

IN THE SUPREME COURT OF OHIO

STATE EX REL. OHIO DEMOCRATIC
PARTY, et al.

Relators,

-v-

FRANK LAROSE.

Respondent.

CASE NO. 2020-0388

ORIGINAL ACTION IN
PROHIBITION

ALTERNATIVE AND
PEREMPTORY WRITS
REQUESTED

Expedited Election Matter
Under S.Ct.Prac.R. 12.08

RELATORS' MEMORANDUM IN OPPOSITION TO THE LIBERTARIAN PARTY OF
OHIO'S MOTION TO INTERVENE

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This court should deny Movant’s Libertarian Party of Ohio (“LPO”)’s motion to intervene because the LPO’s interests are adequately represented by Relator Ohio Democratic Party (“ODP”)’s proposed April 28 absentee ballot deadline, and the LPO does not raise any new arguments or claims.

1. **The ODP adequately represents the LPO’s stated interests in the instant case and will address the constitutional arguments in the ODP’s brief.**

While it is true that the ODP, a major Ohio political party, and the LPO, a minor Ohio political party, are “competitors in the electoral arena,” it does not follow that the two are competitors in the instant case. In bringing the instant action, the ODP was not seeking an order that applied only to Ohio’s *Democratic* primary election, the ODP was seeking an order that applied to *the* Ohio primary election. Here, the ODP adequately protects the LPO’s interests by seeking an earlier resolution to the primary election and providing closure well in advance of the LPO’s national convention.

The LPO claims that it must intervene in the instant case because “The Libertarian Party’s National Convention which will select its presidential ticket begins on May 21, 2020, and it is important to [the LPO] that its Ohio primary be concluded no later than the beginning of this National Convention.” LPO Compl. at 14. The ODP’s proposed relief of extending the absentee ballot postmark deadline to April 28, 2020 adequately protects the LPO’s interest in concluding the Ohio primary well in advance of LPO’s national convention. The ODP’s proposed relief adequately protects the LPO’s interests by providing almost a month for Ohio’s boards of elections to tabulate and certify the results before the LPO national convention begins.

The Libertarian Party also wrongly contends that Relators “failed to make a claim under the Constitution of the United States” in order to assert that their involvement as a party is necessary to raise an argument. However, Relators fully intend to argue that Respondent was without

authority under both federal and state law to set the date of the 2020 presidential primary election. Although Relators' Complaint does not specifically cite Articles I and II of the U.S. Constitution, as the Libertarian Party's proposed complaint does, Relators assert that Respondent Secretary is "patently and unambiguously without jurisdiction and legal authority to suspend, move, or set the date of Ohio's 2020 presidential primary election." Compl. ¶ 13. This assertion necessarily includes the claim that Respondent is without authority under the U.S. Constitution to set the date of Ohio's 2020 presidential primary election, and Respondents fully intend to argue such claim in their Merit Brief. Therefore, the Libertarian Party's participation in this case a party is not needed.

2. **The LPO's proposed relief conflicts with the LPO's stated need for closure by May 21.**

The LPO proposes extending the absentee ballot postmark deadline to May 12, and to require Ohio's boards of elections to count ballots received by May 20. LPO Compl. at B.6. A May 20 deadline would likely mean that boards of elections would still be counting late arriving ballots on May 21, the same day that the LPO's national convention is scheduled to begin. A May 20 deadline guarantees that Ohio's primary election results would not be certified until June. It seems hard to reconcile the LPO's stated need to resolve Ohio's primary election *before* May 21 when the LPO seeks relief that will result in the votes being counted *after* May 21, and the election not being certified until June. The court should not confuse the record by permitting the LPO to intervene where the LPO seeks facially inadequate relief.

3. **While the ODP's proposed relief would protect the LPO's interests, the LPO's proposed relief does not protect the ODP's interests.**

The ODP's proposed April 28 deadline for postmarking ballots would ensure that the primary is resolved in time for the LPO's national convention on May 21. The same is not true of the LPO's proposed May 20 deadline and ODP's national convention. As outlined in the ODP's Delegate Selection Plan, the ODP will require several weeks of post-primary activity to finalize

its delegate selection plan. Exhibit A. The Democratic National Committee imposed a deadline of June 20, 2020 for state parties such as the ODP to certify its delegates to the convention. Exhibit B at Art. III; Art. IV, § F.3. Extending the absentee ballot deadline to May 20, 2020 would prevent the primary from being certified until mid-June, and would make it impossible for the ODP to meet its deadline to certify delegates and would have effectively deprive Ohio Democrats of their first amendment right to participate in the selection of their party's presidential nominee and the drafting of their party's platform. The court should not deprive Ohio Democrats of their associational rights because the LPO prefers a different calendar, especially where, as noted above, the LPO's calendar would not actually benefit the LPO.

