

IN THE SUPREME COURT OF OHIO

**Bria Bennett, et al.,**

**Petitioners,**

**v.**

**Ohio Redistricting Commission, et al.,**

**Respondents.**

**Case No. 2021-1198**

Original Action Filed Pursuant to Ohio  
Constitution, Article XI, Section 9(A)

*[Apportionment Case Pursuant to S.  
Ct. Prac. R. 14.03]*

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**BENNETT PETITIONERS' RESPONSE TO RESPONDENTS SYKES AND RUSSO'S  
MOTION TO MOVE THE PRIMARY ELECTION DATE**

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## I. Introduction

This Court struck down the Ohio Redistricting Commission's latest General Assembly district plan (the "February 24 Plan") because, in multiple respects, that plan violated Article XI of the Ohio Constitution. *League of Women Voters of Ohio v. Ohio Redistricting Comm.*, Slip Opinion No. 2022-Ohio789 ("*LWV III*"). The Commission is now meeting to prepare a new plan pursuant to the Court's order, *id.* ¶ 44, but has not yet adopted one. Accordingly, as Respondent Secretary of State Frank LaRose has articulated, "there are currently no state legislative districts for which a primary election can be held on May 3." Ex. A. Undoubtedly, the May 3 primary cannot proceed for General Assembly races, and the *Bennett* Petitioners concur in Respondents Sykes and Russo's ("Movants") motion, in part: This Court should find that the May 3 primary cannot go forward for General Assembly races because the Commission has not adopted a constitutionally-compliant General Assembly plan and, thus, that the primary election for those races must be held at a later date.

As to what particular date, the facts remain in flux. It is not yet clear when the Commission will conclude its proceedings and adopt a new plan, and, though Petitioners hope that the Commission will heed this Court and adopt a constitutionally-compliant plan, it remains to be determined whether that plan will warrant further objections from Petitioners, necessitating this Court's further review. For this reason, implementation of a constitutionally-compliant plan and preparation for a primary election may extend beyond Movants' proposed primary date of June 28, 2022. Accordingly, and presuming that the General Assembly has not already set a new primary election date itself, this Court should defer setting a new primary date until the Ohio Redistricting Commission has filed its next remedial state legislative plan.

## II. Background

For several weeks, it has been clear that Ohio's primary election cannot go forward as scheduled. On February 14, Secretary LaRose wrote to Respondent Senate President Matt Huffman, expressing that "current redistricting litigation over both the General Assembly and congressional district maps poses a serious threat to the integrity of [the administration of the primary election] on the present timeline." Ex. B. On February 22, Secretary LaRose further underscored that "it is impossible to see a scenario in which these maps are favorably passed by the Redistricting Commission, challenged by litigants, reviewed by a court, and given final approval within a timeframe conducive to a May 3, 2022, primary election date." Ex. C. On February 28, the Ohio Association of Election Officials—a bipartisan organization representing the members and employees of Ohio's county boards of elections, as well as their directors and deputy directors—asked President Huffman "to consider delaying the May 3<sup>rd</sup> primary for all contests." Ex. D.

Now, there is simply no question that the General Assembly ballots will not be ready for a May 3 primary. Following this Court's decision in *LWV III*, Secretary LaRose told the General Assembly that "without clear districts to certify legislative candidates," the boards of elections are "simply out of time to complete the required work that must be done to reprogram election systems with new district data." Ex. E. And yesterday, Secretary LaRose told the federal court in *Gonidakis v. LaRose*, S.D. Ohio No. 2:22-cv-773, that "absent a *very* prompt ruling" on Wednesday, March 23 (the date of this filing) ordering the implementation of the unconstitutional February 24 Plan, "he will have to instruct the boards of election to proceed with the 2022 primary election without the state legislative races being part of that election."<sup>1</sup> Ex. F. The *Bennett* Petitioners respectfully

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<sup>1</sup> As of this filing, no such ruling has been issued by the federal court.

agree with Movants that this Court should erase any fragment of doubt that a federal district court could, in effect, overrule this Court, allow the May 3 primary to go forward under maps this Court invalidated, and thus impede the state redistricting process that Ohioans approved by supermajority last decade.

### **III. Argument**

For the reasons Movants mention, this Court should declare that a primary election cannot be held utilizing a General Assembly district plan that the Court has declared unconstitutional; in effect meaning that there will be no primary for General Assembly races on May 3 and that the primary will be held at a later date. However, this Court should defer setting a new primary date until after the Commission files its next state legislative district plan, and if the General Assembly has still failed to adopt a new primary date itself.

In the present circumstances, this Court has the authority to declare that the primary election for General Assembly seats will not proceed according to the date set by statute. The Ohio Supreme Court is “the ultimate arbiter of the meaning of the Ohio Constitution.” *State v. Mole*, 149 Ohio St.3d 215, 2016-Ohio-5124, 74 N.E.3d 368, ¶ 21. The Ohio Constitution sets forth that “[a]ll nominations for elective state, district, county and municipal offices shall be made at direct primary elections or by petition as provided by law.” Ohio Constitution, Article V, Section 7. And although R.C. 3501.01(E)(1) provides that “[p]rimary elections shall be held on the first Tuesday after the first Monday in May of each year except in years in which a presidential primary election is held,” it does not limit this Court’s authority to set a different date where, as here, there are no constitutional state legislative districts under which a primary can occur. *See Quilter v. Voinovich*, 794 F. Supp. 756, 757 (N.D. Ohio 1992) (finding state legislative districts unconstitutional, ordering that “the date of May 5, 1992 for the holding of the Ohio primary election is vacated to the extent that candidates for election to the General Assembly are concerned,” and directing

election officials “to cause such primary election to be held on June 2, 1992, provided, however, that on proper showing the court may provide an alternate date”). Indeed, courts routinely change statutorily set deadlines to protect constitutional rights, including voting rights. *Compare* R.C. 3501.32(A) (polls “shall be closed by proclamation at seven-thirty p.m.”) *with, e.g., Eric Kearney v. Hamilton Cty. Bd. of Elections*, Hamilton C.P. Case No. A 1505953 (Nov. 3, 2015) (ordering polls to remain open until 9:00 p.m.) (attached as Exhibit G), *and Ohio Democratic Party v. Cuyahoga Cnty. Bd. of Elections*, No. 1:06-cv-2692 (N.D. Ohio Nov. 7, 2006) (same) (attached as Exhibit H).

Moreover, this Court has broad authority to postpone the General Assembly primary and otherwise modify election deadlines to address the harm that would occur if elections were to proceed under unconstitutional districts. *Hale v. State*, 55 Ohio St. 210, 45 N.E. 199 (1896), (explaining that courts have “powers as are necessary to the orderly and efficient exercise of jurisdiction,” which also “must be regarded as inherent”); *see also* Ohio Constitution, Art. IV, Section 2(B)(1)(f); *League of Women Voters of Ohio v. Ohio Redistricting Comm.*, 2022-Ohio-65 (“*LWW P*”) at ¶ 136 (ordering further relief under Article IV, Section 2(B)(1)(f), noting that “because the election cycle should not proceed with a General Assembly–district map that we have declared invalid, it is appropriate to issue further remedial orders in an effort to have the redistricting commission adopt a plan that complies with Article XI in time for the plan to be effective for the 2022 election cycle”).

Other state courts have often made similar election-schedule modifications in the redistricting context. *See, e.g., Carter v. Chapman*, No. 7 MM 2022, 2022 WL 549106 (Pa. Feb. 23, 2022) (modifying congressional and statewide election calendar due to impasse and noting suspension of state legislative election deadlines until resolution of litigation); Order, *In the Matter*

*of 2022 Legislative Districting of the State*, Misc. Nos. 21, 24, 25, 26, 27 (Md. Mar. 15, 2022) (postponing 2022 gubernatorial primary and related deadlines) (attached as Exhibit I); Order, *Harper v. Hall*, No. 413P21 (N.C. Dec. 8, 2021) (postponing 2022 primary and related deadlines) (attached as Exhibit J); *Mellow v. Mitchell*, 530 Pa. 44, 607 A.2d 204, 237, 244 (1992) (revising pre-primary deadlines in similar congressional redistricting impasse case “to provide for an orderly election process”). And the U.S. Supreme Court has authorized federal district courts to do the same. *See, e.g., Upham v. Seamon*, 456 U.S. 37, 44 (1982) (“[W]e leave it to [the District Court] in the first instance to determine whether to modify its judgment [as to the state’s congressional apportionment plan] and reschedule the [congressional] primary elections for Dallas County or . . . to allow the election to go forward in accordance with the present schedule.”); *Sixty-Seventh Minn. State Senate v. Beens*, 406 U.S. 187, 201 n.11 (1972) (“If time presses too seriously [to implement a remedial reapportionment plan], the District Court has the power appropriately to extend the [election deadline] time limitations imposed by state law.”); *see also Larios v. Cox*, 305 F. Supp. 2d 1335, 1343 (N.D. Ga. 2004) (noting court’s power to extend election deadlines and ordering new statewide maps be drawn in time for upcoming primary election).

