

IN THE SUPREME COURT OF OHIO

State ex rel. WILLIAM DEMORA, et al., : Case No. 2022-0661
: :
Relators, : Original Action in Mandamus
: :
v. : Expedited Election Matter
: Pursuant to S.Ct.Prac.R. 12.08
FRANK LAROSE, et al., :
: :
Respondents. :

**MERIT BRIEF OF RESPONDENT
OHIO SECRETARY OF STATE FRANK LAROSE
IN RESPONSE TO INTERVENING RELATORS**

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I. INTRODUCTION

To obtain a writ of mandamus, the Intervening Relators must demonstrate by clear and convincing evidence that they have a clear legal right to the requested relief, and that the Respondent Secretary of State is under a clear legal duty to perform the requested act. They can prove neither of those elements here.

The Intervening Relators are individuals who sought to be added to the August 2, 2022 primary ballot in races for State Representative *just within the past two weeks*. Intervening Relator Shafron Hawkins alleges that he notified the Cuyahoga County Board of Elections on June 3, 2022, of his intent to “reinstate” his previously withdrawn write-in candidacy for the Republican nomination for the 15th Ohio House District. *See* Intervening Relators’ Merits Brief, at 8; Hawkins Compl., ¶ 59. He had withdrawn that candidacy on March 4, and then unsuccessfully sought the Republican nomination for the 13th Congressional District in the May 3 primary election. Intervening Relator Cooke alleges that she filed her declaration of candidacy and petition to be a candidate for the Republican nomination for the 11th Ohio House District with the Franklin County Board of Elections on June 7, 2022. *See* Intervening Relators’ Merits Brief, at 8-9.

These were just 59 days and 55 days, respectively, before the court-ordered primary election date of August 2. Respectfully, neither of the Intervening Relators has a clear legal right to have their candidacies certified under such circumstances. Nor does the Secretary of State have a clear legal duty to take the actions that they request.

Additionally, as the Secretary of State has argued in his prior briefing in this case, the requested relief would be disruptive to the orderly administration of the election. Although the court-ordered primary election date is August 2, the boards of elections must have the ballots that go to overseas military and civilian personnel (“UOCAVA ballots”) ready to be mailed no later

than 46 days *before* that date, in this case by June 17. R.C. 3511.04. Intervening Relators' complaints highlight the impracticability of adding new candidates or re-opening filing periods at this late date.

Like the Original Relators, the Intervening Relators do not have a clear legal right to their requested relief, and the Secretary of State does not have a clear legal duty to provide it.

II. STATEMENT OF FACTS

Most of the relevant factual and procedural history is already set forth in the Merit Brief of Respondent Ohio Secretary of State Frank LaRose, filed June 8, 2022 (the "LaRose Merit Brief"). *See* LaRose Merit Brief, at 3-8. That Statement of Facts is adopted and incorporated herein by reference. The relevant additional factual history that is unique to the Intervening Relators is included below.

Intervening Relator Shafron Hawkins filed his declaration of intent to be a write-in candidate for the Republican nomination for the 15th Ohio House District with the Cuyahoga County Board of Elections on February 22, 2022. *See* Hawkins Compl., ¶ 48.¹ However, he subsequently "filed, alternatively, to run for a Congressional seat." *Id.*, at ¶ 54. He alleges that the Cuyahoga County Board of Elections thereafter "demanded that Relator Hawkins withdraw his candidacy for State Representative if he wished to appear on the ballot for Congress during the May 3, 2022 primary election." *Id.*, at ¶ 55. On March 4, 2022, Hawkins withdrew his candidacy for State Representative. *Id.*, ¶ 57. He unsuccessfully sought the Republican nomination for the 13th Congressional District in the May 3, 2022 primary election. *See* Resp'ts Evidence, Exs. 1-3 (email

¹ Hawkins alleges that he "filed his declaration of intent to be a write-in candidate for the Republican nomination for the 15th Ohio House District at the August 2, 2022 primary election with the Cuyahoga County Board of Elections on February 22, 2022." Hawkins Compl., ¶ 48. However, at the time of that filing the primary election date was scheduled for May 3, 2022.

and certified report from the Summit County Board of Elections) (“6/14/22 LaRose Evidence”); *see also* <https://www.nbcnews.com/politics/2022-primary-elections/ohio-house-results>.

Having already run and lost in the May 3 primary election for another office, on June 3, 2022, Intervening Relator Hawkins notified the Cuyahoga County Board of Elections of his intent to “reinstate” his prior write-in candidacy for the Republican nomination for the 15th Ohio House District. Hawkins Compl., ¶ 59. He alleges that on June 6, 2022, the Cuyahoga County Board of Elections “rejected his request to be included on the ballot” because “there was no mechanism to reinstate him as a write-in candidate for the 15th Ohio House District.” *Id.*, ¶ 60.

Relator Cooke filed her declaration of candidacy and petition to be a candidate for the Republican nomination for the 11th Ohio House District with the Franklin County Board of Elections on June 7, 2022. *See* Intervening Relators’ Merits Brief, at 8-9; Cooke Compl., ¶ 48. She alleges that the Franklin County Board of Elections met on June 8, 2022, to discuss petitions. *Id.*, ¶ 49. She further alleges that the Franklin County Board of Elections “denied Relator Cooke’s Declaration of Candidacy as untimely per Relator LaRose’s Directive 2022-034.” *Id.*, ¶ 51.

III. ARGUMENT

Respondent Ohio Secretary of State Frank LaRose hereby adopts and incorporates by reference the arguments set forth in his original Merit Brief, filed June 8, 2022 with this Court.

A. Standard of Review.

It is well established that relief in the form of mandamus is extraordinary relief. *See, e.g., State ex rel. Rashada v. Pianka*, 112 Ohio St.3d 44, 2006-Ohio-6366, 857 N.E.2d 1220, ¶ 2. To be entitled to the requested writ of mandamus, relators must establish by clear and convincing evidence three elements: (1) the relator has a clear legal right to the requested relief;

(2) the respondent is under a clear legal duty to perform the requested act; and (3) the relator has no plain and adequate remedy at law. *State ex rel. Linnabary v. Husted*, 138 Ohio St.3d 535, 2014-Ohio-1417, 8 N.E.3d 940, ¶ 13, citing *State ex rel Waters v. Spaeth*, 131 Ohio St.3d 55, 2012-Ohio-69, 960 N.E.2d 452, ¶ 6. The Intervening Relators must prove that they are entitled to the writ by clear and convincing evidence. *Id.* Additionally, “all three of these requirements must be met in order for mandamus to lie.” *State ex rel. Kirtz v. Corrigan*, 61 Ohio St.3d 435, 438, 575 N.E.2d 186 (1991).

This Court has emphasized the difficult burden a party must meet when seeking mandamus against the Secretary of State. In extraordinary-writ actions challenging a decision of the Secretary of State, “the standard is whether the secretary engaged in fraud, corruption, or abuse of discretion, or acted in clear disregard of applicable law.” *Linnabary*, at ¶ 14, quoting *State ex rel. Lucas Cty. Republican Party Exec. Comm. v. Brunner*, 125 Ohio St.3d 427, 2010-Ohio-1876, 928 N.E.2d 1072, ¶ 9. The Intervening Relators make no allegations of fraud or corruption, “so the dispositive issue is whether [the Secretary] abused his discretion or clearly disregarded applicable law” *Id.*

Additionally, “[w]hen an election statute is subject to two different, but equally reasonable, interpretations, the interpretation of the Secretary of State, the state’s chief election officer, is entitled to more weight.” *Id.* at ¶ 23, quoting *State ex rel. Herman v. Klopffleisch*, 72 Ohio St.3d 581, 586, 651 N.E.2d 995 (1995). Where the Secretary of State’s interpretation of a statute is reasonable, that interpretation is entitled to judicial deference. *Id.*; see also *State ex rel Colvin v. Brunner*, 120 Ohio St.3d 110, 2008-Ohio-5041, 896 N.E.2d 979, ¶ 57 (“The secretary of state’s construction is reasonably supported . . . the court must defer to that reasonable interpretation.”).

B. The Intervening Relators Are Not Entitled To The Relief That They Seek.

The Intervening Relators seek writs of mandamus to compel the Secretary of State “to rescind his instructions to the boards of elections and to compel their respective boards of elections to certify the Intervening Relators’ candidacies.” Intervening Relators’ Merits Brief, at 1; *see also id.* at 12 (requesting “a writ of mandamus to issue compelling Secretary LaRose to rescind Directive 2022-34”). As an alternative remedy, they request this Court to order Secretary LaRose to direct the boards of elections to accept, for a new ten-day window, the filings of declarations of candidacy for the General Assembly and statements of write-in candidacy for the General Assembly for all General Assembly Districts. *Id.* at 1-2. Additionally, “as a final alternative remedy,” the Intervening Relators ask this Court to postpone the August 2, 2022 primary election “until September 6, 2022, or any time thereafter, to allow candidates a reasonable time to comply with R.C. 3513.05 and R.C. 3513.041.” *Id.* at 13; *see also id.* at 2. Intervening Relators are not entitled to the requested relief.

As explained in Respondent’s Statement of Facts, *supra*, Intervening Relator Hawkins originally filed a timely declaration of intent to be a write-in candidate for the Republican nomination for the 15th Ohio House District by filing it with the Cuyahoga County Board of Elections on February 22, 2022. *See* Hawkins Compl., ¶ 48. However, he subsequently also filed to run for the United States House of Representatives. *Id.*, at ¶ 54. He ultimately withdrew from the race for State Representative, *id.* at ¶ 57, and unsuccessfully ran for Congress in the May 3 primary. *See* Resp’ts Evidence, Exs. 1-3 (“6/14/22 LaRose Evidence”). Even *if* Hawkins’ new request to be reinstated as a write-in candidate had been timely, having already unsuccessfully run for Congress in the May 3 primary, he does not have a clear legal right to have his candidacy for State Representative certified.

Under R.C. 3513.04, “[n]o person who seeks party nomination for an office or position at a primary election by declaration of candidacy or by declaration of intent to be a write-in candidate ... shall be permitted to become a candidate by nominating petition, including a nominating petition ... [or] by declaration of intent to be a write-in candidate”² Revised Code 3513.04 “generally bars a person losing in a partisan primary election from participating as a candidate for another office in the succeeding general election.” *State ex rel. Brinda v. Lorain Cty. Bd. of Elections*, 2007-Ohio-5228, 115 Ohio St. 3d 299, 874 N.E.2d 1205, ¶ 26; *see also State ex rel. Ernst v. Brunner*, 2007-Ohio-7265, 145 Ohio Misc. 2d 73, 882 N.E.2d 990, ¶ 14 (Franklin County Comm. Pl., Oct. 30, 2007), quoting *Brinda*, at ¶ 26. Thus, this Court has denied a request for a writ of mandamus where a candidate who ran unsuccessfully in a primary election later sought to be a candidate for a different office in the same election year. *See, e.g., State ex rel. Brown v. Ashtabula Cty. Bd. of Elections*, 2014-Ohio-4022, 142 Ohio St. 3d 370, 31 N.E.3d 596.

It bears noting as well that R.C. 3513.052(A)(4) precludes a person from running for “a federal office and a state or county office” at the same election, which was presumably the reason he withdrew from the state race. In any event, the Secretary of State does not have a “clear legal duty” to direct the board of elections to certify a candidate for the General Assembly who also unsuccessfully sought a party nomination for Congress in the May 3, 2022 primary. *Compare Linnabary*, at ¶ 13.