4. **The LPO lacks standing in this action because they are using an alternative method to select their presidential nominee, and raise claims against non-parties to the action.**

As a minor political party, the LPO may select its presidential candidates through a state or national convention, or through another procedure in accordance with its internal party rules. R.C. 3505.10(B)(3). Specifically, the LPO has chosen to hold an "online caucus" run through the LPO's website, and has not placed its candidates on the Ohio primary election ballot. Exhibit C. The LPO's complaint specifies that Respondent's actions only impact the LPO's "primary elections for congressional and state-office candidates." Compl. at 3. The date that the state-run Ohio primary is ultimately resolved has no impact on the LPO's presidential nominating convention since the LPO is holding an online, internally administered caucus. Because the LPO is using an alternative method to select its presidential nominee, it lacks standing to intervene.

For the foregoing reasons, the court should deny the LPO's motion to intervene.

Respectfully submitted,

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I hereby certify that the foregoing Memorandum in Opposition was sent via email this the 19th day of March, 2020 to the following:

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EXHIBIT A

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2020 Ohio Delegate Selection Plan

I. Summary of Plan

A. Selection of Delegates and Alternates

Ohio will use a primary proportional representation system.

The first determining step will occur on March 17, 2020, with the Presidential Preference Primary.

Delegates and alternates will be selected as summarized on the following chart:

Type	Delegates	Alternates	Date of Selection	Selecting Body	Filing Requirements
District Level	89	8	March 17	Primary	December 18 with Secretary of State (Candidates)
			January 7	Pre-Primary Caucus	December 31 with Ohio Democratic Party (Delegates)
Members of Congress	5	None		Automatic	None
Automatic DNC	11	None		Automatic	None
Distinguished Party Leaders	1	None		Automatic	None
Pledged PLEOs	18	0	May 9	State Executive Committee	May 1 with the Ohio Democratic Party
At-Large	29	3	May 9	State Executive Committee	May 1 with the Ohio Democratic Party December 18 with Secretary of State
Total	153	11			

B. Selection of Standing Committee Members

(for Credentials, Platform, and Rules Committee)

Members per Committee	Total Members	Selection Date	Filing Requirements and Deadlines
6	18	May 21	Nomination by candidate or authorized representative by May 18

C. Selection of Delegation Chair and Convention Pages

The Delegation Chair will be selected by the National Convention Delegates on May 21, 2020.

Four (4) Convention Pages will be selected by the State Chair on May 9, 2020.

D. Presidential Candidate Filing Deadlines

Presidential candidates must certify the names of their authorized representative(s), in writing to the Chair of the Ohio Democratic Party by December 1, 2019. The deadline by which presidential candidates must file with the appropriate Board of Elections or the Secretary of State is December 18, 2019.

E. Timetable

In the event that the State of Ohio changes the date of Ohio’s Primary, the Chair of the Ohio Democratic Party is hereby granted the authority to change the dates within this plan to comply with State law.

Date	Activity
2019	
February 27	State Chair appoints the Delegate Selection/Affirmative Action Committee
March 2	Public comment period for the proposed Delegate Selection and Affirmative Action Plans begins.
March 2-31	Delegate Selection/Affirmative Action Committee meets to recommend a Delegate Selection and Affirmative Action Plan to the State Democratic Executive Committee.
April 2	Public comment period ends
April 30	State Democratic Executive Committee adopts Delegate Selection and Affirmative Action Plans.
May 1	Delegate Selection and Affirmative Action Plans are forwarded to the Rules and Bylaws Committee.
September 13	Affirmative Action Plan goes into effect.
October - December	Virtual Workshop On Internet www.ohiodems.org
November 1	District delegate and alternate declaration of candidacy and consent forms, and pledge of support forms are available from the Ohio Democratic Party.