Nevertheless, this Court should defer setting a General Assembly primary date until the Commission has filed its fourth state legislative districting plan. As the Deputy Assistant Secretary of State and State Elections Director set forth in a federal court declaration yesterday, “candidates who are members of a recognized political party are required to file declarations of candidacy and petitions with signatures ninety days before a primary election.” Ex. K. Thus, unless that filing deadline is modified, a June 28 primary would require candidates to make their filings on March 30—one week from today—which would be possible only if the Commission’s next plan is timely



filed by March 29 and faces no objections, notwithstanding that, even then, candidates may not be ready to file their declarations on a day's notice.

As such, there are multiple scenarios in which a later primary may be appropriate. Indeed, many states hold their primaries as late as August and September without consequence for the November general election. *See, e.g.*, Mich. Comp. Laws § 168.551 (setting Michigan's 2022 primary for August 2); Wis. Stat. § 8.15 (setting Wisconsin's 2022 primary for August 9); Fla. Stat. § 99.061 (setting Florida's 2022 primary for August 23); Mass. Gen. Laws Ann. ch. 53, § 10 (setting Massachusetts's 2022 primary for September 6). And Ohio law already provides for special elections to be held on the first Tuesday after the first Monday in August. *See* R.C. 3501.01(D). Just last year, Ohio held special primary elections for the 11<sup>th</sup> and 15<sup>th</sup> Congressional districts in August with the winning nominees appearing on the November ballot. *See, e.g.*, Ohio Secretary of State, 2021 Official Election Results, available at <https://www.ohiosos.gov/elections/election-results-and-data/2021-official-election-results/>. Some municipalities in Ohio, including Cleveland, even hold their primary elections in September. *See* Cleveland City Charter, Chapter 3, Section 4. Thus, Ohioans are no strangers to elections in August and September.

#### **IV. Conclusion**

For the foregoing reasons, the *Bennett* Petitioners respectfully request that this Court grant Respondents Sykes and Russo's motion in part by declaring that there will be no primary for General Assembly races on May 3, and that the primary will be held at a later date, but that it defer setting a new primary date until after the Commission files its next state legislative district plan.

Dated: March 23, 2022

Respectfully submitted,

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I hereby certify that the foregoing was sent via email this 23rd day of March, 2022 to the following:

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# Exhibit A

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

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

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**OHIO SECRETARY OF STATE LAROSE’S RESPONSE TO PLAINTIFFS’  
EMERGENCY MOTION TO VACATE STAY AND FOR IMMEDIATE  
APPOINTMENT OF A THREE-JUDGE PANEL**

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Ohio Secretary of State Frank LaRose does not object to this Court lifting its existing stay of this matter and appointing a three-judge panel pursuant to 28 U.S.C. § 2284(a), as requested by the Plaintiffs. On March 16, 2022, the Supreme Court of Ohio again invalidated the state legislative district plan adopted by the Ohio Redistricting Commission, this time the plan adopted on February 24, 2022 (“Third Plan”). *See League of Women Voters, et al. v. Ohio Redistricting Commission*, Slip Opinion No. 2022-Ohio-789. Based on the Supreme Court’s ruling, there are currently no state legislative districts for which a primary election can be held on May 3, 2022. Per the Notice filed with this Court, the only way in which primary elections for the House and Senate state legislative districts could have been held on May 3, 2022 was with that Third Plan. Doc. 71. With military and overseas voting (“UOCAVA”) and early voting for the primary set to begin shortly, logistically, county boards of election cannot hold primary elections for those races

on May 3 with yet *another* legislative district plan. At present, the primary election for those districts will have to be held at a later date.

The Court ordered the Commission to reconvene and adopt a plan no later than March 28, 2022. *See League of Women Voters, et al. v. Ohio Redistricting Commission*, Entry dated March 16, 2022. The Commission is going to convene and work to comply with the Court's Order. And although the May 3, 2022 primary election is no longer looming for the state legislative races, the need for final state legislative districts to be used in this year's elections remains.

Ohio needs state legislative districts. Given the history of the state legislative redistricting proceedings to date, the Secretary believes that it would be prudent for the federal court to begin proceedings to establish a three-judge panel so that a primary—and ultimately a general—election can be held in the event that the state proceedings ultimately fail. He therefore does not object to lifting the stay in this case, empaneling a three-judge panel and, at a minimum, allowing this Court's processes to run in parallel with the work of the Ohio Redistricting Commission.

Respectfully submitted,

OHIO ATTORNEY GENERAL

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I hereby certify that on March 18, 2022, the foregoing was filed with the Court. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties for whom counsel has entered an appearance. Parties may access this filing through the Court's system.

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Assistant Attorney General

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# Exhibit B

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The Honorable Matt Huffman  
President, Ohio Senate  
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President Huffman,

As Ohio's chief elections officer, it is my duty under the law to administer a primary election on Tuesday, May 3, 2022. No one wants to meet that deadline more than me, my team, and our partners at the 88 county boards of elections. However, current redistricting litigation over both the General Assembly and congressional district maps poses a serious threat to the integrity of that process on the present timeline.

Secure, accurate, and accessible elections require preparation, from candidate petition certification and ballot production to the reprogramming of voter registration data. None of this work can even begin for district-specific contests without the finality of redistricted maps.

Should the Redistricting Commission approve and submit new General Assembly maps this week, the Ohio Supreme Court's litigation timeline allows parties up to February 25, 2022, to respond to those new plans. The Court unfortunately took three weeks to review the previous plans approved by the Commission on January 22, 2022, ultimately rejecting them. If the Commission adopts new maps this week, that same timeframe for consideration puts a possible Court decision on or about March 19, 2022. **This is one day after the boards of elections are required by state and federal law to mail ballots to overseas military voters.** Obviously under this scenario, those ballots will not be ready by that date – not even close.

Even assuming a favorable order from the Court on a third General Assembly map, the 88 county boards collectively will need up to three weeks from final approval of either the General Assembly or congressional maps to reprogram their voter and district geo-political data. **Adding this requirement into the timeline brings us to on or about April 9, 2022, before candidate certification can even begin.**

Boards of elections will likewise have to re-evaluate and verify each General Assembly candidate petition once new maps are final. Therefore, **the start of ballot preparation, proofing, and printing cannot begin until four days AFTER early voting is scheduled to begin on April 5, 2022.** Of course, this means ballots will not be ready in time for in-person or mail-in early voting, and overseas voters likely will not receive a ballot before the May 3 primary. It goes without saying that any of these scenarios, and many others, present ample opportunities for litigation leading to even greater uncertainty and potential delay.

Of course, we face additional challenges with the extensive amount of work that goes into testing voting machines and administering numerous mock elections to ensure precinct-by-precinct data and tabulation accuracy. **The testing process alone typically should start no later than 60 days prior to the election, but, under the current restraints, we cannot even begin those critical steps until around April 12, 2022 – three weeks before the currently scheduled primary election day.** These challenges create the potential for error, confusion, and further litigation, threatening even more court intervention and delay.

The General Assembly has made clear its constitutional purview to set the time, place, and manner of an election in an amendment that I fully supported during the 2020 budget process. I recognize my statutory obligation to administer the election on the date prescribed by law. I would, however, be negligent in my duty to the citizens of this state if I failed to convey the significant risks associated with the current timeline.

We lead the most resilient and professional team of bipartisan elections officials in the nation, and they will work tirelessly to achieve the best possible outcome for Ohioans under any circumstance. I simply ask that you consider the very real damage that can be done to voter confidence by running an election without the time needed to do it correctly. To borrow a line from Shakespeare, it is better to proceed “wisely and slow; they stumble that run fast.” As always, I am grateful for your consideration, and I would be honored to discuss this with you in more detail at your convenience.

