

**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 Under  
S.Ct.Prac.R. 12.08**

**OHIO SECRETARY OF STATE FRANK  
LAROSE, et al.**

**Respondents.**

**RELATORS' MERIT BRIEF**

Donald J. McTigue\* (0022849)

*\*Counsel of Record*

Derek S. Clinger (0092075)

McTIGUE COLOMBO & CLINGER, LLC

545 East Town Street

Columbus, Ohio 43215

Phone: (614) 263-7000

dmctigue@electionlawgroup.com

dclinger@electionlawgroup.com

*Counsel for Relators*

Larry J. Obhof, Jr.

Shumaker, Loop & Kendrick, LLP

41 South High Street, Suite 2400

Columbus, Ohio 43215

Phone: (614) 463-9441

lobhof@shumaker.com

Mark D. Wagoner (0068577)

Douglas G. Haynam (0019773)

Alai A. Kadri (0100721)

Shumaker, Loop & Kendrick LLP

1000 Jackson Street

Toledo, Ohio 43604

mwagoner@shumaker.com

dhaynam@shumaker.com

akadri@shumaker.com

*Counsel for Respondent Ohio Secretary of  
State Frank LaRose*

Gary Tyack

FRANKLIN COUNTY PROSECUTOR

Amy L. Hiers (0065028)

Andrea C Hofer (0101258)

Assistant Prosecuting Attorneys

373 South High Street, 13<sup>th</sup> Floor

Columbus, Ohio 43215

(614) 525-3520

ahiers@franklincountyohio.gov

ahofer@franklincountyohio.gov

*Counsel for Respondent Franklin County  
Board of Elections*

Mat Heck, Jr  
MONTGOMERY COUNTY PROSECUTOR  
Ward C. Barrentine (0074366)  
Nathaniel S. Peterson (0095312)  
Assistant Prosecuting Attorneys  
P.O. Box 972  
301 West Third Street  
Dayton, Ohio 45422  
barrentinw@mcoho.org  
petersonn@mcoho.org

*Counsel for Respondent Montgomery  
County Board of Elections*

William C. Hayes (0011733)  
LICKING COUNTY PROSECUTOR  
Carolyn J. Carnes (0066756)  
Mark W. Altier (0017882)  
20 South 2<sup>nd</sup> Street  
Newark, Ohio 43055  
bhayes@lcounty.com  
ccarnes@lcounty.com  
maltier@lcounty.com

*Counsel for Respondent Licking County  
Board of Elections*

**TABLE OF CONTENTS**

INTRODUCTION ..... 1

STATEMENT OF FACTS ..... 2

I. Ohio’s 2022 primary election for General Assembly and State Central Committee candidates is changed from May 3, 2022 to August 2, 2022..... 2

    A. The Ohio Redistricting Commission’s first General Assembly district plan was invalidated three weeks before the February 2, 2022 filing deadline. .... 3

    B. General Assembly and State Central Committee candidates filed under the Second Plan, but the Second Plan was invalidated shortly thereafter. .... 3

    C. The Third Plan was adopted and left several General Assembly and State Central Committee districts without Democratic candidates ..... 4

    D. The Third Plan was invalidated, and Secretary LaRose subsequently ordered General Assembly and State Central Committee contests off the May 3, 2022 ballot ..... 5

    E. The Fourth Plan was invalidated..... 6

    F. A three-judge federal panel ordered both the implementation of the Third Plan and the primary election to be held on August 2, 2022..... 6

    G. Respondent LaRose ordered the boards of elections to conduct a primary election for General Assembly and State Central Committee contests on August 2, 2022 and to reject any candidates for such offices who filed after the deadlines for the May 3, 2022 primary election date. .... 7

II. Relators filed to run for General Assembly and State Central Committee at the August 2, 2022 primary election. .... 8

    A. Relator DeMora filed to run for the Democratic nomination for the 25<sup>th</sup> Senate District with the Franklin County Board of Elections by 4 p.m. on May 4, 2022. .... 8

    B. Relator Somani filed to run for the Democratic nomination for the 11<sup>th</sup> House District with the Franklin County Board of Elections by 4 p.m. on May 4, 2022. .... 9

    C. Relator Thien filed to run as a write-in candidate for the Democratic nomination for the 25<sup>th</sup> Senate District with the Franklin County Board of Elections on May 16, 2022 ..... 9

    D. Relator Jackson filed to run as a write-in candidate for the Democratic nomination for the 39<sup>th</sup> House District with the Montgomery County Board of Elections by 4 p.m. on May 23, 2022..... 10

|   |    |
|---|----|
| E. Relator Tupes filed to run for the Democratic Party State Central Committee for the 15 <sup>th</sup> Senate District with the Franklin County Board of Elections by 4 p.m. on May 4, 2022.....                           | 11 |
| F. Relator Martin filed to run for the Democratic Party State Central Committee for the 20 <sup>th</sup> Senate District with the Licking County Board of Elections by 4 p.m. on May 4, 2022. .                             | 12 |
| LAW & ARGUMENT.....   | 13 |
| I. Relators are entitled to a writ of mandamus compelling Secretary LaRose to correct his instruction to the boards of elections as to appropriate candidate filing deadlines for the August 2, 2022 primary election. .... | 13 |
| A. Secretary LaRose acted in clear disregard of applicable law in calculating the candidate filing deadlines based on May 3, 2022 instead of August 2, 2022. ....   | 13 |
| 1. The plain and unambiguous text of R.C. 3513.05 and 3513.041 shows a clear legislative intent to calculate candidate filing deadlines based on the day of the primary election.....                                       | 14 |
| 2. The primary election will be held on August 2, 2022; therefore, candidate filing deadlines for this election are calculated based on August 2, 2022.....   | 17 |
| 3. Secretary LaRose misdirected the boards of elections to impose a candidate filing deadline based on May 3, 2022 rather than August 2, 2022.....  | 18 |
| B. Alternatively, if Secretary LaRose had any discretion to select the candidate filing deadlines for the August 2, 2022 primary election, he abused his discretion.....  | 20 |
| C. Relators lack an adequate remedy in the ordinary course of law due to the proximity of the August 2, 2022 primary election.....  | 22 |
| II. Relators are entitled to writs of mandamus ordering their respective boards of elections to certify their candidacies for the August 2, 2022 primary election.....  | 22 |
| III. As an alternative remedy, the Court should set new filing deadlines for the August 2, 2022 primary election .....  | 23 |
| CONCLUSION.....   | 24 |
| CERTIFICATE OF SERVICE .....  | 25 |
| APPENDIX OF CITED LEGAL AUTHORITY .....   | 26 |

**TABLE OF AUTHORITIES**

*Gonidakis v. LaRose*,  
S.D.Ohio No. 2:22-cv-0773, 2022 U.S. Dist. LEXIS 72172, 2022 WL 1175617  
(Apr. 20, 2022).....6

*Gonidakis v. LaRose*,  
S.D.Ohio No. 2:22-cv-0773, 2022 U.S. Dist. LEXIS 95341 (May 27, 2022).....7, 16

*League of Women Voters of Ohio v. Ohio Redistricting Commission (“League I”)*  
Slip Opinion No. 2022-Ohio-65 .....3, 24

*League of Women Voters of Ohio v. Ohio Redistricting Commission (“League II”)*  
Slip Opinion No. 2022-Ohio-342 .....4

*League of Women Voters of Ohio v. Ohio Redistricting Commission (“League III”)*  
Slip Opinion No. 2022-Ohio-342 .....5

*League of Women Voters of Ohio v. Ohio Redistricting Commission (“League IV”)*  
Slip Opinion No. 2022-Ohio-1235 .....6, 22

*League of Women Voters of Ohio v. Ohio Redistricting Commission (“League V”)*  
Slip Opinion No. 2022-Ohio-1727 .....1, 7

*State v. Steffen*,  
70 Ohio St.3d 399, 407, 639 N.E.2d 67 (1994) .....24

*State ex rel. Chance v. Mahoning Cty. Bd. of Elections*,  
75 Ohio St.3d 42, 43, 661 N.E.2d 697 (1996) .....15

*State ex rel. Colvin v. Brunner*,  
120 Ohio St.3d 110, 2008-Ohio-5041, 896 N.E.2d 979 .....13

*State ex rel. Duncan v. Portage Cty. Bd. of Elections*,  
115 Ohio St.3d 405, 2007-Ohio-5346, 875 N.E.2d 578 .....20

*State ex rel. Grumbles v. Delaware Cty. Bd. of Elections*,  
165 Ohio St.3d 552, 2021-Ohio-3132, 180 N.E.3d 1099 .....22

*State ex rel. Steele v. Morrissey*,  
103 Ohio St.3d 355, 2004-Ohio-4960, 815 N.E.2d 1107 .....15