2020 Ohio Delegate Selection Plan

- December 1 Presidential candidates shall certify in writing to the Chair of the Ohio Democratic Party the names of their authorized representative(s) who will exercise candidate right of approval.
- December 6 The State Chair shall appoint a congressional district caucus coordinator for each congressional district after consultation with each presidential candidate or their authorized representative. Each presidential candidate or their authorized representative shall appoint a caucus chair for each caucus they will participate in.
- Each presidential candidate must submit a written statement to the State Chair indicating steps to be taken to insure full participation in the delegate selection process.
- December 18 All state forms must be filed with the Board of Elections in the most populous county of each district or with the Secretary of State no later than 4:00 PM.
- If the presidential candidate is achieving ballot access under II.B.1.b. (statewide petition method), a presidential At-Large delegate candidate files a "Declaration of Candidacy" and petition containing the signatures of 1000 to 3000 qualified electors of the Democratic Party who reside in the state along with a statement stating their first and second choices for president and a "Consent for Use of Name" form with the Secretary of State.
- December 10-
January 2 Caucus coordinator and caucus chair training sessions will be conducted by Ohio Democratic Party staff.
- December 18 Caucus Coordinators report site or sites for their caucus to State Chair.
- December 31 All persons interested in running as a delegate or alternate at the district level must file an Ohio Democratic Party Declaration of Candidacy and Consent form including a signed pledge of support with the State Chair.

2020

- January 3 State Chair files with respective campaign representative(s) a list of persons who have filed an Ohio Democratic Party "Declaration of Candidacy and Consent" form.

2020 Ohio Delegate Selection Plan

January 5	Campaign representatives(s) file with the State Chair a list of all approved candidates for district delegates and alternates.
January 7	District pre-primary caucuses.
January 9	Chair of each caucus certifies outcome of their caucus to State Chair. Coordinator of each caucus shall file with the State Chair a list of those people who filled out signed statements of support at each caucus meeting.
February 19	Early in-person and absentee voting begins
February 19	State Executive Committee files with the Secretary of State its rules governing the issuance of certificates of elections. Presidential candidates using the petition method of selecting delegates and alternates must submit a list indicating the order in which certificates of election are to be issued to delegate or alternate candidates.
March 17	Presidential Preference Primary election.
April 8 (tentative)	Secretary of State certifies results of March 17th Primary. This is a tentative date. A change in this date could affect all of the dates which follow. District-level delegates and alternates will be certified within (3) days of confirmation of the election results by the Secretary of State
April 16	Special post-primary caucuses.
April 18	Coordinator of each caucus shall file with the State Chair a list of those people who filled out signed statements of support at each special post-primary caucus meeting.
April 20	State Chair shall certify to the Secretary of the DNC the results of the special post-primary caucuses.
May 1	Deadline for all persons interested in running as delegate at the pledged party leader and elected official level or delegate or alternate at the at-large level must file an Ohio Democratic Party "Declaration of Candidacy and Consent " form including a signed pledge of support with the State Chair. The form will allow persons to file for all types of delegates and alternates at the same time.

2020 Ohio Delegate Selection Plan

May 5	State Chair files with the respective campaign representative(s) a list of persons who have filed as a pledged party leader and elected official delegate or as an at-large delegate or alternate.
May 7	Campaign representative(s) file with the State Chair list of all approved candidates for pledged party leader and elected official, as well as all approved candidates for at-large delegates and alternates
May 9	Pledged party leader elected official delegates selected by the state Democratic Executive Committee. At-Large delegates and alternates will be selected by the State Democratic Executive Committee. Convention pages will be selected by the State Chair.
May 18	Presidential Candidates or their authorized representatives submit list of standing committee candidates to the State Chair.
May 18	State Chair shall certify to the Secretary of the DNC the pledged party leader and elected official delegates and the at-large delegates and alternates
May 21	National Convention Delegates select Standing Committee members and Delegation Chair.
May 25	State Chair shall certify to the Secretary of the DNC the chosen members of Standing Committees and the Delegation Chair

II. Selection of Delegates and Alternates

A. Introduction

1. Number of Delegates and Alternates

Ohio has a total of 153 delegates and 11 alternates. Ohio will choose Option A and will allocate 75% of its alternates at the District Level and 25% at the At-Large Level.

EXHIBIT B



CALL

For the 2020 Democratic National Convention

Issued by the Democratic Party of the United States

Tom Perez, Chair

Adopted by the Democratic National Committee on August 25, 2018

2020 Call for the Democratic National Convention

convention or primary which constitutes the first determining stage in the presidential nomination process in that state occurs in 2020 on a date in Stage III, the percentage shall be 20%.

- b. for any state in which the meeting, caucus, convention or primary which constitutes the first determining stage in the presidential nomination process in that state is held in a regional cluster, that percentage shall be an additional 15 % added onto the base delegate vote without accounting for any adjustments made pursuant to Article I.C.2.a. States deemed to qualify as a regional cluster shall have contests that are:
 - i. held in conjunction with at least two other neighboring states holding similar contests; and
 - ii. on or after the fourth Tuesday in March.

