

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

**LEAGUE OF WOMEN VOTERS OF OHIO,
OHIO A. PHILIP RANDOLPH INSTITUTE,
LASHUNDA LEE, MUNIA MOSTAFA,
AUDRIANNA VICTORIAN RODRIGUEZ,
and HANNAH TUVELL,
Plaintiffs,**

and

**LIBERTARIAN PARTY OF OHIO,
Intervenor-Plaintiff,**

v.

Case No. 20-1638

Judge Watson

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

and

**STATE OF OHIO,
Intervenor-Defendant.**

**TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION REQUESTED**

COMPLAINT

1. This is an action on behalf of the Libertarian Party of Ohio to declare unconstitutional, enjoin and/or modify Ohio's law prohibiting voters who register after February 18, 2020 from voting in Ohio's April 28, 2020 federal election.

JURISDICTION

2. Jurisdiction in this case is predicated on 28 U.S.C. § 1331, this being a case arising under federal law, including the National Voter Registration Act of 1993, 52 U.S.C. § 20507, the United States Constitution, and 42 U.S.C. § 1983.

VENUE

3. Venue is proper in this District under 28 U.S.C. 1391(b) because a substantial part of the events giving rise to Intervenor-Plaintiff's claims occurred in this District.

PARTIES

4. Intervenor-Plaintiff, Libertarian Party of Ohio, is one of three fully recognized political parties in Ohio with ballot access in Ohio's primary and general elections. As a recognized political party in Ohio, its members include eligible voters who can and will vote in Ohio's 2020 primary and general elections. Its membership also includes several candidates for congressional and local office in Ohio who are required to participate in Ohio's 2020 primary. It will also run a presidential ticket in Ohio in the November 2020 general election following the selection of that ticket at its National Convention.

5. Plaintiff, League of Women Voters of Ohio ("LWVO"). is a non-partisan, non-profit membership organization located in Columbus, Ohio.

6. Plaintiff, Ohio A. Philip Randolph Institute ("Ohio APRI"), is a state chapter of the A. Philip Randolph Institute, a national organization for African-American trade unionists and community activists affiliated with the AFL-CIO and established in 1965 to forge an alliance between the civil rights and labor movements.

7. Plaintiff Lashunda Lee is an eligible, registered, and regular voter who has lived in Ohio for more than thirty years.

8. Plaintiff Munia Mostafa is an eligible, registered, and regular voter in Ohio, and has been since she became a naturalized citizen in 2017.

9. Plaintiff Audrianna Victorian Rodriguez is an eligible, registered, and regular voter in Ohio, and had planned to vote in person in the 2020 primary.

10. Plaintiff Hannah Tuvell is a life-long Ohio resident who has never registered to vote before and would like to vote in the 2020 primary election.

11. Defendant Frank LaRose serves as Secretary of State of the State of Ohio and is being sued in his official capacity.

12. Intervenor-Defendant is the State of Ohio acting on behalf of the General Assembly.

FACTS

13. On July 17, 2019, the Ohio General Assembly passed Am. Sub. H.B. 166 to amend R.C. § 3501.01(E) to provide that in-person voting in Ohio's 2020 presidential, congressional and state-office primary election "be held on the third Tuesday after the first Monday in March." For Ohio's 2020 congressional, presidential and state-office primary election, this meant that the election would conclude with in-person voting at the close of the day on March 17, 2020. The Ohio Governor signed Am. Sub. H.B. 166 into law on July 18, 2019.

14. In a press conference on the afternoon of March 16, 2020, Ohio Governor Mike DeWine and Respondent Secretary stated that they lacked the legal authority to change the date of Ohio's 2020 presidential primary election.

15. On or about 10:11 p.m. on Monday, March 16, 2020, Ohio Governor Mike DeWine announced that the Director of the Ohio Department of Health was closing the

polling locations in the State of Ohio on Tuesday, March 17, 2020 due to concerns of exposure to COVID-19.

16. In the early morning hours on Tuesday, March 17, 2020, Respondent Secretary issued Directive 2020-06 to Ohio's 88 county boards of election directing that, "in response to Ohio Governor Mike DeWine's and Director of the Ohio Department of Health Dr. Amy Acton's order closing polling places on March 17, 2020," he was "suspending" the March 17, 2020 presidential primary election and "moving the date of the election to June 2, 2020.