Yours in service,



Frank LaRose

Ohio Secretary of State

cc: John Barron, Chief of Staff, Ohio Senate  
The Honorable Robert Cupp, Speaker, Ohio House  
Christine Morrison, Chief of Staff, Ohio House

# Exhibit C

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The Honorable Matt Huffman  
President, The Ohio Senate  
1 Capitol Square, Rm 201  
Columbus, OH 43215

February 22, 2022

President Huffman,

Thank you for the thoughtful and ongoing conversation in response to the letter I sent you on February 14, 2022, outlining the serious risks presented by redistricting litigation to conducting a secure, accessible, and complete primary election on May 3, 2022.

Since that communication, new developments have introduced even more uncertainty to an already unprecedented election calendar. Among them, as you know, the Ohio Redistricting Commission adjourned after reaching an impasse on a General Assembly district plan, and related litigation continues in the Ohio Supreme Court and now in federal court. Most notably however, is that with each passing day we miss critical legal and administrative deadlines essential to the administration of a successful May 3, 2022, primary election. Nevertheless, I have directed our 88 county boards of elections to proceed with and prepare for an election on that date for offices that are not impacted by redistricting, specifically contests for statewide and local offices.

As this preparation continues, my duty requires me to outline additional problems caused by the current timeline with legally, securely, and accurately administering an election for the offices of General Assembly, United States House of Representatives, and political party state central committees.

Current law requires me to certify *today* to the boards of elections the **form of the official ballot** for the May 3, 2022, primary election. After consulting with the Ohio Attorney General, I am issuing this directive *only for those races not impacted by redistricting litigation*. Unfortunately, due to the Ohio Supreme Court's orders invalidating two General Assembly district plans as well as the court's order and subsequent lack of finality on a congressional district plan, the boards cannot begin petition validation and candidate certification on those races, let alone include them in ballot preparation. We can only proceed with the districts and data we have available to us, and the boards will need adequate time to program, proof, and print ballots, as well as conduct logic and accuracy testing to ensure those ballots are correct and can be tabulated accurately. Many of the important steps on the election calendar and administrative check list cannot happen until I issue this directive.

Just last week, my Office issued the **Election Night Reporting ("ENR")** schedule to all county boards of elections. ENR is the system used to securely transfer the results of the election in each county to my Office to review, aggregate, and publish the unofficial canvass in real time to the public, as required by law and as expected by Ohioans on Election Night. Testing of the system requires a significant amount of time due to its complexity and sophistication, as any failures can lead to significant distrust in the results on Election Night. Because of these requirements, the ENR testing and mock election schedule should have begun on January 23, 2022, but we are now almost a full month behind in this preparation due to delays in

the redistricting process and subsequent litigation. This is yet another key step in ensuring a secure, accurate, and accessible election, but we are only able to proceed at this point with testing statewide and local races not impacted by redistricting litigation. Any further delay to await final approval of General Assembly and congressional district maps simply will not allow adequate time to complete the programming, testing and mock election schedule prior to the May 3, 2022, election. **Let me be clear on this point: it is impossible to see a scenario in which these maps are favorably passed by the Redistricting Commission, challenged by litigants, reviewed by a court, and given final approval within a timeframe conducive to a May 3, 2022, primary election date.**

Even after the maps receive final approval, as you know, H.B. 93 set forth a series of requirements that the boards of elections must do to verify the **validity of signatures on candidate petitions**. Part of the analysis the boards must conduct for General Assembly candidates includes identifying whether the signer of a petition resides in a county that has territory in the House or Senate district the filer seeks to represent. Again, pursuant to a majority opinion in the Ohio Supreme Court, constitutional districts do not yet exist. Therefore, it is not possible for the boards of elections to conduct the required analysis pursuant to H.B. 93 until there are final district maps.

Additionally, the deadline to determine the **validity and sufficiency of partisan candidate petitions by the most populous county board of elections** for the offices of U.S House of Representatives, Ohio House, Ohio Senate, and state political party central committees is March 9, 2022, and the protest deadline for those petitions is March 11, 2022. Aside from not knowing these districts, the 88 county boards of elections also do not yet know the most populous county board of elections. Therefore, without final district maps, candidates also lack that critical information to properly file their petitions.

The boards of elections need at least two to three weeks to **reprogram their voter registration systems** to even begin to conduct the signature validity analysis on any of the candidate petitions impacted by redistricting. Currently, we are less than two weeks *before* the filing deadline for U.S. House of Representatives and about two weeks *before* the petition certification deadline, and we still do not have final district maps. **Therefore, it is administratively impossible for the boards of elections to meet those deadlines as they currently stand, which are already expedited.** An attempt to do so would undoubtedly lead to confusion, unintentional mistakes, potential additional litigation outside the protest process, as well as chaos for election officials, candidates, and most importantly voters.

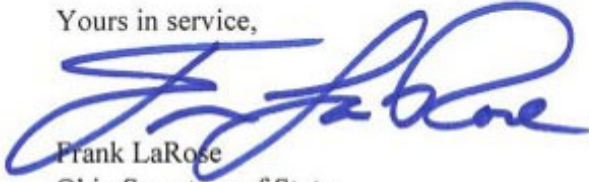
Finally, Section 9(C) of Article XI of the Ohio Constitution provides that when the Ohio Redistricting Commission adopts a new district plan pursuant to an order of the Ohio Supreme Court, as is currently the case, a General Assembly candidate is allowed up to 30 days to **change their residence** to be eligible for election in a district in which the candidate may not currently reside. Thirty days from January 22, 2022 (the date the Ohio Redistricting Commission passed the last map) is today, February 22, 2022. Presumably, the 30-day clock will restart when a map is passed and deemed constitutional by or not challenged in the Ohio Supreme Court. Of course, we do not know when that will be and thus it is imperative that an additional 30 days is considered as an added challenge to the election calendar given the requirement in the Ohio Constitution to permit candidates to move.

As you can see, these are only some the challenges making it impossible to conduct a complete primary election on May 3, 2022, which includes contests for the Ohio General Assembly, U.S. House of Representatives, and political party state central committees. I have attached to this letter a copy of a letter from the Attorney General to the Governor and to the legislative leaders in which the Attorney General

clearly articulates my legal duty to prepare for the primary election on May 3 without these district-based contests appearing on the ballot. I also recognize that proceeding without these contests presents the General Assembly with some difficult decisions, including whether to move the primary election for all contests to a later date on the calendar or to proceed with a bifurcated primary in which statewide and local elections would be held on May 3 and the other contests held at a date to be determined in August. Under a bifurcated primary scenario, the boards of elections will need at least 120 days to conduct an election, including 90 days to prepare and 30 days to complete each one.

I humbly ask the General Assembly to consider this information in determining its next steps, as we mutually work to ensure Ohio voters a secure, accurate, and accessible election process that fulfills our obligation to the constitution and the law.

Yours in service,



Frank LaRose  
Ohio Secretary of State

cc: John Barron, Chief of Staff, Ohio Senate  
The Honorable Robert Cupp, Speaker, Ohio House of Representatives  
Christine Morrison, Chief of Staff, Ohio House

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# Exhibit D

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February 28, 2022

The Honorable Matt Huffman  
Statehouse  
Columbus, OH 43215  
VIA ELECTRONIC MAIL

Dear President Huffman:

We want to thank you for the continued dialogue regarding the 2022 primary election and your thoughtful approach to considering the options before the legislature. As indicated in our last correspondence, we wish to continue to share our perspective with you and your members as you work through these options.

OAEo is in receipt of the letter dated February 22<sup>nd</sup> from Secretary LaRose to your office as well as the accompanying letter from Attorney General Yost. The letters point out concerns that are being vigorously discussed by local election officials. We urge you to give due consideration to the issues they raise.

There is a saying among election officials that "It takes three things to run a successful election: time, money and people. You can always get more money and more people, but you can't get more time." This saying looms large for Ohio's 88 boards of elections right now. Although we would be grateful to have additional money to hire more people to complete the myriad tasks before us, what we really need is more time. And only you, as legislators, can help us with that.

