

MEMORANDUM IN SUPPORT

I. INTRODUCTION AND STATEMENT OF FACTS

Jason Stephens (“Stephens”) is a State Representative for Ohio House District 93. In accordance with the Revised Code, he was scheduled to compete in a primary election to be held on March 17, 2020 (“March Primary”). He was also planning to vote in the March Primary. At a press conference on March 16, 2020, Governor Mike DeWine and Secretary of State Frank LaRose told the public that while they did not have the power to move the March Primary to a different date, they would seek court action to do so.

A. Plaintiffs Seek Unprecedented Remedy Of Moving March Primary.

The evening of March 16, Plaintiffs Jill Reardon and Judith Brachman asked this Court for a temporary restraining order in Reardon, et al. v. Ohio Secretary of State Frank LaRose, 20CV002105. Plaintiffs argued, according to the Director Acton’s most recent guidance, it would be unsafe to vote in-person on March 17, 2020 based on their advanced age and health condition. Plaintiffs requested an unprecedented remedy: cancel the March Primary. Further, Plaintiffs asked for this Court to move the primary to June 2, 2020. Neither Plaintiff availed themselves to the Ohio’s early voting process, which is one of the most generous in the United States. This Court held a hearing the evening of March 16, 2020 to consider the requested relief.

B. Secretary LaRose Declines to Defend Primary And Stephens Intervenes.

At that hearing, Defendant Secretary LaRose appeared, through counsel. Secretary LaRose suggested that it would be appropriate, despite various statutes and constitutional provisions preventing this action, to move the primary to June 2, 2020. Secretary LaRose explicitly stated, both before this Court and in the media, that he had no desire to defend the March Primary.

Stephens, through counsel, also attended the hearing. This Court granted Stephens’ request to appear. Stephens explained that Plaintiffs sought an unprecedented request. First, it is not clear that June 2, 2020 would be a better date to hold the primary election. Second, the Plaintiffs and Secretary LaRose had multiple opportunities since mid-January, when COVID-19 was initially detected, to move the election through the General Assembly. Plaintiffs and Secretary LaRose did not avail themselves of these remedies.

C. This Court Denies Request For Temporary Restraining Order.

This Court denied Plaintiffs’ request for a temporary restraining order. This Court reasoned that the Plaintiff’s requested primary election date provided a speculative remedy because it was not clear that it would be more safe on June 2, 2020 than March 17, 2020; significant resources by the State, candidates, and citizens were expended in preparing for the March Primary; and the General Assembly could still act to move the election, if needed.

D. Secretary LaRose Cancels March Primary Despite This Court’s Order.

Rather than appeal this Court’s order, Secretary LaRose took immediate action to overcome the denial. Governor DeWine and Secretary LaRose issued a joint statement saying that the election cannot go on. Then Director Acton effectively closed the election through the Acton Order and denied individuals the right to vote, purportedly using powers under R.C. 3701.13. Then Secretary LaRose issued the LaRose Director, purportedly moving the primary election to June 2, 2020.

II. LAW AND ARGUMENT

A. Stephens Is Entitled To Intervene As A Matter of Right under Civ.R.24(A)(2).

Stephens is entitled to intervene as a matter of right under Civ.R. 24(A)(2). First, Stephens’ request is timely. Stephens first appeared in this matter at its inception on March 16, 2020. Now,

one day after this Court denied the request for a temporary restraining order, he seeks to continue to defend the March 17, 2020 primary and prevent the primary from being moved to June 2, 2020. Second, Stephens' interest relates to the pending action. Stephens is a State Legislator that is seeking to be elected in a primary election. See *State ex rel. Ohio Gen. Assembly v. Brunner*, 114 Ohio St.3d 386, 2007-Ohio-3780, 872 N.E.2d 912, ¶ 17 ("it has been recognized that legislators at times have standing to challenge executive decisions.") (citing *Coleman v. Miller* (1939), 307 U.S. 433, 59 S.Ct. 972, 83 L.Ed. 1385)). He has spent a significant amount money to be elected. He also attempted to vote and was denied. Based on these interests, whether this Court accepts the proposed new primary date of June 2, 2020 will impact Stephens, including his own campaign. Finally, Secretary LaRose declared at a hearing before this Court that he will not defend the March Primary, meaning that without Stephen's intervention Plaintiffs' action will be unopposed.

B. This Could Should Permit Stephens To Intervene Under Civ.R.24(B).

In the alternative, Stephens should be permitted to intervene under Civ.R.24(B). Stephens' cross-claims share the same questions of law and fact as the pending litigation as it relates to the March Primary and the LaRose Directive. Finally, it would not unduly delay or prejudice the original parties.

III. CONCLUSION

Wherefore, Intervening Defendant Jason Stephens respectfully requests that he be permitted to intervene in this action both as a matter of right and as a matter of discretion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 17 day of March, 2020, a copy of the foregoing Motion to Intervene was filed electronically and notice of this filing will be sent to all parties via operation of the Court's electronic filing system.

/s/Donald C. Brey
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