

In the Supreme Court of Ohio

**State ex rel. OHIO DEMOCRATIC
PARTY, et al.,**

Relators,

v.

**OHIO SECRETARY OF STATE FRANK
LAROSE,**

Respondent.

:
:
: CASE NO. 2024-1361
:
: For Writ of Mandamus
: (Expedited Election Case Under
: S.Ct.Prac.R. 12.08)
:
:

BRIEF OF AMICI CURIAE LEAGUE OF WOMEN VOTERS OF OHIO AND OHIO STATE CONFERENCE OF THE NAACP IN SUPPORT OF RELATORS

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INTRODUCTION

In the weeks leading up to the start of absentee voting in Ohio, Secretary of State Frank LaRose issued Directive 2024-21 (the “Directive”): a confusing, burdensome, and unnecessary set of changes that are inconsistent with Ohio’s own election laws. The Directive provides that drop boxes may be used only by voters who are returning their *own* ballot, and that no individual returning an absentee ballot for a family member or disabled voter may use a drop box.

Secretary LaRose issued the Directive on the heels of a recent federal court decision invalidating the portion of Ohio’s criminal laws that restricted who may help voters with disabilities return their ballots. *See League of Women Voters of Ohio v. LaRose*, No. 1:23-cv-02414, 2024 WL 3495332, at *2 (N.D. Ohio July 22, 2024). The court’s decision was narrow and targeted, prohibiting election officials from enforcing those restrictions “against any disabled voter or against any individual who assists any disabled voter with the return of the disabled voter’s absentee ballot to the extent such enforcement contradicts Section 208 of the Voting Rights Act.” *Id.* at *22. Neither the Secretary nor any other defendant appealed this decision. In seeking to justify this Directive, Secretary LaRose attempts to negate his recent litigation loss. His rationale for doing so – to prevent ballot harvesting – in no way justifies or requires his sweeping, ill-conceived objective.

Due to the suddenness and impracticality of the Directive, boards of election are now scrambling to try to implement substantial changes to the way in which absentee ballots are collected. Worse, as a result of the Directive, voters will soon show up to return an absent voter’s ballot only to discover that they are no longer permitted to use a drop box. Some may not have further recourse—either because they arrive at a time when the board of elections is closed and are not able to return during business hours, the difficulty or time required to fill out an attestation inside is too great a burden, or the confusing language of the posted sign and attestation, combined

with the threat of criminal prosecution, is intimidating and prohibitive. Elections Officials throughout the state have condemned the Directive, raising a chorus of questions and concerns as to the practicality of its administration and legitimate fears that it will end up disenfranchising voters.

Amici Curiae League of Women Voters of Ohio and the Ohio State Conference of the NAACP urge the Court to reject Secretary LaRose’s attempt to alter the status quo of election laws on the eve of absentee voting, as the Directive will undoubtedly cause confusion to voters and elections officials and risks the possibility that valid absentee ballots will not be counted.

BACKGROUND

In April 2023, the Ohio Legislature revised Ohio’s Election Code to, among other things, make it a felony to return another voter’s absentee ballot unless expressly permitted by statute. R.C. 3599.21(A)(9). The law provided that the only persons who could “knowingly . . . [r]eturn the absent voter’s ballot of another to the office of a board of elections” were “an employee or contractor of the United States postal service or a private carrier” or the “spouse of the elector, the father, mother, father-in-law, mother-in-law, grandfather, grandmother, brother, or sister of the whole or half blood, or the son, daughter, adopting parent, adopted child, stepparent, stepchild, uncle, aunt, nephew, or niece of the elector.” R.C. 3599.21(A)(9); R.C. 3509.05(C)(1). For anyone else, returning the absent voter’s ballot of another was a fourth-degree felony. R.C. 3599.21(C).

