

**IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO**

OHIO DEMOCRATIC PARTY, et al.

Plaintiffs,

-v-

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

Defendant.

CASE NO.

JUDGE

**MOTION FOR TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION**

Now come the Plaintiffs Ohio Democratic Party and Lewis Goldfarb, and respectfully move the Court, pursuant to Civ. R. 65, for a temporary restraining order and preliminary injunction enjoining the enforcement of Defendant Ohio Secretary of State Frank LaRose's instruction in Directive 2020-16 that prohibits the county boards of elections from installing additional drop boxes at locations other than the boards' offices to facilitate the return of voters' absentee ballots. Plaintiffs further move the Court to order Defendant LaRose to convey and/or communication notice of this Court's judgment and order, along with a copy of the Court's judgment and order, to all of Ohio's county boards of elections. The reasons for this Motion are set forth in the attached Memorandum in Support.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

This case presents a simple question of statutory interpretation with enormous implications for the November 3, 2020 General Election, and that question is whether Ohio law limits the number or locations of secure drop boxes that Ohio's 88 county boards of elections may provide to the voters of their respective counties.

Ohio law is silent on the matter. And based on this silence, it is the position of Plaintiffs Ohio Democratic Party and Lewis Goldfarb¹ (collectively, the "Plaintiffs") that Ohio law does not limit the number or locations of secure drop boxes that the boards of elections may provide. This is because the Ohio Supreme Court has repeatedly directed that courts must not, when engaging in statutory interpretation, insert prohibitions that do not exist in the plain text of the statute. *See State ex rel. Myles v. Brunner*, 120 Ohio St.3d 328, 2008-Ohio-5097, ¶ 21 quoting *State ex rel. Columbia Reserve Ltd. v. Lorain Cty. Bd. of Elections*, 111 Ohio St.3d 167, 2006-Ohio-5019, ¶ 32 ("We will not add a requirement that does not exist in the statute.").

Defendant Ohio Secretary of State Frank LaRose² ("Defendant LaRose"), in Directive 2020-16, which was issued on August 12, 2020, announced that boards of elections may use secure drop boxes to facilitate the return of marked absentee ballots. *See* Directive 2020-16, attached as Exh. A. At the same time, however, he has also prohibited the boards from "installing a secure drop box at any other location other than the board of elections." *Id.* at 1. The Directive thereby

¹ Plaintiff Ohio Democratic Party is one of Ohio's two legally recognized major political parties whose candidates for local, state, and federal offices will stand for election at the November 3, 2020 General Election. Compl. ¶ 5. Plaintiff Lewis Goldfarb is a qualified elector of Franklin County, Ohio. Compl. ¶ 6. He has already requested an absentee ballot for the November 3, 2020 General Election, and once he receives his ballot and marks his votes, he intends to personally deliver his absentee ballot to the Franklin County Board of Elections' absentee ballot drop box closest to his residence. *Id.*

² Defendant LaRose is the Ohio Secretary of State, the State's chief election officer (R.C. 3501.04). Compl. ¶ 7. The Ohio Secretary of State is charged with supervising the administration of the election laws statewide and "[i]ssu[ing] instructions by directives and advisories...to members of the boards as to the proper methods of conducting elections" and "[p]repar[ing] rules and instructions for the conduct of elections." R.C. 3501.05(B)-(C).

effectively prohibits boards of elections from having multiple drop boxes at other locations in their counties. Yet, despite prohibiting boards of elections from installing a drop box at any location other than the boards' offices, Defendant LaRose has also been quoted as saying "[i]f it's legal to add extra drop boxes, then I'm certainly open to that idea," (Compl. ¶ 2) and that if "it's legal to [add more drop boxes], then I'd be happy to have the county bipartisan board of elections make that decision about whether that's best for their county or not..." (Compl. ¶ 3).

Because Defendant LaRose's instruction in Directive 2020-16 reads in a limitation that is not present in the law, Plaintiffs filed the instant action seeking declaratory and injunctive relief to enjoin the instruction that prohibits the county boards of elections from installing additional drop boxes at locations other than the boards' offices to facilitate the return of voters' absentee ballots.

