-16 and issuing a new directive.*** Having overruled the Secretary of State's first assignment of error and ORP's first and second assignments of error, but having sustained

> the Secretary of State's second assignment of error and ORP's third and fourth assignments of error, we affirm in part and reverse in part the judgment of the Franklin County Court of Common Pleas.

(*Id.* at 19 (emphasis added))

Plaintiffs' constitutional claims in this case remain intact. Indeed, the 10th District in *Ohio Democratic v. LaRose* said as much:

> We note there are other avenues of relief available to a party seeking to challenge a directive of the Secretary of State on grounds other than a statutory violation, among them a challenge to the directive's constitutionality, as is the subject of the federal case currently pending in the Northern District of Ohio, or an action seeking a writ of mandamus arguing the Secretary abused his or her discretion in issuing a directive. *See A. Philip Randolph Institute of Ohio v. LaRose*, N.D. Ohio No. 1:20-CV-01908, 2020 U.S. Dist. LEXIS 168667 (Sept. 15, 2020) (pending federal case asserting constitutional challenge to Directive 2020-16); *State ex rel. Skaggs v. Brunner*, 120 Ohio St.3d 506, 2008-Ohio-6333, ¶ 1 (granting requested writ of mandamus on the grounds that the secretary of state's directive was unreasonable).

(*Id.* 18 n.3). Indeed, given the proximity of the November 3 election, there is an exigent need to resolve Plaintiffs' Motion for Preliminary Injunction as soon as possible.

Plaintiffs further attach as Exhibit B a Motion to Strike filed by Secretary LaRose in *Ohio Democratic Party v. LaRose* pertaining to the Secretary of State's approval of the second ballot drop-off location in Cuyahoga County.

Plaintiffs request a hearing to discuss these urgent issues with the Court at its earliest convenience. Plaintiffs respectfully suggest that the Court schedule a hearing if it is available as soon as the afternoon on Monday, October 5, 2020, after Defendant files the reply ordered by the Court in its October 2, 2020 Order.

Finally, Plaintiffs are prepared to submit a proposed order regarding their Motion for Preliminary Injunction as well Proposed Findings of Fact and Conclusions of Law as soon as Monday, October 5, 2020.

Dated: October 3, 2020

Respectfully submitted,

/ James Schuster /

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CERTIFICATE OF SERVICE

I, HEREBY, CERTIFY that on October 3, 2020, a true and correct copy of the foregoing, Plaintiffs' Notice of Ohio 10th District Court of Appeals Decision in *Ohio Democratic Party V. Larose*, was furnished by electronic filing with the Clerk of the Court via CM/ECF, which will send notice of electronic filling to all counsel of record.

Respectfully submitted,

/ James Schuster /

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