Nor does the Secretary of State have a clear legal duty to direct boards of elections to accept declarations of candidacy and petitions that were filed in June 2022. Intervening Relator Cooke’s declaration of candidacy was not “untimely per Relator LaRose’s Directive 2022-34,” irrespective

² R.C. 3513.04 contains limited statutory exceptions that are not applicable here.

of the explanation used by the board of elections. *See* Cooke Compl., at ¶ 51. It was untimely because it was filed well after the filing period closed, a mere 55 days before the court-ordered primary election date of August 2. The Secretary of State does not have a “clear legal duty” to direct the board of elections to certify a candidate who filed a declaration of candidacy and petitions just 55 days before the primary date.

1. The Secretary of State followed applicable Ohio law and is complying with the federal court’s order in *Gonidakis*.

The Intervening Relators contend that the Secretary of State “acted arbitrarily and with complete disregard of the applicable law and equitable principles when he ordered that candidate deadlines be based upon the May 3, 2022 primary election.” Intervening Relators’ Merits Brief, at 10. Yet they do not point this Court to any statute that permits a candidate to file a declaration of candidacy and petition only 55 days from the primary election date, or to seek reinstatement of a prior write-in candidacy only 59 days before that date. *See generally id.* at 10-11. Instead, Intervening Relators argue that they acted “within a reasonable time period of the implementation of a General Assembly district map,” *id.* at 13, and that “justice requires their inclusion on the ballot.” *Id.* at 11-12. This falls far short of demonstrating that they have a “clear legal right” to the relief requested, much less that the Secretary of State had a “clear legal duty” to provide it. *Compare Linnabary*, at ¶ 13. The Secretary of State is not free to disregard statutory filing deadlines (or create his own) merely because a party alleges that they acted reasonably under unusual circumstances. *See* R.C. 3501.40 (generally prohibiting public officials from causing an election to be conducted other than in the time, place, and manner prescribed by the Revised Code).

As with the Original Relators, moreover, it bears emphasizing that the *Gonidakis* panel ordered the primary election for General Assembly to be held on August 2, but it did not order the filing period re-opened. *Gonidakis v. LaRose*, Case No. 2:22-cv-0773, 2022 WL 1709146 (S.D.

Ohio May 27, 2022). The panel was certainly aware of these issues. On March 30, the *Gonidakis* panel held a hearing that addressed numerous issues related to the Ohio redistricting process and election procedures. This included discussion and testimony about the filing deadlines, their bases in the Ohio Revised Code, and the practical implications of altering those deadlines. *See generally* LaRose Merit Brief, at 13-14. For example, Ohio Deputy Attorney General Jonathan Blanton indicated that the use of Map 3 with a primary date that fell less than 90 days away would not re-open the filing period:

“That would, in terms of timing, allow for the use of the more compressed time frame because the map three calendar would be a continuation of what has already been done. So it wouldn't be reopening candidate filing. It wouldn't be reopening the certification of candidates and petitions which is that 90-day window. We would be back down more to about a 55-day window, 46 of which is UOCAVA, and then the administration ahead of that affords the opportunity to handle protests, to do programming, to do clean up.”

Evidence of Respondent Secretary of State Frank LaRose, filed June 8, 2022, Resp'ts Ex. 1, p. 76 (“6/8/22 LaRose Evidence”).

Although this was in reference to a potential primary date later in May to hold one unified primary election, rather than two separate primary elections, the pre-election time frame contemplated was similar to the time frame ultimately adopted by the *Gonidakis* panel. Importantly, in its April 20 Opinion foreshadowing its eventual May 27 Order, the *Gonidakis* panel indicated that Map 3 would be its fallback option in part because “some of the statutory periods *have already gone into effect* under Map 3, *such as* the 30 days for candidates to move and *90 days to register.*” *Gonidakis v. LaRose*, No. 2:22-cv-0773, 2022 WL 1175617, *24 (S.D. Ohio Apr. 20, 2022) (emphasis added).

In an order issued *today*, another federal judge concluded that “the *Gonidakis* Panel chose the remedy it did there—a May 28 drop-dead date for the federal court to move the primary and

impose Map 3—based on its understanding that the candidate deadline (i.e., February 2) would not simultaneously move.” *Giroux v. LaRose*, Case No. 1:22-cv-00309, Slip. Op. at 32 (S.D. Ohio June 14, 2022).³

In short, the Intervening Relators can point to no statute (1) giving them a clear legal right to the relief requested, or (2) imposing a clear legal duty on the Secretary of State to provide the requested relief. And the *Gonidakis* panel considered the filing period but did not address it in its May 27, 2022, Order.

Finally, Respondent Secretary of State reiterates the point that Ohio’s generous early and absentee voting laws require a substantial window of time prior to the actual election date. Indeed, before early voting begins the boards of elections must prepare, finalize, and electronically test their ballots. Now, however, the state UOCAVA deadline is only a few days away. *See* R.C. 3511.04; *compare State ex rel. Valore v. Summit Cty. Bd. of Elections*, 87 Ohio St. 3d 144, 146, 718 N.E.2d 415, 416–17 (1999) (“by the time the expedited briefing schedule ... had been completed ... the board of elections could not have made changes in the absentee ballots, which had to be printed and ready for use”). Quite simply, time is running short.

2. Intervening Relators’ alternative requests for relief should be denied.

The Secretary of State respectfully submits that granting the relief requested by the Intervening Relators would jeopardize the orderly conduct of the August 2, 2022 primary election. *See generally* LaRose Merit Brief, at 18-20. The alternative requests for relief, in particular, would affect an unknown number of boards of elections, creating substantial administrative challenges less than 50 days from the election date. And as the Secretary has emphasized before, the deadline

³ The decision in *Giroux v. LaRose*, Case No. 1:22-cv-00309 (S.D. Ohio) was released just hours before this filing. The Secretary of State has included a copy of the filed Slip Opinion in the Appendix.

for the boards of elections to have UOCAVA ballots ready to be mailed is quickly approaching; indeed, the deadline is *this week*. See R.C. 3511.04 (ballots must be ready no later than 46 days before the election date).

Intervening Relators' alternative remedy, to set a new filing deadline for both petitions and statements of write-in candidacy on the tenth day following this Court's decision in this matter, would significantly exacerbate the challenges faced by Ohio's elections officials. It is important to keep in mind that the process does not end with the acceptance of a candidate's filing. Boards of elections would be required under R.C. 3513.05 to carry out a number of additional steps, including verifying the signatures and other aspects of the petitions; allowing the public inspection of the petitions; and receiving and hearing protests against certain candidates.

Intervening Relators' alternative remedy—with a filing deadline in late June—would necessitate missing the state statutory UOCAVA deadline. R.C. 3511.04. It would also interfere with the timely implementation of domestic absentee and early in-person voting, both of which are scheduled to start on July 6.⁴ It would not just impact the orderly administration of the election, it would create a substantial risk of curtailing the right of Ohio voters to reasonably cast their votes in conformance with Ohio's election laws.

Finally, this Court should deny Intervening Relators' request to move the primary date to September 6 or later. Indeed, this Court has recently indicated that neither the Court nor the Secretary of State has the authority to set the primary date. See *League of Women Voters of Ohio v. Ohio Redistricting Comm'n*, ___ Ohio St. 3d ___, ___ N.E.3d ___, 2022-Ohio-1235, ¶ 69 (citing R.C. 3501.40 and 3501.01(E)(1)). The Intervening Relators do not have a "clear legal right" to such relief.

⁴ Respondent incorrectly referred to July 5, rather than July 6, in the prior Merits Brief.

IV. CONCLUSION

For the reasons set forth above, Intervening Relators' request for a writ of mandamus and any alternative relief should be **DENIED**.

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CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of June, 2022, the foregoing *Merit Brief of Respondent Ohio Secretary of State Frank LaRose in Response to Intervening Relators* was filed electronically and served by electronic mail upon the following:

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APPENDIX OF CITED LEGAL AUTHORITY

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Ohio Revised Code Section 3513.04 | Filing declaration of candidacy.

Candidates for party nominations to state, district, county, and municipal offices or positions, for which party nominations are provided by law, and for election as members of party controlling committees shall have their names printed on the official primary ballot by filing a declaration of candidacy and paying the fees specified for the office under divisions (A) and (B) of section 3513.10 of the Revised Code, except that the joint candidates for party nomination to the offices of governor and lieutenant governor shall, for the two of them, file one declaration of candidacy. The joint candidates also shall pay the fees specified for the joint candidates under divisions (A) and (B) of section 3513.10 of the Revised Code.

The secretary of state shall not accept for filing the declaration of candidacy of a candidate for party nomination to the office of governor unless the declaration of candidacy also shows a joint candidate for the same party's nomination to the office of lieutenant governor, shall not accept for filing the declaration of candidacy of a candidate for party nomination to the office of lieutenant governor unless the declaration of candidacy also shows a joint candidate for the same party's nomination to the office of governor, and shall not accept for filing a declaration of candidacy that shows a candidate for party nomination to the office of governor or lieutenant governor who, for the same election, has already filed a declaration of candidacy or a declaration of intent to be a write-in candidate, or has become a candidate by the filling of a vacancy under section 3513.30 of the Revised Code for any other state office or any federal or county office.

No person who seeks party nomination for an office or position at a primary election by declaration of candidacy or by declaration of intent to be a write-in candidate and no person who is a first choice for president of candidates seeking election as delegates and alternates to the national conventions of the different major political parties who are chosen by direct vote of the electors as provided in this chapter shall be permitted to become a candidate by nominating petition, including a nominating petition filed under section 3517.012 of the Revised Code, by declaration of intent to be a write-in candidate, or by filling a vacancy under section 3513.31 of the Revised Code at the following general election for any office other than the office of member of the state board of education, office of member of a city, local, or exempted village board of education, office of member of a governing board of an educational service center, or office of township trustee.

Ohio Revised Code Section 3513.052 | Candidacy for more than one office at a time prohibited.

(A) No person shall seek nomination or election to any of the following offices or positions at the same election by filing a declaration of candidacy and petition, a declaration of intent to be a write-in candidate, or a nominating petition, or by becoming a candidate through party nomination in a primary election, or by the filling of a vacancy under section [3513.30](#) or [3513.31](#) of the Revised Code:

- (1) Two or more state offices;
- (2) Two or more county offices;
- (3) A state office and a county office;
- (4) A federal office and a state or county office;
- (5) Any combination of two or more municipal or township offices, positions as a member of a city, local, or exempted village board of education, or positions as a member of a governing board of an educational service center.

(B) The secretary of state or a board of elections shall not accept for filing a declaration of candidacy and petition, a declaration of intent to be a write-in candidate, or a nominating petition of a person seeking to become a candidate if that person, for the same election, has already filed a declaration of candidacy, a declaration of intent to be a write-in candidate, or a nominating petition, or has become a candidate through party nomination at a primary election or by the filling of a vacancy under section [3513.30](#) or [3513.31](#) of the Revised Code for:

- (1) Any federal, state, or county office, if the declaration of candidacy, declaration of intent to be a write-in candidate, or nominating petition is for a state or county office;
- (2) Any municipal or township office, or for member of a city, local, or exempted village board of education, or for member of a governing board of an educational service center, if the declaration of candidacy, declaration of intent to be a write-in candidate, or nominating petition is for a municipal or township office, or for member of a city, local, or exempted village board of education, or for member of a governing board of an educational service center.

