

In The
Ohio Supreme Court

MERYL NEIMAN, et al.,

Relators,

v.

OHIO REDISTRICTING COMMISSION, et al.,

Respondents.

:

: **Case No. 2022-0298**

:

: Original Action Filed Pursuant to
Ohio Constitution, Article XIX,
Section 3(A) and Article IV
Section 2(B)(1)(f)

:

: Expedited Election Matter Under
S.Ct.Prac.R. 12.08

OHIO SECRETARY OF STATE FRANK LAROSE'S ANSWER

DONALD J. MCTIGUE (0022849)
DEREK S. CLINGER (0092075)
McTigue Colombo & Clinger, LLC
545 E. Town Street
Columbus, Ohio 43215
Tel: 614-263-7000 | Fax: 614-368-6961
dmctigue@electionlawgropu.com
dclinger@electionlawgroup.com

ABHA KHANA
BEN STAFFORD
Elias Law Group
1700 Seventh Avenue, Suite 2100
Seattle, Washington 98101
Tel: 206-656-0176 | Fax: 206-656-0180
akhanna@elias.law
bstafford@elias.law

JYOTI JASRASARIA
SPENCER W. KLEIN
HARLEEN K. GAMBHIR
RAISA CRAMER
Elias Law Group
10 G Street, NE, Suite 600
Washington DC 20002
Tel: 202-968-4490 | Fax: 202-968-4498
jjasrasaria@elias.law
sklein@elias.law
hgambhir@elias.law
Counsel for Petitioners

JULIE M. PFEIFFER (0069762)*
**Counsel of Record*
JONATHAN D. BLANTON (0070035)
Deputy Attorney General
MICHAEL A. WALTON (0092201)
ALLISON D. DANIEL (0096186)
Assistant Attorneys General
Constitutional Offices Section
30 E. Broad Street, 16th Floor
Columbus, Ohio 43215
Tel: 614-466-2872 | Fax: 614-728-7592
Julie.Pfeiffer@OhioAGO.gov
Jonathan.Blanton@OhioAGO.gov
Michael.Walton@OhioAGO.gov
Allison.Daniel@OhioAGO.gov

Counsel for Secretary of State LaRose

PHILLIP J. STRACH (PHV 25444-2021)
THOMAS A. FARR (PHV 25461-2021)
JOHN E. BRANCH, III (PHV 25460-2021)
ALYSSA M. RIGGINS (PHV 25441-2021)
NELSON MULLINS RILEY &
SCARBOROUGH, LLP
4140 Parklake Ave., Suite 200
Raleigh, NC 27612
919-329-3812
phil.strach@nelsonmullins.com
*Counsel for Respondents House Speaker Bob
Cupp and Senate President Matt Huffman*

In The
Ohio Supreme Court

MERYL NEIMAN, et al.,

Relators,

v.

OHIO REDISTRICTING COMMISSION, et al.,

Respondents.

:

: Case No. 2022-0298

:

: Original Action Filed Pursuant to
Ohio Constitution, Article XIX,
Section 3(A) and Article IV

: Section 2(B)(1)(f)

:

Expedited Election Matter Under

: S.Ct.Prac.R. 12.08

OHIO SECRETARY OF STATE FRANK LAROSE'S ANSWER

By and through counsel, the Ohio Secretary of State Frank LaRose ("Secretary LaRose") responds and answers the Complaint as follows:

1. Paragraph 1 contains legal conclusions to which no response is required. Further answering, *Adams v. DeWine*, 2022-Ohio-89, speaks for itself.

2. In response to Paragraph 2, Secretary LaRose admits that the General Assembly did not pass a new Congressional district plan. Further answering, this Paragraph contains legal conclusions to which no response is required. To the extent an answer is required, Secretary LaRose denies the same. Finally, *Adams v. DeWine*, 2022-Ohio-89, speaks for itself.

3. Secretary LaRose denies the allegations contained in Paragraph 3 of the Complaint.

4. Secretary LaRose denies the allegations contained in Paragraph 4 of the Complaint.

5. As to Paragraph 5 of the Complaint, Secretary LaRose admits that voters passed Article XIX of the Ohio Constitution and that the Ohio Supreme Court invalidated the first Congressional Plan adopted in November of 2021. Secretary LaRose denies for lack of knowledge the "desires" of Ohio voters. Secretary LaRose denies the remaining allegations contained therein.

6. As to Paragraph 6 of the Complaint, Secretary LaRose admits that the Ohio Redistricting Commission adopted a Congressional Plan on March 2, 2022. Secretary LaRose denies the remaining allegations contained therein.