BACKGROUND

Ohio's 2020 General Election is scheduled to take place on November 3, 2020. For qualified voters who have requested to vote an absentee ballot, the county boards of elections are required to distribute voters' absentee ballots beginning on October 6, 2020. *See* R.C. 3509.01. Thus, beginning on October 6, 2020, voters will be able to return their marked absentee ballots to their county boards of elections for the November 3, 2020 General Election.

Ohio law authorizes a system of no-fault absentee voting in which any qualified elector may vote by absentee ballot at an election. *See* R.C. 3509.02. Once a voter has requested, received, and marked their absentee ballot, Ohio law provides that the voter shall return their absentee ballot by placing it into an identification envelope and either (1) "mail the identification envelope to the director from whom it was received in the return envelope, postage prepaid," (2) or "personally deliver it to the director, or the spouse of the elector, the father, mother, father-in-law, mother-in-law, grandfather, grandmother, brother, or sister of the whole or half blood, or the son, daughter,

adopting parent, adopted child, stepparent, stepchild, uncle, aunt, nephew, or niece of the elector may deliver it to the director.” R.C. 3509.05(A), third paragraph. The return envelope “shall be transmitted to the director in no other manner, except as provided in section 3509.08 of the Revised Code,” (*id.*) which concerns disabled, hospitalized, and confined absent voter’s ballots. All marked absentee ballots that are delivered to the director either personally by the voter or by an authorized close relative “shall be delivered to the director not later than the close of the polls on the day of an election.” R.C. 3509.05(A), fifth paragraph.

Importantly, nothing in R.C. 3509.05 or any other Revised Code section prescribes either the manner in which voters or their close relatives may “deliver” their absentee ballot or the manner in which the directors of the boards of elections are to receive “delivered” ballots.

In the absence of any language in the Ohio Elections Code limiting the manner in which voters may “deliver” their marked absentee ballots to the board of elections, some boards have, for many years, provided a drop box at their offices to facilitate the return of absentee ballots. The Hamilton County Board of Elections, for instance, has had a drop box at their office since 2012. *See* Exh. B, *Aff. of Caleb Faux*, ¶ 10. The Butler County Board of Elections has had a drop box since Ohio’s 2016 Primary Election. *Compl.* ¶ 28. In short, the use of drop boxes by county boards of elections was a common, though not required, practice prior to 2020. *See Compl.* ¶ 26-29.

Due to the COVID-19 pandemic, Ohio elections officials are projecting a surge in the use of absentee voting compared to the past. Defendant LaRose has stated that he believes that as many as 50% of Ohio voters could request an absentee ballot for the 2020 General Election. *Compl.* ¶ 31. Local elections officials are also reporting large increases in the number of people requesting absentee ballots. For example, as of August 23, 2020, the Cuyahoga County Board of Elections had reportedly received approximately 80,000 absentee ballot requests for the 2020 General

Election—an increase from the approximately 5,000 requests the Board had received at this point during the 2016 General Election. Compl. ¶ 33. Similarly, as of August 22, the Hamilton County Board of Elections had processed 36,223 absentee ballot applications—an increase from the 2,867 applications the Board had processed at this point in 2016. *See* Exh. B, Faux Aff. ¶ 16.

At the same time that Ohio elections officials are seeing an increase in absentee ballot requests, policy changes within the United States Postal Service (USPS) have led to widely reported delays in mail delivery that may result in absentee ballots not being timely received or returned by voters. Compl. ¶ 38-41. During Ohio’s 2020 Primary Election, Defendant LaRose wrote of such delays in a letter to Ohio’s congressional delegation, stating that “First-class mail that normally would take one to three days for delivery now is taking as many as seven to nine days,” and that “these delays mean it is very possible that many Ohioans who have requested a ballot may not receive it in time.” Compl. ¶ 39. It was also reportedly shortly after the 2020 Primary Election that more than 300 absentee ballots in Butler County alone were not delivered to the respective board of elections by the USPS until it was too late for the votes to be counted, despite the ballots having been timely postmarked. Compl. ¶ 40. The delays in mail delivery have reportedly become even worse in the months since the Primary Election. *See* Compl. ¶ 41. In light of the increased demand and anticipated delays in mail delivery as the November 3, 2020 election approaches, the USPS even wrote a letter to Defendant LaRose on July 30, 2020 warning him—and voters—of the anticipated delays. *See* Letter attached as Exh. C-1 to Aff. of Sandra Wise.