(C)(1) If the secretary of state determines, before the day of the primary election, that a person is seeking nomination to more than one office at that election in violation of division (A) of this section, the secretary of state shall do one of the following:

- (a) If each office or the district for each office for which the person is seeking nomination is wholly within a single county and none of those offices is a federal office, the secretary of state shall notify the board of elections of that county. The board then shall determine the date on which the person first sought to become a candidate for each of those offices by filing a declaration of candidacy or a declaration of intent to be a write-in candidate or by the filling of a vacancy under section [3513.30](#) of the Revised Code. The board shall vote promptly to disqualify that person as a candidate for each office for which the person sought to become a candidate

after the date on which the person first sought to become a candidate for any of those offices. If the board determines that the person sought to become a candidate for more than one of those offices on the same date, the board shall vote promptly to disqualify that person as a candidate for each office that would be listed on the ballot below the highest office for which that person seeks nomination, according to the ballot order prescribed under section [3505.03](#) of the Revised Code.

(b) If one or more of the offices for which the person is seeking nomination is a state office or an office with a district larger than a single county and none of the offices for which the person is seeking nomination is a federal office, the secretary of state shall determine the date on which the person first sought to become a candidate for each of those offices by filing a declaration of candidacy or a declaration of intent to be a write-in candidate or by the filling of a vacancy under section [3513.30](#) of the Revised Code. The secretary of state shall order the board of elections of each county in which the person is seeking to appear on the ballot to disqualify that person as a candidate for each office for which the person sought to become a candidate after the date on which the person first sought to become a candidate for any of those offices. If the secretary of state determines that the person sought to become a candidate for more than one of those offices on the same date, the secretary of state shall order the board of elections of each county in which the person is seeking to appear on the ballot to disqualify that person as a candidate for each office that would be listed on the ballot below the highest office for which that person seeks nomination, according to the ballot order prescribed under section [3505.03](#) of the Revised Code. Each board of elections so notified shall vote promptly to disqualify the person as a candidate in accordance with the order of the secretary of state.

(c) If each office or the district for each office for which the person is seeking nomination is wholly within a single county and any of those offices is a federal office, the secretary of state shall notify the board of elections of that county. The board then shall vote promptly to disqualify that person as a candidate for each office that is not a federal office.

(d) If one or more of the offices for which the person is seeking nomination is a state office and any of the offices for which the person is seeking nomination is a federal office, the secretary of state shall order the board of elections of each county in which the person is seeking to appear on the ballot to disqualify that person as a candidate for each office that is not a federal office. Each board of elections so notified shall vote promptly to disqualify the person as a candidate in accordance with the order of the secretary of state.

(2) If a board of elections determines, before the day of the primary election, that a person is seeking nomination to more than one office at that election in violation of division (A) of this section, the board shall do one of the following:

(a) If each office or the district for each office for which the person is seeking nomination is wholly within that county and none of those offices is a federal office, the board shall determine the date on which the person first sought to become a candidate for each of those offices by filing a declaration of candidacy or a declaration of intent to be a write-in candidate or by the filling of a vacancy under section [3513.30](#) of the Revised Code. The board shall vote promptly to

disqualify that person as a candidate for each office for which the person sought to become a candidate after the date on which the person first sought to become a candidate for any of those offices. If the board determines that the person sought to become a candidate for more than one of those offices on the same date, the board shall vote promptly to disqualify that person as a candidate for each office that would be listed on the ballot below the highest office for which that person seeks nomination, according to the ballot order prescribed under section [3505.03](#) of the Revised Code.

(b) If one or more of the offices for which the person is seeking nomination is a state office or an office with a district larger than a single county and none of the offices for which the person is seeking nomination is a federal office, the board shall notify the secretary of state. The secretary of state then shall determine the date on which the person first sought to become a candidate for each of those offices by filing a declaration of candidacy or a declaration of intent to be a write-in candidate or by the filling of a vacancy under section [3513.30](#) of the Revised Code. The secretary of state shall order the board of elections of each county in which the person is seeking to appear on the ballot to disqualify that person as a candidate for each office for which the person sought to become a candidate after the date on which the person first sought to become a candidate for any of those offices. If the secretary of state determines that the person sought to become a candidate for more than one of those offices on the same date, the secretary of state shall order the board of elections of each county in which the person is seeking to appear on the ballot to disqualify that person as a candidate for each office that would be listed on the ballot below the highest office for which that person seeks nomination, according to the ballot order prescribed under section [3505.03](#) of the Revised Code. Each board of elections so notified shall vote promptly to disqualify the person as a candidate in accordance with the order of the secretary of state.

(c) If each office or the district for each office for which the person is seeking nomination is wholly within a single county and any of those offices is a federal office, the board shall vote promptly to disqualify that person as a candidate for each office that is not a federal office.

(d) If one or more of the offices for which the person is seeking nomination is a state office and any of the offices for which the person is seeking nomination is a federal office, the board shall notify the secretary of state. The secretary of state then shall order the board of elections of each county in which the person is seeking to appear on the ballot to disqualify that person as a candidate for each office that is not a federal office. Each board of elections so notified shall vote promptly to disqualify the person as a candidate in accordance with the order of the secretary of state.

(D)(1) If the secretary of state determines, after the day of the primary election and before the day of the general election, that a person is seeking election to more than one office at that election in violation of division (A) of this section, the secretary of state shall do one of the following:

(a) If each office or the district for each office for which the person is seeking election is wholly within a single county and none of those offices is a federal office, the secretary of state shall

notify the board of elections of that county. The board then shall determine the offices for which the person seeks to appear as a candidate on the ballot. The board shall vote promptly to disqualify that person as a candidate for each office that would be listed on the ballot below the highest office for which that person seeks election, according to the ballot order prescribed under section [3505.03](#) of the Revised Code. If the person sought nomination at a primary election and has not yet been issued a certificate of nomination, the board shall not issue that certificate for that person for any office that would be listed on the ballot below the highest office for which that person seeks election, according to the ballot order prescribed under section [3505.03](#) of the Revised Code.

(b) If one or more of the offices for which the person is seeking election is a state office or an office with a district larger than a single county and none of the offices for which the person is seeking election is a federal office, the secretary of state shall promptly investigate and determine the offices for which the person seeks to appear as a candidate on the ballot. The secretary of state shall order the board of elections of each county in which the person is seeking to appear on the ballot to disqualify that person as a candidate for each office that would be listed on the ballot below the highest office for which that person seeks election, according to the ballot order prescribed under section [3505.03](#) of the Revised Code. Each board of elections so notified shall vote promptly to disqualify the person as a candidate in accordance with the order of the secretary of state. If the person sought nomination at a primary election and has not yet been issued a certificate of nomination, the board shall not issue that certificate for that person for any office that would be listed on the ballot below the highest office for which that person seeks election, according to the ballot order prescribed under section [3505.03](#) of the Revised Code.

(c) If each office or the district for each office for which the person is seeking election is wholly within a single county and any of those offices is a federal office, the secretary of state shall notify the board of elections of that county. The board then shall vote promptly to disqualify that person as a candidate for each office that is not a federal office. If the person sought nomination at a primary election and has not yet been issued a certificate of nomination, the board shall not issue that certificate for that person for any office that is not a federal office.

(d) If one or more of the offices for which the person is seeking election is a state office and any of the offices for which the person is seeking election is a federal office, the secretary of state shall order the board of elections of each county in which the person is seeking to appear on the ballot to disqualify that person as a candidate for each office that is not a federal office. Each board of elections so notified shall vote promptly to disqualify the person as a candidate in accordance with the order of the secretary of state. If the person sought nomination at a primary election and has not yet been issued a certificate of nomination, the board shall not issue that certificate for that person for any office that is not a federal office.

(2) If a board of elections determines, after the day of the primary election and before the day of the general election, that a person is seeking election to more than one office at that election in violation of division (A) of this section, the board of elections shall do one of the following:

(a) If each office or the district for each office for which the person is seeking election is wholly within that county and none of those offices is a federal office, the board shall determine the offices for which the person seeks to appear as a candidate on the ballot. The board shall vote promptly to disqualify that person as a candidate for each office that would be listed on the ballot below the highest office for which that person seeks election, according to the ballot order prescribed under section [3505.03](#) of the Revised Code. If the person sought nomination at a primary election and has not yet been issued a certificate of nomination, the board shall not issue that certificate for that person for any office that would be listed on the ballot below the highest office for which that person seeks election, according to the ballot order prescribed under section [3505.03](#) of the Revised Code.

(b) If one or more of the offices for which the person is seeking election is a state office or an office with a district larger than a single county and none of the offices for which the person is seeking election is a federal office, the board shall notify the secretary of state. The secretary of state promptly shall investigate and determine the offices for which the person seeks to appear as a candidate on the ballot. The secretary of state shall order the board of elections of each county in which the person is seeking to appear on the ballot to disqualify that person as a candidate for each office that would be listed on the ballot below the highest office for which that person seeks election, according to the ballot order prescribed under section [3505.03](#) of the Revised Code. Each board of elections so notified shall vote promptly to disqualify the person as a candidate in accordance with the order of the secretary of state. If the person sought nomination at a primary election and has not yet been issued a certificate of nomination, the board shall not issue that certificate for that person for any office that would be listed on the ballot below the highest office for which that person seeks election, according to the ballot order prescribed under section [3505.03](#) of the Revised Code.

(c) If each office or the district for each office for which the person is seeking election is wholly within that county and any of those offices is a federal office, the board shall vote promptly to disqualify that person as a candidate for each office that is not a federal office. If the person sought nomination at a primary election and has not yet been issued a certificate of nomination, the board shall not issue that certificate for that person for any office that is not a federal office.

(d) If one or more of the offices for which the person is seeking election is a state office and any of the offices for which the person is seeking election is a federal office, the board shall notify the secretary of state. The secretary of state shall order the board of elections of each county in which the person is seeking to appear on the ballot to disqualify that person as a candidate for each office that is not a federal office. Each board of elections so notified shall vote promptly to disqualify the person as a candidate in accordance with the order of the secretary of state. If the person sought nomination at a primary election and has not yet been issued a certificate of nomination, the board shall not issue that certificate for that person for any office that is not a federal office.

(E) When a person is disqualified as a candidate under division (C) or (D) of this section, on or before the seventieth day before the day of the applicable election, the board of elections shall remove the person's name from the ballot for any office for which that person has been disqualified as a candidate according to the directions of the secretary of state. When a person is

disqualified as a candidate under division (C) or (D) of this section after the seventieth day before the day of the applicable election, the board of elections shall not remove the person's name from the ballot for any office for which that person has been disqualified as a candidate. The board of elections shall post a notice at each polling location on the day of the applicable election, and shall enclose with each absent voter's ballot given or mailed after the candidate is disqualified, a notice that votes for the person for the office for which the person has been disqualified as a candidate will be void and will not be counted. If the name is not removed from the ballots before the day of the election, the votes for the disqualified candidate are void and shall not be counted.

(F) Any vacancy created by the disqualification of a person as a candidate under division (C) or (D) of this section may be filled in the manner provided for in sections [3513.30](#) and [3513.31](#) of the Revised Code.

(G) Nothing in this section or section [3513.04](#), [3513.041](#), [3513.05](#), [3513.251](#), [3513.253](#), [3513.254](#), [3513.255](#), [3513.257](#), [3513.259](#), or [3513.261](#) of the Revised Code prohibits, and the secretary of state or a board of elections shall not disqualify, a person from being a candidate for an office, if that person timely withdraws as a candidate for any offices specified in division (A) of this section for which that person first sought to become a candidate by filing a declaration of candidacy and petition, a declaration of intent to be a write-in candidate, or a nominating petition, by party nomination in a primary election, or by the filling of a vacancy under section [3513.30](#) or [3513.31](#) of the Revised Code.