7. Secretary LaRose denies the allegation contained Paragraph 7 of the Complaint and further denies that the petitioners are entitled to any relief.

8. Secretary LaRose admits the allegations contained in Paragraph 8 of the Complaint.

9. As to Paragraph 9, Secretary LaRose admits that the Petitioners seek a declaration that the March 2 Congressional Plan is invalid. Further answering, Secretary LaRose denies that the March 2 Plan violates Article XIX of the Ohio Constitution.

10. As to Paragraph 10, Secretary LaRose admits that the Petitioners seek relief, but denies that they are entitled to relief.

11. As to Paragraph 11, Secretary LaRose admits that the primary election for the United States House of Representatives in Ohio is set for May 3, 2022. Any remaining allegations are legal conclusions to which no response is required. To the extent an answer is required, Secretary LaRose denies the same. Finally, S.Ct.Prac.R. 12.08 speaks for itself.

12. Secretary LaRose denies the allegations contained in Paragraph 12 of the Complaint.

13. Paragraph 13 contains legal conclusions to which no response is required. To the extent a response is required, Secretary LaRose denies the same.

14. Secretary LaRose admits the allegations contained in Paragraph 14 of the Complaint.

15. Secretary LaRose admits the allegations contained in Paragraph 15 of the Complaint.

16. Secretary LaRose admits the allegations contained in Paragraph 16 of the Complaint.

17. As to Paragraph 17, Secretary LaRose admits that the Ohio Redistricting Commission passed the March 2 Plan. Secretary LaRose denies that it “failed to remedy the legal defects in the November 20 Plan.” Any remaining allegations are legal conclusions to which no response is required.

18. As to Paragraph 18, Secretary LaRose denies that the Congressional districts were drawn in violation of the Ohio Constitution. Secretary LaRose denies for lack of knowledge the remaining allegations contained therein.

19. Secretary LaRose denies for lack of knowledge the allegations contained in Paragraphs 19 through 30 of the Complaint.

20. Paragraphs 31 through 44 (including second No. 44) contain legal conclusions to which no response is required. Further answering, the various cited Ohio statutes, constitutional provisions and cases speak for themselves. To the extent an answer is required, Secretary LaRose denies the same.

21. As to sub-heading “A” and Paragraphs 45 through 52, Secretary LaRose denies for lack of knowledge the allegations contained therein because Secretary LaRose did not participate in the redistricting process prior to 2021. Further answering, the 2011 Congressional Map, the results of subsequent elections, the cited cases, and Exhibits 11 and 2 speak for themselves and are matters of public record.

22. Paragraph 53 contains legal conclusions to which no response is required. Further answering, *Ohio A. Philip Randolph Inst. v. Householder*, 373 F. Supp. 3d 978 (S.D. Ohio 2019),

vacated and remanded sub nom, Chabot v. Ohio A. Philip Randolph Inst., 140 S. Ct. 102 (2019), speaks for itself.

23. As to sub-heading “B” and Paragraph 54, Secretary LaRose admits that Ohioans enacted Article XIX of the Ohio Constitution. Secretary LaRose denies for lack of knowledge the motivations behind Ohioans’ votes for or against Article XIX.

24. Secretary LaRose admits the allegations contained in Paragraph 55 of the Complaint. Further answering, Exhibits 12 and 13 speak for themselves.

25. Secretary LaRose denies the allegations contained in Paragraph 56 of the Complaint. Further answering, Exhibit 14 speaks for itself.

26. Paragraphs 57 through 63 contains legal conclusions to which no response is required. To the extent a response is required, Secretary LaRose denies same. As to the allegations regarding Issue 1, Secretary LaRose denies the same for lack of knowledge. Further answering, the exhibits and constitutional provisions referenced speak for themselves.

27. As to Paragraph 64, Secretary LaRose admits that Exhibit 18 speaks for itself.

28. Secretary LaRose admits the allegation in Paragraph 65 that the voters approved what is now Article XIX of the Ohio Constitution in 2018. Secretary LaRose further admits that the General Assembly and the Commission are required to comply with the Ohio Constitution. As to the remaining allegations contained therein, Secretary LaRose denies the same.

29. Sub-heading C of Petitioners’ Complaint contains legal conclusions to which no response is required. To the extent an answer is required, Secretary LaRose denies the same for lack of knowledge because the General Assembly, not Secretary LaRose, created and passed the November 20, 2021 Congressional Plan.