Because these restrictions on voter assistance made voting burdensome for Ohio voters with disabilities, Amicus Curiae League of Women Voters of Ohio and an individual Ohio voter with a disability filed suit against Secretary LaRose in the United States District Court for the Northern District of Ohio, arguing, among other things, that longstanding federal law prevents states from imposing precisely these sorts of burdens on voters with disabilities. On July 22, 2024, the federal court agreed, finding “Section 208 of the Voting Rights Act, 52 U.S.C. § 10508, allows

a disabled voter to select a person of their choice to assist them with voting, including the return of a disabled voter’s absentee ballot.” *League of Women Voters of Ohio*, 2024 WL 3495332, at *22. The court ordered that, to the extent Ohio law “prohibit[s] such assistance by limiting who a disabled voter may select to assist them in this manner,” it is “PREEMPTED by Section 208 of the Voting Rights Act.” *Id.* The remedy was specific and narrow: the court enjoined Secretary LaRose, the Attorney General, Cuyahoga County Prosecutor’s Office, and their agents, employees, and successors in office from enforcing those assistance restrictions “against any disabled voter or against any individual who assists any disabled voter with the return of the disabled voter’s absentee ballot to the extent such enforcement contradicts Section 208 of the Voting Rights Act.” *Id.*

Just over a month later, Secretary LaRose submitted a letter to President Huffman and Speaker Stephens of the Ohio Legislature invoking the recent court decision. Letter from Sec’y LaRose to Hons. Huffman & Stephens (Aug. 29, 2024), <https://perma.cc/4XKM-M4BN>. Despite acknowledging that “the decision is limited in scope” three times in the first two pages of the letter, Secretary LaRose asserted that the decision had “effectively create[d] an unintended loophole in Ohio’s ballot harvesting law”: that, “[w]ithout the appropriate safeguards, a person could return any number of ballots to an unattended drop box simply by claiming (whether truthfully or not) the permissive authority granted under Section 208.” *Id.*

Two days later after submitting this letter to the Legislature, Secretary LaRose issued Directive 2024-21 (the “Directive”)—the subject of the lawsuit before this Court. Ohio Sec’y of State, Directive 2024-21 (Aug. 31, 2024), <https://www.ohiosos.gov/globalassets/elections/directives/2024/dir2024-21.pdf>. This new Directive decreed that “the only individual who may use a drop box to return the ballot is the

voter,” and directed that “[a]ll individuals who are delivering ballots for a family member or disabled voter may either mail the ballot to the county board of elections or return the ballot to a county board of elections official at the county board of elections office and complete an attestation at the board of elections.” *Id.* The attestation form contains a Family Member Absentee Ballot Delivery Attestation (the “Family-Member Attestation”) and a Disabled Voter Absentee Ballot Delivery Attestation (the “Disabled-Voter Attestation”). *See* Ohio Sec’y of State, Form No. 12-P (Aug. 2024), <https://www.ohiosos.gov/globalassets/elections/forms/12-p.pdf>.

The Directive immediately drew strong criticism and frustration from election officials throughout the state. On September 9, 2024, at a Cuyahoga Board of Elections meeting, the Board discussed the multiple recent Secretary of State directives, including Directive 2024-21. The Board raised numerous legitimate concerns regarding the Directive’s impracticability in close proximity to the election. At a meeting on September 20, 2024, members of the Ohio Association of Election Officials (“OAEO”) Legislative Committee gathered to express their concerns with the Directive and the confusion and potential confrontation it will cause to voters and election officials. Later that day, Secretary LaRose issued a clarifying “Advisory”, suggesting boards of election develop a “traffic mitigation plan” to streamline the drive-through ballot drop-off system. Ohio Sec’y of State, Advisory 2024-03 (Sept. 20, 2024), https://www.ohiosos.gov/globalassets/elections/advisories/2024/adv2024-03_employingbipartisaneelectionofficials.pdf. This advisory is purely discretionary, however, and does not provide practical guidance to the public or boards of election as to how to implement the attestation requirement.

STATEMENT OF INTEREST OF AMICI CURIAE

Amicus Curiae League of Women Voters of Ohio (“LWVO”) is the Ohio chapter of the League of Women Voters of the United States—a nonpartisan, statewide non-profit founded in May

1920, shortly before the ratification of the Nineteenth Amendment in August 1920 granting women's suffrage. LWVO currently has 3,932 members across the state, the vast majority of whom are registered Ohio voters, who live and vote in most of Ohio's Senate and House districts. LWVO's members make up 37 local Leagues and at-large units that are dedicated to empowering citizens and ensuring an effective democracy.