*State ex rel. Myles v. Brunner*,  
120 Ohio St.3d 328, 2008-Ohio-5097, 899 N.E.2d 120 .....15

*State ex rel. Ohioans for Secure and Fair Elections v. LaRose*,  
159 Ohio St.3d 568, 2020-Ohio-1459, 152 N.E.3d 267 .....13

*State ex rel. Painter v. Brunner*,  
128 Ohio St.3d 17, 2011-Ohio-35, 941 N.E.2d 782 .....13

*State ex rel. Schenck v. Shattuck*,  
1 Ohio St.3d 272, 274, 439 N.E.2d 891 (1982) .....15

**Constitutional Provisions**

Ohio Constitution, Article VI, Section 2 .....23

Ohio Constitution, Article XI, Section 6 .....3, 4, 5, 6

**Statutory Provisions**

R.C. 1.14 .....2, 17

R.C. 3501.05 .....6

R.C. 3501.06 .....8, 11, 12

R.C. 3501.11 .....6, 8, 11, 12

R.C. 3503.19 .....16

R.C. 3509.01 .....16

R.C. 3511.04 .....16

R.C. 3513.05 ..... *passim*

R.C. 3513.041 ..... *passim*

R.C. 3513.10 .....9, 10, 11

R.C. 3513.257 .....16

R.C. 4301.33 .....16

**Ohio Secretary of State Directives**

Directive 2022-31 .....5, 6

Directive 2022-34 ..... *passim*

## INTRODUCTION

To state the obvious, Ohio’s still-ongoing redistricting process for General Assembly districts has been less than smooth. *See, e.g., League of Women Voters of Ohio v. Ohio Redistricting Commission*, Slip Opinion No. 2022-Ohio-1727 (“*League V*”). A consequence of this is that the day of the 2022 primary election for candidates for the General Assembly and state central committees of the political parties has been changed from May 3, 2022 to August 2, 2022. With the change in the primary election date, there should have been a change in the candidate filing deadlines because the deadlines, by law, are calculated based on the “day of the primary election,” whenever that day is. But Ohio Secretary of State Frank LaRose has directed the boards of elections to enforce candidate filing deadlines that were calculated based on May 3, 2022 instead of August 2, 2022. This results in filing deadlines that expired before the General Assembly district plan ordered by a federal court to be implemented for the 2022 election cycle—the “Third Plan” that this Court has *twice* held to amount to an unconstitutional gerrymander, *see League V*—had even been drawn, which, in turn, has resulted in several General Assembly districts not having any Democratic candidates.

Secretary LaRose’s instruction to the boards of elections concerning the filing deadlines for the August 2, 2022 primary election is in clear disregard of Ohio law. For this reason, Relators, each of whom filed to be a candidate for General Assembly or State Central Committee before the applicable filing deadlines when calculated based on the August 2, 2022 primary election date, respectfully seek writs of mandamus to compel Secretary LaRose to correct his instructions to the boards of elections and to compel their respective boards of elections to certify their candidacies. As an alternative remedy, Relators request the Court to set a new filing deadline for all candidates at the August 2, 2022 primary election.

## STATEMENT OF FACTS

### **I. Ohio's 2022 primary election for General Assembly and State Central Committee candidates is changed from May 3, 2022 to August 2, 2022.**

Ohio's 2022 primary election for state and federal offices was originally scheduled to be held on May 3, 2022. Am. Compl. at ¶ 22. This primary election was to include candidates for party nomination for the General Assembly, including for all 99 House districts, plus the odd numbered Senate districts. *Id.* at ¶ 15, 22. And it was to also include candidates for the state central committees of the political parties, each of which currently consists of 66 elected members with one man and one woman representing each of the 33 state senate districts. *Id.* at ¶ 16, 22.

By law, the deadline for partisan General Assembly and state central committee candidates to file a declaration of candidacy and petition is 4 p.m. on the 90<sup>th</sup> “day before the primary election,” R.C. 3513.05, and the deadline for partisan General Assembly candidates to file a declaration of intent to be a write-in candidate is 4 p.m. on the 72<sup>nd</sup> “day preceding the election at which such candidacy is to be considered,” R.C. 3513.041. Thus, for the May 3, 2022 primary election date, the deadline for partisan General Assembly and state central committee candidates to file a declaration of candidacy and petition was 4 p.m. on February 2, 2022, and the deadline for partisan General Assembly candidates to file a declaration of intent to be a write-in candidate for the General Assembly was 4 p.m. on February 22, 2022.<sup>1</sup> *Id.* at ¶ 23. However, due to the delay in having a General Assembly district plan in place for the 2022 election cycle, the primary election for General Assembly and State Central Committee offices did not take place on May 3, 2022. *Id.* at ¶ 24.

---

<sup>1</sup> The 72<sup>nd</sup> day before May 3, 2022 was Sunday, February 20, 2022, and by operation of R.C. 1.14, the deadline extended until the next business day, which was Tuesday, February 22, 2022 as Monday, February 21, 2022 was a legal holiday.



**A. The Ohio Redistricting Commission’s first General Assembly district plan was invalidated three weeks before the February 2, 2022 filing deadline.**

The Ohio Redistricting Commission, which is constitutionally tasked with drawing and adopting a General Assembly district plan, adopted its first General Assembly district plan (the “First Plan”) in September 2021. Am. Compl. at ¶ 25. But on January 12, 2022, three weeks before the February 2, 2022 filing deadline for the May 3, 2022 primary election date, this Court held that the First Plan was invalid because it did not meet the standard in Article XI, Section 6(A) of the Ohio Constitution, which requires that no plan be drawn primarily to favor a political party, or the proportionality standard in Article XI, Section (B), which requires that the statewide proportion of districts whose voters favor each political party correspond closely to the statewide preferences of the voters of Ohio. *See League of Women Voters of Ohio v. Ohio Redistricting Commission*, Slip Opinion No. 2022-Ohio-65 (“*League P*”). The Court ordered the Commission to be reconstituted and to adopt a new plan in conformity with the standards set forth in Article XI, Sections 6(A)-(B) within ten days of the judgment. *Id.* at ¶ 139.

**B. General Assembly and State Central Committee candidates filed under the Second Plan, but the Second Plan was invalidated shortly thereafter.**

The reconstituted Ohio Redistricting Commission then adopted its first remedial General Assembly district plan (the “Second Plan”) on January 22, 2022. Am. Compl. at ¶ 27. The Second Plan was in effect as of the February 2, 2022 filing deadline for General Assembly and State Central Committee candidates to appear on the May 3, 2022 primary election ballot. *Id.* at ¶ 28-29. This meant that candidates who filed by February 2, 2022 deadline did so under the Second Plan’s districts. *Id.*

However, five days after the February 2, 2022 filing deadline, on February 7, 2022, this Court held that the Second Plan was invalid because it, too, did not meet the standard in Article

XI, Sections 6(A)-(B) of the Ohio Constitution. *See League of Women Voters of Ohio v. Ohio Redistricting Commission*, Slip Opinion No. 2022-Ohio-342, ¶ 67 (“*League II*”). The Court again ordered the commission to be reconstituted and to adopt a new plan in conformity with the standards set forth in Article XI, Sections 6(A)-(B) within ten days of the judgment, i.e., by February 17, 2022. *Id.* at ¶ 68.

**C. The Third Plan was adopted and left several General Assembly and State Central Committee districts without Democratic candidates.**

The Ohio Redistricting Commission missed this Court’s February 17 deadline, but, after being threatened with contempt of court, *see* Ohio Supreme Court, *02/18/2022 Case Announcements #2*, 2022-Ohio-498, the Commission reconstituted and adopted its second remedial plan—and third overall plan—on February 24, 2022 (the “Third Plan”). *See, e.g.*, Docket, Ohio Supreme Court Case No. 2021-1193, Ohio Redistricting Commission’s Notice of Filing of Adopted General Assembly Plan (Feb. 25, 2022).