We just received state legislative maps on Saturday and still do not have the legal descriptions, which are necessary for boards of elections to begin implementing the new districts. (District maps closely approximate the actual districts, but they do not correspond exactly to the legal descriptions.) Moreover, these maps are subject to further proceedings in the Ohio Supreme Court, the result of which likely will not be known until next week. Congressional maps are still being debated by the Commission and must be completed before election officials can begin our internal process of redrawing district lines and assigning voters to those districts. Given these facts, our ability to administer a fair and accurate election has been compromised. Critical functions such as ballot proofing and testing of equipment will necessarily be delayed and then rushed. The result will likely be mistakes in the election. This is not how we want to do business, but it is the only option currently left open to us. This confluence of circumstances causes grave concerns on the part of election officials. As the ultimate arbiter of the time, manner and place of elections in Ohio, the General Assembly should be concerned as well.

Many counties around the state no longer have the ability to run a successful May 3<sup>rd</sup> election, and more counties lose that ability each day that we do not have final maps and the legal descriptions we need to implement them. Although HB 93 gave the Secretary of State needed flexibility to move state election deadlines, no one in Ohio can change the federal deadline to mail ballots to our military and overseas voters on March 18<sup>th</sup>. We are aware that the Secretary of State has requested a waiver of this deadline,

but as election officials we cannot count on that occurring as we do our internal planning. Missing this deadline will inevitably lead to litigation and additional confusion for voters, election boards, and the candidates seeking office this spring.

Rather than face this seeming inevitability, we ask you to consider delaying the May 3<sup>rd</sup> primary for all contests. Please rest assured that we do not ask this lightly. Our strong preference has always been to hold the election on the day it was originally scheduled. However, we feel obligated to share our concerns about the consequences of maintaining our current course.

Again, we greatly appreciate the ability to share our thoughts with you. As Ohio's election professionals, we are happy to provide any additional information you or your colleagues may require.

Sincerely and respectfully,

*Brian Sleeth*

Brian Sleeth, President  
Ohio Association of Election Officials

*Sherry Poland*

Sherry Poland, First Vice-President  
Ohio Association of Election Officials

CC: Speaker Bob Cupp  
Minority Leader Allison Russo  
Minority Leader Kenny Yuko  
Secretary of State Frank LaRose

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# Exhibit E

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March 17, 2022

Honorable Mike DeWine  
Governor, State of Ohio  
77 South High Street, 30<sup>th</sup> Floor  
Columbus, Ohio 43215

Honorable Matt Huffman  
President, Ohio Senate  
Ohio Statehouse  
Columbus, Ohio 43215

Honorable Robert Cupp  
Speaker, Ohio House of Representatives  
77 South High Street, 14<sup>th</sup> Floor  
Columbus, Ohio 43215

Honorable Allison Russo  
Minority Leader, Ohio House  
77 South High Street, 14<sup>th</sup> Floor  
Columbus, Ohio 43215

Honorable Kenny Yuko  
Minority Leader, Ohio Senate  
Ohio Statehouse  
Columbus, OH 43215

Members of the General Assembly  
Columbus, Ohio

Dear Colleagues:

I regret to inform you that as a result of last night's decision by the Ohio Supreme Court, and barring the immediate action of a federal court, our 88 county boards of elections can no longer include contests for the state House and state Senate in the May 3, 2022 primary election. Let there be no doubt, however, that we will continue to prepare for a May 3 primary election that includes statewide, congressional and local contests, unless directed to do otherwise by the Ohio General Assembly or a court order.

The election effectively begins with the delivery of ballots to military and overseas voters. Due to the Court's order invalidating the third Ohio General Assembly district plan, it's no longer logistically possible to include district-specific legislative races on the ballots without federal court intervention allowing the boards to proceed as scheduled.


After mounting a monumental effort over the last few weeks, our bipartisan elections officials were ready to conduct this election on time, as I directed. However, those boards are now left once again without clear districts to certify legislative candidates, and they're simply out of time to complete the required work that must be done to reprogram election systems with new district data. **The Court's majority opinion effectively causes the primary election for these contests "to be conducted other than in the time, place, and manner prescribed by the Revised Code."** (ORC Section 3501.40)

I remind the General Assembly that a cascading series of delays beyond our control have brought us to this point. The process of redrawing Ohio's political districts requires the use of U.S. Census data to determine population shifts over the past decade. The Biden administration failed to deliver that data to the Ohio Redistricting Commission by the required April 2021 deadline. I believe this delay was intentional. After Ohio Attorney General Dave Yost sued the federal government to get the data, it finally arrived by mid-August – nearly five months late and just days before the Commission's constitutional deadline for new district maps (September 1). The Redistricting Commission moved quickly to adopt a new state House and Senate district plan, giving final approval on September 16, 2021. Opponents then filed lawsuits against the plan just days later, and the Ohio Supreme Court has so far taken six months in total to consider that litigation, including nearly four months to issue its first ruling and then additional weeks of deliberation each time the Commission has attempted to comply with the Court's ever-changing orders.

Additionally, my office is currently involved in or monitoring no less than *nine* local, state or federal lawsuits seeking in some way to cause chaos and confusion for voters and to postpone the primary election. As I've often stated in recent weeks, I believe the motive is entirely political, and the strategy is being bankrolled by out of state special interests ultimately seeking court-ordered gerrymandering for partisan advantage. Nevertheless, our team at the Secretary of State's Office and our bipartisan colleagues at the boards of elections have been working tirelessly to overcome these unprecedented obstacles, even as some in the General Assembly opposed efforts to accommodate military voters and attempted to block our local elections officials from receiving critical funding needed to get this job done. Regardless, we've never let up in the effort to make a *complete* May 3 primary election a success, and I'm confident we're prepared to do that.

I look forward to working closely with the General Assembly as we chart a course forward to give Ohioans the honest and accessible election they deserve. Please consider me and my office a resource as you make some very important decisions in the days ahead.

Yours in service,



Frank LaRose  
Ohio Secretary of State

# Exhibit F

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

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

---

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

---

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



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

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

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



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

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

Respectfully submitted,

OHIO ATTORNEY GENERAL

/s/ Jonathan D. Blanton

JONATHAN D. BLANTON (0070035)

Deputy Attorney General

JULIE M. PFEIFFER\* (0069762)

*\*Counsel of Record*

MICHAEL A. WALTON (0092201)

Assistant Attorneys General

Constitutional Offices Section

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

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

*Counsel for Defendant Frank LaRose*

### **CERTIFICATE OF SERVICE**

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

/s/ Jonathan D. Blanton

JONATHAN D. BLANTON (0070035)

Deputy Attorney General

# Exhibit G

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APR - 6 2016

IN THE COURT OF COMMON PLEAS  
HAMILTON COUNTY, OHIO

JUDGE ROBERT F. FUEHMAN  
COURT OF COMMON PLEAS  
HAMILTON COUNTY, OHIO

A 1505953

Eric Kearney

Case No. \_\_\_\_\_

Plaintiff,

v.

Hamilton County Board of Elections



D114070843

**[PROPOSED] ORDER**

Defendants.

Plaintiffs have submitted a Verified Complaint and Affidavit or Declaration alleging the following facts: Plaintiff Eric Kearney is a qualified and registered voter in Hamilton County. Defendant Hamilton County Board of Elections, among other things, appoints voting officials within the county and investigates irregularities in the voting process within the county.

ORC § 3501.30(A) provides that "the board of elections shall provide for each polling place the necessary ballot boxes, official ballots, cards of instructions, registration forms, pollbooks or poll lists, tally sheets, forms on which to make summary statements, writing implements, paper, and all other supplies necessary for casting and counting the ballots and recording the results of the voting at the polling place." ORC § 3505.17 provides that if "by accident or casualty the ballots or other required papers, lists, or supplies are lost or destroyed, or in case none are delivered at the polling place, or if during the time the polls are open additional ballots or supplies are required, the board of elections, upon requisition by telephone or in writing and signed by the majority of the election judges of the precinct stating why additional supplies are needed, shall supply them as speedily as possible."

Polling place officials were unable to operate the new electronic poll books resulting in long lines and persons leaving without voting. Voters who arrived in a timely manner at the

correct polling location were thus turned away without being allowed to cast a vote in violation of Ohio Rev. Code § 3501.32 and their rights under the Ohio Constitution.

Polling officials were unaware that they had backup paper poll books to use or in some instances no such backup was available resulting in voters not being allowed to vote.

In some instances, voters were not being provided any opportunity to vote a provisional ballot either because there were no such ballots or poll workers failed to inform voters of their rights.

