

IN THE COMMON PLEAS COURT  
FRANKLIN COUNTY, OHIO

**Judy Brockman and  
Jill Reardon,**

**Plaintiffs**

v.

**Ohio Secretary of State,  
Frank LaRose**

**Defendant.**

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

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Plaintiffs move under Civ. R. 65(B) for a temporary restraining order and preliminary injunction, granting relief sought in the Complaint. This motion is supported by the accompanying memorandum and declarations.

Respectfully submitted,

/s/ Diane Menashe

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## **MEMORANDUM IN SUPPORT**

### **I. INTRODUCTION AND FACTS**

Plaintiffs Brockman and Reardon are residents of Franklin County who are registered voters and who intend to travel to their assigned polling locations tomorrow, March 17, 2020 to cast their vote in the 2020 Presidential Primary Election. Both Plaintiffs are over the age of Sixty-Five. Due to directives issued by the Ohio Department of Health involving the spread of COVID-19 in the State of Ohio, Plaintiffs allege that they will be prevented from casting their votes in the 2020 Presidential Primary Election in violation of their First and Fourteenth Amendment rights.

On March 9, 2020, the Governor declared a State of Emergency in Executive Order 2020-01D due to the spread and/or potential for the spread of COVID-19 in the State of Ohio. On March 11, 2020, the head of the World Health Organization declared COVID-19 a pandemic. Since then, the Ohio Department of Health has issued several directives designed to slow the spread of COVID –19 in the State of Ohio including limiting access to Ohio nursing homes and similar facilities on March 11, 2020 and limiting and/or prohibiting mass gatherings on March 12, 2020. Today, the Ohio Department of Health issued a directive recommending that all Ohioans over the age of 65 engage in self isolation until further notice.

Due to today's directive from the Ohio Department of Health, Plaintiffs will be prevented from voting in the 2020 Presidential Primary Election. In addition, upon information and belief, the directive will require numerous poll workers and other elections staff to refrain from

conducting elections activities in the 2020 Presidential Primary Election, and therefore, will likely prevent the boards of elections from conducting the election. These directives, while necessary for the health and safety of Ohioans, will likely impact Plaintiffs' ability to exercise their right to vote on March 17, 2020. Accordingly, Plaintiffs request a temporary restraining order and preliminary injunction to suspend all election activities scheduled to occur on March 17, 2020 as set forth in the Complaint and to reschedule those activities to June 2, 2020.

## II. ARGUMENT

### A. Preliminary Injunction Should Issue to Postpone the March 17, 2020 Election Activities.

In deciding whether to grant a preliminary injunction, a court must look at: 1) whether there is a substantial likelihood that plaintiff will prevail on the merits; 2) whether plaintiff will suffer irreparable injury if the injunction is not granted; 3) whether third parties will be unjustifiably harmed if the injunction is granted; and 4) whether the public interest will be served by the injunction. *Valco Cincinnati, Inc. v. N & D Machining Service, Inc.* (1986), 24 Ohio St. 3d 41, 492 N.E.2d 814; *Goodall v. Crofton* (1877), 33 Ohio St. 271. Further, the party seeking the preliminary injunction must establish a right to the preliminary injunction by showing clear and convincing evidence of each element of the claim. *Mead Corp., Diconix, Inc., Successor v. Lane* (1988), 54 Ohio App. 3d 59, 560 N.E.2d 1319; *Vanguard Transp. Sys. v. Edwards Transfer & Storage Co. Gen. Commodities Div.*, 109 Ohio App. 3d 786, 790, 673 N.E.2d 182, 184, 1996 Ohio App. LEXIS 954, \*6

The facts here clearly establish that plaintiffs are likely to succeed on the merits of this action. The United States Supreme Court has held that "when the legislature vests the right to vote for President in its people, the right to vote as the legislature has prescribed is fundamental;

and one source of its fundamental nature lies in the equal weight accorded to each vote and the equal dignity owed each voter.” *Bush v. Gore*, 531 U.S. 98, 104 (2000). The Ohio Department of Health’s directive instructing all Ohioans over the age of sixty five to engage in self isolation, while necessary and appropriate, will undoubtedly prevent Plaintiffs from exercising their right to vote.

Plaintiffs have shown that they will be irreparably harmed without the preliminary injunction. It is well settled that the loss of voting rights constitutes irreparable harm. *Elrod v. Burns*, 427 U.S. 347, 373 (1976). Without an injunction, Plaintiffs and others similarly situated individuals will not vote in the 2020 Presidential Primary Elections. Moreover, without sufficient poll workers and other elections staff, even younger registered voters who have not already voted and who intend to vote tomorrow could very likely be prevented from voting due to insufficient accommodations at the polls. Postponement of election activities until June 2, 2020 is the only way to prevent the irreparable harm that Plaintiffs and other Ohioans will most definitely suffer if they cannot vote.

Finally, no third parties will be harmed and the public interest will be served by a postponement of the March 17, 2020 election activities. The health directives are designed to slow the spread of COVID 19 and all Ohioans should follow these directives diligently. There is no doubt that postponement of the March 17, 2020 election activities until June 2, 2020 is in the best interest of the public. Moreover, a postponement will permit the Ohio Secretary of State and the county boards of election to fully staff the elections to ensure that elections are conducted in an order and efficient manner, ensuring that all registered voters can exercise their right to vote.

### III. CONCLUSION

For the reasons stated above, this Court should issue a temporary restraining order and preliminary injunction as set forth and requested in Plaintiffs' Complaint and Proposed Order.

Respectfully submitted,

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*/s/ Diane Menashe*

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### CERTIFICATE OF SERVICE

I hereby certify that the foregoing Motion for Preliminary Injunction, Memorandum in Support of Motion for Preliminary Injunction and Proposed Order was sent via email on this the 16<sup>th</sup> day of March, 2020 to the Ohio Secretary of State Frank LaRose to: [MGrodhaus@OhioSOS.gov](mailto:MGrodhaus@OhioSOS.gov). Notice of this filing will also be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

Respectfully submitted,

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