Amidst the backdrop of increased demand for absentee ballots and increased delays in mail delivery, many of the bipartisan county boards of elections around the state were, as of late-July and early-August, moving forward with plans to install additional secure drop boxes in different parts of their respective counties for voters to use in returning their absentee ballots. The Sandusky

County Board of Elections, for example, was taking the steps necessary to add secure drop boxes in different parts of Sandusky County to provide voters with an alternative means to cast their vote without risking any delays caused by the USPS. Exh. C, Wise Aff. ¶ 15. Similarly, on July 14, 2020, the Hamilton County Board of Elections had approved a motion to explore adding four more secure drop boxes throughout Hamilton County, in addition to the two drop boxes already located at their office. Exh. B, Faux Aff. ¶ 21. The Hamilton County Board's staff subsequently received bids for installing the new drop boxes. *Id.* ¶ 22. There were other reports of boards of elections taking similar steps around the state. *See, e.g.*, Compl. ¶ 51 (discussing Lucas County's plans).

But as many boards of elections were preparing to install additional secure drop boxes in their counties, Defendant LaRose intervened to stop them. Initially, Defendant LaRose expressed uncertainty as to whether boards of elections were allowed to have even one secure drop box located at their respective offices; on July 20, 2020, he sent a Request for a Formal Opinion to the Ohio Attorney General to address his uncertainty. A copy of this letter is attached as Exh. D. But before the Ohio Attorney General could issue his legal opinion, Defendant LaRose abruptly withdrew the request and, on August 12, 2020, issued Directive 2020-16 in which he instructed that boards of elections (1) must have one drop box installed outside their offices and (2) are "prohibited from installing a drop box at any other location other than the board of elections." Exh. A. Directive 2020-16 did not cite any legal authority for this prohibition. *See id.*

Even *after* Defendant LaRose issued Directive 2020-16, he continued to express uncertainty as to whether the law supports his instruction. On August 19, 2020, Defendant LaRose stated in a phone call about the election that if a judicial order made it clear that he has the authority to allow county boards of elections to install secure drop boxes at locations other than the boards' offices, then he would allow the boards to do so. *See* Exh. E, Aff. of Andre Washington, ¶ 5-6;

Exh. G, Aff. of Paula Hicks Hudson, ¶ 3-4.

Regardless of what Defendant LaRose has told others, he has acted to prohibit the boards from installing additional secure drop boxes throughout their counties. As a result, the boards of elections that had made plans to install additional drop boxes in their counties had to stop, and this will harm Plaintiffs and other voters.

LEGAL STANDARD

R.C. 2727.02 provides that a plaintiff is entitled to a temporary restraining order if, absent the relief, the defendant's conduct would "produce great or irreparable injury to the Plaintiff..." In considering a motion for a temporary restraining order and a preliminary injunction, the Court must consider the following: (1) there is a substantial likelihood that the plaintiff will prevail on the merits, (2) the plaintiff will suffer irreparable injury, (3) whether the preliminary injunction could harm third parties, (4) the public interest would be served. *See, e.g., Vineyard Christian Fellowship of Columbus v. Anderson*, 2015-Ohio-5083, 53 N.E.3d 910, ¶ 11 (10th Dist.)

ARGUMENT

I. Plaintiffs Have a Strong Likelihood of Success on the Merits of Their Claim Because Ohio Law Does Not Set Forth Any Limit on the Number or Location of Ballot Drop Boxes.

Plaintiffs have a strong likelihood of success on the merits of their claim for a declaration that Ohio law, including, R.C. 3509.05, does not limit the number or locations of secure drop boxes that the county boards of elections may provide to the voters of their respective counties, and does not limit Defendant Secretary from instructing boards of elections that they may have multiple drop boxes at alternate locations in their respective counties. *See* Compl. ¶ 52-60.

The critical statutory provision governing the return of marked absentee ballots is R.C. 3509.05(A), the third paragraph of which provides:

The elector shall mail the identification envelope to the director from whom

it was received in the return envelope, postage prepaid, or the elector may personally³ deliver it to the director, or the spouse of the elector, the father, mother, father-in-law, mother-in-law, grandfather, grandmother, brother, or sister of the whole or half blood, or the son, daughter, adopting parent, adopted child, stepparent, stepchild, uncle, aunt, nephew, or niece of the elector may deliver it to the director. The return envelope shall be transmitted to the director in no other manner, except as provided in section 3509.08 of the Revised Code.

