

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

JILL REARDON, et al.,

Plaintiffs,

v.

OHIO SECRETARY OF STATE
FRANK LaROSE,

Defendant,

Case No. 20 CV002105

INTERVENOR-DEFENDANT’S ANSWER AND CROSS-CLAIMS

Intervenor-Defendant Jason Stephens (“Stephens”) hereby answers as follows:

1. Stephens denies for lack of knowledge Paragraphs 1, 2, and 10 through 16.
2. Stephens denies Paragraphs 9, 19, and 21 through 30.
3. Stephens admits Paragraphs 3 through 8, 17 and 18.
4. In response to Paragraph 20, Stephens incorporates by reference his responses to Paragraphs 1 through 19.
5. Any Paragraphs not explicitly admitted are denied.

CROSS-CLAIMS

6. Representative Jason Stephens is a State Representative for District 93, and lives at the following address: 26 County Road 230, Kitts Hill, Ohio 45645
7. He was scheduled to participate in a contested primary election for State Representative on March 17, 2020.
8. He was also planning to vote on March 17, 2020 (“March Primary”).
9. On March 16, 2020, Defendant Secretary of State LaRose announced that he would recommend the cancelation of the March Primary.

10. LaRose also announced that the March Primary should be moved to June 2, 2020, and that he would not defend the office against a lawsuit that sought that remedy.

11. On March 16, 2020, the present lawsuit was filed by Plaintiffs.

12. At an oral hearing before this Court, and though the Complaint, Plaintiffs sought to enjoin the March Primary.

13. LaRose, through counsel, stated no opposition to enjoining the primary.

14. This Court, on the evening of March 16, 2020, denied the request for a temporary restraining order enjoining the March Primary.

15. Nonetheless, LaRose purported to unilaterally reschedule the March Primary.

16. LaRose issued a directive the night of March 16, 2020 to move the primary election from March 17, 2020 to June 2, 2020 (the "Directive").

17. A true and accurate copy of the Directive is attached hereto as **Exhibit A**.

18. LaRose lacks the statutory and constitutional authority to unilaterally reschedule the date of an election, the action taken in the Directive.

19. LaRose's unilateral action, moving a primary election approximately 8 weeks into the future the night of an election, is unprecedented, and created significant confusion and chaos.

20. LaRose stated purpose was to make the election safer in light of COVID-19; however, and as recognized by this Court, there is not sufficient evidence to conclude that on June 2, 2020 the risks presented by COVID-19 will be less than they were on March 17, 2020.

21. Further, LaRose had several months to plan for moving the March Primary as contemplated by the rise of COVID-19 across the world and by working with the body that controls the election, the General Assembly.

22. LaRose's unilateral action, the Directive, denied Stephens' right to vote as a member of the public.

23. LaRose's unilateral action, the Directive, also denied Stephens' right to vote as member of the General Assembly.

24. Elections dates, including for primary elections, are set by statute by the General Assembly.

25. Unlike other states, Ohio does not delegate emergency election powers to the Secretary of State.

26. The authority to reschedule elections is alone vested in the General Assembly.

27. LaRose did not have statutory authority to issue the Directive.

28. Should legislative action be needed, under Article III, Section 8 of the Ohio Constitution, the governor can call (and could have called) an emergency session for the General Assembly.

29. In fact, the General Assembly is ready, able and willing to exercise its authority to help solve an election day crisis that was not of its making.

30. The Speaker of the House expressed just such a willingness in the Memorandum Primary Election Update is attached hereto as **Exhibit B**.

31. Stephens has an interest in seeing the separation of powers respected and the exclusive power of the General Assembly to enact legislation recognized.

32. Further, like all citizens, Stephens has an interest in participating in a lawful election on a date lawfully established by the General Assembly.

33. Unless the Directive is enjoined, Stephens' right to vote as an individual and as a member of the General Assembly will be irreparably harmed.

34. Unless the Directive is enjoined, the LaRose will continue to unforce this unconstitutional unilateral action and other unconstitutional actions.

35. Unless the Directive is enjoined, the public’s interest in a safe, orderly, and lawful election, as provided by the U.S. Constitution, Ohio Constitution, and Ohio Revised Code, cannot be fulfilled.

WHEREFORE, Stephens respectfully requests:

1. A declaratory judgment that the Directive purporting to establish a new primary election date and other deadlines without legislative authority is null and void; and
2. Preliminary and permanent injunctions against LaRose preventing him
 - a. From acting upon the Directive;
 - b. From issuing new directives purporting to change the dates of election without authorization by the General Assembly; and,
 - c. From instructing or directing boards of election to deny voters the ability to vote on statutorily established election dates.

Respectfully submitted,

/s/ Donald C. Brey
 Donald C. Brey (0021965)
 Matthew R. Aumann (0093612)
Isaac Wiles Burkholder & Teetor LLC
 Two Miranova Place, Suite 700
 Columbus, OH 43215
 (614) 221-2121 / Fax: (614) 365-9516
dbrey@isaacwiles.com
maumann@isaacwiles.com

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of March, 2020, a copy of the foregoing Answer of Defendant Ohio Secretary of State Frank LaRose to Plaintiff's Complaint 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
Donald C. Brey (0021965)

4821-3560-6199.1