LWVO's mission is to help Ohioans exercise the right to vote, improve American democracy, and engage Ohioans in the decisions that most impact their lives. As part of its mission, LWVO aims to shape public policy, to educate the public about policy issues and the functioning of our democracy, and to protect and expand Ohioans' access to elections and their government. As such, LWVO and its members invest substantial volunteer time in voter education, civic engagement, and voter registration efforts.

LWVO is committed to protecting the voting rights of all Ohioans. LWVO has filed state and federal cases and appeared as amicus curiae in seeking to hold Ohio's elected officials accountable to the Ohio Constitution in planning and conducting elections. *See, e.g., Ohio A. Philip Randolph Institute v. Householder*, 373 F. Supp. 3d 978 (S.D. Ohio 2019), *LWVO v. Ohio Redistricting Comm.*, 2022-Ohio-789, *LWVO v. Ohio Redistricting Comm.*, 2022-Ohio-1235, *LWVO et al. v. Ohio Redistricting Comm.*, 2022-Ohio-1727, *State ex rel. Ohio Democratic Party v. LaRose*, 2020-Ohio-1253 (as amicus), *State ex rel. One Person One Vote v. LaRose*, 2023-Ohio-1992 (as amicus). LWVO was a plaintiff in *League of Women Voters of Ohio v. LaRose*, 2024 WL 3495332, and has an interest in ensuring the court's order is appropriately implemented and not used as an improper rationalization to alter Ohio's absentee voting laws. Directive 2024-21's hastily issued requirements to election procedures also impair LWVO's mission by making it more

difficult to engage voters through its education, registration, and outreach efforts, and impedes Ohio voters from making their voice heard through the democratic process.

Amicus Curiae Ohio State Conference of the NAACP (“NAACP”) is a non-partisan, nonprofit membership organization that was founded in 1931. Its mission is to eliminate racial discrimination through democratic processes and ensure the equal political, educational, social, and economic rights of all persons, in particular African Americans. A core part of the Ohio State Conference's mission is protecting the right to vote. The Ohio State Conference dedicates substantial resources to voter registration, voter education, and get out the vote (“GOTV”) efforts. The Ohio State Conference has thousands of members across Ohio. The Ohio State Conference has an interest in preventing the disenfranchisement of its members and other eligible voters. As such, the organization's mission and voter engagement efforts are being undermined by Secretary LaRose's Directive 2024-21. Directive 2024-21 will force the Ohio State Conference to divert its limited resources toward educating voters about the new Directive. In addition, Directive 2024-21 will make more difficult for Ohio State Conference’s elderly and disabled members to exercise their right to vote.

ARGUMENT

I. Directive 2024-21 is a Hastily Imposed, Unnecessary, and Underdeveloped Policy, Which Will Wreak Havoc on Election Administration

This Court should not countenance Secretary LaRose’s last-minute effort to alter the rules for voting in this upcoming election. When Secretary LaRose has introduced new directives that flout Ohio statutes and change the “established ‘rules of the road’” governing elections procedures, this Court has not hesitated to require the Secretary “to do his duty and follow the law.” *State ex rel. DeMora v. LaRose*, 2022-Ohio-2173, ¶44. Any contrary result would create perverse incentives for election officials to wreak havoc without consequences on the eve of an election.

What's more, Secretary LaRose issued the Directive despite facts or evidence suggesting that it was necessary or logically required as a result of the district court's ruling in *League of Women Voters*. As other courts have explained, "[t]he precedent it would set to allow an executive branch official to negate the duly-enacted election laws of a state as they pertain to a presidential election is toxic to the concepts of the rule of law and fair elections." *Carson v. Simon*, 978 F.3d 1051, 1061 (8th Cir. 2020).