As is apparent from the plain text of R.C. 3509.05(A), the General Assembly said nothing about boards of elections providing one or more secure drop boxes to facilitate the return of marked absentee ballots. Indeed, the statute says nothing at all with respect to the manner in which voters or their close relatives may “deliver” their absentee ballot or the manner in which the directors of the boards of elections are to receive the delivered ballots. Moreover, and prior to Directive 2020-16, no Secretary of State had ever interpreted this provision or anything else in Ohio law as limiting the number or locations of drop boxes for voters to use to return their absentee ballots.

In contrast, when the General Assembly has intended to restrict other voting activities to one location, it has made such restrictions clear. For instance, the General Assembly specified that county boards of elections may allow early, in-person voting to occur at only one location in the county. *See* R.C. 3501.10(C).⁴ But nothing like that exists with respect to drop boxes.

Similarly, the General Assembly has been equally clear when it intends an activity to take place at the “office of the board” of elections. In the fourth paragraph of 3509.05(A), for example, the statute explicitly refers to voting activity that takes place “*at the office of the board....*”

³ In R.C. 3509.05(A), the adverb “personally” juxtaposes the identity of the person who delivers the ballot to the director—the voter himself or herself, as opposed to an enumerated relative in the next clause. It is not used to describe the manner by which the director must accept the ballot. The latter interpretation would require each county director to physically accept every absentee ballot delivered by voters, and unworkable and nonsensical result. Statutes must not be interpreted to lead to “unreasonable or absurd consequences.” *Columbia Gas Transm. Corp. v. Levin*, 117 Ohio St.3d 122, 2008-Ohio-511, ¶ 35.

⁴ R.C. 3501.10(C) provides that “The board of elections may maintain permanent or temporary branch offices at any place within the county, provided that, if the board of elections permits electors to vote at a branch office, electors shall not be permitted to vote at any other branch office or any other office of the board of elections.”

(emphasis added). And in R.C. 3509.06(D)(3)(b), the statute makes clear that if an absentee ballot features incomplete or non-conforming identification information, the voter must complete a correction form and “*deliver the form to the office of the board in person or by mail.*” (emphasis added). The fact that “the office of the board” is used in these instances, but not used in the third paragraph’s references of delivering a ballot “to the director,” makes clear that a geographic limitation was not intended by the open-ended terminology of that paragraph.

In the absence of a limit in the plain text of R.C. 3509.05 or elsewhere in the Revised Code, Defendant LaRose cannot read one in. *See Myles, supra*, ¶ 21 (“We will not add a requirement that does not exist in the statute.”); *State v. Taniguchi*, 74 Ohio St. 3d 154, 156 (1995) (“[a] court should give effect to the words actually employed in a statute, and should not delete words used, or insert words not used, in the guise of interpreting the statute”). Moreover, courts must “avoid unduly technical interpretations that impede the public policy favoring free, competitive elections” and “liberally construe election laws in favor of the right to vote.” *Myles, supra*, ¶ 22, 26.

Finally, in his letter to the Ohio Attorney General, Defendant LaRose questioned whether HB197, as a temporary measure in the Primary, somehow added further weight to a limitation on drop boxes. *See* Exh. D (stating that “the only legal authorization for the installation of those single receptacles is found in uncodified, temporary law related to the completion of the 2020 Primary Election (*i.e.*, Section 32(E)(1) of H.B. 197) and not in the permanent law of Ohio (*i.e.*, R.C. 3509.05)”) But that is both a red herring and a plain mischaracterization of Ohio law. HB 197 provided a mandate obligating the boards of elections to designate a “secure receptacle . . . outside the office of the board for the return of ballots,”⁵ but added no restrictions on numbers and locations

⁵ “Coronavirus Response Bill”, H.B. 197, 133th G.A. § 32(E)(1) (2020) (effective March 27, 2020); see also Ohio Legislative Service Commission, Final Analysis of H.B. 197 at 15 (“The board of elections must place a secure receptacle outside the board’s office for the return of ballots cast under the act.”) (emphasis added).

of voter receptacles beyond that required location. And while HB197 *required* each county to have at least one drop box, it did not create the *underlying authority* for counties to have drop boxes, as the July 20 letter suggests. Long before HB 197, many boards of elections already provided secure drop boxes for ballots, per the open-ended authority for directors to receive “delivered” ballots under R.C. 3509.05.

