

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

MICHAEL GONIDAKIS, et al.,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	Case No. 2:22-CV-773
	:	
	:	Chief Judge Algenon Marbley
FRANK LaROSE et al.,	:	
	:	
Defendants.	:	

**OHIO SECRETARY OF STATE LAROSE’S RESPONSE TO PLAINTIFFS’ MOTION
FOR A TEMPORARY RESTRAINING ORDER TO MAINTAIN THE THIRD PLAN**

Plaintiffs characterization of the current status of the May 3, 2022, Ohio primary election is not completely accurate. They write that Secretary LaRose “has started implementing the Ohio Redistricting Commission’s Third Plan though he may stop at any time.” *Motion for Temporary Restraining Order*, Doc. No. 84, PAGEID # 1156. By “Third Plan,” the Plaintiffs are referring to the February 24, 2022 Ohio General Assembly state legislative district plan that the Ohio Supreme Court recently invalidated. *See League of Women Voters, et al. v. Ohio Redistricting Commission*, Slip Opinion No. 2022-Ohio-789. Doc. No. 76, PAGEID# 1107. They are partially correct about the Third Plan in one regard – that Secretary LaRose was implementing it and was readying the eighty-eight county boards of election to hold the May 3 primary election with the districts in the Third Plan. But once the Supreme Court invalidated it, he had no choice but to pause those preparations. So, on March 17, 2022 Secretary LaRose issued Directive 2022-30 informing the county boards of election that the Supreme Court had invalidated the Third Plan and ordered the

Ohio Redistricting Commission to adopt a new one by March 28, 2022. *See*, Exhibit A, Directive 2022-30. As a result of the Court's Order, he instructed boards that they are prohibited from altering or sending ballots and that they must pause reprogramming of voter registration tabulating systems until his Office provides additional instruction. *Id.*

The Secretary was clear about his reason for doing so: this case. *Id.* When the Secretary issued the Directive, the Plaintiffs had just filed "Gonidakis Plaintiffs' Additional Notice That They Seek the Third Plan". Doc. 72. With Plaintiffs' Notice still pending even after the Supreme Court ruled, the Secretary rightfully pressed "pause" on holding the May 3 primary with the legislative districts in the Third Plan. Thus, the current status quo of the Third Plan is just that: on pause. So, to be completely accurate, it is not that the Secretary *may* stop implementing the Third Plan at any time, he already has paused implementing it. Exh. A. Of course, given that boards of election had been preparing for the May 3 primary election using the Third Plan for nearly three weeks, significant progress had been made in that regard and the boards of election would have been ready to hold the election using the districts in the Third Plan. Doc. 70-2, Directive 2022-26.

But, Ohio's primary election could only remain on pause for so long. Early in-person voting for Ohio's May 3, 2022, primary election begins on April 5, 2022. *See* R.C. 3509.01. Before that, boards of election must prepare and begin mailing Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA") absentee ballots. *Id.* Though the Secretary negotiated an agreement with the Department of Justice which would give Ohio's boards of elections until April 5, 2022, at the latest to complete mailing UOCAVA ballots for which applications have already been received, the process for preparing and sending ballots takes time. *See* Exhibit B, Amanda Grandjean Affidavit, ¶ 17. There are a limited number of vendors certified in the State of Ohio

that can reprogram the voting machines which produce ballots and on which early votes are cast. *Id.*, ¶ 24. In order to reprogram all of the relevant voting systems in time for early in-person voting on April 5, 2022, let alone sending UOCAVA ballots out before that deadline, the vendors need the May 3 primary ballot to be **final** (e.g., with or without General Assembly races) by Wednesday March 23, 2022. *Id.*, ¶¶ 23-24. By no later than the close of business tomorrow, Wednesday, March 23, the Secretary *must* issue instructions to the county boards of elections on whether to retain or remove the General Assembly races from their primary election ballots *Id.*¹

The Secretary and the boards of election were (and as of this date still are) ready to proceed with the May 3 primary election using the legislative districts in the Third Plan. More than anything, the Secretary and the county boards of election need finality on what races to include on the primary election ballot. In deference to what this court might rule on Plaintiffs' motion, he has paused the boards' final preparation of their primary election ballots. The Secretary recognizes that absent a *very* prompt ruling from this court granting Plaintiffs' the relief they seek, then pursuant to the Supreme Court of Ohio's ruling invalidating the Third Plan, he will have to instruct the boards of election to proceed with the 2022 primary election without the state legislative races being part of that election.

Respectfully submitted,

OHIO ATTORNEY GENERAL

/s/ Jonathan D. Blanton

JONATHAN D. BLANTON (0070035)

Deputy Attorney General

JULIE M. PFEIFFER* (0069762)

**Counsel of Record*

MICHAEL A. WALTON (0092201)

Assistant Attorneys General

Constitutional Offices Section

¹ It will probably take the county boards of election several days to remove the General Assembly races from their primary election ballots.

30 E. Broad Street, 16th Floor
Columbus, Ohio 43215
Tel: 614-466-2872 | Fax: 614-728-7592
Jonathan.Blanton@OhioAGO.gov
Julie.Pfeiffer@OhioAGO.gov
Michael.Walton@OhioAGO.gov

Counsel for Defendant Frank LaRose

CERTIFICATE OF SERVICE

I hereby certify that on March 22, 2022, the foregoing was filed with the Court. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties for whom counsel has entered an appearance. Parties may access this filing through the Court's system.

/s/ Jonathan D. Blanton

JONATHAN D. BLANTON (0070035)

Deputy Attorney General