A. The Directive is Not a Necessary Corollary Following the District Court Decision

Secretary LaRose has wrongly claimed that Directive 2024-21 (the "Directive") was needed to prevent "ballot harvesting," and that "[w]ithout the appropriate safeguards, a person could return any number of ballots to an unattended drop box simply by claiming (whether truthfully or not) the permissive authority granted under Section 208." Letter from Sec'y LaRose to Hons. Huffman & Stephens (Aug. 29, 2024), <https://perma.cc/4XKM-M4BN>. Secretary LaRose went so far as to assert that the League of Women Voters—an organization that has devoted more than 100 years to promoting American democracy and the right to vote—may have "intended" such an outcome. *Id.*

Secretary LaRose's offensive and baseless assertion about LWVO's intention is flawed several times over, including in its premise that the recent court decision created any new loophole. The decision did not forbid Ohio from prosecuting the unauthorized return of a ballot: the injunction extends only to "enforcement [that] contradicts Section 208 of the Voting Rights Act," which would not include the fraudulent return of ballots without a voter's consent. Secretary LaRose also cited no evidence to support the notion that, following this decision, individuals would suddenly begin lying about their relationships to voters in order to fraudulently return ballots. Indeed, to the extent that individuals were going to lie about their relationship to a voter in order to fraudulently return ballots, they did not need this decision to do so: they could instead have

fabricated a narrative that they were returning ballots on behalf of their spouse, parents, children, siblings, uncles, aunts, nieces, or nephews.

Secretary LaRose cited no evidence to suggest this scheme has ever happened in Ohio, before or since the recent decision. In fact, Aaron Ockerman, executive director of the Ohio Association of Election Officials (“OAEO”) reiterated his favorable view of drop boxes, noting they “have not seen any evidence that they are problematic.” Lynn Hulsey, *Local election officials: LaRose’s proposals to ban ballot drop boxes, require proof of citizenship would create new challenges*, Dayton Daily News (Sept. 23, 2024), <https://perma.cc/6YSG-4ACA>. Likewise, Jeff Rezabek, director of the Montgomery County Board of Elections, has remarked that he “has never seen any evidence of people inappropriately dropping off multiple ballots.” *Id.*

B. Last Minute Changes to the Election Process Impede the Fair and Efficient Administration of Elections

This new absentee ballot process was issued and then clarified a mere two and a half weeks before early voting is set to begin. The Directive includes substantive changes to the absentee ballot process, and leaves boards of election facing a growing number of unanswered questions as they are tasked with implementing its terms. Ohio election officials are expressing confusion, anger, and frustration with the new requirements outlined by the Directive and Advisory. Warren County Board of Elections Director Brian Sleeth expressed exasperation over the broad directive, with little guidance from Secretary LaRose on how to implement its terms. *Id.* Nicole Unzicker, director of the Butler County Board of Elections stated: “Any directive, any changes that are made this close to the presidential election would be difficult. Anything that would change at this point would cause more work on the board of elections for sure.” *Id.* Alisha Beeler, director of the Greene County Board of Elections, says the Directive will likely create longer lines inside the board as people wait to sign an attestation form and drop off someone else’s ballot. *Id.*

The Cuyahoga County Board of Elections gathered on September 9, 2024, to express frustration and concerns with the “big change[s]” in this Directive, “especially this close to the election,” Cuyahoga County Board of Elections, *Board Meeting 9/9/2024*, 6:14, YouTube (Sept. 9, 2024), <https://perma.cc/4F4E-YB85> [hereinafter “*Cuyahoga BOE Meeting*”], and noting “this is too big of an initiative that impacts us financially, clearly impacts the voters,” *id.* at 37:35. Auglaize County Board of Elections Deputy Director Luke Scott has likewise acknowledged that the change would generate a lot more work for his office. Brent Melton, *Board of Elections working hard during 2024 Presidential Election cycle*, *The Evening Leader* (Sept. 4, 2024), <https://perma.cc/KK8A-DJ66>.

Boards of elections have a responsibility to train staff on the proper procedure for individuals to complete the attestation form and ensure they are able to answer any questions posed. The Directive will also increase congestion and flow and disrupt the existing preparations boards have already undertaken “for voter lines and things like that[.]” *Cuyahoga BOE Meeting* at 7:00. Elections officials, who are already working at capacity as they prepare for a large voter turnout in a presidential election year, will now be required to engage in additional administrative work to train staff and process the attestation forms with little guidance on how to do so, or what to do with a ballot should a person fail to sign the attestation form. *Id.* at 13:20. Secretary LaRose’s “clarifying” Advisory offers only discretionary “best practices,” so that, across the state, each county will likely implement this process differently, and many counties will even have inconsistencies in their own protocols depending on the day, time, number of people working, and even the weather. As discussed in more detail below, it is also questionable whether boards of election will even have the time or capacity to implement any of these practices. Moreover, election

officials fear the Directive will lead to voter disenfranchisement because not all individuals will have completed the form. *Id.* at 15:15.