To obtain a Temporary Restraining Order, Plaintiff must demonstrate that (1) he is likely to succeed on the merits of the case; (2) the issuance of the injunction will prevent irreparable harm; (3) the potential injury that may be suffered by the Defendants will not outweigh the potential injury suffered by Plaintiff if the injunction is not granted, and (4) the public interest will be served by the granting of the injunction. See *City of Cleveland v. Cleveland Electric Illuminating Co.*, 684 N.E.2d 343, 350 (Ohio App. 8th Dist. 1996) (citing *Corbett v. Ohio Bldg. Auth.*, 619 N.E.2d 1145 (Ohio App. 10th Dist. 1993)). This standard has been met.

The facts alleged in this action establish that Plaintiff is likely to prevail on the merits. The United States Supreme Court has held that “[h]aving once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person’s vote over another.” *Bush v. Gore*, 531 U.S. 98, 104–105 (2000). By failing to comply with ORC §§ 3501.30(A) and 3505.17, Defendants impermissibly infringed upon the constitutional rights of Plaintiff and others, including interfering with the ability of Plaintiff to vote on equal footing with voters in other precincts in this county.

It is well settled that the loss of voting rights by voters would itself constitute irreparable harm. See, e.g., *Elrod v. Burns*, 427 U.S. 347, 373 (1976). That makes perfect sense given that the Supreme Court has held that “[n]o right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live [and that o]ther rights, even the most basic, are illusory if the right to vote is undermined.” *Wesberry v. Sanders*, 376 U.S. 1, 17 (1965). For the same reasons, the public interest

undoubtedly is served by issuing a Temporary Restraining Order to protect the public's right to vote. Moreover, it is in the public interest that, whenever possible, voting rights are enforced *before* the date of the election has passed. A Temporary Restraining Order is warranted in this instance all the more because Defendants will not suffer harm by being ordered to comply with Ohio election law. Accordingly, Plaintiff has met his burden for the issuance of a Temporary Restraining Order and Preliminary Injunction.

Plaintiff also has met his burden of demonstrating that the order should be issued *ex parte*. This Court may grant a Temporary Restraining Order *restraining order* without written or oral notice to the adverse party or his attorney if: (1) it clearly appears from specific facts shown by Affidavit or Declaration or by the Verified Complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or his attorney can be heard in opposition; and (2) the applicant's attorney certifies to the Court in writing the efforts, if any, which have been made to give notice and the reasons supporting his claim that notice should not be required. Ohio Civ. R. 65(A). As discussed in the Certification of Counsel, Plaintiff made reasonable efforts to notify Defendants and/or their attorneys of this Motion. In addition, because the election and the ensuing violation of Ohio election law is ongoing, and the election is currently scheduled to end at 7:30 p.m. tonight, Plaintiff and other registered voters will be further irreparably harmed by any delay in the issuance of a Temporary Restraining Order while waiting for Defendants' attorneys to appear in this Court.

Finally, the Court has the discretion not to require Plaintiff to post a bond for the Temporary Restraining Order to issue, and—particularly as this case involves fundamental constitutional rights—finds that no bond should be required here. *See Vanguard Transportation Systems, Inc. v. Edwards Transfer & Storage Co.*, 673 N.E.2d 182, 186 (Ohio App. 10th Dist. 1996) (reasoning that because the Ohio statute permitting injunctions is modeled after Fed. R. Civ. P. 65, and federal courts have determined that under that statute they have the discretion not to set bond, Ohio courts have the same discretion), *See also Ingram v. Toledo City Sch. Dist. Bd. of Ed.* 399 F. Supp. 2d 998, 1007 (N.D. Ohio 2004).

For the reasons stated above, it is ORDERED that Defendants (as well as their officers, agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of the order whether by personal service or otherwise) to (i) keep precinct open (or re-open the precinct) until 9:00 p.m. to ensure that no qualified voter will be prevented from voting as the result of missing supplies; and (ii) require Defendants to forthwith issue public service announcements through all available media informing voters who attempted to vote earlier in the day and were not able to do so due to problems at their polling location they may return until 9:00 p.m. due to a court order extending poll hours.

SO ORDERED:

JUDGE ROBERT P. RUEHLMAN  
COURT OF COMMON PLEAS  
HAMILTON COUNTY, OHIO

November 3, 2015

JUDGE ROBERT P. RUEHLMAN  
COURT OF COMMON PLEAS  
HAMILTON COUNTY, OHIO

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# Exhibit H

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
CLEVELAND

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

OHIO DEMOCRATIC PARTY,

Plaintiff,

vs.

CUYAHOGA COUNTY BOARD OF,

Defendant.

) Case No. 1:06 CV 2692

)

) Judge Dan Aaron Polster

)

) ORDER RE: GRANTING IN PART

) PLAINTIFF'S MOTION FOR

) TEMPORARY RESTRAINING

) ORDER

Before the Court is Plaintiff's Motion for Temporary Restraining order and Preliminary Injunction ("Motion") (ECF No. 2). Plaintiff Ohio Democratic Party alleges that Defendant Cuyahoga County, Ohio Board of Elections (Board"), violated voters' First and Fourteenth Amendment rights by failing to open certain polling stations at the designated time of 6:30 a.m. based on malfunctioning and nonfunctioning equipment, as well as failing to sufficiently provide an opportunity for voters to exercise their constitutional right to vote based on wait times in excess of one hour. Problems with polling equipment, precinct judges absent from polling stations, etc. all prevented voters from exercising their constitutional voting rights as well. On November 7, 2006, the Court held a conference with counsel for both parties. Counsel for Secretary of State Blackwell was present as well. During that discussion, the Court informed the parties that having the votes cast according to voters' constitutional rights is a more

compelling need than an immediate determination of the election winners. The Board conceded that four of the polling places were problematic, while Plaintiff cited evidence of serious problems at 12 other polling locations. The Court **GRANTS** the Motion in part, concluding that the public interest will be served by keeping the following polling locations open until 9 p.m., and irreparable harm will result from a decision not to keep the following polling places open to 9 p.m., and there is no harm to anyone by keeping the following polling locations open.

*Performance Unlimited v. Questar Publishers, Inc.*, 52 F.3d 1373, 1381 (6th Cir. 1995).

#### CLEVELAND

Dunbar Elementary School—Cleveland Ward 14  
Beechland Presbyterian—Cleveland Ward 4  
Korean Presbyterian Church—Cleveland  
Braceland Church—Cleveland Ward 1

#### SHAKER HEIGHTS

Woodbury Elementary School—Shaker Heights  
Boulevard Elementary—Shaker Heights

#### UNIVERSITY HEIGHTS

Fuchs-Mizrachi School—University Heights

#### WARRENSVILLE HEIGHTS

Clarksville Library—Warrensville Heights  
Westwood School—Warrensville Heights

#### CLEVELAND HEIGHTS

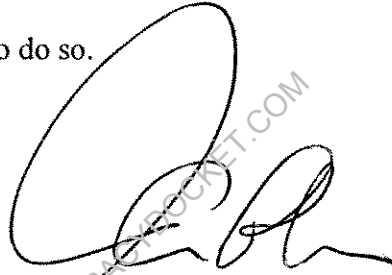
St. Albans School—Cleveland Heights  
Alcazar Hotel—Cleveland Heights  
Canterbury Elementary School—Cleveland Heights  
Coventry School—Cleveland Heights  
Noble Library—Cleveland Heights  
Grace Lutheran—Cleveland Heights

EAST CLEVELAND

Mt. Nebo Church–East Cleveland

Given the recent history of elections in this county, the Court believes the Cuyahoga County Board of Elections did an excellent job in conducting today's election. The problems cited by Plaintiff were in a handful of polling locations – all in the east side of Cleveland and in east side suburbs. More than one hour in line is too long to wait, given the importance of the right to vote, and the action by the Court will ensure that all of the citizens in these precincts who wish to vote will have the opportunity to do so.

**IT IS SO ORDERED.**

A handwritten signature in black ink, appearing to read 'Dan Polster', is written over a horizontal line. A diagonal watermark 'RETRIEVED FROM DEMOCRACYDOCKET.COM' is visible across the signature.