30. Secretary LaRose denies the allegations contained in sub-heading (C)(1) of Petitioners' Complaint.

31. Secretary LaRose admits the allegations contained in Paragraph 66 of the Complaint. Further answering, Exhibit 4 speaks for itself.

32. Paragraph 67 contains legal conclusions to which no response is required. To the extent a response is required, Secretary LaRose denies the same as an incomplete statement of Article XIX. Further answering, Article XIX of the Ohio Constitution also gives the General Assembly the authority to pass a congressional map by a simple majority, and it speaks for itself.

33. As to Paragraphs 68 through 70, Secretary LaRose denies for lack of knowledge the allegations contained therein. Further answering, the cited exhibits speak for themselves.

34. As to Paragraph 71, Secretary LaRose admits that the Ohio Redistricting Commission did not adopt a 2021 Congressional Plan and further admits that during the state legislative redistricting proceedings he made the statement as quoted therein. Secretary LaRose denies that the Commission "simply did nothing at all." All remaining allegations are denied due to lack of knowledge. Further answering, Exhibits 5 and 21 speak for themselves.

35. As to Paragraph 72, Secretary LaRose admits that the Ohio Redistricting Commission held a hearing on October 28, 2021, that the Commission did not approve a congressional map, and that the Article XIX process advanced back to the General Assembly in accordance with Section 1(F)(1). Secretary LaRose denies the remaining allegations for lack of knowledge. Further answering, Exhibits 5 and 22 speak for themselves.

36. As to sub-heading (C)(2) of Petitioners' Complaint, Secretary LaRose denies the allegations contained therein for lack of knowledge because the General Assembly, not Secretary LaRose, created and passed the November 20 Plan.

37. As to Paragraph 73, Secretary LaRose admits that the General Assembly passed Sub. S.B. 258 creating the November 20, 2021 Congressional Plan by a simple majority. Secretary LaRose denies the remaining allegations contained therein.

38. As to Paragraphs 74 through 80, sub-heading (C)(3), and footnote 1, Secretary LaRose denies the allegations contained therein for lack of knowledge because the General Assembly, not Secretary LaRose, created and passed the November 20, 2021 Congressional Plan. Further answering, the exhibits referenced in those paragraphs speak for themselves.

39. Paragraph 81 contains a legal conclusion to which no response is required. Further answering, Article XIX, Section 1(G) of the Ohio Constitution speaks for itself.

40. As to Paragraphs 82 through 97 and sub-heading (C)(4), Secretary LaRose denies for lack of knowledge the allegations contained therein because the General Assembly, not Secretary LaRose, created and passed the November 20, 2021 Congressional Plan. Further answering, the exhibits and constitutional provisions referenced in those paragraphs speak for themselves.

41. Paragraph 98 and Sub-heading D contain legal conclusions to which no response is required.

42. Secretary LaRose admits the allegations contained in Paragraph 99 of the Complaint. Further answering, the complaint in *Adams v. DeWine*, No. 2021-1428, speaks for itself.

43. As to Paragraphs 100 through 104, this Court's decision in *Adams v. DeWine*, 2022-Ohio-89 speaks for itself.

44. As to Paragraph 105 and sub-heading E, Secretary LaRose admits that the General Assembly did not pass a new Congressional plan after this Court struck down the November 20,

2021 Congressional Plan in *Adams v. DeWine*, 2022-Ohio-89. Any remaining allegations are legal conclusions to which no response is required.

45. As to Paragraphs 106 through 111 and footnote 2, Secretary LaRose denies for lack of knowledge the allegations contained therein. Further answering, the exhibits, Ohio constitutional provisions, and cases referenced in those paragraphs speak for themselves. Secretary LaRose denies the allegations contained in Sub-heading F. Secretary LaRose admits that allegations contained in Sub-heading F(1).

46. As to Paragraph 112, Secretary LaRose admits that the Commission met on February 22, 2022. Secretary LaRose denies for lack of knowledge the allegations related to Senator Sykes. Secretary LaRose denies the remaining allegations contained therein. Further answering, the cited exhibits speak for themselves.

47. Secretary LaRose admits the allegations contained in Paragraph 113 through 114 of the Complaint. Further answering, the cited exhibits speak for themselves.

48. Secretary LaRose denies for lack of knowledge the allegations contained in sub-heading F(2), Paragraphs 115 and 116, and footnote 3. Further answering, the cited exhibits speak for themselves.

