

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

**LEAGUE OF WOMEN VOTERS OF OHIO,
ET AL.,**

v.

Case No. 20-1638

Judge Watson

LAROSE, ET AL.,

**INTERVENOR-PLAINTIFF'S SUPPLEMENT TO ITS
MOTION FOR EMERGENCY RELIEF**

ARGUMENT

I. The Democratic Party's Decision to Postpone its Election Obviates the Need for an April 28, 2020 Primary.

House Bill 197's choice of April 28, 2020 as the concluding date for Ohio's primary was a compromise arrived at between Democrats and Republicans. The Ohio Democratic Party had demanded this exact same date when they challenged Defendant-LaRose's cancellation and postponement of the primary in the Ohio Supreme Court. Defendant-LaRose, of course, had settled on June 2, 2020 as the new primary election date, and Democrats complained that this was too late to accommodate their National Convention.

Following the General Assembly's agreement in House Bill 197 to make April 28, 2020 the primary election date, the Ohio Democratic Party immediately moved the Ohio Supreme Court to dismiss it from the action. It claimed in that application that it had received most everything it wanted from House Bill 197.

Because the Democrats have now delayed their National Convention, the necessity to hold a primary election on April 28, 2020 has passed. There is no reason Ohio cannot hold its

primary election at a later date, comply with federal law, and satisfy the United States Constitution.

As for the Libertarian Party, its National Convention is still scheduled for May 21, 2020 and has not been delayed. For that reason, Intervenor-Plaintiff respectfully requests that an Order be fashioned to provide that Ohio's federal primary election be concluded before that date. In order to do so and have time to count what promises to be a majority of ballots cast by mail, Intervenor-Plaintiff asks of this Court the same relief it sought in the Ohio Supreme Court, that voting conclude on Tuesday, May 12, 2020. Assuming a 30-day pre-registration period is imposed -- which is not required by but only allowed by federal law -- there would be not only the post-February 18, 2020 registrants awarded the ability to vote, but also roughly two additional weeks of registration for voting. May 12, 2020 would also provide elections officials with time to announce uncertified results before the Libertarian Party's National Convention.

II. There is No Longer Any Rational Reason to Rush Toward April 28, 2020 and Ignore Federal Law.

Whatever final date is employed, Ohio's primary election must comply with federal law and the United States Constitution. As House Bill 197 stands, it plainly violates the National Voter Registration Act, and Defendants have no rational explanation for why they continue to ignore the registration requirements found in that law.

There is absolutely no reason Ohio cannot extend voter registration in lock-step with whatever new election date is chosen. The Court in *Florida Democratic Party v. Scott*, 215 F. Supp.3d 1250 (N.D. Fla. 2016), made this clear. In ruling in that case that Florida had to extend voter registration following the postponement of elections because of a Hurricane: "Many other states, for example, either extended their voting registration deadlines in the wake of Hurricane Matthew or already allow voter registration on Election Day. There is no reason Florida could

not do the same." *Id.* at 1257. It elaborated: "Other states ravished by Hurricane Matthew extended their registration deadline to protect voters. In fact, fifteen other states, including, for example, Iowa, even allow registration on Election Day. It is incomprehensible that Florida could not follow suit." *Id.* at 1258 (emphasis added).

III. There is No Longer Any Rational Reason to Impose Costs On Voters.

Ohio's planned use of exclusive absentee voting with costs being imposed on voters, while providing for only "excuse" in person voting, violates the Fourteenth and Twenty-Fourth Amendments. It is also, in the absence of a need to immediately conduct an election, irrational.

The Twenty Fourth Amendment, ratified in 1964, bars the use of poll taxes by the States or the Congress in federal elections. In *Harman v. Forsesenius*, 380 U.S. 528, 541 (1965), the Supreme Court interpreted this new Amendment to reach beyond technical and literal taxes; according to the Court, the Twenty Fourth Amendment "'hits onerous procedural requirements which effectively handicap exercise of the franchise'" "Significantly," the Court stated, "the Twenty-fourth Amendment does not merely insure that the franchise shall not be 'denied' by reason of failure to pay the poll tax; it expressly guarantees that the right to vote shall not be 'denied or abridged' for that reason." *Id.* at 540. "Thus," the Court concluded, "like the Fifteenth Amendment, the Twenty-fourth 'nullifies sophisticated as well as simple-minded modes' of impairing the right guaranteed." *Id.* at 540-41. In short, "the Twenty-Fourth Amendment exists to combat the 'disenfranchisement of the poor....'" *Johnson v. Bredesen*, 624 F.3d 742, 750 (6th Cir. 2010) (quoting *Harman*, 380 U.S. at 539) (emphasis added).

In *Harman*, the Court used this analysis to invalidate a Virginia law that imposed no tax at all on federal voters. Instead, it required that federal voters "either pay the customary poll taxes as required for state elections [which had not yet been invalidated by the Supreme Court's

decision in *Harper v. Virginia State Board of Elections*, 383 U.S. 663 (1966)] or file a certificate of residence." *Harman*, 380 U.S. at 532. The Court ruled that "it need only be shown that [the law] imposes a material requirement solely upon those who refuse to surrender their constitutional right to vote in federal elections without paying a poll tax." *Id.* at 541. Applying this standard, the Court ruled that Virginia's certificate of residence requirement "constitutes an abridgment of the right to vote in federal elections in contravention of the Twenty-fourth Amendment." *Id.*

It is irrelevant that some, or most voters, moreover, can readily satisfy whatever financial obstacles a State chooses to impose. "The right to vote is personal and is not defeated by the fact that 99% of other people can secure the necessary credentials easily." *Frank v. Walker*, 819 F.3d 384, 386 (7th Cir. 2016) (holding that individual challenges to State photo ID law could proceed under theory that they constituted unconstitutional poll tax).

"In *Harper v. Virginia Bd. of Elections*, 383 U.S. 663 (1966), the Court held that Virginia could not condition the right to vote in a state election on the payment of a poll tax of \$1.50," *Crawford v. Marion County Election Board*, 553 U.S. 181, 189 (2008), thus effectively extending as a matter of Fourteenth Amendment Equal Protection the reach of the Twenty Fourth Amendment to state and local elections. Consequently, whether federal, state or local elections are involved, a State may not constitutionally "impose[] a material requirement solely upon those who refuse to surrender their constitutional right to vote in federal elections without paying a poll tax." *Harman*, 380 U.S. at 541.

Here, Ohio does just that. According to Defendant-LaRose, "Voters who want to cast a ballot must [after receiving a post card] then either print out an absentee ballot request form themselves or call their county board and ask for one to be sent to them. Voters must then affix

their own postage and send the request to their county board of elections." *LaRose Issues Statement on Legislation Finalizing Ohio's Primary Election*, March 25, 2020 (emphasis added). Voters must first supply their own ballot request forms, then must supply their own postage to send those forms to their county boards of elections. Only then will they receive a ballot and be able to vote.

Many voters, of course, can satisfy the first step using their own computers, printers and paper at home. Unfortunately, many voters cannot. Many voters can easily afford the cost of postage to return their ballot requests to their elections boards. Unfortunately, many poor voters cannot. And as stated by the Sixth Circuit, "the Twenty-Fourth Amendment exists to combat the 'disenfranchisement of the poor....'" *Bredesen*, 624 F.3d at 750 (emphasis added). That is exactly what Ohio is doing.

CONCLUSION

For the foregoing reasons, Intervenor-Plaintiff respectfully requests that Defendant-LaRose be ordered to conclude the primary election on May 12, 2020 and comply with federal law in doing so.

Respectfully submitted,

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