**Dan Aaron Polster**  
**United States District Judge**

# Exhibit I

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**IN THE MATTER OF  
2022 LEGISLATIVE  
DISTRICTING OF THE STATE**

**\* IN THE  
\* COURT OF APPEALS  
\* OF MARYLAND  
\* MISC. NOS.  
\* 21, 24, 25, 26, 27  
\* SEPTEMBER TERM, 2021**

## **ORDER**

The Court of Appeals of Maryland, pursuant to the provisions of Article III, § 5 of the Constitution of Maryland, is vested with original jurisdiction to review the legislative districting plan upon petition of any registered voter, and has received timely-filed petitions challenging the validity of the 2022 legislative districting plan enacted by the General Assembly of Maryland as Senate Joint Resolution 2.

Special Magistrate Alan M. Wilner, appointed by Order of this Court on January 28, 2022, has scheduled a hearing on the merits in the above-captioned cases to commence on March 23, 2022 and extend, if necessary, through March 25, 2022, which accordingly will occur after the current primary election candidate filing deadline of March 22, 2022.

The Special Magistrate intends to produce and file a report with the Court on April 5, 2022. After the issuance of the Special Magistrate's report, the parties may wish to file exceptions and/or request a hearing concerning the Special Magistrate's report, which would require extension of various dates in the Election Calendar for the efficient conduct of an election after the determination of whether the legislative districting plan satisfies constitutional standards.

Now, therefore, it is this 15th day of March, 2022, ORDERED, by the Court of Appeals of Maryland, that

(1) The 2022 Primary for Gubernatorial Elections, scheduled for June 28, 2022, is moved to July 19, 2022.

(2) The following deadlines are amended for the 2022 Primary for the Gubernatorial Elections:

(a) The deadline for filing certificates of candidacy, established pursuant to Maryland Code, (1957, 2017 Repl. Vol., 2021 Supp.), Election Law Article ("EL") § 5-303 as Tuesday, February 22, 2022

and extended by Order of this Court on February 11, 2022 (the “February 11 Order”) to Tuesday, March 22, 2022 at 9:00 p.m., is extended to Friday, April 15, 2022 at 9:00 p.m.;

(b) The deadline for candidates to withdraw a certificate of candidacy, established pursuant to EL § 5-502(a) as Friday, March 4, 2022 and extended by this Court’s February 11 Order to Thursday, March 24, 2022, is extended to Monday, April 18, 2022;

(c) The deadline to fill a vacancy in candidacy for a primary election, established pursuant to EL § 5-901 as Tuesday, March 8, 2022 and extended by this Court’s February 11 Order to Monday, March 28, 2022, is extended to Wednesday, April 20, 2022;

(d) The deadline to challenge a candidate’s residency, established pursuant to EL § 5-305 as Wednesday, March 9, 2022 and extended by this Court’s February 11 Order to Tuesday, March 29, 2022, is extended to Thursday, April 21, 2022;

(e) Pursuant to EL § 9-207, the Maryland State Board of Elections is authorized to adjust any deadlines related to certifying, displaying, and printing ballots.

/s/ Joseph M. Getty  
Joseph M. Getty  
Chief Judge  
Court of Appeals of Maryland

Filed: March 15, 2022

/s/ Suzanne C. Johnson  
Suzanne C. Johnson  
Clerk  
Court of Appeals of Maryland

Pursuant to Maryland Uniform Electronic Legal  
Materials Act  
(§§ 10-1601 et seq. of the State Government Article) this document is authentic.



2022-03-15 16:20-04:00

Suzanne C. Johnson, Clerk

# Exhibit J

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SUPREME COURT OF NORTH CAROLINA

\* \* \* \* \*

REBECCA HARPER; AMY CLARE )  
OSEROFF; DONALD RUMPH; JOHN )  
ANTHONY BALLA; RICHARD R. CREWS; )  
LILY NICOLE QUICK; GETTYS COHEN, )  
JR.; SHAWN RUSH; JACKSON THOMAS )  
DUNN, JR.; MARK S. PETERS; KATHLEEN )  
BARNES; VIRGINIA WALTERS BRIEN; and )  
DAVID DWIGHT BROWN )

Plaintiffs, )

v. )

REPRESENTATIVE DESTIN HALL, in his )  
official capacity as Chair of the House )  
Standing Committee on Redistricting; )  
SENATOR WARREN DANIEL, in his official )  
capacity as Co-Chair of the Senate Standing )  
Committee on Redistricting and Elections; )  
SENATOR RALPH HISE, in his official )  
capacity as Co-Chair of the Senate Standing )  
Committee on Redistricting and )  
Elections; SENATOR PAUL NEWTON, in his )  
official capacity as Co-Chair of the Senate )  
Standing Committee on Redistricting and )  
Elections; SPEAKER OF THE NORTH )  
CAROLINA HOUSE OF )  
REPRESENTATIVES, TIMOTHY K. )  
MOORE; PRESIDENT PRO TEMPORE OF )  
THE NORTH CAROLINA SENATE, PHILIP )  
E. BERGER; THE NORTH CAROLINA )  
STATE BOARD OF ELECTIONS; and )  
DAMON CIRCOSTA, in his official capacity )

Defendants. )



NORTH CAROLINA LEAGUE OF )  
CONSERVATION VOTERS, INC.; HENRY )  
M. MICHAUX, JR.; DANDRIELLE LEWIS; )  
TIMOTHY CHARTIER; TALIA FERNÓS; )  
KATHERINE NEWHALL; R. JASON )  
PARSLEY ; EDNA SCOTT ; ROBERTA )  
SCOTT ; YVETTE ROBERTS; JEREANN )  
KING JOHNSON; REVEREND REGINALD )  
WELLS; YARBROUGH WILLIAMS, JR.; )  
REVEREND DELORIS L. JERMAN; VIOLA )  
RYALS FIGUEROA; and COSMOS GEORGE )

Plaintiffs, )

v. )

REPRESENTATIVE DESTIN HALL, in his )  
official capacity as Chair of the House )  
Standing Committee on Redistricting; )  
SENATOR WARREN DANIEL, in his official )  
capacity as Co-Chair of the Senate Standing )  
Committee on Redistricting and Elections; )  
SENATOR RALPH E. HISE, JR., in his of )  
ficial capacity as Co-Chair of the Senate )  
Standing Committee on Redistricting and )  
Elections; SENATOR PAUL NEWTON, in )  
his official capacity as Co-Chair of the Senate )  
Standing Committee on Redistricting and )  
Elections; REPRESENTATIVE TIMOTHY )  
K. MOORE, in his official capacity as Speaker )  
of the North Carolina House of )  
Representatives; SENATOR PHILIP E. )  
BERGER, in his official capacity as President )  
Pro Tempore of the North Carolina Senate; )  
THE STATE OF NORTH CAROLINA; THE )  
NORTH CAROLINA STATE BOARD OF )  
ELECTIONS; DAMON CIRCOSTA, in his )  
official capacity as Chairman of the North )  
Carolina State Board of Elections; STELLA )  
ANDERSON, in her official capacity as )  
Secretary of the North Carolina State Board )  
of Elections; JEFF CARMON III, in his )  
official capacity as Member of the North )

Carolina State Board of Elections; STACY )  
EGGERS IV , in his official capacity as )  
Member of the North Carolina State Board of )  
Elections; TOMMY TUCKER, in his of ficial )  
capacity as Member of the North Carolina )  
State Board of Elections; and KAREN )  
BRINSON BELL, in her official capacity as )  
Executive Director of the North Carolina )  
State Board of Elections )

\* \* \* \* \*

ORDER

Plaintiffs' Petitions for Discretionary Review Prior to Determination by the Court of Appeals, Motion to Suspend Appellate Rules to Expedite a Decision, and Motion to Suspend Appellate Rules and Expedite Schedule, filed in these consolidated cases on 6 December 2021 are allowed as follows:

In light of the great public interest in the subject matter of these cases, the importance of the issues to the constitutional jurisprudence of this State, and the need for urgency in reaching a final resolution on the merits at the earliest possible opportunity, the Court grants a preliminary injunction and temporarily stays the candidate-filing period for the 2022 elections for all offices until such time as a final judgment on the merits of plaintiffs' claims, including any appeals, is entered and a remedy, if any is required, has been ordered.

1. Defendants are hereby enjoined from conducting elections for any public offices in the state on Tuesday, March 8, 2022 and, consistent with the response and affidavit

of the North Carolina State Board of Elections, defendants instead are directed to hold primaries for all offices on Tuesday, May 17, 2022. The trial court is authorized to issue any orders necessary to accomplish the resulting changes in the election schedule, including implementing shortened filing periods and other administrative adjustments.