(H) As used in this section:

(1) "State office" means the offices of governor, lieutenant governor, secretary of state, auditor of state, treasurer of state, attorney general, member of the state board of education, member of the general assembly, chief justice of the supreme court, and justice of the supreme court.

(2) "Timely withdraws" means either of the following:

(a) Withdrawing as a candidate before the applicable deadline for filing a declaration of candidacy, declaration of intent to be a write-in candidate, or nominating petition for the subsequent office for which the person is seeking to become a candidate at the same election;

(b) Withdrawing as a candidate before the applicable deadline for the filling of a vacancy under section [3513.30](#) or [3513.31](#) of the Revised Code, if the person is seeking to become a candidate for a subsequent office at the same election under either of those sections.

Ohio Revised Code Section 3501.40 | Public officials' orders concerning elections.

Except as permitted under section 161.09 of the Revised Code, and notwithstanding any other contrary provision of the Revised Code, no public official shall cause an election to be conducted other than in the time, place, and manner prescribed by the Revised Code.

As used in this section, "public official" means any elected or appointed officer, employee, or agent of the state or any political subdivision, board, commission, bureau, or other public body established by law.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

JENNIFER GIROUX, et al.,

Plaintiffs,

v.

FRANK LAROSE, et al.,

Defendants.

**Case No. 1:22-cv-309
JUDGE DOUGLAS R. COLE**

OPINION AND ORDER

This case highlights the difficulties that arise when federal courts are forced to intervene, late in the day, in state-regulated voting processes. Quite often, such intervention may give rise to a host of collateral—and often unintended—consequences.

Consider the instant case. On May 27, 2022, a three-judge panel of this Court (the “Panel”) issued a decision in a different case moving Ohio’s primary for certain state offices to August 2, 2022. Five days later, on June 1, 2022, Plaintiff Jennifer Giroux, who wishes to appear on the ballot in that primary, and Lisa Daly, one of Giroux’s supporters, sued Ohio Secretary of State Frank LaRose and others in this action, claiming that, in moving the primary back to August, the Panel necessarily also reopened the candidate petition process for that primary. She notes that state law specifies that such petitions must be filed ninety days before the primary—which now, Plaintiffs say, would be May 3, 2022. Although Giroux had a petition ready to go as of that date, when the Panel—some three weeks after May 3—issued the Order

actually moving the primary, Secretary LaRose’s directive implementing that Order stated that the candidate petition date would not move in tandem with that new primary date.

In addition to suing, Plaintiffs also moved for a Temporary Restraining Order, Preliminary Injunction, and Permanent Injunction. (“Motion,” Doc. 3). Specifically, they ask this Court to Order the Defendants to accept Giroux’s petition. That request for injunctive relief is now fully briefed. (See “Opposition,”¹ Doc. 12; “Reply,” Doc. 14).

For the reasons stated more fully below, the Court concludes both (1) that Plaintiffs have failed to establish a reasonable likelihood of success on the merits, and (2) that the relief they request creates a substantial risk that Ohio will not be able to conduct a successful primary on August 2, 2022, a result contrary to the public interest. Accordingly, the Court **DENIES** Plaintiffs’ Motion.

BACKGROUND

The facts of this case are largely undisputed. An Ohio statute specifies May 3, 2022, as the date that Ohio will hold its primary election for candidates seeking a party nomination to run for a position in the state legislature this fall. Ohio Rev. Code § 3501.01(E)(1) (setting primary date as “the first Tuesday after the first Monday in May,” which this year was May 3, 2022); *see also Gonidakis v. LaRose*, No. 2:22-cv-

¹ Strictly speaking, Secretary LaRose and the remaining defendants (the Hamilton County Board of Elections and its members) actually filed two separate opposition briefs. (Docs. 12, 13). However, only LaRose’s brief provides substantive arguments against Plaintiffs’ Motion, with the County Defendants’ short brief simply stating that they adopt Secretary LaRose’s arguments as their own. (Doc. 13, #768). Thus, for the sake of simplicity, the Court generally refers to Secretary LaRose’s brief as “Defendants’ Opposition,” and describes all the arguments therein as offered by Defendants collectively.

773, 2022 WL 1175617, at *3 (S.D. Ohio Apr. 20, 2022) (hereinafter “*Gonidakis I*”). Another statute provides that candidates desiring to be included on the ballot for that primary election must complete the requisite paperwork declaring their candidacy “not later than four p.m. of the ninetieth day before the day of the primary election”—or, for this year’s election, by February 2, 2022. Ohio Rev. Code § 3513.05. While that sounds straightforward, things have—unfortunately—not gone according to plan.

To understand why, one must first wind the clock back to 2015, when Ohio’s voters approved an amendment to the State’s Constitution establishing a new system to draw legislative districts. *Gonidakis I*, 2022 WL 1175617, at *4. While not every aspect of this new redistricting system is relevant to the Court’s decision here, three pertinent provisions require some explanation.

First, under the 2015 amendment, Ohio’s voters charged a new entity—the Ohio Redistricting Commission (the “Commission”)—with drawing the map for the state’s legislative elections. *Id.* The Commission is composed of seven members—the Governor, the Auditor of State, the Secretary of State, one person appointed by the Speaker of the House of Representatives, one person appointed by the House minority leader, one person appointed by the Senate President, and one person appointed by the Senate minority leader. *Id.* The Commission must draw a new map, at minimum, every ten years based on the results of the federal decennial census.² *Id.*

² How long a legislative map lasts under this system depends on the level of bipartisan support the map receives within the Commission. “If the Commission votes for a plan with at least two members of each of the two major political parties in the majority, then the map applies for ten years. But if the Commission is unable to pass a map with that degree of bipartisan support, an ‘impasse procedure’ specifies that the approved map may remain in effect for only four years.” *Gonidakis I*, 2022 WL 1175617, at *5.

Second, in drawing the map, the Commission “shall attempt” to meet three standards described in the Ohio Constitution. First, “[n]o general assembly district plan shall be drawn primarily to favor or disfavor a political party”; second, “[t]he statewide proportion of districts whose voters, based on statewide and federal partisan general election results during the last ten years, favor each political party shall correspond closely to the statewide preferences of the voters of Ohio”; and third, “[g]eneral assembly districts shall be compact.” Ohio Const. art. XI, § 6(A)–(C).

Third, the 2015 amendment granted the Ohio Supreme Court “exclusive, original jurisdiction in all cases arising under” the redistricting provisions. *Id.* art. XI, § 9(A). However, that court’s power is limited in that it may not “order ... the implementation or enforcement of any general assembly district plan that has not been approved by the commission in the manner prescribed by” the redistricting provisions. *Id.* art. XI, § 9(D)(1). Similarly, the Ohio Supreme Court may not “order the commission to adopt a particular general assembly district plan or to draw a particular district.” *Id.* art. XI § 9(D)(2).

In 2021, the Commission began work on a new map. *Gonidakis I*, 2022 WL 1175617, at *5. State law required the Commission to complete that map by September 1, 2021. *Id.* “But that assumed the federal government would release the 2020 census data on time in April 2021”—a deadline the Census Bureau missed as a result of the Covid-19 pandemic. *Id.* Instead, the Commission received the necessary census data in August 2021, “more than three months late.” *Id.*

Late out of the gate, the Commission did not approve its first map (“Map 1”) until September 16, 2021. (Stipulation of Facts, Doc. 16, #841). “But various challengers to the map ... sued the Commission under Article XI of the Ohio Constitution.” *Gonidakis I*, 2022 WL 1175617, at *5. Ohio’s Supreme Court, finding that Map 1 did not comply with the Ohio Constitution, struck the map and ordered the Commission to try again. *Id.*

And the Commission did—three more times. *Id.* at *6. Each time, though, challengers again sued in the Ohio Supreme Court alleging that the maps (“Map 2,” “Map 3,” and “Map 4”) did not comply with constitutional requirements. *Id.* And, each time, the Ohio Supreme Court agreed, sending the Commission back to the proverbial (and literal) drawing board to try again. *Id.*

These delays started to create other problems. By statute, Ohio must hold its primary election for state legislators on May 3. *Id.* at *1. But as the weeks and months passed without a finalized map, it became increasingly uncertain whether the State would be able to meet that deadline—or indeed, whether the State would be able to hold a primary election at all. *Id.*

Against that backdrop, a group of voters, including lead plaintiff Michael Gonidakis, sued in federal court, asking the court to “intervene to protect their right to vote in a primary election for state legislators.” *Id.* A three-judge panel was convened in the Southern District of Ohio pursuant to 28 U.S.C. § 2284. *Id.* at *8.

That three-judge panel held an evidentiary hearing. Based on the evidence the parties presented, the Panel ultimately issued two decisions relevant here. First, on

April 20, the Panel concluded that, because of the delays in the redistricting process, it was “too late for Ohio to include the General Assembly races on the ballot for the May 3 primary as statutorily required.” *Id.* at *9. Even though the May 3 primary was no longer feasible, however, the Panel found that Ohio could still hold a primary election as late as August 2 “without disrupting the general election” and “without Ohio’s elected officials amending the state’s election laws.” *Id.* But to hold a primary on August 2, Ohio would need to implement a map by no later than May 28. *Id.*

Leery of intervening in the state-regulated redistricting process, but cognizant of its obligation to protect Ohioans’ right to vote in a primary, the Panel balanced these competing concerns by staying their hand in the short term, but providing a back-up plan for the longer-term. As to the former, the Panel said: “we stay our hand until May 28” (i.e., the latest date that the Secretary said would work). *Id.* at *2. “But if the State remains unable to implement its own valid map that satisfies federal law” by that date, the Panel held that two consequences would follow. *Id.* Specifically, absent a valid plan as of that date, the Panel (1) would set the primary election for August 2, 2022, and (2) would implement Map 3—one of the maps that the Redistricting Commission had approved, but that the Ohio Supreme Court had rejected. *Id.* at *2–3.

Importantly, a key reason that the Panel chose Map 3 was that using that map would not require as much in the way of a do-over, as pre-election processing had already progressed to a certain extent based on that map. *Id.* at *4. Because proceeding under Map 3 would be a continuation of those processes, the Panel could

stay its hand in deciding whether to move the primary for longer than otherwise possible. That in turn promoted the Panel’s goal of providing state officials the longest possible runway to achieve a viable map on their own, thereby hopefully obviating the need for federal court intervention at all.

As the May 28 deadline approached, though, it became increasingly clear that the State would not implement its own valid map in time. Consequently, on May 27, the Panel issued a second decision implementing the plan it had proposed in its first decision. *Gonidakis v. LaRose*, No. 2:22-cv-773, 2022 WL 1709146 (S.D. Ohio May 27, 2022) (hereinafter “*Gonidakis II*”). In particular, the Panel stated that, if Ohio failed to approve a map by midnight on Saturday, May 28 (i.e., the next day), then Secretary LaRose—who is a defendant in both that case and this one—was ordered “to push back Ohio’s state primaries to August 2, 2022, and to implement Map 3 for this year’s elections.”³ *Id.* at *1.

When Ohio did not approve a map by the designated time, Secretary LaRose responded to the Panel’s Order by issuing Directive 2022-034 (the “Directive”) on May 28, 2022. (Doc. 1-1). There, Secretary LaRose directed the local boards of elections “to implement the General Assembly district plan that was adopted by the Ohio Redistricting Commission on February 24, 2022 [that is, Map 3], and to conduct a primary election for the offices of State Representative, State Senator, and Member of State Central Committee on August 2, 2022,” as the Panel had ordered. (*Id.* at #17).