Given that the Third Plan was drawn after the February 2, 2022 filing deadline for the May 3, 2022 primary election date, the Republican majority members of the Redistricting Commission and their staff who drew the maps knew who all, from both parties, had filed to run for the General Assembly, and they were, therefore, able to draw new districts in which no Democratic candidates resided. Am. Compl. ¶ 36. Indeed, under the Second Plan, incumbent Democratic Representative Adam Miller filed for the 6<sup>th</sup> House District, Democrat Ben Leland filed for the 7<sup>th</sup> House District, and incumbent House Minority Leader Allison Russo filed for the 11<sup>th</sup> House District. *Id.* at ¶ 37; Affidavit of Jordan Hawkins at ¶ 4 (REL\_EVID\_085). But under the Third Plan, all three of these Democrats were drawn into the 7<sup>th</sup> House District, leaving no Democratic candidate who resided in the 11<sup>th</sup> House District—a district with a Democratic-leaning performance index of 53%. Am. Compl. at ¶ 37; Hawkins Aff. at ¶ 4 (REL\_EVID\_085). As another example, under the Second

Plan, Democrat Crystal Lett had filed to run for the 25<sup>th</sup> Senate District. Am. Compl. at ¶ 38; Affidavit of William DeMora at ¶ 8 (REL\_EVID\_018). But under the Third Plan, she was drawn into the 16<sup>th</sup> Senate District, the State Senator for which is not up for election in 2022. Am. Compl. at ¶ 38; DeMora Aff. at ¶ 8 (REL\_EVID\_018). This left Ms. Lett unable to run for State Senate in 2022, and it left the Democrats without any candidate for the 25<sup>th</sup> Senate District—a district with a strongly Democratic performance index of 70.28%. Am. Compl. at ¶ 38; DeMora Aff. at ¶ 8 (REL\_EVID\_018).

The gap between the invalidation of the Second Plan on February 7 and the adoption of the Third Plan on February 24 also meant that no General Assembly district plan was in place as of the February 22, 2022 deadline for write-in candidates. Am. Compl. ¶ 35. Thus, prospective write-in candidates for the General Assembly could not have known which district they were eligible to run for and represent.

**D. The Third Plan was invalidated, and Secretary LaRose subsequently ordered General Assembly and State Central Committee contests off the May 3, 2022 ballot.**

On March 16, 2022, this Court invalidated the Third Plan because it, too, did not meet the standard in Article XI, Sections 6(A)-(B) of the Ohio Constitution. *See League of Women Voters of Ohio v. Ohio Redistricting Commission*, Slip Opinion No. 2022-Ohio-789 (“*League III*”). The Court again ordered the commission to be reconstituted and to adopt a new plan in conformity with the standards set forth in Article XI, Sections 6(A)-(B) by March 28, 2022. *Id.* at ¶ 45.

Following this Court’s decision in *League III*, Respondent LaRose issued Directive 2022-31 on March 23 in which he directed that “it is not possible to include the primary contests for the Ohio House, Ohio Senate, and State Central Committee on the May 3, 2022 Primary Election

ballot,” and “[t]herefore, offices and candidates for Ohio House, Ohio Senate, or State Central Committee will not appear on the ballot.”<sup>2</sup> Directive 2022-31 at 1 (REL\_EVID\_012).

**E. The Fourth Plan was invalidated.**

The Ohio Redistricting Commission adopted its third remedial plan and fourth overall plan (the “Fourth Plan”) on March 28, 2022. Am. Compl. at ¶ 43. However, this Court invalidated the Fourth Plan on April 14, 2022 because it, like the prior plans, did not meet the standard in Article XI, Sections 6(A)-(B) of the Ohio Constitution. *See League of Women Voters of Ohio v. Ohio Redistricting Commission*, Slip Opinion No. 2022-Ohio-1235 (“*League IV*”). The Court again ordered the commission to be reconstituted and to adopt a new plan in conformity with the standards set forth in Article XI, Sections 6(A)-(B) and file it with Respondent LaRose by the morning of May 6, 2022. *See id.*

**F. A three-judge federal panel ordered both the implementation of the Third Plan and the primary election to be held on August 2, 2022.**

On April 20, 2022, a three-judge federal panel for the Southern District of Ohio announced that if a General Assembly district plan was not in place by May 28, 2022, it would order the Third Plan to be implemented for the 2022 election cycle and that the primary election would be held on August 2, 2022. *Gonidakis v. LaRose*, S.D. Ohio No. 2:22-cv-0773, 2022 U.S. Dist. LEXIS 72172, 2022 WL 1175617 (Apr. 20, 2022). However, it did not actually issue the promised order until May 27, 2022, discussed below.

---

<sup>2</sup> As Ohio’s Secretary of State, Respondent LaRose is the chief election officer of Ohio and has duties to “[i]ssue instructions by directives and advisories . . . to members of the [county boards of elections] as to the proper methods of conducting elections,” “[p]repare rules and instructions for the conduct of elections,” “[d]etermine and prescribe the forms of ballots,” and “[c]ompel the observance by election officers in the several counties of the requirements of the election laws.” R.C. 3501.05(B), (C), (G), and (M). The boards of elections must perform “duties as prescribed by law or the rules, directives, or advisories of the secretary of state.” R.C. 3501.11(P). Am. Compl. ¶ 11.

On May 5, 2022, the Ohio Redistricting Commission re-adopted the Third Plan. Am. Compl. at ¶ 47. And on May 25, 2022, this Court invalidated the Ohio Redistricting Commission’s re-adoption of the Third Plan and ordered the Commission to adopt a new plan by June 3, 2022. *See League V.*

Subsequently, on May 27, 2022, the three-judge federal panel in *Gonidakis* issued an order stating that “[a]ssuming no map is approved by midnight on Saturday, May 28, we order Secretary of State Frank LaRose to push back Ohio’s state primaries to August 2, 2022, and to implement [the Third Plan] for this year’s elections only.” *Gonidakis v. LaRose*, S.D. Ohio No. 2:22-cv-0773, 2022 U.S. Dist. LEXIS 95341 (May 27, 2022).

**G. Respondent LaRose ordered the boards of elections to conduct a primary election for General Assembly and State Central Committee contests on August 2, 2022 and to reject any candidates for such offices who filed after the deadlines for the May 3, 2022 primary election date.**

By midnight on Saturday, May 28, 2022, no new map had been approved, thereby triggering the federal panel’s order. Am. Compl. at ¶ 50. Later that day, Respondent LaRose issued Directive 2022-34 in which, citing the federal panel’s decision, he directed the boards of elections “to conduct a primary election for the offices of State Representative, State Senator, and Member of the State Central Committee on August 2, 2022.” Directive 2022-34 at 1 (REL\_EVID\_002). With respect to the August 2, 2022 primary election, Respondent LaRose instructed the boards of elections in Directive 2022-34 that “[t]he filing deadline for candidates for State Representative, State Senator, or Member of State Central Committee to file a declaration of candidacy was 4:00 p.m. on February 2, 2022,” and that “[w]rite-in candidates for the primary election were required to file their declaration of intent to be a write-in candidate by February 22, 2022.” *Id.* at 2. Respondent LaRose then directed that “[i]f a declaration of candidacy or declaration of intent to

be a write-in candidate was filed after those filing deadlines, the board must reject the candidacy.”

*Id.*

## **II. Relators filed to run for General Assembly and State Central Committee at the August 2, 2022 primary election.**

As an August 2, 2022 primary election looked increasingly likely, Relators William DeMora, Anita Somani, Leronda Jackson, Elizabeth Thien, Bridgette Tupes, and Gary Martin filed in May to run as candidates for the General Assembly and Democratic Party State Central Committee at the August 2, 2022 primary election.

### **A. Relator DeMora filed to run for the Democratic nomination for the 25<sup>th</sup> Senate District with the Franklin County Board of Elections by 4 p.m. on May 4, 2022.**

Relator William DeMora is a qualified elector who affiliates with the Democratic Party and resides at 100 Warren Street, Columbus, Ohio 43215. Am. Compl. at ¶ 5. Under the Second Plan, Relator DeMora resided in the 15<sup>th</sup> Senate District along with incumbent Democratic State Senator Hearcel Craig who filed to run for re-election. DeMora Aff. at ¶ 5 (REL\_EVID\_017). As a result, Relator DeMora did not file to run for the State Senate by the February 2, 2022 filing deadline for the May 3, 2022 primary election date. Under the Third Plan, however, Relator DeMora resides in the 25<sup>th</sup> Senate District. *Id.* at ¶ 7 (REL\_EVID\_018). Because no Democratic candidate who had filed by the February 2, 2022 filing deadline resides in the Third Plan’s 25<sup>th</sup> Senate District, Relator DeMora filed a declaration of candidacy and petition for the Democratic nomination for the 25<sup>th</sup> District with Respondent Franklin County Board of Elections<sup>3</sup> on May 4,

---

<sup>3</sup> Respondent Franklin County Board of Elections is the duly established and acting election authority for Franklin County, Ohio, pursuant to R.C. 3501.06. Pursuant to R.C. 3501.11(K)(1), the Franklin County Board of Elections has the duty to “[r]eview, examine, and certify the sufficiency and validity of petitions and nomination papers” for candidates in Franklin County, Ohio, including candidates and write-in candidates for the 11<sup>th</sup> House District, 25<sup>th</sup> Senate District, and Democratic Party State Central Committee for the 15<sup>th</sup> Senate District under the General Assembly district plan in place for the August 2, 2022 primary election. Am. Compl. ¶ 12.