D. Fifteen percent (15%) of the base delegate votes determined pursuant to paragraphs B and E shall be added to the number of votes allocated for the purpose of representing pledged Party and Elected Official delegates. For purposes of this paragraph, the number of base delegate votes determined pursuant to paragraph B shall be the number determined thereunder after rounding. Fractions of .5 and above resulting from the multiplication required by this paragraph are rounded up to the next highest integer.

E. American Samoa, Guam, the Northern Mariana Islands and the Virgin Islands will each receive six (6) at-large delegate votes. Democrats Abroad will receive twelve (12)

at-large and one (1) pledged Party and Elected Official delegate votes. Puerto Rico will receive forty-four (44) base delegate votes.

F. Automatic² votes shall be allocated to each delegation to accommodate the members of the Democratic National Committee from that state or territory in which they legally reside. The size of such a member's vote (i.e., whole or fractional) shall be the same size as that which he or she is allowed to cast at meetings of the Democratic National Committee. Additional automatic delegate votes shall be allocated for other officers serving in positions created by the Democratic National Committee in accordance with Article 3, Section 1.e. of the Charter of the Democratic Party of the United States.

G. Automatic votes shall be allocated to provide for the Democratic President, the Democratic Vice President, and all former Democratic Presidents, all former Democratic Vice Presidents, all former Democratic Leaders of the United States Senate, all former Democratic Speakers of the United States House of Representatives and Democratic Minority Leaders, as applicable, and all former Chairpersons of the Democratic National Committee.³ Such delegates shall be seated with the state delegations from the state in which they have their voting residences.

H. Additional automatic votes shall be added if needed to provide for the Democratic Governor⁴ (if any) from that state or territory and for the Democratic Members of the United States House of Representatives and Democratic United States Senators from that state or territory (if any).⁵

I. Each state, the District of Columbia and Puerto Rico may select a number of

² For the purpose of the Call for the Convention, the term "automatic" used in reference to the delegates described in Delegate Selection Rule 9.A corresponds with the term "unpledged" as used in Article Two, Section 4(h) of the Charter.

³ Former Chairpersons of the Democratic National Committee shall include National Chairs and General Chairs.

⁴ The Mayor of the District of Columbia, if a Democrat, shall be treated as a Democratic Governor.

⁵ The District of Columbia's Statehood Senators, if Democrats, shall be treated as Democratic United States Senators.

alternates equivalent to one (1) alternate for every twelve (12) Convention votes received by it pursuant to paragraphs B, C, D, and E, provided, however, that each such delegation shall have at least two (2) alternates. American Samoa, Democrats Abroad, Guam, the Northern Mariana Islands and the Virgin Islands shall each have one (1) alternate. Fractions of .5 and above are rounded up to the next highest integer. It is further provided that each state shall have the additional number of at-large alternates necessary to provide at least one alternate for each presidential candidate who is entitled to delegates from that state, if the DNC Rules and Bylaws Committee determines that the number of alternates allocated to the state is not sufficient for each presidential candidate to have at least one alternate.

- J. Members of the Democratic National Committee and delegates selected pursuant to paragraphs G and H (“Automatic delegates”) may run and be elected as Pledged delegates. If an Automatic delegate is elected and certified as a Pledged delegate, that individual shall not serve as an Automatic delegate at the 2020 National Convention. No delegate may hold more than one (1) vote. Democratic Governors, Democratic Members of the United States House of Representatives and Democratic United States Senators who are members of the Democratic National Committee shall serve as delegates by virtue of their membership on the National Committee.

II. Qualifications of State Delegations

- A. Notice is hereby given that delegates, alternates and standing committee members to the Democratic National Convention shall be elected in accordance with the Charter and Bylaws of the Democratic Party of the United States, the Delegate Selection Rules for the 2020 Democratic National Convention, the Call for the 2020 Democratic National Convention, and the Regulations of the DNC Rules and Bylaws

Committee. The DNC Rules and Bylaws Committee shall have the final authority to regulate the delegate selection process, subject to the authority of the Convention Credentials Committee and the Democratic National Convention. It shall be the duty of the DNC Rules and Bylaws Committee to administer the delegate selection process and ensure compliance with the rules, including equal division, and report to the Secretary of the Democratic National Committee those states which are in non-compliance. Only delegates and alternates selected under a delegate selection procedure approved by the DNC Rules and Bylaws Committee shall be placed on the Temporary Roll of the 2020 Democratic National Convention. Only standing committee members and convention pages chosen pursuant to a state delegate selection procedure approved by the DNC Rules and Bylaws Committee shall be qualified to serve in their respective capacities.

