



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.

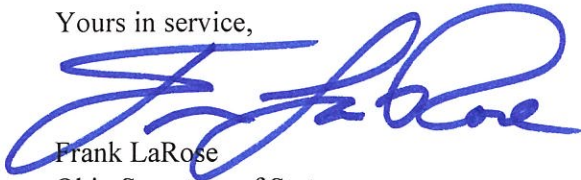
Finally, Section 9(C) of Article XI of the Ohio Constitution provides that when the Ohio Redistricting Commission adopts a new district plan pursuant to an order of the Ohio Supreme Court, as is currently the case, a General Assembly candidate is allowed up to 30 days to **change their residence** to 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