³ The Panel emphasized, however, it was implementing “Map 3 for this year’s elections *only*.” *Gonidakis II*, 2022 WL 1709146, at *1 (emphasis original).

Before anyone can participate as a candidate in a primary election, though, she must first declare her candidacy with the local board of elections. And recall, Ohio’s original statutory timeline for this year’s elections called for candidates to file that paperwork by February 2, 2022. Of course, that deadline arose based on the presumed May 3 primary date. With the Panel now pushing the primary back to August 3, Secretary LaRose also needed to address whether the February 2 filing deadline still applied.

In his Directive, Secretary LaRose answered that question in the affirmative: “[t]he federal court order did not alter the partisan candidate filing deadlines for the primary election.” (Doc. 1-1, #18). Thus, “[t]he filing deadline for candidates for State Representative, State Senator, or Member of the State Central Committee to file a declaration of candidacy was 4:00 p.m. on February 2, 2022 If a declaration of candidacy ... was filed after th[at] filing deadline[], the board must reject the candidacy.” *Id.*

That’s where the Plaintiffs in this case—Jennifer Giroux and Lisa Daly—enter the picture. Giroux originally had filed as a candidate for the Republican nomination in the federal race for Ohio’s First Congressional District. (Opp’n, Doc. 12, #456). On April 25, 2022, however, Giroux filed her notice withdrawing from that race. (*Id.* at #463). On May 2, she followed that up by filing a petition seeking the Republican nomination for the Twenty-Seventh District in the Ohio House of Representatives. (*Id.*). Daly is one of Giroux’s supporters. (Compl., Doc. 6, #71).

While it is undisputed that Giroux filed all the necessary paperwork for the state race, it is also undisputed that she missed the February 2 deadline that the Directive specified by three months. (Mot., Doc. 3, #57). Accordingly, Plaintiffs note, “as a result of Directive 2022-034, the declaration of candidacy and supporting petition of Jennifer Giroux will not be processed by the Hamilton County Board of Elections and, in turn, the Hamilton County Board of Elections will, in compliance with Directive 2022-034, reject the candidacy of Jennifer Giroux for state representative and not place her name on the ballot at the forthcoming primary election now being held on August 2, 2022.” (*Id.* at #58).

Opposed to that result, on June 1, 2022, Plaintiffs filed the Complaint in this case. (Doc. 1, *refiled as* Doc. 6). The Complaint asserts claims under 42 U.S.C. § 1983 against the Hamilton County Board of Elections, each of the Board’s members, and Secretary LaRose. (Doc. 6, #70, 82). In particular, Plaintiffs argue that the Directive violates the First and Fourteenth Amendments because “it seeks to impose a filing deadline for declaration of candidacy and the associated petition,” either “(i) 6 months before the actual primary date of August 2, 2022; or (ii) before the final determination and adoption of the state legislative district maps for which individuals would be candidates in the primary election to be held on August 2, 2022.” (*Id.* at #83).⁴

⁴ The Court notes that Plaintiffs assert their claims solely under the First and Fourteenth Amendments. (Compl., Doc. 6, #82–83). That is, Plaintiffs are not advancing a state-law claim that Secretary LaRose’s Directive violates Ohio Rev. Code § 3513.05. That makes sense, as *Pennhurst State School & Hospital v. Halderman*, 465 U.S. 89 (1984), would preclude this Court from instructing Secretary LaRose to follow state law. (In any event, the Ohio Supreme Court, the ultimate expositor on Ohio law, currently has that issue pending before it. *See Demora, et. al v. Ohio Secretary of State, et. al.*, Case No. 2022-0661 (Ohio Sup. Ct.)) If, on

Plaintiffs seek declaratory and injunctive relief, as well as money damages and attorneys' fees. (*Id.* at #83–84).

Also on June 1, Plaintiffs filed the instant Motion for a Temporary Restraining Order, Preliminary Injunction, and Permanent Injunction. (Doc. 3). There, Plaintiffs ask that the Court: (1) “enjoin and restrain Directive 2022-34 to the extent Defendant Frank LaRose, as the Ohio Secretary of State, has unconstitutionally imposed a petition-filing deadline of February 2, 2022, for those seeking to be candidates for, *inter alia*, state representative at the forthcoming primary election to be held on August 2, 2022;” and (2) prohibit “the Hamilton County Board of Elections and its individual members ... from rejecting or otherwise taking adverse actions concerning the declaration of candidacy and petition of Jennifer Giroux,” and order them to process Giroux’s declaration of candidacy immediately. (*Id.* at #66).

Defendants filed their Opposition to Plaintiffs’ Motion on June 8, and Plaintiffs filed a Reply the next day.

PLAINTIFFS’ STANDING

As an initial matter, the Court must address the issue of Plaintiffs’ standing. “Federal courts do not possess a roving commission to publicly opine on every legal question.” *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2203 (2021). Instead, Article

the other hand, Plaintiffs are relying on Secretary LaRoae’s alleged failure to follow that provision of state law as a basis for their *constitutional* claims, that argument is foreclosed by the related principle that a State’s failure to follow its own laws, in and of itself, does not make out a constitutional claim. *See, e.g., Sweeton v. Brown*, 27 F.3d 1162, 1166 (6th Cir. 1994) (noting that even state official’s arbitrary refusal to follow state law does not give rise to constitutional claim). Either way, the Court does not address in this Opinion whether Secretary LaRose’s Directive complies with the language of Ohio Rev. Code. § 3513.05.

III of the United States Constitution cabins the power of the federal judiciary by limiting its jurisdiction to only “Cases” and “Controversies.” U.S. Const. Art. III, § 2, cl.1. To show the existence of a qualifying “Case” or “Controversy”—that is, to invoke Article III powers—a plaintiff must show that he or she has a “personal stake” in the case, or in other words, has “standing.” *Raines v. Byrd*, 521 U.S. 811, 818–19 (1997).

In determining whether a plaintiff has carried her burden to show standing, the Court applies “well-worn yet enduring standards.” *Thomas v. TOMS King (Ohio), LLC*, 997 F.3d 629, 634 (6th Cir. 2021). The “irreducible constitutional minimum” of standing includes the following three elements: (1) that the plaintiff has suffered an injury in fact, (2) that the injury is “fairly traceable” to the defendant’s conduct, and (3) that the injury is likely to be redressed by a favorable judicial decision. *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016) (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992)).

Here, Defendants contend that Plaintiffs fail on the third prong: redressability. According to Defendants, whatever this Court may rule, Plaintiff Giroux cannot qualify for inclusion on the primary ballot for an Ohio House race. That is because Ohio law prohibits individuals from seeking multiple federal, state, or county offices in the same election. (Opp’n, Doc. 12, #467 (citing Ohio Rev. Code § 3513.052(A)). And Ohio’s Revised Code implements that rule by prohibiting the Secretary from accepting a second declaration of candidacy from anyone who has already filed a previous declaration of candidacy for another office at the same election. Ohio Rev. Code § 3513.052(B). Here, Defendants note, “on March 2, 2022, Giroux filed a

declaration of candidacy with the Hamilton County Board of Elections to be a candidate for the U.S. House of Representatives.” (Opp’n, Doc. 12, #465). Thus, they claim, she cannot file another declaration for a different office, meaning her petition for the state race would fail, even if this Court moved the deadline, thereby making the petition timely.

That said, Defendants concede that a candidate can qualify for a new race if she “timely withdraws” from the previous race. (*Id.* at #467). “Timely withdraws” means—in pertinent part—“withdrawing as a candidate before the applicable deadline for filing a declaration of candidacy ... for the subsequent office for which the person is seeking to become a candidate at the same election.” (*Id.* (citing Ohio Rev. Code § 3513.052(G))). Here, Giroux withdrew her candidacy for the U.S. House of Representatives on April 25, which was before she filed her declaration of candidacy for the Ohio House of Representatives on May 2. (*Id.* at #466). However, Defendants argue that—at the time Giroux withdrew her federal candidacy (or even at the time she filed her state candidacy)—the *Gonidakis* Panel had not yet moved the May 3 primary to August. Thus, at the time of her withdrawal from the federal race, the deadline for Giroux to declare her candidacy for the Ohio House was indisputably February 2. (*Id.*). Accordingly, Defendants claim, Giroux did not withdraw her federal-race petition before her state-race petition was due. (*Id.*). Essentially, Defendants argue that Giroux’s withdrawal was untimely when made, and could not become timely even if the state-race filing deadline later changed. Based on that, Defendants assert that Giroux will be “ineligible to run for the Ohio

House in 2022 *however* this Court rules on her challenge to Directive 2022-034. As such, both Giroux and Daly lack the constitutionally required standing to bring this case.” (*Id.* at #468 (emphasis in original)).

The Court is not persuaded. The key question is whether Giroux withdrew “as a candidate [from the federal race] before *the applicable deadline* for filing a declaration of candidacy for” the Ohio House of Representatives. Ohio Rev. Code § 3513.052(H)(2)(a) (emphasis added). The problem, of course, is determining, on the facts here, what the statutory reference to the “applicable deadline for filing a declaration of candidacy” means. Defendants read that phrase to mean the deadline that was in effect for the state race *at the time Giroux withdrew her candidacy from the federal race on April 25*—or, in other words, February 2. Giroux, by contrast, asks the Court to read the statute to adopt a rule under which a withdrawal from a previous race is timely so long as the candidate had withdrawn from that previous race in time to file a timely petition for the subsequent race. Under that reading, even if Giroux’s withdrawal from the federal race was originally untimely (as she could not file a timely petition for the state race at the time she withdrew), that previous withdrawal could become timely if the February 2 deadline was subsequently moved to some date after April 25, which is the very relief that Giroux requests the Court to order here.

Which of the above proposals correctly reads Ohio Rev. Code § 3513.052(H)(2)(a) is—perhaps unsurprisingly—a novel question of state law. While the Court concedes this is a close call, the Court finds the latter interpretation more

persuasive for two reasons. First, the phrase “applicable deadline for filing a declaration of candidacy” is most naturally read as referring to the deadline that *actually applies* to that declaration. To be sure, at one time the deadline that applied to the state-office race here was February 2, but if this Court changes that deadline, then the deadline that would actually apply to the declaration of candidacy would be the deadline the Court adopted. Second, the statute’s underlying purpose further supports this result. The “timely withdrawal” provision is meant to prevent a person from running for two different offices in the same election. Here, though, Giroux withdrew her candidacy from the federal race *before* filing the declaration of candidacy that she asks the Court to find valid here. That is, assuming the Court finds her new declaration of candidacy to be timely filed, there is no point in time at which Giroux would have been running for both a federal office and a state office in this election. As Defendants’ interpretation of Ohio Rev. Code § 3513.052(H)(2)(a) is a worse fit, both in terms of the statute’s language and its express purpose, the Court declines to adopt it. Accordingly, the Court finds that, if Giroux obtains the relief she seeks, her candidacy would be valid under Ohio law, meaning that she meets the redressability prong of the standing inquiry. And, as that is the only prong that Defendants contend is lacking, the Court concludes that Plaintiffs have standing here.

LAW AND ANALYSIS

With the jurisdictional inquiry out of the way, the Court turns its attention to the merits of Plaintiffs’ Motion. On that front, Plaintiffs seek a permanent injunction,

a preliminary injunction, and a temporary restraining order. (Mot., Doc. 3). Because different considerations apply to the first of those, the Court starts there before turning to the latter two, which the Court addresses in tandem.