2. Any individual who has already filed to run for public office in 2022 and whose filing has been accepted by the appropriate board of elections, will be deemed to have filed for the same office under the new election schedule for the May 2022 primary unless they provide timely notice of withdrawal of their candidacy to the board of elections during the newly-established filing period; and except to the extent that a remedy in this matter, if any, impacts a candidate's eligibility to hold the office for which they have currently filed. Any individual who has properly withdrawn their candidacy is free to file for any other office for which they may be eligible during the reopened filing period.

3. The trial court is directed to hold proceedings necessary to reach a ruling on the merits of plaintiffs' claims and to provide a written ruling on or before Tuesday, January 11, 2022.

4. Any party wishing to appeal the trial court's ruling must file a Notice of Appeal within two business days of the trial court's ruling, exclusive of weekends and holidays, in the trial court and with this Court, and should expect that an expedited briefing and hearing schedule in this Court will commence immediately thereafter.



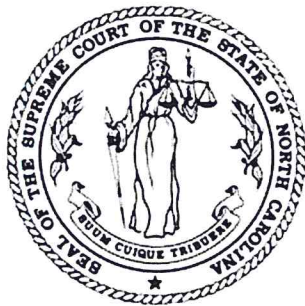
The Petition for Writ of Supersedeas and Motion for Temporary Stay are dismissed as moot.

By order of the Court in Conference, this the 8th day of December, 2021.

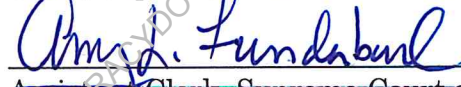


For the Court

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 8th day of December, 2021.



AMY L. FUNDERBURK  
Clerk, Supreme Court of North Carolina



Assistant Clerk, Supreme Court of  
North Carolina

Copy to:

North Carolina Court of Appeals

Mr. Narendra K. Ghosh, Attorney at Law, For Harper, Rebecca, et al. - (By Email)

Mr. Terence Steed, Assistant Attorney General, For State Board of Elections, et al. - (By Email)

Mr. Amar Majmundar, Senior Deputy Attorney General, For State Board of Elections, et al. - (By Email)

Ms. Stephanie A. Brennan, Special Deputy Attorney General, For State Board of Elections, et al. - (By Email)

Mr. Burton Craige, Attorney at Law, For Harper, Rebecca, et al. - (By Email)

Mr. Paul E. Smith, Attorney at Law, For Harper, Rebecca, et al. - (By Email)

Mr. Phillip J. Strach, Attorney at Law, For Hall, Destin, et al. - (By Email)

Ms. Alyssa Riggins, Attorney at Law, For Hall, Destin, et al. - (By Email)

Mr. John E. Branch, III, Attorney at Law, For Hall, Destin, et al. - (By Email)

Mr. Thomas A. Farr, Attorney at law, For Hall, Destin, et al. - (By Email)

Mr. Stephen D. Feldman, Attorney at Law, For N.C. League of Conservation Voters, Inc., et al. - (By Email)

Mr. Adam K. Doerr, Attorney at Law, For N.C. League of Conservation Voters, Inc., et al. - (By Email)

Mr. Erik R. Zimmerman, Attorney at Law, For N.C. League of Conservation Voters, Inc., et al. - (By Email)

Mr. Ryan Y. Park, Solicitor General, For Gov. Cooper and AG Stein - (By Email)

Mr. James W. Doggett, Deputy Solicitor General, For Gov. Cooper and AG Stein - (By Email)

Mr. Zachary W. Ezor, Solicitor General Fellow, For Gov. Cooper and AG Stein - (By Email)

Ms. Kellie Z. Myers, Trial Court Administrator - (By Email)  
West Publishing - (By Email)  
Lexis-Nexis - (By Email)

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# Exhibit K

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# Exhibit B

# Amanda Grandjean

# Affidavit

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## Grandjean Aff 3.20-2022.pdf

DocVerify ID: BC7F4D75-556B-4A12-B441-58FE6135CF7A  
 Created: March 22, 2022 11:51:08 -8:00  
 Pages: 6  
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### E-Signature Summary

#### E-Signature 1: Amanda M. Grandjean (AMG)

March 22, 2022 11:56:01 -8:00 [DC36379637CB] [156.63.71.253]  
 agrandjean@ohiosos.gov (Principal) (Personally Known)

#### E-Signature Notary: MacKenzie S. Clayton (msc)

March 22, 2022 11:56:01 -8:00 [7E6CB94B2971] [98.102.110.129]  
 MacKenzie.Clayton@OhioAGO.gov  
 I, MacKenzie S. Clayton, did witness the participants named above electronically sign this document.





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

<p><b>MICHAEL GONIDAKIS, et al.,</b></p> <p style="text-align: center;"><b>Plaintiffs,</b></p> <p style="text-align: center;"><b>v.</b></p> <p><b>FRANK LaROSE et al.,</b></p> <p style="text-align: center;"><b>Defendants.</b></p>	<p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p>	<p><b>Case No. 2:22-CV-773</b></p> <p><b>Chief Judge Algenon Marbley</b></p>
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**AFFIDAVIT OF AMANDA M. GRANDJEAN**

---

STATE OF OHIO	:	
	:	SS
COUNTY OF PERRY	:	

Now comes Amanda M. Grandjean, having been first duly cautioned and sworn, and states and affirms as follows:

1. I have personal knowledge of the information set forth in this Affidavit, and I am competent to testify to the matters stated herein.

2. I am an attorney licensed to practice law in the State of Ohio. From September 2016 to January 2019, I was an associate attorney with the law firm of Bricker and Eckler, LLP, and focused my practice of law on the areas of government relations, election law, campaign finance, and litigation.

3. In January 2019, I was appointed by Secretary of State Frank LaRose to the position of Deputy Assistant Secretary of State and State Elections Director in the Elections Division of the Ohio Secretary of State's Office, where I am responsible for developing and implementing policies, procedures, and guidelines for the administration of federal, state, and local elections to assist county boards of elections in the fulfillment of their statutory duties, as well as having oversight of the statewide voter registration database, the receipt, review, and distribution of statewide candidate and issue petition filings, and campaign finance regulations and related filings.

4. I am an elected Vice President and executive committee member of the National Association of State Election Directors ("NASED") and the Secretary and executive board member of the Electronic Registration Information Center ("ERIC"), the elected Vice Chair of the United States Election Assistance Commission Standards Board Executive Committee, and a



member of the National Association of Secretaries of State, the Bipartisan Policy Center Task Force, and the Massachusetts Institute of Technology Election Data Science Lab.

5. In March 2021, the America Society for Public Administration (“ASPA”) awarded NASED the 2020 Public Integrity Award, along with the Cybersecurity and Infrastructure Security Agency (“CISA”). This award pays tribute to an individual or organization that has made outstanding contributions to responsible conduct in public service. On behalf of NASED, I, as a member of the Executive Committee, accepted this award.

6. In my role as Deputy Assistant Secretary of State and State Elections Director, I also work closely with Ohio’s 88 county boards of elections (“boards”). In that capacity, I advise boards as to the issuance and implementation of directives issued by the Secretary of State which govern the conduct of elections, answer general questions, and work with the boards to ensure that elections run smoothly, accurately, and in accordance with Ohio law.

7. Under Ohio law, candidates who are members of a recognized political party are required to file declarations of candidacy and petitions with signatures ninety days before a primary election. Thus, the partisan candidate filing deadline was February 2, 2022, for the May 3, 2022, Primary Election. Ordinarily, following receipt of those filings, the boards of election are required to adhere to the following, but not limited to, statutory deadlines:

- a. February 14, 2022 - Boards of elections must certify the validity and sufficiency of partisan candidates’ petitions (78 days before primary election).
- b. February 18, 2022 - Protests against partisan candidates’ petitions must be filed by 4 p.m. (74 days before primary election).
- c. February 22, 2022 - Board of elections of most populous county in a multi-county subdivision must certify names of all candidates to other boards of elections (70 days before primary election).
- d. March 18 and 19, 2022 - Uniformed and Overseas Citizens Absentee Voting Act (“UOCAVA”) absentee ballots for May 3 primary election must be ready for use under Ohio law by March 18 (46 days before primary election) and under federal law must be mailed beginning March 19 (45 days before the primary election).
- e. April 5, 2022 - Non-UOCAVA absentee ballots for May 3 primary election must be ready for use and for early-in person voting at the boards of election (first day after close of voter registration, 28 days before primary election).