17. Directive 2020-06 included the following instructions to the county boards of elections:

a. "The March 17, 2020 Presidential Primary Election is suspended until June 2, 2020."

b. "The boards of elections are prohibited from processing any new voter registrations for the June 2, 2020 presidential primary election. The February 18, 2020 voter registration deadline remains the voter registration deadline."

c. "Boards of elections must remain open on March 17, 2020 to receive any absentee ballots at the boards of elections through 7:30 p.m. Boards of elections are required to process any UOCAVA ballots. Boards of elections are required to process any-non UOCAVA absentee ballot post-marked by Monday, March 16, 2020 and received by the boards of elections through March 27, 2020. Boards of elections are prohibited from tabulating and reporting any results until the close of polls on Tuesday, June 2, 2020."

d. "The boards of elections are required to process absentee ballot applications received at the board of elections postmarked by Tuesday, May 26, 2020. Absentee ballots must be postmarked by June 1, 2020 and must be received by the boards of elections no later than Friday, June 12, 2020. UOCAVA absentee ballots must be submitted for mailing not later than 12:01 a.m. at the place where the voter completes the ballot, on Tuesday, June 2, 2020."

e. "On Tuesday, June 2, 2020, boards of elections must conduct in-person voting at polling locations in their county. The polls will open at 6:30 a.m. and close at 7:30 p.m. on Tuesday, June 2, 2020. Boards of elections should work with their county prosecutors to review any contracts with polling locations to ensure that

in-person voting can take place at those polling locations on Tuesday, June 2, 2020.”

18. On March 17, 2020, the Ohio Democratic Party filed an original action in the Supreme Court of Ohio challenging Defendant-LaRose's action and seeking to have the previously scheduled March 17, 2020 primary concluded by April 28, 2020.

19. The Libertarian Party of Ohio moved to intervene in that action on March 19, 2020, in an effort to have the previously scheduled March 17, 2020 election lawfully concluded no later than May 12, 2020.

20. The Libertarian Party challenged not only Defendant-LaRose's authority under the federal Constitution to cancel the March 17, 2020 election in that action before the Ohio Supreme Court, but also his authority under the Constitution to substitute his own Directive fixing Ohio's registration deadline as February 18, 2020.

21. The Libertarian Party of Ohio's Motion to Intervene was granted by the Ohio Supreme Court over the Ohio Democratic Party's and Defendant-LaRose's objections on March 20, 2020.

22. On or about March 25, 2020, the Ohio General Assembly passed 2020 Am.Sub.H.B. No. 197 (“House Bill 197”)—an emergency act that voided Directive 2020-06 and established a new election date, April 28, 2020, and how that primary election would proceed in Ohio.

23. House Bill 197 was signed by the Governor on or about March 30, 2020.

24. In addition to setting the primary election for April 28, 2020, House Bill 197 also fixes the registration date for that election as February 18, 2020.

25. House Bill 197 also precludes "no excuse" in person voting during the April 28, 2020 election.

26. House Bill 197 requires the vast majority of voters in Ohio to vote by mail and absorb most of the costs associated with obtaining a ballot and voting that ballot at the April 28, 2020 primary election.

27. As described by Defendant-LaRose on his official web page:

The Ohio Secretary of State must design, print and mail approximately 7.8 million informational postcards to every registered Ohioan that explains to them how to obtain the form necessary to request an absentee ballot.

Based on preliminary estimates from prospective vendors, it is expected that these postcards will reach registered voters in the second week of April.

Voters who want to cast a ballot must 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.

Boards must then process the request, print the ballot and send it to the voter.

Each voter must receive their ballot, cast their vote, and return the ballot in a postage-paid envelope, postmarked by April 27th.

*LaRose Issues Statement on Legislation Finalizing Ohio's Primary Election, March 25, 2020.*¹

28. On March 26, 2020, the Democratic Party moved the Ohio Supreme Court to dismiss it from the case following the General Assembly's having passed House Bill 197.

29. The Ohio Supreme Court granted the Democratic Party's application and dismissed its complaint on March 27. *State ex rel. Ohio Democratic Party v. LaRose*, __ Ohio St.3d __, 2020-Ohio1139, __ N.E.3d __.

¹ <https://www.ohiosos.gov/media-center/press-releases/2020/2020-03-25/>.

30. On March 31, 2020, the Ohio Supreme Court then dismissed the Libertarian Party of Ohio's challenge to Directive 2020-06 as moot, stating that should the Libertarian Party wish to press its argument that "House Bill 197 violates federal law (and thus does not render its claim moot)[,] ... that claim is for another day and another case." *See id.*, 2020-1253 at 3.

31. On March 30, 2020, this action was filed.

32. The Ohio Democratic Party moved to intervene as a Defendant on April 1, 2020.

FIRST CAUSE OF ACTION

33. All prior paragraphs are incorporated herein.

34. House Bill requires that ballots cast through April 28, 2020, count in Ohio's 2020 presidential primary election, H.B. 197 § 32(E)(1)–(2), but prohibits anyone who registered to vote after February 18, 2020, from participating in the election, *id.* § 32(C)(1)(a).

35. The National Voter Registration Act of 1993 ("NVRA") applies to federal elections, such as Ohio's 2020 presidential primary election. *See, e.g.*, 52 U.S.C. §§ 20501(b)(1), 20502(1)–(2).