A. The Request For Permanent Injunctive Relief Is Not Ripe.

Turning first to that portion of Plaintiffs' Motion seeking a permanent injunction, the Court concludes that it must **DENY** the request on procedural grounds. Specifically, as another Judge in this District observed, "[i]ssuance of a permanent injunction is not proper until some final entry in [the] matter." *Hogan v. Cleveland Ave Rest., Inc.*, No. 2:15-cv-2883, 2021 WL 963746, at *1 (S.D. Ohio Mar. 15, 2015). Where—as here—"the merits of [a] case have not yet been adjudicated, ... [the] Plaintiffs cannot show 'actual success on the merits' as required to obtain a permanent injunction. Absent final judgment as to some claims or parties under Fed. R. Civ. P. 54(b), [a] request for a permanent injunction is premature and unripe."⁵ *Id.*; see also *Skycasters, LLC v. Hughes Network Sys., LLC*, No. 5:06-cv-1094, 2006 WL 8454315, at *7 n.14 (N.D. Ohio Jun. 2, 2006) ("Plaintiff simultaneously moved for both preliminary *and* permanent injunctive relief. To the extent [plaintiff's motion] seeks a permanent injunction, it is premature and is denied for record purposes. If plaintiff does prevail in this lawsuit, it may be appropriate to enter some form of permanent injunctive relief. The Court need not decide that now."). That still leaves,

⁵ To be clear, this is not "ripeness" in the jurisdictional sense. That is, the Court does not hold that the case itself is "unripe" (which would entirely deprive the Court of jurisdiction over the matter). Rather, the point is that it would be premature for the Court to consider the merits of permanent injunctive relief until such time as the Court is prepared to enter a final judgment.

though, Plaintiffs' requests for a preliminary injunction and a temporary restraining order, to which the Court turns next.

B. The Court Denies Plaintiffs' Request For A Preliminary Injunction And TRO.

1. The Applicable Legal Standards

"Federal Rule of Civil Procedure 65 empowers district courts to issue temporary restraining orders or preliminary injunctions 'to preserve the status quo so that a reasoned resolution of a dispute may be had.'" *Harsman v. Cincinnati Children's Hosp. Med. Ctr.*, No. 1:21-cv-597, 2021 WL 4504245, at *2 (S.D. Ohio Sept. 30, 2021) (quoting *Procter & Gamble Co. v. Bankers Tr. Co.*, 78 F.3d 219, 227 (6th Cir. 1996)). "The standards for obtaining a temporary restraining order or a preliminary injunction are the same." *Id.* (citing *Workman v. Bredesen*, 486 F.3d 896 (6th Cir. 2007)). Accordingly, the Court addresses Plaintiffs' requests for a temporary restraining order and a preliminary injunction jointly.

"The party seeking [a] preliminary injunction bears the burden of justifying such relief." *McNeilly v. Land*, 684 F.3d 611, 615 (6th Cir. 2012). And it is a heavy burden. As the Sixth Circuit has observed more than once, "preliminary injunctions are 'extraordinary and drastic remed[ies] ... never awarded as of right.'" *Platt v. Bd. of Comm'rs on Grievances and Discipline of Ohio Sup. Ct.*, 769 F.3d 447, 453 (6th Cir. 2014) (quoting *Munaf v. Geren*, 553 U.S. 674, 689–90 (2008)); *Am. Civ. Liberties Union Fund of Mich. v. Livingston Cnty.*, 796 F.3d 636, 642 (6th Cir. 2015) (same). Rather, such relief "should be granted only if the movant carries his or her burden of proving that the circumstances clearly demand it." *Overstreet v. Lexington- Fayette*

Urb. Cnty. Gov't, 305 F.3d 566, 573 (6th Cir. 2002); *see also Leary v. Daeschner*, 228 F.3d 729, 739 (6th Cir. 2000) (noting that a “preliminary injunction is an ‘extraordinary remedy involving the exercise of a very far-reaching power, which is to be applied only in the limited circumstances which clearly demand it’”) (quoting *Direx Israel, Ltd. v. Breakthrough Med. Corp.*, 952 F.2d 802, 811 (4th Cir. 1991)) (brackets and internal quotation omitted).

The framework for assessing whether a plaintiff has carried her burden is also well settled—the Court considers four factors in deciding whether to issue a preliminary injunction: (1) whether the movant has a strong likelihood of success on the merits; (2) whether the movant would suffer irreparable injury without the injunction; (3) whether issuance of the injunction would cause substantial harm to others; and (4) whether the public interest would be served by the issuance of the injunction. *Speech First, Inc. v. Schlissel*, 939 F.3d 756, 763 (6th Cir. 2019). No one factor is determinative, rather, the Court should “balance[] [the factors] against each other.” *Overstreet*, 305 F.3d at 573 (citing *United Food & Com. Workers Union, Local 1099 v. Sw. Ohio Reg'l Transit Auth.*, 163 F.3d 341, 347 (6th Cir. 1998)). That said, a finding that there is no likelihood of success on the merits tips that balance in such a way that is “usually fatal” to the request for a preliminary injunction. *Gonzales v. Nat'l Bd. of Med. Exam'rs*, 225 F.3d 620, 625 (6th Cir. 2000) (citing *Mich. State AFL-CIO v. Miller*, 103 F.3d 1240, 1249 (6th Cir. 1997)). The Court considers each of those factors in turn.

2. Plaintiffs Have Not Demonstrated A Strong Probability Of Success On The Merits.

To satisfy the first prong, a movant must “show[] a strong or substantial likelihood or probability of success on the merits.” *Bossert v. Springfield Grp., Inc.*, 579 F. Supp. 56, 66 (S.D. Ohio 1984); *Warner v. Cent. Tr. Co.*, 715 F.2d 1121, 1124 (6th Cir. 1983) (“Since the district court did not find that appellant had shown a strong or substantial likelihood that he could prove fraud in the transaction which produced the letter of credit, the first ‘prong’ of the traditional test for a preliminary injunction has not been met.”).

In this case, Plaintiffs advance two separate theories that the Directive’s February 2 deadline to file paperwork declaring one’s candidacy is unconstitutional. First, they argue that “a filing deadline of 6 months ahead of the primary election imposes a severe burden upon the speech and associational rights of Plaintiffs and their supporters.” (Mot., Doc. 3, #59). Second, in the alternative, Plaintiffs argue that the February 2 deadline was unconstitutional because it required candidates to file their candidacy declarations before legislative districts were finalized with the implementation of Map 3 on May 28. (*Id.* at #60–61).

“When deciding whether state election laws violate a plaintiff’s associational rights and the right to vote effectively under the First and Fourteenth Amendments, [courts] apply the framework set forth by the Supreme Court in *Anderson v. Celebrezze*, 460 U.S. 780 (1983), and *Burdick v. Takushi*, 504 U.S. 428 (1992).” *Graveline v. Benson*, 992 F.3d 524, 534 (6th Cir. 2021) (cleaned up). This is known as the *Anderson-Burdick* framework.

Under the *Anderson-Burdick* framework, “the court must first consider the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate.” *Mich. State A. Randolph Philip Inst. v. Johnson*, 833 F.3d 656, 662 (6th Cir. 2016) (quoting *Green Party of Tenn. v. Hargett*, 791 F.3d 684, 693 (6th Cir. 2015)). “Second, the court ‘must identify and evaluate the precise interests put forward by the State as justifications for the burden imposed by its rule.’” *Id.* (quoting *Hargett*, 791 F.3d at 693). Third, the Court must “determine the legitimacy and strength of each of those interests and consider the extent to which those interests make it necessary to burden the plaintiff’s rights.” *Id.* (quoting *Hargett*, 791 F.3d at 693).

In applying this third step, “the rigorousness of [the court’s] inquiry into the propriety of a state election law depends upon the extent’ of the burden that the law imposes on the rights of voters.” *Id.* (quoting *Burdick*, 504 U.S. at 434). If the court determines at the first step that the burden is severe, then at the third step the court applies “strict scrutiny and the law ‘must be narrowly tailored and advance a compelling state interest.’” *Id.* (quoting *Hargett*, 791 F.3d at 693). But if a court instead finds at the first step that the law imposes a “reasonable and nondiscriminatory’ burden, ‘the statute will be subject to rational basis review and [will] survive if the state can identify important regulatory interests to justify it.’” *Id.* (quoting *Hargett*, 791 F.3d at 693) (modifications omitted). Finally, if the burden is somewhere between these two extremes, “courts will weigh the burden on the

plaintiffs against the state’s asserted interest and chosen means of pursuing it.” *Id.* at 662–63 (quoting *Hargett*, 791 F.3d at 693).

a. The February 2 Registration Deadline Imposed A Reasonable And Nondiscriminatory Burden.

As noted, the inquiry starts by assessing “the character and magnitude of the asserted injury.” *Johnson*, 833 F.3d at 662. Here, Plaintiffs argue that the February 2 deadline to file declarations of candidacy, if enforced, would “impose a significant or severe burden upon [Plaintiffs’] speech and associational rights.” (Mot., Doc. 3, #60). In support, Plaintiffs first note that the February 2 deadline would have required Giroux to declare her candidacy (1) six months before the state primaries were ultimately set to occur, and (2) nearly four months before the precise boundaries of Giroux’s legislative district were settled.

To determine whether a restriction imposes a “reasonable” burden, a “severe” burden,” or something in-between, courts consider two factors: (1) “content-neutrality” and (2) “alternate means of access.” *Daunt v. Benson*, 999 F.3d 299, 311 (6th Cir. 2021) (quoting *Citizens for Legis. Choice v. Miller*, 144 F.3d 916, 921 (6th Cir. 1998)). As the Sixth Circuit has explained, “[f]irst, and most importantly, a law severely burdens voting rights if it discriminates based on content instead of neutral factors.” *Miller*, 144 F.3d at 921. Second, “a law severely burdens voting rights if the burdened voters have few alternate means of access to the ballot.” *Id.* The Court considers each of these factors below.

i. The Directive Is Content Neutral.

The content-neutrality inquiry reflects what amounts to a non-discrimination principle. “A law would not be content-neutral, and would thus impose a severe burden, if it limited political participation by an identifiable political group whose members share a particular viewpoint, associational preference, or economic status.” *Daunt*, 999 F.3d at 311 (modifications and internal quotation marks omitted).

For example, in *Anderson*, the Supreme Court struck down an Ohio law requiring independent candidates to declare their candidacy in March in order to appear on the ballot in the November general election. *Anderson*, 460 U.S. at 799. As the Court explained, although independent candidates were required to declare well in advance of the general election, “the name[s] of the nominees of the Democratic and Republican parties [would] appear on the Ohio ballot” automatically—“even if [those parties’ nominees] did not decide to run until after Ohio’s March deadline had passed.” *Id.* The Court held that these different timelines had a disparate impact on independent candidates and their voters. *Id.* at 790. As the Court explained,

[i]n election campaigns, ... the candidates and the issues simply do not remain static over time. Various candidates rise and fall in popularity; domestic and international developments bring new issues to center stage and may affect voters’ assessments of national problems. Such developments ... may ... create opportunities for new candidates. Yet Ohio’s filing deadline prevents persons who wish to be independent candidates from entering [this] political arena ... at any time after mid to late March. At this point developments in campaigns for major-party nominations have only begun, and the major parties will not adopt their nominees and platforms for another five months. Candidates and supporters within the major parties thus have the political advantage of continued flexibility; for independents, the inflexibility imposed by the March filing deadline is a correlative disadvantage because of the competitive nature of the electoral process.