Accordingly, there is no legal basis for Defendant LaRose’s instruction in Directive 2020-16 limiting the number and location of secure drop boxes that county boards of elections can install in their counties. Plaintiffs have, therefore demonstrated a strong likelihood of success on the merits of their claim for declaratory relief.

II. Plaintiffs will be Irreparably Injured Absent a Temporary Restraining Order and a Preliminary Injunction.

Plaintiffs will be irreparably injured absent a temporary restraining order and a preliminary injunction. Limiting county boards of elections to providing a drop box only at the boards’ offices threatens to disenfranchise voters, including Plaintiff ODP’s members, and it is well-settled that the deprivation or threatened deprivation of the fundamental right to vote constitutes irreparable harm. *See, e.g., Elrod v. Burns*, 427 U.S. 347, 373 (1976); *Obama for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012); *see also Cleveland v. Cleveland Elec. Illum. Co.*, 115 Ohio App.3d 1, 14, 684 N.E.2d 343 (1996) (defining an “irreparable injury” as “one for the redress of which, after its occurrence, there could be no plain, adequate and complete remedy at law, and for which restitution in specie (money) would be impossible, difficult or incomplete.”)

As explained in more detail below in the discussion of the public benefit, the combination of ongoing COVID-19 pandemic, the surge in demand for absentee ballots, delays in mail delivery, traffic problems, and the lack of access to the county boards of elections’ offices via public transportation acts to prevent voters from being able to return their absentee ballots in time to be

voted. *See* Argument, Sec. IV, *infra*. This is not a mere hypothetical concern either—it happened during Ohio’s 2020 Primary Election, and without a temporary restraining order and a preliminary injunction, it will happen again during the 2020 General Election. *Id.* That is why many boards were in the process of installing additional drop boxes in locations other than their offices prior to Defendant LaRose prohibiting them doing so in Directive 2020-16. *Id.* And with time running short for boards to install additional drop boxes prior to the election, this Court’s intermediate intervention is necessary to prevent these irreparable harms.

III. Issuing a Temporary Restraining Order and a Preliminary Injunction Would Not Harm Third Parties.

There would be absolutely no harm to other voters or the integrity of the election by granting the requested relief. After all, Plaintiffs do not seek to *require* boards of elections to provide a certain number of drop boxes. Instead, Plaintiffs seek relief that will allow the boards to decide for themselves if they want to provide more than one secure drop box in their counties—discretion the boards had already exercised prior to the issuance of Directive 2020-16.

Defendant LaRose himself has said he supports allowing the boards of elections to have this discretion if the law permits it. Again, he was recently quoted as saying if “it’s legal to [add more drop boxes], then I’d be happy to have to the county bipartisan board of elections make that decision about whether that’s best for their county or not...” *See* Background at 2, *supra*. Additionally, and as also stated above, Defendant LaRose recently said on an August 19, 2020 phone call discussing the election that if a judicial order made it clear that the Ohio Secretary of State has the authority to allow the boards to install secure drop boxes at locations other than the boards’ offices, then he would allow the boards to do so. *See* Exhs. E, G.

Moreover, many of the bipartisan county boards of elections were already in the process of installing additional drop boxes throughout their respective counties when Defendant LaRose

announced the prohibition in Directive 2020-16. For instance, prior to Defendant LaRose issuing Directive 2020-16, the Hamilton County Board of Elections had already accepted bids to install four new drop boxes around Hamilton County, including drop boxes in Downtown Cincinnati and in suburbs in the West, North, and East sections of the county. Exh. B, Faux Aff. ¶ 21. The Sandusky County Board of Elections was similarly moving forward with a plan to add secure drop boxes in different parts of Sandusky County when Defendant LaRose issued Directive 2020-16. Exh. C, Wise Aff. ¶ 16. Thus, many of the boards want to be able to provide their voters with additional drop boxes for returning their absentee ballots, but Directive 2020-16 has stopped these efforts.