- B. It is understood that a State Democratic Party, in electing and certifying delegates and alternates to the Democratic National Convention, thereby undertakes to assure all Democratic voters in the state a full, timely and equal opportunity to participate in the delegate selection process and in all Party affairs and to implement affirmative action and outreach and inclusion plans toward that end; that the delegates and alternates to the Convention shall be selected in accordance with the Delegate Selection Rules for the 2020 Democratic National Convention adopted by the Democratic National Committee on August 25, 2018; and that the delegates it certified will not publicly support or campaign for any candidate for President or Vice President other than the nominees of the Democratic National Convention. Furthermore, voters in the state will have the opportunity to cast their election ballots for the Presidential and Vice Presidential nominees selected by said Convention.
- C. It is presumed that the delegates and alternates to the Democratic National Convention, when certified pursuant to the Call, are bona fide Democrats who are

faithful to the interests, welfare, and success of the Democratic Party of the United States, who subscribe to the substance, intent, and principles of the Charter and the Bylaws of the Democratic Party of the United States, and who will participate in the Convention in good faith and shall not express support for any candidate who is opposed to the Democratic nominee. Therefore, no additional assurances shall be required of delegates to the Democratic National Convention in the absence of a credentials contest or challenge.

III. Delegate Selection Deadline

All state parties are required to take all steps necessary and appropriate to complete the process of selecting delegates to the 2020 Democratic National Convention no later than June 20, 2020.

IV. Certification Requirements

- A. Pledged Delegates and Alternates: Each state's Democratic Chair shall certify in writing to the Secretary of the Democratic National Committee the election of their state's delegates and alternates to the Democratic National Convention ten (10) days after their election. For the purposes of this Call, the Chair of a committee constituted pursuant to Rule 21.C. of the Delegate Selection Rules, shall be recognized to act in place of the state's Democratic Chair.
- B. Automatic Delegates:
 - 1. Pursuant to Rule 9.A. of the Delegate Selection Rules, official confirmation by the Secretary of the Democratic National Committee to each State Democratic Chair shall constitute verification of the following automatic delegates: members of the Democratic National Committee; the Democratic President, Vice President and Democratic Governor, if applicable; all Democratic members of the United States House of Representatives and all Democratic members of the United States Senate;

and all former Democratic Presidents, Vice Presidents, Democratic Leaders of the United States Senate, Speakers and Democratic Minority Leaders of the United States House of Representatives, and Chairs of the Democratic National Committee.

- C. Presidential Preference:

Ten (10) days after the completion of the state's delegate selection process, each state's Democratic Chair shall certify in writing to the Secretary of the Democratic National Committee the presidential preference (including uncommitted) of the state's delegates.

- D. Replacements:

- 1. Pledged Delegates and Alternates:

Replacement of a delegate (due to resignation or death) by an alternate and replacement of a vacant alternate position shall be certified in writing by the State's Democratic Chair to the Secretary of the Democratic National Committee (pursuant to Rule 19 of the Delegate Selection Rules) within three (3) days after the replacement is selected. Certification of replacements will be accepted by the Secretary up to 72 hours before the first official session of the Convention is scheduled to convene.

- 2. Automatic Delegates:

- a. Members of Congress and Democratic Governors shall not be entitled to name a replacement. In the event of any changes or vacancies in a state's Democratic congressional delegation following the official confirmation and prior to the commencement of the National Convention, the Secretary shall recognize only such changes as have been officially recognized by the Democratic Caucus of the United States House of Representatives or the Democratic Conference of the

EXHIBIT C

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Vote Free, Ohio!

2020 Ohio Presidential Caucus

Do you care about the 2020 Presidential Race? Do you want to let your 2020 delegates know who your choice is for the Libertarian Presidential Nomination? Join us for our 2020 Ohio Presidential Caucus.

If you are registered to vote in Ohio, fill out the form below before March 13. Then Starting March 16 you will receive an email with a link to participate in an secure Non-Binding Presidential Caucus. The balloting will be open until April 11. The week following we will be providing the results to our delegates and the public.

In order for your vote to be valid you must be an Ohio Registered Voter and one of the following must be true:

- You pulled a Libertarian Ballot during the Ohio 2020 Primary
- You pulled an Issues only Ballot because a Libertarian Ballot was not available during the Ohio 2020 Primary
- You did not vote in the Ohio 2020 Primary

If none of the above are true, your vote will not be counted.

If you have any questions, please email us at info@lpo.org

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