II. Directive 2024-21 Will Likely Disenfranchise Voters Who Are Unaware of or Cannot Comply with the Directive.

Given how recently the Directive was issued, many voters will not learn that the absentee voting process has changed. Even diligent voters who proactively seek information in advance of election day will have trouble finding up-to-date information. And voters who are aware of this new requirement may still struggle to comply with its terms.

A. Many Voters Will Be Unaware of the Directive in Time to Account for its Added Burdens

Given the proximity to the election, many voters will first learn about the Directive's new requirements when dropping off an absent voter's ballot. They will be caught off guard by this new process, which alters Ohio's election laws and is being implemented for the first time. *See* Brent Melton, *Board of Elections working hard during 2024 Presidential Election cycle*, *The Evening Leader* (Sept. 4, 2024), <https://perma.cc/KK8A-DJ66> (quoting Auglaize County Board of Elections Deputy Director Luke Scott saying "they're making it harder on voters and catching them off guard because a lot of people are used to these things").

Even for those individuals who proactively seek out information relating to the voting process, and who have turned to reputable organizations for guidance, the eleventh-hour nature of the Directive has already ensured that at least some voter-education materials will provide voters with incomplete information. LWVO publishes and widely promulgates voting materials to educate and inform voters about the election process, including polling place information and early and absentee voting rules. LWVO has already published and distributed voting materials, which are widely in circulation around the state. This includes 18,320 "Power the Vote" cards in English, 4,285 in Spanish, 1,285 in Arabic, 1,590 in Nepali, 1,490 in Somali, and 42,350 "Voting 1-2-3"

cards in English. LWVO began distributing these materials in January of this year, and both discuss the absentee ballot process. Because of the last-minute issuance of the Directive, insufficient time remains to retrieve obsolete materials from circulation, and to re-design, re-print, and re-circulate new materials. Even if new information were quickly disseminated, there is no way to retract the older published materials, resulting in the distribution of inconsistent information and further confusing voters.

B. Not All Individuals Will Be Able to Comply with the New Directive

Because drop boxes are open 24/7, *see* R.C. 3509.05(C)(3)(b), many people drop off their absentee ballot outside of normal business hours, either to avoid traffic, congestion, and/or long lines, or due to the dictates of their work schedules or other obligations. Indeed, being open 24/7 is a longstanding, essential, and distinctive feature of drop boxes. Nazek Hapasha, the Policy Affairs Manager of LWVO and a member of the Election Protection Coalition, recently became ill and has been managing long-term disability issues. Affidavit of Nazek Hapasha, ¶ 4. She is no longer able to drive long distances, stand in long lines, or be in busy, loud environments. *Id.* Because the nearest Board of Elections is a half-hour drive from her home, Nazek relies on her husband to deliver her ballot. *Id.* ¶¶ 4, 6. As a surgeon, Nazek's husband has a demanding schedule and works long hours, making it difficult for him to arrive at a Board of Elections during operating hours. *Id.* ¶ 6. If Nazek's husband and other individuals assisting a disabled voter or a family member pull up at a drop box location outside of the board's business hours, they will not be able to return the ballot of another. At that point, they will have to decide whether to forgo submitting the other person's ballot, risk criminal prosecution, or return another day when the board of election is open for business. Nazek is therefore deeply concerned that the Directive creates a substantial obstacle in exercising her fundamental right to vote. *Id.* ¶ 7.