8. In the ordinary course, those deadlines allow adequate time – 44 days – for the county boards of election to prepare and ensure that all necessary steps, proofing, and testing are complete prior to having UOCAVA ballots prepared and ready to send by the 46<sup>th</sup> day before the primary election.



9. In the state of Ohio, the election is in fact not conducted on a single day, but over a period of time, beginning with the mailing of live UOCAVA ballots, typically 46 days before the election and ending through the close of polls on Election Day.

10. The 2020 decennial Census 2020 required the 99 House districts and 33 Senate districts in the Ohio General Assembly to be redrawn in 2021 pursuant to Article XI of Ohio's Constitution. The new Ohio Redistricting Commission adopted a new General Assembly district plan late the night of September 15, 2021. It was not until January 12, 2022 – nearly four months after the adoption of the plan – that the Ohio Supreme Court issued a decision invalidating the first General Assembly District Plan ("First Plan") and ordered the Ohio Redistricting Commission to adopt a new plan within 10 days. The Ohio Redistricting Commission adopted a second General Assembly District Plan ("Second Plan") on January 22, 2022.

11. The Ohio Redistricting Commission adopted the Second Plan just 11 days prior to the February 2, 2022, candidate filing deadline. This created timing problems for election administration procedures and deadlines under the current law at that time. The General Assembly passed H.B. 93 following the adoption of the Second Plan, which modified the filing requirements for all General Assembly candidates and congressional candidates for the 2022 Primary Election. H.B. 93 retained the February 2, 2022, filing deadline for candidates for the Ohio House of Representatives and the Ohio Senate; however, it permitted the Secretary of State to adjust certain elections administration deadlines with respect to those contests for the May 3, 2022, primary election as necessary, except for the March 18, 2022 UOCAVA deadline (unless the Secretary sought a waiver under federal law) and any deadline that, under Ohio law, falls on or after April 3, 2022.

12. On January 31, 2022, the Secretary issued Directive 2022-03 to inform the boards of H.B. 93's changes and to establish additional deadlines for General Assembly candidates consistent with H.B. 93 as follows:

- a. February 22, 2022 - Candidates for Ohio House or Ohio Senate who seek to serve a district in which they did not reside at the time of filing must become a resident of the district they wish to represent, update their voter registration, and file an addendum with the board of elections that indicates their new address.
- b. March 9, 2022 – Most populous county board of elections or board of elections must certify the validity and sufficiency of partisan candidate petitions and provide the names of the certified candidates to the less populous county board of elections in the district.
- c. March 11, 2022 – Protests against partisan candidates for U.S. House, Ohio House, Ohio Senate, and state central committee of a political party (including write-in candidates) must be filed with the most populous county by 4:00 p.m.

13. On February 7, 2022, the Ohio Supreme Court invalidated the Second Plan and ordered the Ohio Redistricting Commission to adopt a new plan. The impact of the Court's order



was once again to cause additional chaos and compression in election procedures and the election calendar.

14. On February 24, 2022, the Ohio Redistricting Commission adopted the third General Assembly District Plan (“Third Plan”).

15. Two days later, on February 26, 2022, pursuant to his authority under R.C. 3501.05(B), the Secretary issued Directive 2022-26, which, again moved the protest and certification deadlines for General Assembly candidates to accommodate the Third Plan as follows:

- a. March 10, 2022 – Any House and Senate candidates who may wish to change their residence to run in another district file the addendum contemplated by Section 4(C)(1)(b) of H.B. 93 with the board no later than 4:00 p.m. on March 10, 2022.
- b. March 14, 2022 – Most populous county board of elections or board of elections must certify the validity and sufficiency of partisan candidate petitions and provide the names of the certified candidates to the less populous county board(s) of elections in the district, subject to any filers changing districts and completing their move by March 26, 2022. Boards cannot verify or certify candidate petitions until the reprogramming of the voter registration system is complete, a process that normally takes 2-3 weeks for the boards to complete.
- c. March 17, 2022 – Protests against partisan candidates for Ohio House, Ohio Senate, and state central committee of a political party (including write-in candidates) must be filed with the most populous county board of elections by 4:00 p.m.

16. As a result of these delays, the boards of elections have an almost impossibly compressed period of time to perform their duties to review petition signatures, certify General Assembly candidates, hold protest hearings, resolve protests, and finalize ballots including the General Assembly primary races before the UOCAVA and early voting deadlines. Under current permanent law, the protest filing deadline against partisan candidate petitions is 74 days before the primary election, 46 days before the start of early voting, and 28 days prior to the state deadline for mailing UOCAVA ballots. The protest deadline for the 2022 primary election is *only* 47 days before Election Day, *only* 19 days before the start of early voting, and just *one day* prior to the state deadline for mailing UOCAVA ballots.

17. Some boards of elections will not be able to finalize and send UOCAVA ballots by either the state or federal UOCAVA deadline because of this impossibly compressed timeline. As such, on Friday, March 18, 2022, the Secretary executed an agreement with the U.S. Department of Justice (“DOJ”) for the DOJ to forego litigation against the state for some counties missing the March 19 deadline *if* the counties begin sending their UOCAVA ballots as soon as possible after March 19 but no later than April 5, 2022. Substitute S.B. 11, enacted last week, is part of that tentative agreement and requires UOCAVA ballots to be ready for use no later than Tuesday, April 5, 2022.



18. Even though the Third Plan was adopted on February 24, 2022, a mere twenty two days before the state UOCAVA deadline, the General Assembly has not taken any action to postpone the May 3, 2022, primary election. Only the General Assembly can move the date of the primary election. *See* R.C. 3501.40. Thus, unless and until the General Assembly moves the date of the primary election or bifurcates the election for offices impacted by redistricting, the Secretary has a legal duty move forward with the administration of the May 3, 2022, primary election.

19. On Wednesday, March 16, 2022 at approximately 10:00 p.m., the Ohio Supreme Court issued a decision invalidating the Third General Assembly district map.

20. On Thursday, March 17, 2022, Secretary LaRose issued Directive 2022-30, which among other things, prohibited the 88 county boards of elections from altering or sending any ballots until additional guidance was given from our Office in light of pending federal litigation.

21. In my conversations with the Secretary as I drafted Directive 2022-30, I informed the Secretary that R.C. 3513.13 states, “primary election ballots shall contain the names of all persons whose declarations of candidacy and petitions have been determined to be valid.” Given the Ohio Supreme Court’s decision, our Office would need to direct the 88 county boards of elections to remove the offices of General Assembly and State Central Committee from the ballot as soon as possible.

22. In light of federal litigation, it was the Secretary’s opinion and professional judgment to prohibit the boards of elections from altering or sending ballots until there is a decision from federal court.

23. I informed the Secretary that in my professional opinion, our Office would need to issue formal instruction via directive to the 88 county boards of elections requiring them to remove the General Assembly and State Central Committee offices from the ballot no later than Wednesday, March 23, 2022.

24. My division contacted approximately four of the voting system vendors certified in the State of Ohio. Each vendor informed my division that they needed direction and finality from our Office regarding the contents of the May 3, 2022 ballot as soon as possible and no later than Wednesday, March 23, 2022. This timeline represents the minimum timeline for only the reprogramming of the election management system and ballots. It does not include ballot proofing, logic and accuracy testing, or final printing orders to various print vendors. Wednesday, March 23, 2022 is 13 days from the start of early voting. Reprogramming of the election management systems and ballots will take at least a week and a half. This compressed timeline does not in any way fall in line with or allow for the quality control checks or level of accuracy that is required to reprogram election management systems and ballots.

25. This timeline only allows for three days to perform ballot proofing, conduct logic and accuracy testing, and providing final printing order to print vendors.

Further affiant sayeth naught.



Amanda M. Grandjean

Signed on 2022/03/22 11:56:01 -8:00

Amanda M. Grandjean

Sworn to in my presence and subscribed before me this 22nd day of March 2022.



4888-5057-9733 v1 [94687-2]

MacKenzie S. Clayton

Signed on 2022/03/22 11:56:01 -8:00

Notary Public

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