Additionally, broad use of voter drop boxes has become a best practice with bipartisan support across the country. Many states have implemented drop boxes widely and securely without incident, controversy, or risk.⁶

Thus, the relief sought by Plaintiffs, which Defendant LaRose has been quoted as supporting, would not impose any unwanted burdens upon boards of elections but instead would give boards the discretion to decide for themselves if they want to provide additional drop boxes.

IV. The Public Interest Would be Served by Granting the Requested Relief

The public interest would undoubtedly be served by granting a temporary restraining order and a preliminary injunction allowing the county boards of elections to decide for themselves if having secure drop boxes at locations other than their offices is the right choice for their counties. Indeed, there are many important justifications for allowing the boards of elections to make this decision as each county is different and a “one size fits all” approach cannot adequately address

⁶ See, e.g., National Conference of State Legislatures, *Voting Outside the Polling Place: Table 9*, Aug. 18, 2020, available at <https://www.ncsl.org/research/elections-and-campaigns/vcp-table-9-ballot-drop-box-definitions-design-features-location-and-number.aspx> (summarizing the use of drop boxes around the country).

each county's unique circumstances.⁷ These reasons include, but are not limited to, controlling traffic around their offices, avoiding delays in mail delivery, and providing locations that are accessible via public transportation.

A. Allowing multiple drop boxes would help voters avoid delays in mail delivery.

Allowing boards of elections to decide for themselves whether to install additional drop boxes at locations throughout their counties would allow the boards to better address the projected delays in mail delivery. According to Sandra Wise, who is one of the Members of the Sandusky County Board of Elections, one of the main reasons she supported her board's plans to install multiple drop boxes in different locations throughout Sandusky County was out of a concern for the widely reported delays in mail delivery by the USPS. Exh. C, Wise Aff. ¶ 15. Board Member Wise explained that during Ohio's 2020 Primary Election, voters in Sandusky County experienced significant delays in receiving and returning their absentee ballots through the mail due to problems with the USPS. *Id.*, ¶ 10-11. In some instances, these delays caused Sandusky County voters' absentee ballots to not be postmarked or returned to the Board of Elections in time to be counted. *Id.* Based on her experience as an elections official, and particularly as an elections official during the 2020 Primary Election, Board Member Wise is deeply concerned that limiting the county boards of elections to installing absentee ballot drop boxes only at their offices will prevent the boards from taking steps they feel are necessary to address the mail delivery issues that prevented voters from having their absentee ballots counted during the 2020 Primary Election. *Id.*, ¶ 17. She is further concerned that the problems associated with the 2020 Primary Election will only be exacerbated by the expected increased turnout for the 2020 General Election. *Id.*, ¶ 18.

⁷ Indeed, for this reason, the U.S. Elections Assistance Commission (EAC) recommends having one drop box for every 15,000-20,000 registered voters. See, EAC, *Ballot Drop Box*, available at https://www.eac.gov/sites/default/files/electionofficials/vbm/Ballot_Drop_Box.pdf.

B. Allowing multiple drop boxes would ease traffic problems.

Allowing boards of elections to decide for themselves whether to install additional drop boxes at locations throughout their counties would also allow the boards to help relieve the traffic problems associated with voters' rush to return their absentee ballots.

According to Caleb Faux, who is one of the Members of the Hamilton County Board of Elections, the Hamilton County Board of Elections has had at least one drop box at their office since 2012 and, prior to Ohio's 2020 Primary Election, never had any serious problems with having a drop box located only at their office. Exh. B, Faux Aff. ¶ 12. But the Hamilton County Board of Elections had serious traffic problems during the 2020 Primary Election, which saw a surge in the use of absentee ballots due to the still-ongoing COVID-19 pandemic and the cancellation of in-person Election Day voting. *Id.*, ¶ 13-14. For instance, on April 28, 2020, which was the last day of voting for Ohio's 2020 Primary Election, there was a point in the early evening when the lines of cars waiting to get to the drop box extended onto a nearby, four-lane highway, S.R. 262, as far as a mile in both directions. *Id.* Based on this experience, combined with the expected increase in voter turnout for the 2020 General Election, Board Member Faux expects there to be "an incredible traffic mess" at the Board's office as voters try to return their absentee ballots. *Id.*, ¶ 18.