In some cases, it may be too late by then to mail in an absentee ballot, or the voter has legitimate concerns about whether a mailed in ballot will actually be received in time and counted.¹ For example, Dolores Black, a disabled voter who suffered a stroke and now requires the use of a wheelchair, distrusts the U.S. mail given that her “local sorting facility sends mail to out of state for processing” and she “fear[s] something could happen to [her] ballot in transit.” Affidavit of Dolores Black, ¶ 4. Nazek similarly expressed distrust of the postal service to ensure her ballot is reliably counted given the many reports she has received regarding mailed ballots that never arrived or arrived too late to the Board of Elections be counted. Hapasha Aff. ¶ 5. For others, returning to their board of elections at another date will not be an option, due to their schedules, transportation issues, or the time and distance involved.

Even for those individuals who do arrive when the building is open, the new directive will turn an otherwise quick trip into a lengthy outing. They will have to find parking, oftentimes in only a small, congested parking lot, enter the building, possibly face long lines or other delays, and obtain and fill out an attestation form. *See Cuyahoga BOE Meeting* at 25:10 (Director Anthony Perlatti: “Nobody has the space or the time or the resources to have all these people park and go inside”). Upon obtaining the form, individuals may also have legitimate questions and concerns about the new attestation form, further increasing delay times.

For some voters, these delays are increasingly burdensome. For instance, Dolores Black relies on her roommate, an 82-year-old woman who also has mobility issues of her own, to return

¹ See Jessie Balmert, *More than 300 Butler County ballots delivered late won't count in Ohio primary*, Cincinnati Enquirer (May 12, 2020), <https://www.cincinnati.com/story/news/2020/05/12/more-than-300-butler-county-ballots-delivered-late-wont-count-ohio-primary/3119026001/> (reporting that 318 mail in ballots that were postmarked on or before the deadline were not counted by the Butler County Board of Elections because they were waylaid by the U.S. Postal Service for 14 days and arrived 4 days past the deadline to count votes).

her absentee ballot. Black Aff. ¶ 5. The Directive burdens the ability of voters like Dolores and those with limited mobility issues who depend on reliable and accessible voting methods. *Id.* ¶ 6.

C. Secretary LaRose’s Advisory Does Not Result in Any Clarification

In recognition of this problem, Secretary LaRose’s Advisory simplistically suggests that boards of elections might implement a “traffic mitigation plan” to receive absentee ballots outside of the board of elections office. *See* Advisory 2024-03 at 1–2. This late-breaking advisory is wholly discretionary and would only be possible if boards of elections were able to further stretch their limited capacity, staffing, and resources to do all of the following: (1) place “[a]t least two board of elections employees, one Republican and one Democrat,” outside the board of elections office while simultaneously maintaining enough staffers inside the office to “continue the successful operation of all other duties of the board of elections”; (2) “provide the bipartisan team with an appropriate container into which the delivered absentee ballots will be received”; (3) “engage with its law enforcement point of contact to develop a plan for appropriate traffic control while the drive-through system is being utilized”; and (4) create and “post appropriate signage outside the board of elections office instructing voters on where to park or drive to return absentee ballots.” *Id.* at 2.

Per the Advisory’s terms, none of this should be taking place on an ad hoc basis: the board of elections is also responsible for “set[ting] a schedule of days and hours during which bipartisan teams of board employees will be stationed outside the office of a board of elections to receive absentee ballots,” as well as “publiciz[ing] that schedule on the board’s website and social media.” *Id.* Meeting these demands would have been difficult even if the boards had adequate time to prepare to take such measures. With the Advisory issued just 2.5 weeks before early voting begins,

undertaking these measures will be impossible for many boards—in turn, leaving the illusory option of a traffic-mitigation plan unavailable to many voters.

At bottom, the Directive’s new requirements could make it impossible for some individuals to return ballots altogether, either because they are not able to go when the building is open, or the process of going inside or waiting to meet with a board of elections official is too burdensome.

III. Directive 2024-21 Confuses and Intimidates Voters and Those Legally Authorized to Assist Them

The attestation form itself is confusing and intimidating, and the first time many individuals will encounter this form is when they attempt to return an absent voter’s ballot. Even the warnings required to be posted on the drop box are intimidating and may lead to further confusion. Ohio and Federal law have long authorized certain individuals to return an absent voter’s ballot to a county board of elections office on their behalf. This includes a list of clearly enumerated family members, *see* R.C. 3509.05(C)(1), as well as someone assisting a voter with a disability, *see* 52 U.S.C. § 10508.