36. Section 8(a)(1) of the NVRA requires that in elections for federal office the registration date be no earlier than 30 days prior to "the date of the election." *Id.* § 20507(a)(1).

37. House Bill 197's restriction on registration violates the NVRA. This restriction will deprive eligible Ohio voters, including members of the Libertarian Party of Ohio, of their right to participate in the 2020 primary election in violation of federal law.

38. Defendant-LaRose's enforcement of this February 18, 2020 registration deadline violates the NVRA.

SECOND CAUSE OF ACTION

39. All prior paragraphs are incorporated herein.

40. Article I, § 4 of the Constitution of the United States provides that "The times, places and manner of holding elections for Senators and Representatives, shall be prescribed in each state by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators." (Emphasis added).

41. Congress has in the NVRA prescribed the proper manner and temporal deadlines for electing Senators and Representatives in the United States, and that manner includes precluding States from requiring voter registration more than 30 days before the federal election.

42. The General Assembly had no authority under Article I, § 4 to pass a law that required voters to register more than 30 days before Ohio's upcoming federal primary election.

43. The General Assembly's inclusion of its voter registration date in House Bill 197 violates the powers delegated to it by Article I, § 4 of the United States Constitution.

44. Defendant-LaRose's enforcement of House Bill 197's registration deadline violates 42 U.S.C. § 1983.

THIRD CAUSE OF ACTION

45. All prior paragraphs are incorporated herein.

46. House Bill 197 requires that voters in Ohio absorb most of the costs associated with obtaining and voting their ballots.

47. The Twenty-Fourth Amendment prohibits poll taxes in any federal elections.

48. The Equal Protection Clause of the Fourteenth Amendment prohibits poll taxes in any elections. *See Harper v. Virginia State Board of Elections*, 383 U.S. 663 (1966).

49. House Bill 197's requirement that voters cast absentee ballots and themselves absorb most of the costs associated with obtaining and voting their ballots constitute an unconstitutional poll tax in violation of the Fourteenth and Twenty-Fourth Amendments to the United States Constitution.

50. Defendant-LaRose's enforcement of House Bill 197 imposes an unconstitutional poll tax in violation of the Fourteenth and Twenty-Fourth Amendments to the United States Constitution.

51. Defendant-LaRose's enforcement of House Bill 197's registration deadline violates 42 U.S.C. § 1983.

FOURTH CAUSE OF ACTION

52. All prior paragraphs are included herein.

53. The Libertarian Party of Ohio relied on the scheduling of Ohio's March 17, 2020 primary to its detriment in planning to participate in the Libertarian National Convention.

54. Should Ohio conduct its primary later than approximately May 12, 2020, the Libertarian Party of Ohio's participation in that National Convention will be prejudiced.

55. The Libertarian Party of Ohio has a First Amendment right to order its internal affairs as it sees fit.

56. Delaying Ohio's primary election beyond May 12, 2020 will interfere with and irreparably damage the Libertarian Party of Ohio's First Amendment rights.

57. Defendant-LaRose's conducting the primary after May 12, 2020 will violate the First Amendment rights of the Libertarian Party of Ohio and 42 U.S.C. § 1983.

DEMAND FOR RELIEF

WHEREFORE, the Libertarian Party of Ohio respectfully pray that this Court:

- (1) Assume original jurisdiction over this case;
- (2) Issue a temporary restraining order, preliminary and/or permanent injunction (i) prohibiting enforcement of Ohio's February 18, 2020 registration deadline; (ii) directing Defendant-LaRose to comply with federal law by setting a registration deadline that is no more than 30 days before the date of the primary election; (iii) directing Defendant-LaRose to conduct that election no later than May 12, 2020; and (iv) directing Defendant-LaRose to either bear the full costs associated with obtaining and voting ballots, or alternatively provide some reasonable alternative like "no excuse" in person voting before the close of the election to allow voters to cast their ballots at no cost.
- (3) Issue a declaratory judgment under 28 U.S.C. § 2201(a) stating that (i) enforcement of Ohio's February 18, 2020 registration deadline is illegal; (ii) Defendant-LaRose must comply with federal law by setting a registration deadline that is no more than 30 days before the date of the primary election; (iii) Defendant-LaRose must conduct that election no later than May 12, 2020; and (iv) Defendant-LaRose must bear the full costs associated with obtaining and voting ballots, or alternatively provide some reasonable alternative like "no excuse" in person voting before the close of the election to allow voters to cast their ballots at no cost.

- (4) Order Defendant-LaRose to pay to Intervenor-Plaintiff the Libertarian Party of Ohio its costs and a reasonable attorney's fees under 42 U.S.C. § 1988(b); and
- (5) Retain jurisdiction over this matter and order Defendant-LaRose to provide to the Libertarian Party of Ohio any additional relief the Court deems just.

Respectfully submitted,

/s Mark R. Brown

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