Id. at 790–91 (internal citations omitted). In short, the Court recognized independent voters as a relevant group for the discrimination inquiry, and concluded that Ohio’s “March filing deadline place[d] a particular burden on an identifiable segment of Ohio’s independent-minded voters.” *Id.* at 792.

Importantly, though, the Sixth Circuit’s more recent decision in *Lawrence v. Blackwell*, 430 F.3d 368 (6th Cir. 2005), confirms that it is the discrimination, more than the burden itself, that drives the analysis. In *Lawrence*, the plaintiffs also challenged as unconstitutional a March deadline to declare one’s independent candidacy for the November general election. Specifically, independent candidates were required to declare their candidacy by no later than the day before the partisan primaries occurred. In contrast, candidates who hoped to participate in the primaries were required to have “filed a declaration of candidacy sixty days before the primary election.” *Id.* at 373. Although the declaration deadlines for partisan candidates and independent candidates were different, the Court concluded that the regulations were content-neutral in that they did not place the independent candidates at a disadvantage against the partisan nominees. As the Court explained, “all candidates seeking a place on the ballot in November must engage in substantial campaign work before the early primary in order to obtain a space on the [November] ballot.” *Id.* For example, “[t]hose running in a primary must file sixty days before the primary campaign, and win their party’s primary.” *Id.* In contrast, “independent candidates [had to] spend the time before the primary acquiring the requisite number of signatures and then file their petition the day before the primary.” *Id.* Ultimately

though, “no particular group ... [felt] the additional burden of being placed at a disadvantage with respect to the rest of the field.” *Id.* Accordingly, the Sixth Circuit concluded that “the burden imposed by [the state’s] early deadline [was] nondiscriminatory,” and the court thus concluded that the burden was “reasonable.” *Id.*

Applying *Anderson* and *Lawrence* here, the Court concludes that Plaintiffs are unlikely to succeed in demonstrating that the February 2 deadline disadvantages an “identifiable political group.” *Daunt*, 999 F.3d at 311. Indeed, Plaintiffs do not even suggest that Giroux and Daly were members of any such group. Rather, the instant case strikes the Court as similar to *Miller*, where the Sixth Circuit found a lifetime term limit was content-neutral because the restriction

burden[ed] no voters based on the content of protected expression, party affiliation, or inherently arbitrary factors such as race, religion or gender. It [also] burden[ed] no voters based on their views on any of the substantive issues of the day, such as taxes or abortion. Apart from the term limits issue, voters who favor experience are not in any sense a recognized group, and we are aware of no historical bias against incumbent politicians or their supporters.

Miller, 144 F.3d at 922.

Just so here. The Court is not aware of any “historical bias” against, for example, “supporters of Giroux.” To be sure, Giroux could perhaps point to her non-incumbency, or her status as a female candidate, as a basis for claiming membership in groups subject to such historical bias. (It is worth noting, though, that she did not argue either.) But, even then, it is not at all clear how either of those groups is disparately impacted by the February 2 deadline. Rather, like in *Lawrence*, to the

extent that Plaintiffs were burdened by this registration deadline, that burden would appear to have fallen on all candidates equally. For that reason, the Court concludes Plaintiffs are unlikely to be able to demonstrate that Ohio's February 2 declaration deadline was discriminatory or not content-neutral.

ii. Plaintiffs Had Alternate Means of Access.

Separately, Plaintiffs could attempt to demonstrate that the burden is severe by showing that the Directive deprives candidates of adequate alternative means of accessing the ballot. Unfortunately, case law offers less clarity on exactly what such a showing entails. In *Daunt*, for example, the Sixth Circuit simply explained that “a law would impose a severe burden if it left few alternate means of access to the ballot,” thereby “restricting the availability of political opportunity.” 999 F.3d at 311. What the Court takes from that, however, is that the inquiry turns on the *degree* to which a restriction burdens the electorate—rather than the extent to which it has a disparate impact on certain groups. For example, in *Daunt*, the plaintiffs challenged a Michigan law that prohibited individuals from serving as members of Michigan's Redistricting Commission if they had served in certain political roles (i.e., candidates, elected officials, lobbyists, etc.) at any point in the previous six years. *Id.* at 304. The Sixth Circuit concluded that the law's eligibility criteria did not “present substantial concerns regarding alternate means of access. The criteria restrict eligibility for an array of individuals with partisan ties, but those restrictions look back only to the past six years, and ... [a] waiting period is hardly a significant barrier to candidacy.”

Id. at 311 (internal citations and quotation marks omitted). In other words, it is the significance of the barrier that matters.

Here, Plaintiffs essentially argue that the February 2 deadline severely burdened Giroux's access to the ballot because it forced her to declare her candidacy prematurely. This is true, she says, in two regards. First, the deadline is too far in advance of the primary, and, second, it lapsed before the boundaries of her legislative district had been set. And these ballot-access burdens, she argues, apply not only to Giroux, but to every other would-be candidate hoping to run in the state primaries and—by extension—to all the supporters (such as, in Giroux's case, Daly) hoping to vote for them. Thus, she claims, they are a significant barrier.

The Court is not persuaded. Start with Plaintiffs' contention that a six-months-before-the-primary registration period is too long. Case law suggests otherwise. In *Lawrence*, the Sixth Circuit found a state restriction was "reasonable" and "nondiscriminatory" where it required independent candidates to declare their candidacy in early March—*eight months* before they would first appear on a ballot in November. 430 F.3d at 373–74. According to the appeals court, "[t]he filing deadline for independent candidates is not so early that a diligent candidate cannot meet the requirement." *Id.* at 373. Here, the Directive essentially required Giroux to declare her candidacy six months before she would ultimately appear on the primary ballot. As in *Lawrence*, that is not so early that a "diligent candidate" could not meet that requirement. Thus, to the extent that the filing deadline burdened Giroux's First and

Fourteenth Amendment ballot-access rights on a too-long-before-the-election basis, the burden does not strike the Court as particularly severe.

That said, in fairness to the Plaintiffs, previous courts have found that early deadlines to declare one's candidacy can—under certain circumstances—constitute a severe burden. For example, in *Anderson*, the Supreme Court found Ohio's early deadline for independent candidates to register imposed a severe burden on would-be candidates and their supporters. 460 U.S. at 790–91. But to read *Anderson* as meaning *any* early candidate registration deadline constitutes a severe burden would “gloss over a vital distinction.” *Lawrence*, 430 F.3d at 373. As the Sixth Circuit explained, “[t]he early deadline discussed in *Anderson* imposed such a significant burden because it put independent candidates at a disadvantage vis-à-vis the major parties' nominees who were not named until nearly five months later.” *Id.* However, where “[a]ll candidates are burdened by [a state] choos[ing] to conduct its primary at an early date, but ... no particular group ... feels the additional burden of being placed at a disadvantage with respect to the rest of the field,” the burden would be “nondiscriminatory.” *Id.* Under such circumstances, the Sixth Circuit has found, “there is no reason for [the] Court to conclude that [a] burden placed on all candidates” to undertake early efforts to appear on the ballot is “severe or inherently unreasonable.” *Id.*

Thus, as noted, *Lawrence* clarifies that burdens matter more for *Anderson* purposes when those burdens are discriminatory. Here, as discussed at length above, no such concerns arise—the burden of Ohio's February 2 deadline fell on Giroux with

equal force as it did on all other candidates. Thus, the six-months-in-advance argument does not carry the day for Plaintiffs.

That still leaves, though, Plaintiffs' argument that the February 2 deadline severely limited Giroux's access to the ballot by forcing her to declare her candidacy before the exact borders of her legislative district had been set. The Court begins its analysis on this front by noting that none of the parties in this action have directed the Court to any authority considering this precise issue, nor has the Court discovered any. Of course, given the unique trajectory that Ohio's redistricting process has followed this year, it would not surprise the Court if no such precedent exists. In the absence of case law directly on point, the Court concludes that, at least in Giroux's case, the burden imposed by any uncertainty as to the final borders of Giroux's legislative district at the time she would have been required to file was far from severe.

That is not to say that Giroux's argument has no appeal. It is admittedly difficult for a person to know whether she wishes to run for an office without knowing the exact contours of the district in which she would be running. An initial map that suggests her candidacy would be promising could change in ways that would make her prospects more tenuous. But here this concern is largely obviated by the fact that Ohio's requirements to declare one's candidacy for an Ohio House race are quite modest. Individuals seeking a major party's nomination (as Giroux is) need only (1) file a declaration of candidacy; (2) obtain a minimum of fifty signatures from individuals of the same party; and (3) pay an \$85.00 filing fee. Ohio Rev.

Code §§ 3513.05, 3513.10. The point is merely this—to the extent Giroux argues that she should not have been forced to “go through the hoops” of declaring her candidacy before knowing her district’s final borders, those “hoops” were minimal. That is, the Court concludes that Giroux faced no substantial burden in collecting the required signatures, paying the filing fee, waiting for the map of her district to be finalized, and then determining whether she wished to pursue her candidacy or withdraw. Even if she ultimately chose not to continue her candidacy, at most she would have lost the time it took to collect the signatures and the cost of her filing fee—neither of which strike the Court as imposing a particularly severe burden.

Relatedly, Giroux might argue that it would be difficult for her to collect the requisite *signatures* for her petition if she did not know her district’s boundaries. After all, in most election years, the signers must be “electors,” or in other words persons who reside in the district. Ohio Rev. Code § 3513.05. So if a putative candidate does not know the district boundaries, collecting valid signatures could be difficult. But that is no longer the rule in Ohio—at least for this election. Rather, recognizing the difficulties that the ongoing redistricting saga was creating, on January 28, 2022, Ohio’s General Assembly enacted House Bill 93, which stated that

a signature on a declaration of candidacy and petition or nominating petition filed by a person seeking nomination for the office of member of ... the Ohio House of Representatives ... shall not be considered invalid on the ground that the signer does not reside in the district the filer seeks to represent, so long as ... both of the following are true: (a) The House district in which the filer resided under the General Assembly district plan adopted by the Ohio Redistricting Commission in September 2021 [that is, Map 1] had territory in the county in which the signer resides. (b) The House district the filer seeks to represent has territory in the county in which the signer resides.

H.B. 93 § 4(D), 134th Gen. Assemb. (Ohio 2022). Moreover, this provision was enacted as emergency legislation, meaning it became effective immediately upon the Governor's signature on January 28. *Id.* § 5. Thus, so long as a portion of a signatory's county of residence fell within a candidate's district under Map 1, and some portion of that same county also fell within a candidate's district under the map that was ultimately adopted, that signature on the petition would be considered valid.

That rule makes Giroux a bad representative to advance any argument about the uncertainty surrounding the signature requirement. Although Giroux's briefing is not clear on the exact district in which she resided under Map 1, her Complaint makes clear she is a Hamilton County resident. (Compl., Doc. 6, #72). And under Map 1, *all* of the districts making up Hamilton County (districts 24 through 30) fell *entirely* within Hamilton County. Ohio Secretary of State, County Populations and Filing Locations: Ohio House Districts (Sept. 15, 2021). Stated differently, no district in Hamilton County crossed county lines to an adjacent county. Thus, every valid signature Giroux would have collected under Map 1 would have been from a Hamilton County resident. But under Map 3, which is the map that the Panel ordered Ohio to use for the August primary, every one of those districts also included solely Hamilton County. Ohio Secretary of State, County Populations and Filing Locations: Ohio House Districts (Feb. 24, 2022). In short, every signature Giroux would have collected under Map 1 would have also worked under the final map Ohio will use. Thus, there was no risk, at least to Giroux, that any signatures she collected for her petition would

have been invalidated as a result of redistricting, meaning that, at least as applied to her, this argument does her little good in establishing a ballot-access burden.