2022 before 4 p.m. Am. Compl. ¶ 64; *see* William DeMora's Declaration of Candidacy and Petition (REL\_EVID\_019) (indicating that it was filed on May 4, 2022 at 10:48 a.m.). At this time, Relator DeMora also paid the \$85 in filing fees required by R.C. 3513.10. Am. Compl. ¶ 67.

**B. Relator Somani filed to run for the Democratic nomination for the 11<sup>th</sup> House District with the Franklin County Board of Elections by 4 p.m. on May 4, 2022.**

Relator Anita Somani is a qualified elector who affiliates with the Democratic Party and resides at 5846 Dyrham Park, Dublin, Ohio 43017. Am. Compl. at ¶ 6. Under the Second Plan, Relator Somani resided in the 11<sup>th</sup> House District along with incumbent House Minority Leader Allison Russo. Affidavit of Anita Somani at ¶ 3 (REL\_EVID\_037). As a result, Relator Somani did not file to run for the House by the February 2, 2022 filing deadline for the May 3, 2022 primary election date. Under the Third Plan, however, Relator Somani resides in the 11<sup>th</sup> House District. *Id.* at ¶ 6. Because no Democratic candidate who had filed by the February 2, 2022 filing deadline resides in the Third Plan's 11<sup>th</sup> House District, Relator Somani filed a declaration of candidacy and petition for the Democratic nomination for the 11<sup>th</sup> House District with Respondent Franklin County Board of Elections on May 4, 2022 before 4 p.m. *Id.*; *see* Anita Somani's Declaration of Candidacy and Petition (REL\_EVID\_039) (indicating that it was filed on May 4, 2022 at 1:33 p.m.). At this time, Relator Somani also paid the \$85 in filing fees required by R.C. 3513.10. Am. Compl. ¶ 80.

**C. Relator Thien filed to run as a write-in candidate for the Democratic nomination for the 25<sup>th</sup> Senate District with the Franklin County Board of Elections on May 16, 2022.**

Relator Elizabeth Thien is a qualified elector who affiliates with the Democratic Party and resides at 3397 Sciotangy Drive, Columbus, Ohio 43221. Am. Compl. at ¶ 7. Under the Second Plan, Relator Thien resided in the 16<sup>th</sup> Senate District, the State Senator for which is not up for election in 2022. Affidavit of Elizabeth Thien at ¶ 5 (REL\_EVID\_061). As a result, Relator Thien

did not file to run for the Senate by the February 2, 2022 filing deadline for the May 3, 2022 primary election date. Under the Third Plan, however, Relator Thien resides in the 25<sup>th</sup> Senate District. Am. Compl. at ¶ 7; Thien Aff. at ¶ 5 (REL\_EVID\_061). Because no Democratic candidate who had filed by the February 2, 2022 filing deadline resides in the 25<sup>th</sup> Senate District, Realtor Thien filed a declaration of intent to be a write-in candidate for the Democratic nomination for the 25<sup>th</sup> Senate District with Respondent Franklin County Board of Elections on May 16, 2022. Thien Aff. at ¶ 5 (REL\_EVID\_061); *see* Elizabeth Thien’s Declaration of Intent to be a Write-In Candidate (REL\_EVID\_063) (indicating that it was filed on May 16, 2022 at 2:27 p.m.). At this time, Relator Thien also paid the \$85 in filing fees required by R.C. 3513.10. Am. Compl. at ¶ 97.

**D. Relator Jackson filed to run as a write-in candidate for the Democratic nomination for the 39<sup>th</sup> House District with the Montgomery County Board of Elections by 4 p.m. on May 23, 2022.**

Relator Leronda Jackson is a qualified elector who affiliates with the Democratic Party and resides at 4525 Northglen Court, Englewood, Ohio 45322, which is in the 39<sup>th</sup> House District under the Third Plan. Am. Compl. at ¶ 107. Under the Second Plan, House District 39 had a low Democratic Performance Index and a low number of African American voters, while under the Third Plan, House District 39 has a comparably higher percentage of Democratic and African American voters. Affidavit of Leronda Jackson at ¶ 3-6 (REL\_EVID\_065). However, no Democratic candidate who had filed to run for the Ohio House by February 2, 2022 resides in House District 39 under the Third Plan, leaving the District without a Democratic candidate. *Id.* at ¶ 7 (REL\_EVID\_065). Thus, to ensure that District’s Democratic voters have a candidate to vote for in the 2022 election cycle, Relator Jackson filed a declaration of intent to be a write-in candidate



for the 39<sup>th</sup> House District with Respondent Montgomery County Board of Elections<sup>4</sup> on May 23, 2022 before 4 p.m. *Id.*; *see* Leronda Jackson’s Declaration of Intent to be a Write-In Candidate (REL\_EVID\_067) (indicating that it was filed on May 23, 2022 at 3:48 p.m.) At this time, Relator Jackson also paid the \$85 in filing fees required by R.C. 3513.10. Am. Compl. at ¶ 110.

**E. Relator Tupes filed to run for the Democratic Party State Central Committee for the 15<sup>th</sup> Senate District with the Franklin County Board of Elections by 4 p.m. on May 4, 2022.**

Relator Bridgette Tupes is a qualified elector who affiliates with the Democratic Party and resides at 2316 East Livingston Avenue, Bexley, Ohio 43209, which is in the 15<sup>th</sup> Senate District under the Third Plan. Am. Compl. at ¶ 9. No female candidate for the Democratic Party State Central Committee who had filed to run for the State Central Committee by February 2, 2022 resides in the 15<sup>th</sup> Senate District under the Third Plan. DeMora Aff. at ¶ 10 (REL\_EVID\_018). Relator Tupes filed a declaration of candidacy and petition to be a candidate for the Democratic Party State Central Committee for the 15<sup>th</sup> Senate District with Respondent Franklin County Board of Elections on May 4, 2022 before 4 p.m. *See* Bridgette Tupes’s Declaration of Candidacy and Petition (REL\_EVID\_070) (indicating that it was filed on May 4, 2022 at 10:38 a.m.) State central committee candidates are not required to pay a filing fee. R.C. 3513.10 (exempting state central committee candidates from the filing fee requirements).

---

<sup>4</sup> Respondent Montgomery County Board of Elections is the duly established and acting election authority for Montgomery County, Ohio, pursuant to R.C. 3501.06. Pursuant to R.C. 3501.11(K)(1), the Montgomery County Board of Elections has the duty to “[r]eview, examine, and certify the sufficiency and validity of petitions and nomination papers” for candidates in Montgomery County, Ohio, including candidates and write-in candidates for the 39<sup>th</sup> House District under the General Assembly district plan in place for the August 2, 2022 primary election. Am. Compl. ¶ 13.

**F. Relator Martin filed to run for the Democratic Party State Central Committee for the 20<sup>th</sup> Senate District with the Licking County Board of Elections by 4 p.m. on May 4, 2022.**

Relator Gary Martin is a qualified elector who affiliates with the Democratic Party and resides at 255 Trail East SW, Pataskala, Ohio 43062, which is in the 20<sup>th</sup> Senate District under the Third Plan. Am. Compl. at ¶ 10. No male candidate for the Democratic Party State Central Committee who had filed to run for the State Central Committee by February 2, 2022 resides in the 20<sup>th</sup> Senate District under the Third Plan. DeMora Aff. at ¶ 10 (REL\_EVID\_018). Relator Martin filed a declaration of candidacy and petition to be a candidate for the Democratic Party State Central Committee for the 20<sup>th</sup> Senate District with Respondent Licking County Board of Elections<sup>5</sup> on May 4, 2022 before 4 p.m. *See* Gary Martin’s Declaration of Candidacy and Petition (REL\_EVID\_075) (indicating that it was filed on May 4, 2022 at 2:12 p.m.).

It is Relators’ position that they complied with the applicable candidate filing deadlines and requirements for the August 2, 2022 primary election set forth in R.C. 3513.05 and 3513.041. But with Directive 2022-34, Secretary LaRose instructed Relators’ respective boards of elections to reject their candidacies for having been filed after what he views as the appropriate filing deadlines. Relators, therefore, filed the instant action on May 31, 2022, which was the first business day after Secretary LaRose issued Directive 2022-34.

---

<sup>5</sup> Respondent Licking County Board of Elections is the duly established and acting election authority for Licking County, Ohio, pursuant to R.C. 3501.06. Pursuant to R.C. 3501.11(K)(1), the Licking County Board of Elections has the duty to “[r]eview, examine, and certify the sufficiency and validity of petitions and nomination papers” for candidates in Licking County, Ohio, including candidates for the Democratic Party State Central Committee for the 20<sup>th</sup> Senate District. Am. Compl. ¶ 14.