The Family-Member Attestation requires a person to state that they are “a family member defined under R.C. 3509.05 *and* that I am one of the following:” (emphasis added) and lists the individuals identified in R.C. 3509.05(C)(1) who are authorized to return the absent voter’s ballot. Although a “family member defined under R.C. 3509.05” and the list of authorized individuals identified in R.C. 3509.05(C)(1) are one in the same, the use of two separate code provisions and the word “and” implies that they are in fact different. *See Snellman v. Levine*, 2010-Ohio-5616, ¶ 7 (8th Dist.) (finding “the word ‘and’ means also; as well as; plus”); *State v. Rucci*, 2015-Ohio-2097, ¶ 33 (7th Dist.) (interpreting “and” to mean “both”). Most individuals filling out this form will understandably be unaware of who is a “family member” as defined in R.C. 3509.05 and interpret this to mean that the family member requirement is separate and apart from the

enumerated list of individuals in R.C. 3509.05(C)(1). Likewise, the Disabled-Voter Attestation requires the individual signing to attest that the disabled voter they are assisting “is a disabled voter, as defined by state or federal law”—though a reasonable assistant may be unfamiliar with the precise contours of those definitions.

Both attestations contain bold language at the bottom ominously warning that “**Whoever commits election falsification is guilty of a felony of the fifth degree.**” The combination of each attestation’s confusing and legalistic language with the threat of criminal prosecution could well intimidate those legally authorized to return the ballots of others. Ordinary voters will worry about having to sign a legal document attesting to the fact that they are a “family member” as statutorily defined or that the person they are assisting has a legal disability “as defined by state or federal law.” Given that the unauthorized possession of another individual’s absentee ballot is already a felony of the fourth degree, *see* R.C. 3599.21(A)(10) and (C), the attestation is nothing more than a tactic to intimidate voters, in clear violation of the Voting Rights Act. *See* 52 U.S.C. § 10101(b) (prohibiting election officials from “deny[ing] the right of any individual to vote in any election because of an error or omission on any record or paper . . . if such error or omission is not material in determining whether such individual is qualified under State law to vote in such election”).

The language posted on drop boxes is similarly threatening and intimidating. The Directive mandates boards of elections to post a notice on each drop box including a statement that the “drop box may only be used to return YOUR personal ballot”, if you are returning the ballot of another, “you MUST see a board of elections official who can provide you with the necessary attestation form”, notice that “Ohio law prohibits the unauthorized return of a ballot on behalf of another voter [and that] anyone charged with this offense could be charged with a fourth degree felony, punishable by up to 18 months in prison and/or a fine of up to \$5,000,” and

clear notice that the “drop box is monitored under 24/7 video surveillance.” Faced with the threat of criminal prosecution, 24/7 video surveillance, and jail time for helping a family member and/or a person with a disability vote, individuals may well abandon their mission of returning the ballot altogether. The Directive will therefore only serve to further scare those who are merely seeking to assist another in exercising their fundamental right to vote, and perhaps force some to forego voting altogether, not willing to endanger the safety of a family member or trusted friend.

CONCLUSION

For the foregoing reasons, Amici Curiae League of Women Voters of Ohio and the Ohio Chapter of the NAACP respectfully encourage this Court to issue Relators’ a Peremptory Writ of Mandamus directing Respondent Ohio Secretary of State Frank LaRose to rescind Directive 2024-21 and inform county election officials to accept absentee ballots from authorized individuals without requiring an attestation form, including via a drop box.

Respectfully submitted,

/s/ Freda J. Levenson

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Counsel for Amici Curiae

*Motion for permission to appear *pro hac vice* forthcoming

CERTIFICATE OF SERVICE

I hereby certify that on October 2, 2024, the foregoing was filed electronically using the Court's efilings system. I further certify that the foregoing was served by electronic mail upon the following:

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Nazek Hapasha Affidavit.pdf

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E-Signature Summary

E-Signature 1: Nazek Hapasha (NH)

October 02, 2024 13:49:27 -5:00 [5E8BC6CF8299] [108.226.148.116]
 nhapasha@lwvohio.org (Principal)

E-Signature Notary: Theresa M Sabo (TMS)

October 02, 2024 13:49:27 -5:00 [664DA417997A] [23.245.232.119]
 tess.sabo@gmail.com

I, Theresa M Sabo, did witness the participants named above electronically sign this document.