Because Plaintiffs have not demonstrated that the Directive's mandate to enforce the February 2 filing deadline was discriminatory, and because that mandate did not otherwise substantially restrict candidates' access to the ballot, the Court concludes that any burden the Directive's mandate creates is "reasonable" as that term is used in step one of the *Anderson-Burdick* framework.

b. Ohio Offers Compelling Interests To Maintain The February 2 Deadline.

Anderson-Burdick's second step requires the Court to "identify and evaluate the precise interests put forward by the State as justifications for the burden imposed by its rule." *Johnson*, 833 F.3d at 662; *see also Thompson v. DeWine*, 959 F.3d 804, 811 (6th Cir. 2020) (whether a burden on "[p]laintiffs' First Amendment rights passes constitutional muster depends on whether the State has legitimate interests to impose the burden that outweigh it"). The Court concludes that the interests the State has identified here are weighty.

Defendants argue that they have a compelling interest in leaving the February 2 deadline intact because, under Ohio law, "boards of election must have the ballots that go to military and overseas civilian personnel ... ready by no later than 46 days before an election, which, based on an August 2 primary election, is June 17." (Opp'n, Doc. 12, #478). To have these ballots ready to ship by that time, Defendants state that "the boards of election [must] have candidates finalized no later than June 10, 2022"—a date which has already passed. (*Id.*). And Defendants also describe the

consequences that may ensue from failure to respect that deadline. According to the Deputy Secretary of State, considering potential new candidates—that is, those who filed their petitions in early May—for inclusion on the ballot would create “significant, and potentially disastrous, risks to the election administration process and for the local boards of elections that are making their best efforts to administer an additional, unplanned, statewide primary election in 2022 in an accurate and secure manner, under intense scrutiny, on a compressed and expedited timeline.” (*Id.* at #457).

Giving Defendants the benefit of the doubt with regard to these factual allegations, which the Court must, given the short lead time it has to decide the Motion, the Court agrees that Defendants’ interests in maintaining the February 2 deadline are compelling.⁶ Specifically, given that testimony, it appears that granting Plaintiffs’ request would force the Court also to extend Ohio’s deadline—enshrined in state law—to prepare ballots for military and overseas voters. But Ohio’s preparations for its 2022 primary election already have been marred by uncertainty—uncertainty that has forced the state’s judicial, executive, and legislative branches, as well as federal courts, to repeatedly intervene. Time is quickly running out. Indeed, in weighing the State’s interest here, the Court must be mindful of the Sixth Circuit’s

⁶ At the preliminary telephonic status conference on the Motion, the Court noted that the timeline the parties were suggesting for resolving the Motion would not allow an opportunity for cross-examination of the factual assertions that either side advanced. The parties advised the Court that they understood this limitation, that the facts were largely undisputed, and that the Court should rely on the factual assertions that the parties tendered by way of affidavits. Of course, if this case were to move forward, any factual determination that the Court makes in this Opinion is preliminary, and is subject to revision if, and to the extent that, additional evidence supports a different factual finding.

admonition that “rewriting a state’s election procedures or moving deadlines rarely ends with one court order. Moving one piece on the game board invariably leads to additional moves.” *Thompson*, 959 F.3d at 813. The events of the past few months offer ample evidence of the wisdom in this warning, and this Court must be cautious that any order delaying Ohio’s deadlines further could have unanticipated second, third, and fourth order effects that might undermine the fundamental integrity of Ohio’s electoral process. *Beiersdorfer v. LaRose*, No. 20-3557, 2021 WL 3702211, at *12 (6th Cir. Aug. 20, 2021) (“The State’s interest in preserving the integrity of the electoral process is undoubtedly important.”).

Defendants also point to another related factor supporting this same result. In particular, the *Gonidakis* Panel chose the remedy it did there—a May 28 drop-dead date for the federal court to move the primary and impose Map 3—based on its understanding that the candidate deadline (i.e., February 2) would *not* simultaneously move. As the Secretary’s attorney explained during that hearing:

[Using Map 3] would, in terms of timing, allow for the use of the more compressed time frame because the map three calendar would be a continuation of what has already been done. So it wouldn’t be reopening candidate filing. It wouldn’t be reopening the certification of candidates and petitions which is that 90-day window.

(Mar. 30, 2022 *Gonidakis* Hr’g Tr., Doc. 12-2, #593). In short, the Panel was able to delay intervening in Ohio’s electoral processes until fewer than ninety days before the August 3 primary date that the Panel ultimately imposed precisely *because* the Panel did not need to include time for such filings. But now here, Giroux asks this Court to impose an obligation on the Boards of Elections (i.e., considering new candidate petitions) that the *Gonidakis* Panel assumed would not happen. In essence,

Giroux asks this Court to undercut a key factual assumption that led the *Gonidakis* Panel to wait as long as it did. In practical terms, then, the instant case amounts to almost a form of collateral attack on the decision there. Or, at the very least, the request for relief here ignores the factual findings that were the tacit underpinnings for the relief the Panel ordered in *Gonidakis*—underpinnings, it should be noted, on which the State relied in proposing the date for federal court action in that lawsuit that it did. This Court is hesitant to interfere, at this late date, either with the remedial framework that the *Gonidakis* Panel ordered, or the State’s reliance interest that underlies that Panel’s decision to implement that relief.

For all of these reasons, the Court ascribes heavy weight to Ohio’s interests in maintaining the February 2 deadline.

c. The State’s Interests Outweigh Plaintiffs’ Burden.

The third and final step of the *Anderson-Burdick* framework instructs the Court to “determine the legitimacy and strength of each of [the State’s] interests and consider the extent to which those interests make it necessary to burden the plaintiff’s rights.” *Johnson*, 833 F.3d at 662. In applying this test, as noted, courts apply different standards of review based on the severity of the burden on a plaintiff’s rights. If a burden is severe, the Court applies strict scrutiny; if a burden is “reasonable” and “nondiscriminatory,” then the Court applies rational basis review. For those burdens lying somewhere in between, the Court applies an intermediate standard. *Id.* at 662–63.

As previously discussed, in this case, the February 2 registration deadline was nondiscriminatory and reasonable, thus the Court applies rational basis review. Under rational basis review, and given the preliminary factual findings here, there is simply no question that the Directive is lawful. As already noted, any burden that the Directive imposes is at worst minimal, and the State's pressing interest in holding a timely and effective election outweighs that burden. Accordingly, the Court finds that the Plaintiffs have failed to demonstrate likelihood of success on the merits.

But, even if the Directive were subject to intermediate scrutiny, or perhaps even strict scrutiny, that result would not change. The interests that the State raises, and the specter of harm to those interests that it invokes, are issues this Court must take seriously. If, as Defendants contend, moving the candidate filing deadlines would create "potentially disastrous risks" for successfully completing an election, that harm suffices to justify even relatively substantial burdens on candidate access. A successfully administered election presenting the voters with a choice among $n-1$ candidates, or even $n-2$ candidates—those who filed their paperwork for a given office by the February 2 deadline—is better than no successful primary election at all.

B. The Court Declines To Grant A Preliminary Injunction.

Aside from the movant's likelihood of success on the merits, in granting a preliminary injunction, the Court must also consider (1) whether the movant would suffer irreparable injury without the injunction; (2) whether issuance of the injunction would cause substantial harm to others; and (3) whether the public interest would be served by the issuance of the injunction. *Schlissel*, 939 F.3d at 763.

As to the first of these factors—whether the movant would suffer irreparable harm—while the Court considers Plaintiffs unlikely to prevail on the merits, to the extent they *have* identified a potentially viable constitutional claim, blocking Giroux from the ballot would admittedly qualify as an irreparable injury. The first round of primary ballots will soon be printed and shipped to overseas voters. As a result, it would be exceptionally difficult—basically, impossible—to add Giroux as a candidate in this election at a later date. In short, the Court’s failure to order the preliminary relief she requests here forecloses Giroux’s ability to participate in the August 2 primary, and thus also precludes her from any possibility of being a major-party candidate in the November 2022 election. The Court agrees that this constitutes an irreparable injury to her (and her supporters), and this factor thus favors Plaintiffs.

That leaves the last two factors—substantial harm and the public interest. When the government is the defendant, these inquiries effectively merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009). And here, these two factors point in favor of denying the relief that Plaintiffs request. Given the nature of the *Anderson-Burdick* framework, much of the analysis as to these factors is merely a repeat of the issues the Court already addressed in assessing Plaintiffs’ likelihood of success on the merits. In that regard, as noted above, Defendants have offered compelling evidence that the injunction Plaintiffs request would impose substantial risks and hardships on the State’s ability to conduct its August primary. As just one example, granting the request would effectively force this Court also to extend Ohio’s deadline to send ballots to military and overseas voters to accommodate the changes that would need

to be made to the ballots. *See Thompson*, 976 F.3d at 619 (conducting a preliminary injunction analysis and noting that “Ohio will soon print ballots for overseas and military voting. Because ‘federal courts are not supposed to change state election rules as elections approach,’ [the balance of equities] favors Ohio.”) (citations omitted). And the example merely illustrates the broader point—Ohio has a compelling interest in ensuring its statutorily-enshrined deadlines in this election are respected to the fullest extent possible. *Id.* (“It’s in the public interest that we give effect to the will of the people ‘by enforcing the laws they and their representatives enact.’”). Tinkering with those deadlines now—what the *Gonidakis* Panel referred to as “tugging on [the] strings” of the election, *Gonidakis I*, 2022 WL 1175617, at *22—raises a meaningful prospect that Ohio’s primary election will fall prey to the most immutable law of all, the law of unintended consequences. Given the magnitude of the potential harms that the Defendants have identified to the overall election effort, the Court concludes that final two factors of the preliminary injunction analysis counsel strongly against awarding the preliminary relief that Plaintiffs seek. As the Sixth Circuit observed just last Friday, “courts generally decline to ‘disrupt imminent elections absent a powerful reason for doing so.’” *Conyers v. Garrett*, No. 22-1494, 2022 WL 2081475, at *1 (6th Cir. June 10, 2022) (quoting *Crookston v. Johnson*, 841 F.3d 396, 398 (6th Cir. 2016)); cf. *Serv. Emps. Int’l Union Loc. 1 v. Husted*, 698 F.3d 341, 345 (6th Cir. 2012) (per curiam) (“As a general rule, last-minute injunctions changing election procedures are strongly disfavored.”). There is substantial wisdom in that approach, and this Court finds it compelling here.

In short, while Plaintiffs have identified a potential irreparable injury, in light of the Court's conclusion on the first, third, and fourth prongs of the preliminary injunction analysis, the Court determine that this potential injury does not give rise to a right to the injunctive relief that Plaintiffs request.

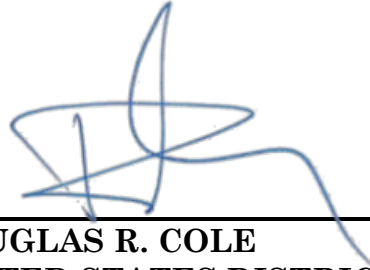
CONCLUSION

For the above reasons, the Court **DENIES** Plaintiffs' Motion for a Temporary Restraining Order, Preliminary Injunction, and Permanent Injunction (Doc. 3).

SO ORDERED.

June 14, 2022

DATE



DOUGLAS R. COLE
UNITED STATES DISTRICT JUDGE