## LAW & ARGUMENT

### **I. Relators are entitled to a writ of mandamus compelling Secretary LaRose to correct his instruction to the boards of elections as to appropriate candidate filing deadlines for the August 2, 2022 primary election.**

Relators seek a writ of mandamus compelling Secretary LaRose to correct his instructions in Directive 2022-34 by directing the boards of elections to accept any declarations of candidacy that were filed before 4 p.m. on May 4, 2022 that are otherwise valid, and also accept any declarations of intent to be a write-in candidate that were filed before 4 p.m. on May 23, 2022 that are otherwise valid.

It is well-settled that a writ of mandamus is appropriate to correct the directives of the Secretary of State when he “has, under the law, misdirected the members of the boards of election as to their duties.” *State ex rel. Painter v. Brunner*, 128 Ohio St.3d 17, 2011-Ohio-35, 941 N.E.2d 782, ¶ 30 quoting *State ex rel. Colvin v. Brunner*, 120 Ohio St.3d 110, 2008-Ohio-5041, 896 N.E.2d 979, ¶ 20. Such a writ will issue when the relator can establish, by clear and convincing evidence, (1) a clear legal right to the requested relief, (2) a clear legal duty on the part of the respondents to provide it, and (3) the lack of an adequate remedy in the ordinary course of the law. *See, e.g., State ex rel. Ohioans for Secure and Fair Elections v. LaRose*, 159 Ohio St.3d 568, 2020-Ohio-1459, 152 N.E.3d 267, ¶ 13. And when reviewing the Secretary’s decisions, the standard is whether he engaged in fraud, corruption, or abuse of discretion, or acted in clear disregard of applicable legal provisions. *See, e.g., id.* at ¶ 14. Relators easily satisfy these requirements.

#### **A. Secretary LaRose acted in clear disregard of applicable law in calculating the candidate filing deadlines based on May 3, 2022 instead of August 2, 2022.**

Secretary LaRose acted in clear disregard of the applicable legal provisions by calculating the candidate filing deadlines for the August 2, 2022 primary election based on the date of May 3, 2022, instead of when the primary will actually be held. That such conduct was in disregard of

applicable law is apparent from the plain text of the statutes containing the relevant candidate filing deadlines.

- 1. The plain and unambiguous text of R.C. 3513.05 and 3513.041 shows a clear legislative intent to calculate candidate filing deadlines based on the day of the primary election.**

Directive 2022-34 cites R.C. 3513.05 and 3513.041 as the two statutes that authorize his instructions to reject declarations of candidacy and declarations of intent to be a write-in candidate filed after February 2, 2022 and February 22, 2022, respectively. Directive 2022-34 at 2 n.6-7 (REL\_EVID\_003). Indeed, these two statutes are *all* Secretary LaRose cites for his instructions. *Id.* But these statutes do not support Secretary LaRose’s interpretation.

R.C. 3513.05 establishes the filing deadline to be a candidate for a party nomination for election to the General Assembly or a candidate for member of a state central committee of a political party is established in R.C. 3513.05 as 4 p.m. on the 90<sup>th</sup> day “before the day of the primary election”:

Each person desiring to become a candidate for a party nomination at a primary election or for election to an office or position to be voted for at a primary election, except persons desiring to become joint candidates for the offices of governor and lieutenant governor and except as otherwise provided in section 3513.051 of the Revised Code, shall, not later than four p.m. of the ninetieth day before the day of the primary election, file a declaration of candidacy and petition and pay the fees required under divisions (A) and (B) of section 3513.10 of the Revised Code.

(Emphasis added.)

R.C. 3513.041 establishes filing deadline to be a write-in candidate for a party nomination for election to the General Assembly as 4 p.m. on the 72<sup>nd</sup> day “preceding the election at which such candidacy is to be considered”:

A write-in space shall be provided on the ballot for every office, except in an election for which the board of elections has received

no valid declarations of intent to be a write-in candidate under this section. Write-in votes shall not be counted for any candidate who has not filed a declaration of intent to be a write-in candidate pursuant to this section. A qualified person who has filed a declaration of intent may receive write-in votes at either a primary or general election. Any candidate shall file a declaration of intent to be a write-in candidate before four p.m. of the seventy-second day preceding the election at which such candidacy is to be considered.

(Emphasis added.)

In construing R.C. 3513.05 and 3513.041, the Court’s “paramount concern is the legislative intent in enacting the statute.” *State ex rel. Myles v. Brunner*, 120 Ohio St.3d 328, 2008-Ohio-5097, 815 N.E.2d 1107, ¶ 17 quoting *State ex rel. Steele v. Morrissey*, 103 Ohio St.3d 355, 2004-Ohio-4960, ¶ 21. To discern the legislative intent of a statute, the Court must “first consider the statutory language, reading words and phrases in context and construing them in accordance with the rules of grammar and common usage.” *Id.* (internal quotation and citation omitted). Courts are further bound by the duties to (1) not insert language not used in the statute, (2) avoid unduly technical interpretations that impede the public policy favoring free, competitive elections, and (3) liberally construe limitations on the right of a person to hold office in favor of those seeking to hold office, in order that the public may have the benefit of choice from all those who are in fact and in law qualified. *Id.* at ¶ 21, 22, 26; *State ex rel. Chance v. Mahoning Cty. Bd. of Elections*, 75 Ohio St.3d 42, 43, 661 N.E.2d 697 (1996) quoting *State ex rel. Schenck v. Shattuck*, 1 Ohio St.3d 272, 274, 439 N.E.2d 891 (1982).

It is apparent from the plain text of R.C. 3513.05 and 3513.041 that the General Assembly’s intent was to tie the candidate filing deadlines to the specified number of days before the primary election, regardless of when the primary election will be held. The deadlines are not based on specified number of days before a certain date in May. Indeed, this is consistent with the statutory framework for virtually all primary election-related deadlines. For instance, the following

deadlines are all statutorily connected to the “day” of a primary election: local option petition filings, *e.g.*, R.C. 4301.33(A) (90<sup>th</sup> day before primary election day); the certification of partisan candidates, R.C. 3513.05 (78<sup>th</sup> day before primary election day); the filing of protests against candidacies, *id.* (74<sup>th</sup> day before primary election day); the start of UOCAVA voting, R.C. 3511.04(B) and 3509.01(B) (46<sup>th</sup> day before primary election day); the close of voter registration, R.C. 3503.19(A) (30<sup>th</sup> day before primary election day); and the filings of nominating petitions of independent candidates for office for which a primary election may be held, R.C. 3513.257 (the day before primary election day).

Furthermore, nothing in R.C. 3513.05 and 3513.041 authorizes the Secretary of State to change or alter these deadlines. This, too, is consistent with the statutory framework for virtually all primary election-related deadlines.

Indeed, this understanding of R.C. 3513.05 and 3513.041 is what Secretary LaRose represented to the three-judge federal panel in *Gonidakis*. In a sworn affidavit, Secretary LaRose’s Director of Elections told the federal court that “[i]f this Court orders an August 2, 2022 Primary Election, the 90-day statutory deadlines that are tied to the date of a primary election will reset by operation of law.” Affidavit of Amanda Grandjean attached to Ohio Secretary of State LaRose’s Response in Opposition to Plaintiffs’ Second Amended Motion for a Preliminary Injunction, *Gonidakis v. LaRose*, S.D. Ohio No. 2:22-cv-773 (Apr. 6, 2022), ¶ 6 (REL\_EVID\_130). And in a subsequent brief arguing for an August 2, 2022 primary election date, Secretary LaRose explained that most election deadlines are “defined as being ‘x’ amount of days prior to ‘the primary election’ rather than occurring on a certain date,” including the filing deadline for declarations of candidacy for a party nomination, which Secretary LaRose explained are “tethered to the date of the primary election.” Ohio Secretary of State LaRose’s Response Brief to Plaintiffs’ Second Amended Motion

for a Preliminary Injunction, *Gonidakis v. LaRose*, S.D.Ohio No. 2:22-cv-773 (Apr. 11, 2022) at \*3, 7 (REL\_EVID\_143, REL\_EVID\_147).

**2. The primary election will be held on August 2, 2022; therefore, candidate filing deadlines for this election are calculated based on August 2, 2022.**

Here, the primary election date for candidates for the General Assembly and state central committees is August 2, 2022. This cannot be disputed as the *Gonidakis* Court ordered Ohio's state primaries to be held August 2, 2022, *Gonidakis v. LaRose*, S.D.Ohio No. 2:22-cv-0773, 2022 U.S. Dist. LEXIS 95341 (May 27, 2022), and Secretary LaRose, in turn, directed the boards of elections "to conduct a primary election for the offices of State Representative, State Senator, and Member of the State Central Committee on August 2, 2022." Directive 2022-34 at 1 (REL\_EVID\_002). Moreover, this is not a situation like Ohio's primary elections in 2020 where the early voting for a primary on one date had commenced only to have the primary election suspended to a later date; the primary election date is clearly August 2, 2022.