In addition to presenting serious public safety concerns, Board Member Faux explained that increased traffic could make it difficult to determine whether a voter, in their car, was in line to drop off their absentee ballot by 7:30 p.m. on Election Day when polls close. *Id.*, ¶ 20. Ohio law requires that any voter waiting to vote at closing time must be permitted to vote. *Id.* If there is a line of voters when the polls close, an elections official will stand at the end of the line to mark its end, and voting continues until the end of the line is reached. *Id.* The same principle extends to voters waiting in their cars to deliver their absentee ballots to the Board's office; the Board will send out

an elections official to mark the end of the line of cars waiting to return their absentee ballots by 7:30pm. *Id.* However, if the traffic extends onto the nearby highway, it would be incredibly difficult, if not impossible, to mark the end of those lines to ensure that the voters waiting in line are still able to deliver their ballot. *Id.*

C. Allowing multiple drop boxes would provide better access via public transportation.

Another concern with limiting county boards of elections to installing drop boxes only at their offices is that the boards of elections' offices are not always easily accessible by public transportation. For instance, according to research by a former member of the Board of Trustees of the Southwest Ohio Regional Transit Authority, which provides fixed-route bus service and paratransit service to the citizens of Butler, Clermont, Hamilton, and Warren Counties, the average one-way bus trip on a Tuesday afternoon to the Hamilton County Board of Elections from any of the 36 public library branches located throughout Hamilton County is approximately 55 minutes long. *See* Exhibit F-1 to Affidavit of Bradley W. Thomas attached as Exh. F. The average one-way bus trip from any of these same public library branches to a proposed drop box location in downtown Cincinnati⁸ is shorter at approximately 43 minutes. *Id.* Additionally, the travel times to the proposed location in downtown Cincinnati is shorter from 25 of the 36 public library locations compared to the travel times to the Hamilton County Board of Elections' office. *Id.*

The same research shows a similar pattern in Franklin County. *See*, Exh. D-2. The average one-way bus trip on a Tuesday afternoon to the Franklin County Board of Elections from 20 of the 23 public library branches located throughout Franklin County is approximately 60 minutes long;

⁸ Prior to Directive 2020-16, the Hamilton County Board of Elections was reportedly considering installing a drop box in front the Hamilton County Administration Building in downtown Cincinnati. *See* Howard Wilkinson, *Commentary: Seems Ohio's GOP Wants to Make Absentee Voting Harder*, WOSU, July 28, 2020, available at <https://radio.wosu.org/post/commentary-seems-ohios-gop-wants-make-absentee-voting-harder#stream/0> (last accessed Aug. 24, 2020).

the other 3 locations are not by a bus route that will take voters to the Board's office. *Id.* The average one-way bus trip from any of these same library branches to a hypothetical drop box location by the Main Branch of the Columbus Metropolitan Library in downtown Columbus is shorter at approximately 37 minutes long (excluding the main branch as a departure location). *Id.* Plus, the actual travel time to the hypothetical downtown location is shorter for 15 of the 19 library branch locations (excluding the main branch as a departure location). *Id.*

As is apparent from this research, the existing locations of the county boards of elections' offices are not always easily accessible via public transportation. Providing voters with an alternative drop box location, however, can dramatically reduce the amount of time it takes voters to travel to cast their ballots.

Accordingly, Plaintiffs have shown that issuing the requested relief to allow county boards of elections the discretion to decide for themselves whether to install additional drop boxes at locations other than their offices would serve the public interest. Plaintiffs have, therefore, met their burden for the issuance of a temporary restraining order and a preliminary injunction.

CONCLUSION

Having met their burden, Plaintiffs respectfully move the Court to issue a temporary restraining order and preliminary injunction enjoining the enforcement of Defendant Ohio Secretary of State Frank LaRose's instruction in Directive 2020-16 that prohibits the county boards of elections from installing additional drop boxes at locations other than the boards' offices to facilitate the return of voters' absentee ballots. Plaintiffs further request that the Court order Defendant LaRose to convey and/or communication notice of this Court's judgment and order, along with a copy of the Court's judgment and order, to all of Ohio's county boards of elections.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Motion was sent via email this the 25th day of August 2020 to the following:

Ohio Attorney General
Bridget E. Coontz, Esq.
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Counsel for Ohio Secretary of State Frank LaRose

/s/ Derek S. Clinger
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