In the Supreme Court of Ohio

State ex rel. OHIO DEMOCRATIC PARTY, et al.,

Relators,

v.

OHIO SECRETARY OF STATE FRANK LAROSE,

Respondent.

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CASE NO. 2024-1361

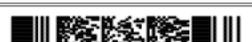
For Writ of Mandamus
(Expedited Election Case Under
S.Ct.Prac.R. 12.08)

AFFIDAVIT OF NAZEK HAPASHA

I, Nazek Hapasha, being first duly sworn and cautioned according to law, hereby state that I am over the age of 18 years and am competent to testify as to the facts set forth below based on my personal knowledge:

1. I am the Policy Affairs Manager of the League of Women Voters of Ohio and a member of the Election Protection Coalition.
2. I am a registered voter in Ohio.
3. I wish to highlight the significant and undue burden that the new restrictions imposed by Ohio Secretary of State LaRose on the use of dropboxes place on voters like me.
4. Several months ago, I became ill and have since been managing long-term disability issues, which greatly limit my ability to drive long distances, stand in long lines, or to be in busy, loud environments. The nearest Board of Elections office is a half-hour drive from my home, a journey that I cannot undertake easily due to my health constraints.
5. As the Policy Affairs Manager of the League of Women Voters of Ohio and member of the Election Protection Coalition, I regularly receive informal and formal reports before election day about problems with the postal system. These reports often detail cases

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where voters requested mail ballots that never arrived or instances where ballots, though mailed back before the postmark deadline, did not reach the Board of Elections in time to be counted. In addition, in recent years, there have been instances where delays in mailing ballots were caused by vendor errors, further complicating the timely delivery of ballots. Given these frequent and documented delays and errors, I do not trust that my vote would be reliably counted if I were to rely on the postal system. Therefore, I prefer to deliver my ballot directly to the Board of Elections to ensure my vote is counted.

6. However, because of my disability, I must rely on my husband to deliver my ballot. As a surgeon, his demanding schedule and long hours make it difficult for him to reach the Board of Elections during its business hours. This situation creates a substantial obstacle for me in exercising my fundamental right to vote.
7. My situation demonstrates how the new restrictions on dropboxes disproportionately affect individuals with disabilities and those who have limited transportation options, further compounded by the unreliability of the postal system and vendor-related delays.

The undersigned hereby affirms that the statements made in the foregoing affidavit are true, under penalty of perjury.

Nazek Hapasha
Signed on 2024/10/02 13:49:27 -5:00

Nazek Hapasha

Subscribed and sworn to before me this 2nd day of October 2024 in Franklin County, Ohio.


Signed on 2024/10/02 13:49:27 -5:00
Notary Public



Notarial act performed by audio-visual communication





Dolores Black Affidavit.pdf

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E-Signature Summary

E-Signature 1: Dolores A. Black (DAB)

October 02, 2024 15:23:28 -5:00 [62304200E4A6] [181.214.107.61]
 janetparks987@gmail.com (Principal) (ID Verified)

E-Signature Notary: Theresa M Sabo (TMS)

October 02, 2024 15:23:28 -5:00 [0F4E147AD289] [23.245.232.119]
 tess.sabo@gmail.com

I, Theresa M Sabo, did witness the participants named above electronically sign this document.



5. I cannot deliver my ballot, so my helper will deliver it for me. She is 82 years old, and also faces her own mobility challenges.
6. These restrictions disproportionately impact voters with disabilities and those with limited mobility who depend on reliable and accessible voting methods.
7. I urge the court to reconsider these restrictions and work with disability advocates to find a solution that allows all voters to participate in the electoral process equally.

The undersigned hereby affirms that the statements made in the foregoing affidavit are true, under penalty of perjury.

Dolores A. Black
Signed on 2024/10/02 15:23:28 -5:00

 Dolores Black

Sw *Theresa M Sabo* before me this 2nd day of October 2024 in Franklin County, Ohio.

 Notary Public



Notarial act performed by audio-visual communication