Given that the "day of the primary election" is August 2, 2022, the candidate filing deadlines for the primary are calculate based on August 2, 2022—not May 3, 2022. The 90<sup>th</sup> day before August 2, 2022 primary election was Wednesday, May 4, 2022, and the 72<sup>nd</sup> day before the primary was Sunday, May 22, 2022. Thus, in accordance with the plain text of R.C. 3513.05 and 3513.041, the deadline to file a declaration of candidacy and petition for party nomination for the General Assembly or member of the state central committee of a political party was 4 p.m. on May 4, 2022, and the deadline to file a declaration of intent to be a write-in candidate for party nomination for the General Assembly was 4 p.m. on Monday, May 23, 2022.<sup>6</sup>

---

<sup>6</sup> Statutory deadlines that fall on a weekend or holiday extend until the next business day. R.C. 1.14.

**3. Secretary LaRose misdirected the boards of elections to impose a candidate filing deadline based on May 3, 2022 rather than August 2, 2022.**

Despite the clear language of R.C. 3513.05 and 3513.041—and despite what Secretary LaRose told the federal court—Secretary LaRose directed the boards of elections that the deadline for filing declarations of candidacy and petitions for the August 2, 2022 primary was February 2, 2022 and that the filing deadline for write-in candidates was February 22, 2022. Directive 2022-34 at 2 (REL\_EVID\_003). To be sure, these *would have* been the appropriate deadlines if the primary election date had remained May 3, 2022. But because the statutory filing deadlines are calculated based on the “day of the primary election,” rather than based on a certain date in May, the filing deadlines must be calculated based on August 2, 2022.

Secretary LaRose attempted to explain the February filing deadlines in Directive 2022-34 by stating that “[t]he federal court order did not alter the partisan candidate filing deadlines for the primary election.” *Id.* (REL\_EVID\_003). But this only further demonstrates that the applicable filing deadlines are still those set forth in R.C. 3513.05 (90 days before the primary election) and 3513.041 (72 days before the primary election). The federal court did not change how the deadlines are to be calculated, nor did the federal court (or any other body) authorize Secretary LaRose to limit the candidates for the August 2, 2022 primary election to those that filed for the May 3, 2022 primary election date.

Secretary LaRose’s attempt to pin the deadlines on the *Gonidakis* decision is further belied by the other deadlines set forth in Directive 2022-34, which *are* based on the August 2, 2022 date. For instance, with the primary election having been set to August 2, 2022, Secretary LaRose directed that if any local option petition was filed by the statutory deadline of 90 days before the day of the primary election—which he explains is May 4, 2022, not February 2, 2022—“the local option question(s) may be placed on the August 2, 2022 primary election ballot.” Directive 2022-



34 at 1 (REL\_EVID\_002). Secretary LaRose also directed boards that independent candidates for the General Assembly must file their nominating petitions by 4 p.m. “on the day before the day of the primary election immediately preceding the general election at which the candidacy is to be voted on,” which he explains is August 1, 2022, not May 2, 2022. *Id.* at 4. The federal court did not alter either of these statutory deadlines, and Secretary LaRose correctly used the August 2, 2022 primary election date in his calculation of the applicable filing deadlines. But as to General Assembly and state central committee candidates, the deadlines for which were also not altered by the federal court, Secretary LaRose incorrectly used the May 3, 2022 election date in his calculation.

Further highlighting Secretary LaRose’s inconsistent approach to statutory deadlines is his treatment of the deadline to file protests against candidates. By law, the deadline to file a protest against a candidate who filed a declaration of candidacy and petition for a primary election is the 74<sup>th</sup> day before the election. R.C. 3513.05. If the protest deadline was tied to the May 3, 2022 election date, as Secretary LaRose has said is the case for candidate filing deadlines, then the deadline would have expired months ago. However, Directive 2022-34 instructs boards of elections that the deadlines for filing protests are June 6, 2022 and June 9, 2022, depending on when the candidacies were certified. Directive 2022-34 at 3 (REL\_EVID\_004). And although these deadlines are after the statutory deadlines for filing protests—June 6, 2022 is the 57<sup>th</sup> day before August 2, 2022—it is apparent that Secretary LaRose believes the protest deadline is tied to August 2, 2022 rather than to May 3, 2022.

Accordingly, Secretary LaRose’s instruction to the boards of elections in Directive 2022-34 to reject the General Assembly or state central committee candidacies of anyone who filed a

declaration of candidacy or declaration of intent to be a write-in candidate after February 2 and February 22 is in clear disregard of applicable law.

**B. Alternatively, if Secretary LaRose had any discretion to select the candidate filing deadlines for the August 2, 2022 primary election, he abused his discretion.**

In the alternative, if Secretary LaRose had any discretion to decide the candidate filing deadlines for the August 2, 2022 primary election—discretion that Secretary LaRose, to date, has not claimed to possess and that Relators firmly believe he lacks—then he abused his discretion by selecting February 2 and February 22. An abuse of discretion “implies an unreasonable, arbitrary, or unconscionable attitude.” *State ex rel. Duncan v. Portage Cty. Bd. of Elections*, 115 Ohio St.3d 405, 2007-Ohio-5346, 875 N.E.2d 578, ¶ 10. Directive 2022-34 easily meets this standard.

First, there is no valid justification—administrative or otherwise—for setting filing deadlines that are more than twice as many days before the day of the primary election than the filing deadlines that the General Assembly already determined are sufficient to prepare for an election. Again, candidates must ordinarily file their declarations of candidacy and petitions 90 days before the primary election, and write-in candidates must file their declarations of intent to be a write-in candidate 72 days before the primary election; the General Assembly even recently reduced this deadline to the 60<sup>th</sup> day before the primary election for congressional candidates in 2022. *See* 2022 Sub.H.B. No. 93, Section 4. But with Directive 2022-34, Secretary LaRose established the deadline to file declarations of candidacy and petitions at *181 days* before the primary election and the deadline for declarations of intent to be a write-in candidate at *161 days* before the primary election.

Second, Directive 2022-34 cements filing deadlines that expired before the districts even existed. The result is that several strong Democratic and several Democratic-leaning toss-up districts lack any Democratic candidates due to the shenanigans of the Republican majority of the

Redistricting Commission in how they moved district lines from the Second Plan to the Third Plan. The result was to leave only Republican candidates who would be unopposed at the general election and win by default in districts that easily could have been won by a Democratic candidate. This only compounds the harm from having an unconstitutionally gerrymandered General Assembly district plan imposed upon Ohio voters.

Third, the act of cementing filing deadlines that expired before the districts even existed amounts to the retroactive application of a ballot access requirement. Candidates who filed by February 2, 2022 did so under the Second Plan and subsequently had their districts voided and replaced with new districts. These new districts had significant differences in district lines that affected candidate residency, district demographics and geography, communities of interest, and political party performance indexes. Directive 2022-34 locks these candidates into running in the new districts. At the same time, others, like Relators, did not file for any district on February 2, 2022 because, at the time, they had been drawn into districts with incumbent Democratic legislators whom they respected and did not want to challenge. Directive 2022-34 locks these individuals *out* of running in the new districts. This is fundamentally unfair, and it violates Ohio's public policy favoring ballot access for candidates so that Ohio voters can choose among qualified candidates and have a fair opportunity to elect the person who will represent them in the Ohio legislature.

Finally, any claim Secretary LaRose makes that he set the deadlines in good faith is rebutted by the internally inconsistent filing deadlines set forth in Directive 2022-34. In the same document and for the same primary election date, Secretary LaRose claims that the 90<sup>th</sup> day "before the day of the primary election" for General Assembly candidates was February 2, 2022, but that the 90<sup>th</sup> day "before the day of the primary election" for local ballot measures and local

options was May 4, 2022. At this point, Secretary LaRose, who as a member of the Ohio Redistricting Commission voted *twice* to approve the unconstitutional Third Plan while showing disdain for the Court, *see, e.g., League IV* at ¶ 85-87 (Donnelly, J. concurring), has abandoned any pretense of acting in good faith. Instead, he is openly engaging in “unreasonable, arbitrary, or unconscionable” behavior.

For all these reasons, and to the extent that the Court determines Secretary LaRose had some level of discretion in establishing the filing deadlines for the August 2, 2022 primary election, Secretary LaRose abused his discretion by selecting February 2 and February 22 as the filing deadlines for General Assembly and State Central Committee candidates.

**C. Relators lack an adequate remedy in the ordinary course of law due to the proximity of the August 2, 2022 primary election.**

Relators lack an adequate remedy in the ordinary course of the law due to the proximity of the August 2, 2022 election. *See, e.g., State ex rel. Grumbles v. Delaware Cty. Bd. of Elections*, 165 Ohio St.3d 552, 2021-Ohio-3132, 180 N.E.3d 1099, ¶ 8 (“Because of the proximity of the November 2 election, [Relator] lacks an adequate remedy in the ordinary course of the law.”)

