

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

League of Women Voters of Ohio, et al.,	:	
	:	
Plaintiffs,	:	Case No. 2:20-cv-01638
	:	
	:	Judge Michael H. Watson
v.	:	
	:	Chief Magistrate Judge Deavers
Frank LaRose, in his official capacity as	:	
Secretary of State of Ohio,	:	
	:	
Defendant.	:	

**INTERVENOR-DEFENDANT OHIO REPUBLICAN PARTY’S MEMORANDUM
OPPOSING PLAINTIFF’S
MOTION FOR TEMPORARY RESTRAINING ORDER**

Intervenor-Defendant Ohio Republican Party (“ORP”) opposes Plaintiffs’ motion for a temporary restraining order and asks the Court to uphold the timing and process for conducting Ohio’s 2020 primary election as set forth in Amended Substitute House Bill 197 of the 133rd Ohio General Assembly (“H.B. 197”).

Specifically, the ORP asks this Court to deny Plaintiffs’ (1) request to once again change the date of Ohio’s primary election (which has already been changed more than once); (2) request to extend the voter registration; and (3) request that Secretary of State LaRose (the “Secretary”) be ordered to send multiple ballots to every voter who has not yet voted.

STATEMENT OF FACTS

In the interest of brevity (and because the Court is well aware of what transpired from other filings herein), the ORP will not reiterate all of the facts that led to the enactment of H.B. 197, which allows voting in the March 17, 2020 through April 28, 2020.

What is important here is that the General Assembly, on March 25, 2020, in the midst of an historical pandemic, took action to pass comprehensive emergency legislation to address a number of pressing legal issues related to the pandemic, including Ohio's March 17, 2020 primary election. This comprehensive emergency legislation, H.B. 197, was *unanimously* passed. As aptly stated by the Ohio Democratic Party ("ODP"):

Leaders of both parties spoke in support of HB 197's provisions related to the election, which set a primary date of April 28, 2020 and gave Ohioans an unprecedented additional 40 days to cast a ballot by mail, return postage prepaid. At the same time, it addressed the needs of candidates, parties, and school districts and other government subdivisions for finality in the election by not drawing out the election any longer than necessary. The General Assembly acted swiftly and decisively in unanimous, bipartisan fashion to address bringing the primary election to a conclusion and provide additional time for voting.

Two days later, the Governor signed H.B. 197 and it became Ohio law.

Prior to March 17, 2020, Ohioans who had properly and timely registered to vote 30 days prior to the March 17, 2020 primary election had the full 28 days of early voting provided under Ohio law to cast their vote in-person. Of course, those who had properly and timely registered to vote 30 days prior to the March 17, 2020 primary election were also able to avail themselves of absentee voting prior to March 17, 2020. H.B. 197 was enacted to provide electors who had not voted prior to March 17, 2020, the opportunity to do so. In enacting H.B. 197, the General Assembly was cognizant of relevant time frames necessary to process ballots and votes and of the serious health risks associated with the coronavirus, and attempted to balance these interests.

ARGUMENT

I. Delaying the election again will further confuse voters and may preclude the ORP's members from meaningfully participating in the Republican National Convention.

The authority to set the "time, place and manner" of voting in Ohio elections rests with the General Assembly. Further, the General Assembly's authority to establish the rules for elections

involving Congressional candidates comes from the Elections Clause of the U.S. Constitution, which provides in relevant part:

the Times, Places, and Manner of holding Elections for Senators and Representatives, shall be prescribed in each state by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations.

Art. I, Sec. 4, c. 1, U.S. Constitution. The Elections Clause extends to primary elections in which Congressional candidates are nominated. *See United States v. Classic*, 313 U.S. 299, 320 (1941).

Because Congress did not take any action to determine the date for Ohio's 2020 primary election, the time place and manner of the election "shall be prescribed" by the Ohio General Assembly. After ample consideration of all factors, the General Assembly exercised this authority, pursuant to R.C. 3501.01(E), and most recently in enacting H.B. 197, *unanimously*.¹

Pursuant to H.B.197, the primary election will continue through April 28, 2020. Changing this date again, will only cause further voter confusion and likely lead to even further litigation. "Court orders affecting elections, especially conflicting orders, can themselves result in voter confusion and consequent incentive to remain away from the polls." *Purcell v. Gonzalez*, 549 U.S. 1, 5 (2006); *see also SEIU Local 1 v. Husted*, 698 F.3d 342, 345-46 (6th Cir. 2012) (stating that the public interest strongly disfavors last-minute changes to election procedures).