For all these reasons, Relators have established the required elements for a writ of mandamus to issue compelling Secretary LaRose to correct Directive 2022-34 and direct the county boards of elections to (1) accept any declarations of candidacy that were filed before 4 p.m. on May 4, 2022 that are otherwise valid, and (2) accept any declarations of intent to be a write-in candidate that were filed before 4 p.m. on May 23, 2022 that are otherwise valid.

**II. Relators are entitled to writs of mandamus ordering their respective boards of elections to certify their candidacies for the August 2, 2022 primary election.**

If the Court agrees that the applicable filing deadlines for the August 2, 2022 primary election are May 4, 2022 (declarations of candidacy and petitions) and May 22, 2022 (declarations

of intent to be write-in candidates) rather than the deadlines set forth in Directive 2022-34, then the Boards of Elections Respondents must certify Relators' candidacies if the boards determine that the Relators' filings are otherwise valid. Relators each met their respective filing deadlines and applicable signature and filing fee requirements: Relators DeMora, Somani, Tupes, and Martin each filed their declarations of candidacy and petitions with their respective board of elections before 4 p.m. on May 4, 2022, and Relators Jackson and Thien each filed their declarations of intent to be a write-in candidate with their respective board of elections before 4 p.m. on May 22, 2022. Accordingly, Relators are entitled to have the Boards of Elections Respondents certify their candidacies for the August 2, 2022 primary election if the boards determine that Relators' filings are otherwise valid.

**III. As an alternative remedy, the Court should set new filing deadlines for the August 2, 2022 primary election.**

As an alternative remedy, Relators respectfully submit that the fairest manner to deal with the present situation in which an unconstitutional map was imposed by the federal court on May 28, 2022, authorizing districts created long after the initial petition and write-in filing deadlines passed, is to set a new deadline to allow any qualified person to file. Relators propose a filing deadline for both petitions and statements of write-in candidacy be permitted to be file by 4 pm of the tenth day following the Court's decision. *See* Compl. Prayer for Relief at ¶ H; *see also id.* at ¶ K (requesting "such other relief as the Court deems appropriate"). Such a remedy could be issued as a writ of mandamus, as R.C. 3513.05 and 3513.041 contemplate elections officials providing candidates with a meaningful opportunity (and legal right) to file to run for office. It could also be issued pursuant to this Court's authority in Article IV, Section 2(B)(1)(f), which "authorize[s] judgments in this court that are necessary to achieve closure and complete relief in actions pending

before the court.” *League I* at ¶ 136 quoting *State v. Steffen*, 70 Ohio St.3d 399, 407, 639 N.E.2d 67 (1994).

This would be a full remedy that would assure voters the widest choice of candidates, albeit under an unconstitutionally gerrymandered plan. Not only was the order from the federal court long after when candidates were required to file, but the original adoption of the Third Plan was also after the filing deadline for what, at that time, was the May 3, 2022 primary. In other words, the State has engaged in bait and switch—after candidates filed under the Second Plan, the State changed the lines, raising a question regarding whether it is legally possible to file for a district that does not exist.

### **CONCLUSION**

In sum, Directive 2022-34’s filing deadlines are anti-voter and anti-candidate. If the filing deadlines are allowed to stand, it will deprive Democratic voters in the 25<sup>th</sup> Senate District, 11<sup>th</sup> House District, and 39<sup>th</sup> House District of a Democratic candidate for the 2022 election cycle; this will only compound the harm caused by the federal court’s imposition of a redistricting plan that this Court has *twice* held unduly favors the Republican Party and disfavors the Democratic Party. But because Directive 2022-34’s filing deadlines are in clear disregard of the statutory filing deadlines set forth in R.C. 3513.05 and 3513.041, the Court can prevent this harm by issuing the requested writs of mandamus or the alternative remedy of setting new candidate filing deadlines for the August 2, 2022 primary election.

Respectfully submitted,

Donald J. McTigue

Donald J. McTigue\* (0022849)

*\*Counsel of Record*

Derek S. Clinger (0092075)

McTIGUE COLOMBO & CLINGER, LLC

545 East Town Street

Columbus, Ohio 43215  
Phone: (614) 263-7000  
dmctigue@electionlawgroup.com  
dclinger@electionlawgroup.com

*Counsel for Relators*

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Merit Brief was sent via email this 6<sup>th</sup> day of June, 2022 to the following:

Larry J. Obhof, Jr., lobhof@shumaker.com  
Mark Wagoner, mwagoner@shumaker.com  
Douglas Haynam, dhaynam@shumaker.com  
Alia A. Kadrik, akadri@shumaker.com  
*Counsel for Respondent Ohio Secretary of State LaRose*

Amy L. Hiers, ahiers@franklincountyohio.gov  
Andrea C. Hofer, ahofer@franklincountyohio.gov  
*Counsel for Respondent Franklin County Board of Elections*

Ward C. Barrentine, barrentinw@mcoho.org  
Nathaniel S. Peterson, petersonn@mcoho.org  
*Counsel for Respondent Montgomery County Board of Elections*

William C. Hayes, bhayes@lcounty.com  
Carolyn J. Carnes, ccarnes@lcounty.com  
Mark W. Altier, maltier@lcounty.com  
*Counsel for Respondent Licking County Board of Elections*

/s/ Derek S. Clinger  
Derek S. Clinger (0092075)

**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 Under  
S.Ct.Prac.R. 12.08**

**OHIO SECRETARY OF STATE FRANK  
LAROSE, *et al.***

**Respondents.**

---

**APPENDIX OF CITED LEGAL AUTHORITY**

---



### **R.C. 3513.041**

A write-in space shall be provided on the ballot for every office, except in an election for which the board of elections has received no valid declarations of intent to be a write-in candidate under this section. Write-in votes shall not be counted for any candidate who has not filed a declaration of intent to be a write-in candidate pursuant to this section. A qualified person who has filed a declaration of intent may receive write-in votes at either a primary or general election. Any candidate shall file a declaration of intent to be a write-in candidate before four p.m. of the seventy-second day preceding the election at which such candidacy is to be considered. If the election is to be determined by electors of a county or a district or subdivision within the county, such declaration shall be filed with the board of elections of that county. If the election is to be determined by electors of a subdivision located in more than one county, such declaration shall be filed with the board of elections of the county in which the major portion of the population of such subdivision is located. If the election is to be determined by electors of a district comprised of more than one county but less than all of the counties of the state, such declaration shall be filed with the board of elections of the most populous county in such district. Any candidate for an office to be voted upon by electors throughout the entire state shall file a declaration of intent to be a write-in candidate with the secretary of state before four p.m. of the seventy-second day preceding the election at which such candidacy is to be considered. In addition, candidates for president and vice-president of the United States shall also file with the secretary of state by that seventy-second day a slate of presidential electors sufficient in number to satisfy the requirements of the United States constitution.

A board of elections shall not accept for filing the declaration of intent to be a write-in candidate 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 any federal, state, or county office, if the declaration of intent to be a write-in candidate is for a state or county office, or for any municipal or township office, 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 intent to be a write-in candidate 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.

No person shall file a declaration of intent to be a write-in candidate for the office of governor unless the declaration also shows the intent of another person to be a write-in candidate for the office of lieutenant governor. No person shall file a declaration of intent to be a write-in candidate for the office of lieutenant governor unless the declaration also shows the intent of another person to be a write-in candidate for the office of governor. No person shall file a declaration of intent to be a write-in candidate for the office of governor or lieutenant governor if the person has previously filed a declaration of intent to be a write-in candidate to the office of governor or lieutenant governor at the same primary or general election. A write-in vote for the two candidates who file such a declaration shall be counted as a vote for them as joint candidates for the offices of governor and lieutenant governor.

The secretary of state shall not accept for filing the declaration of intent to be a write-in candidate of a person for the office of governor unless the declaration also shows the intent of another person to be a write-in candidate for the office of lieutenant governor, shall not accept for filing the declaration of intent to be a write-in candidate of a person for the office of lieutenant governor unless the declaration also shows the intent of another person to be a write-in candidate for the office of governor, and shall not accept for filing the declaration of intent to be a write-in candidate of a person to the office of governor or lieutenant governor 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 any other state office or any federal or county office.

Protests against the candidacy of any person filing a declaration of intent to be a write-in candidate may be filed by any qualified elector who is eligible to vote in the election at which the candidacy is to be considered. The protest shall be in writing and shall be filed not later than four p.m. of the sixty-seventh day before the day of the election. The protest shall be filed with the board of elections with which the declaration of intent to be a write-in candidate was filed. Upon the filing of the protest, the board with which it is filed shall promptly fix the time for hearing it and shall proceed in regard to the hearing in the same manner as for hearings set for protests filed under section 3513.05 of the Revised Code. At the time fixed, the board shall hear the protest and determine the validity or invalidity of the declaration of intent to be a write-in candidate. If the board finds that the candidate is not an elector of the state, district, county, or political subdivision in which the candidate seeks election to office or has not fully complied with the requirements of Title XXXV of the Revised Code in regard to the candidate's candidacy, the candidate's declaration of intent to be a write-in candidate shall be determined to be invalid and shall be rejected; otherwise, it shall be determined to be valid. The determination of the board is final.

The secretary of state shall prescribe the form of the declaration of intent to be a write-in candidate.

### **R.C. 3513.05**

Each person desiring to become a candidate for a party nomination at a primary election or for election to an office or position to be voted for at a primary election, except persons desiring to become joint candidates for the offices of governor and lieutenant governor and except as otherwise provided in section 3513.051 of the Revised Code, shall, not later than four p.m. of the ninetieth day before the day of the primary election, file a declaration of candidacy and petition and pay the fees required under divisions (A) and (B) of section 3513.10 of the Revised Code. The declaration of candidacy and all separate petition papers shall be filed at the same time as one instrument. When the offices are to be voted for at a primary election, persons desiring to become joint candidates for the offices of governor and lieutenant governor shall, not later than four p.m. of the ninetieth day before the day of the primary election, comply with section 3513.04 of the Revised Code. The prospective joint candidates' declaration of candidacy and all separate petition papers of candidacies shall be filed at the same time as one instrument. The secretary of state or a board of elections shall not accept for filing a declaration of candidacy and petition of a person seeking to become a candidate if that person, 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 federal, state, or county office, if the declaration of candidacy is for a state or county office, or for any municipal or township office, if the declaration of candidacy is for a municipal or township office.

If the declaration of candidacy declares a candidacy which is to be submitted to electors throughout the entire state, the petition, including a petition for joint candidates for the offices of governor and lieutenant governor, shall be signed by at least one thousand qualified electors who are members of the same political party as the candidate or joint candidates, and the declaration of candidacy and petition shall be filed with the secretary of state; provided that the secretary of state shall not accept or file any such petition appearing on its face to contain signatures of more than three thousand electors.

Except as otherwise provided in this paragraph, if the declaration of candidacy is of one that is to be submitted only to electors within a district, political subdivision, or portion thereof, the petition shall be signed by not less than fifty qualified electors who are members of the same political party as the political party of which the candidate is a member. If the declaration of candidacy is for party nomination as a candidate for member of the legislative authority of a municipal corporation elected by ward, the petition shall be signed by not less than twenty-five qualified electors who are members of the political party of which the candidate is a member.

No such petition, except the petition for a candidacy that is to be submitted to electors throughout the entire state, shall be accepted for filing if it appears to contain on its face signatures of more than three times the minimum number of signatures. When a petition of a candidate has been accepted for filing by a board of elections, the petition shall not be deemed invalid if, upon verification of signatures contained in the petition, the board of elections finds the number of signatures accepted exceeds three times the minimum number of signatures required. A board of elections may discontinue verifying signatures on petitions when the number of verified signatures equals the minimum required number of qualified signatures.

If the declaration of candidacy declares a candidacy for party nomination or for election as a candidate of a minor party, the minimum number of signatures on such petition is one-half the minimum number provided in this section, except that, when the candidacy is one for election as a member of the state central committee or the county central committee of a political party, the minimum number shall be the same for a minor party as for a major party.

If a declaration of candidacy is one for election as a member of the state central committee or the county central committee of a political party, the petition shall be signed by five qualified electors of the district, county, ward, township, or precinct within which electors may vote for such candidate. The electors signing such petition shall be members of the same political party as the political party of which the candidate is a member.

For purposes of signing or circulating a petition of candidacy for party nomination or election, an elector is considered to be a member of a political party if the elector voted in that party's primary election within the preceding two calendar years, or if the elector did not vote in any other party's primary election within the preceding two calendar years.

If the declaration of candidacy is of one that is to be submitted only to electors within a county, or within a district or subdivision or part thereof smaller than a county, the petition shall be filed with the board of elections of the county. If the declaration of candidacy is of one that is to be submitted only to electors of a district or subdivision or part thereof that is situated in more than one county, the petition shall be filed with the board of elections of the county within which the major portion of the population thereof, as ascertained by the next preceding federal census, is located.

A petition shall consist of separate petition papers, each of which shall contain signatures of electors of only one county. Petitions or separate petition papers containing signatures of electors of more than one county shall not thereby be declared invalid. In case petitions or separate petition papers containing signatures of electors of more than one county are filed, the board shall determine the county from which the majority of signatures came, and only signatures from such county shall be counted. Signatures from any other county shall be invalid.

Each separate petition paper shall be circulated by one person only, who shall be the candidate or a joint candidate or a member of the same political party as the candidate or joint candidates, and each separate petition paper shall be governed by the rules set forth in section 3501.38 of the Revised Code.

The secretary of state shall promptly transmit to each board such separate petition papers of each petition accompanying a declaration of candidacy filed with the secretary of state as purport to contain signatures of electors of the county of such board. The board of the most populous county of a district shall promptly transmit to each board within such district such separate petition papers of each petition accompanying a declaration of candidacy filed with it as purport to contain signatures of electors of the county of each such board. The board of a county within which the major portion of the population of a subdivision, situated in more than one county, is located, shall promptly transmit to the board of each other county within which a portion of such

subdivision is located such separate petition papers of each petition accompanying a declaration of candidacy filed with it as purport to contain signatures of electors of the portion of such subdivision in the county of each such board.

All petition papers so transmitted to a board and all petitions accompanying declarations of candidacy filed with a board shall, under proper regulations, be open to public inspection until four p.m. of the eightieth day before the day of the next primary election. Each board shall, not later than the seventy-eighth day before the day of that primary election, examine and determine the validity or invalidity of the signatures on the petition papers so transmitted to or filed with it and shall return to the secretary of state all petition papers transmitted to it by the secretary of state, together with its certification of its determination as to the validity or invalidity of signatures thereon, and shall return to each other board all petition papers transmitted to it by such board, together with its certification of its determination as to the validity or invalidity of the signatures thereon. All other matters affecting the validity or invalidity of such petition papers shall be determined by the secretary of state or the board with whom such petition papers were filed.

Protests against the candidacy of any person filing a declaration of candidacy for party nomination or for election to an office or position, as provided in this section, may be filed by any qualified elector who is a member of the same political party as the candidate and who is eligible to vote at the primary election for the candidate whose declaration of candidacy the elector objects to, or by the controlling committee of that political party. The protest shall be in writing, and shall be filed not later than four p.m. of the seventy-fourth day before the day of the primary election. The protest shall be filed with the election officials with whom the declaration of candidacy and petition was filed. Upon the filing of the protest, the election officials with whom it is filed shall promptly fix the time for hearing it, and shall forthwith mail notice of the filing of the protest and the time fixed for hearing to the person whose candidacy is so protested. They shall also forthwith mail notice of the time fixed for such hearing to the person who filed the protest. At the time fixed, such election officials shall hear the protest and determine the validity or invalidity of the declaration of candidacy and petition. If they find that such candidate is not an elector of the state, district, county, or political subdivision in which the candidate seeks a party nomination or election to an office or position, or has not fully complied with this chapter, the candidate's declaration of candidacy and petition shall be determined to be invalid and shall be rejected; otherwise, it shall be determined to be valid. That determination shall be final.

A protest against the candidacy of any persons filing a declaration of candidacy for joint party nomination to the offices of governor and lieutenant governor shall be filed, heard, and determined in the same manner as a protest against the candidacy of any person filing a declaration of candidacy singly.

The secretary of state shall, on the seventieth day before the day of a primary election, certify to each board in the state the forms of the official ballots to be used at the primary election, together with the names of the candidates to be printed on the ballots whose nomination or election is to be determined by electors throughout the entire state and who filed valid declarations of candidacy and petitions.

The board of the most populous county in a district comprised of more than one county but less than all of the counties of the state shall, on the seventieth day before the day of a primary election, certify to the board of each county in the district the names of the candidates to be printed on the official ballots to be used at the primary election, whose nomination or election is to be determined only by electors within the district and who filed valid declarations of candidacy and petitions.

The board of a county within which the major portion of the population of a subdivision smaller than the county and situated in more than one county is located shall, on the seventieth day before the day of a primary election, certify to the board of each county in which a portion of that subdivision is located the names of the candidates to be printed on the official ballots to be used at the primary election, whose nomination or election is to be determined only by electors within that subdivision and who filed valid declarations of candidacy and petitions.