Notably, Plaintiffs' Amended Complaint leaves open-ended when the 2020 primary election should conclude. Like the ODP, the ORP has a right and desires to meaningfully participate in its national convention.² *See* ODP's Memorandum in Partial Support/Opposition, at 4-8. To this end, there should be certainty as to the conclusion of the primary election as set forth in H.B. 197.

¹ In the interest of brevity, the ORP defers to the State (an Intervenor herein), at this stage of the action, to defend the constitutionality of this legislation.

² While the ORP's schedule for delegate selection differs from that of the ODP, it still requires significant time after the primary election is certified.

II. There is no need to extend voter registration.

Under Section 8 (a) of the National Voter Registration Act (“NVRA”), “the state shall ensure that any eligible applicant is registered to vote in an election that has submitted a valid voter registration form to the appropriate State Election Officer no later than the lesser of 30 days, or the period provided by State law, before the date of the election.” 54 U.S.C. §20507 (a)(1). Ohio law complies with this requirement as is evident in Article V, Section 1 of the Ohio Constitution which states that “Every citizen of the United States, of the age of eighteen years, who has been a resident of the state . . . and has been registered to vote for thirty days, has the qualifications of an elector, and is entitled to vote at all elections.” The State allowed for eligible voters to register to vote by February 18, 2020, which is 30 days prior to the primary election date of March 17, 2020. Thus, eligible voters had the full statutorily-required time frame of 30 days prior to the primary election date of March 17, 2020 to register to vote. Therefore, eligible voters are not harmed in violation of the NVRA.

Under H.B. 197, Ohio’s primary election date remains unchanged. House Bill 197 references March 17, 2020 as the primary election date. H.B. 197, § (B)(1), (B)(2), (C)(1)(a), (C)(1)(b). April 28, 2020 is only referred to as the deadline for absentee ballots. H.B. 197 § (C)(3). Section 32 (B)(3) of H. B. 197 prohibits voter registration forms to be processed because processing such forms would be in direct contradiction with Ohio law. The primary election date is set as the third Tuesday following the first Monday in March. R.C. 3501.01 (E)(2). March 17, 2020 is the primary election date and the proper registration period was 30 days prior, on February 18, 2020. Again, eligible voters were able to register to vote during the proper time period of 30 days prior to the primary election. And, no one should have had any expectation that, if they were not registered to vote by February 18, 2020, they would have been able to vote in the 2020 primary election. Therefore, eligible voters’ rights were not violated and there is no need to reopen voter registration.

III. The ORP opposes Plaintiffs' proposal to send multiple ballots to voters for the same reasons as those articulated by the ODP and the State.

The ODP and the State have thoroughly articulated the many reasons why requiring the Secretary to send multiple ballots to each voter is unworkable and unconstitutional. For instance:

Because this is a primary election, voters must request the ballot of the party they wish to be affiliated with. Plaintiffs propose to short circuit this by sending every voter in the state who has not yet voted each party's ballot in the same envelope. There are several million voters in Ohio who have not yet voted. That would require printing several million Democratic ballots, several million Republican ballots, and several million Libertarian party ballots, mailing them all to voters, and then hoping the voter reads the instructions saying to only fill one out. In addition, voters who do not wish to be affiliated with any political party may request an issue-only ballot. If these voters are not sent an issue-only ballot as well as these partisan ballots, those voters are forced to either affiliate with a political party against their wishes, or be deprived of their right to vote. Sending an issue-only in addition to the partisan ballots would result in some voters being confronted with up to four ballots to choose from.

See ODP's Memorandum in Partial Support/Opposition, at 8-9.

Further "sending multiple ballots is also likely to result in a significant number of voters being confused and having their votes thrown out" and "the only way for an Ohio voter to formally affiliate with a political party is to request that party's ballot at a partisan primary election" *Id.* at 9; *see also* State's Opposition, at 17-18.

In the interest of brevity, the ORP agrees with the ODP's the State's arguments opposing the request to order the Secretary to send multiple ballots to voters, and incorporates them herein by reference.

CONCLUSION

For the reasons listed above, the Court should deny the Plaintiffs' request for a new election date, deny an extension of voter registration, and deny the request to order the Secretary

to send every voter multiple ballots as requested in Plaintiff's motion for a temporary restraining order.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 2, 2020, I caused a true and correct copy of the foregoing document to be served upon all counsel of record registered with the Court's ECF system, by electronic service via the Court's ECF transmission facilities.

/s/ Anne Marie Sferra

Anne Marie Sferra (0030855)