49. As to Paragraphs 117 through 124 of the Complaint, Exhibits 67 and 69 speak for themselves. To the extent that a response is required, Secretary LaRose denies same. Secretary LaRose denies for lack of knowledge the allegations contained in Footnote 4.

50. As to Paragraph 125, Secretary LaRose denies that the Plan is gerrymandered. Secretary LaRose admits the remaining allegations. Further answering, Exhibit 73 speaks for itself.

51. Secretary LaRose denies the allegations contained in Subheadings G and G(1) and Paragraph 126.

52. As to Paragraph 127, Secretary LaRose denies for lack of knowledge the allegation that Democrats have received “*about*” 47% and Republicans “*about*” 53% of the statewide vote share. Secretary LaRose denies the remaining allegations contained therein.

53. Paragraphs 128 through 130 are simply restatements of the contents of Dr. Rodden’s Affidavit. To the extent that a response is required, Secretary LaRose denies same. Secretary LaRose further denies that the March 2, 2022 Congressional Plan violates the Ohio Constitution.

54. Secretary LaRose denies the allegations contained in Sub-heading G(2) of the Complaint.

55. Paragraphs 131 through 135 are simply restatements of the contents of Dr. Chen’s Affidavit. To the extent that a response is required, Secretary LaRose denies same. Secretary LaRose further denies that the March 2, 2022 Congressional Plan violates the Ohio Constitution. Secretary LaRose denies for lack of knowledge the allegations in footnotes 5 and 6.

56. Secretary LaRose denies the allegations contained in Sub-heading G(3).

57. Paragraphs 136 through 138 are simply restatements of the contents of Dr. Rodden’s Affidavit. To the extent that a response is required, Secretary LaRose denies same. Secretary LaRose further denies that the March 2, 2022 Congressional Plan violates the Ohio Constitution.

58. Paragraphs 139 through 142 are simply restatements of the contents of Dr. Chen’s Affidavit. To the extent that a response is required, Secretary LaRose denies same. Secretary LaRose further denies that the March 2, 2022 Congressional Plan violates the Ohio Constitution.

59. Secretary LaRose admits the allegations contained in Subheading H and Paragraphs 144 and 145 in the Complaint. Further answering, Exhibit 74 speaks for itself.

60. Secretary LaRose denies for lacks knowledge the allegations contained in Paragraph 146 of the Complaint. Further answering, the Exhibit 61 speaks for itself.

61. As to Paragraph 147, Secretary LaRose lacks knowledge or information sufficient to form a belief as to the truth of the allegations directed at the General Assembly and said allegations are, therefore denied. Secretary LaRose denies the remaining allegations contained therein.

FIRST CAUSE OF ACTION – Violation Of Article XIX, Section 1(C)(3)(A) Of The Ohio Constitution

62. To the extent that Paragraph 148 reincorporates other paragraphs of the Complaint, all defenses and averments are specifically incorporated by reference.

63. As to Paragraph 149, Secretary LaRose admits that the General Assembly passed the November 20, 2021 Congressional Plan by a simple majority. The remaining allegations are legal conclusions to which no response is required.

64. Paragraph 150 contains legal conclusions to which no response is required. Further answering, Article XIX, Section 1 speaks for itself.

65. Paragraph 151 contains legal conclusions to which no response is required. Further answering, Article XIX, Section 3 of the Ohio Constitution and *Adams v. DeWine*, 2022-Ohio-89, speak for themselves.

66. Secretary LaRose denies the allegations contained in Paragraphs 152 through 158 of the Complaint. Secretary LaRose further denies that Petitioners are entitled to relief. Further answering, Article XIX, Section 3 of the Ohio Constitution and the cited cases speak for themselves.

**SECOND CAUSE OF ACTION – Violation Of Article XIX, Section 1(C)(3)(B) Of The
Ohio Constitution**

67. To the extent that Paragraph 159 reincorporates other paragraphs of the Complaint, all defenses and averments are specifically incorporated by reference.

68. As to Paragraph 160, Secretary LaRose admits that the November 20, 2021 Congressional Plan was passed by a simple majority in the General Assembly. The remaining allegation is a legal conclusion to which no response is required.

69. Paragraphs 161 and 162 contains legal conclusions to which no response is required. Further answering, Article XIX, Section 3 of the Ohio Constitution and *Adams v. DeWine*, 2022-Ohio-89, speak for themselves.

70. Secretary LaRose denies the allegations contained in Paragraphs 163 through 166 of the Complaint. Secretary LaRose further denies that Petitioners will be irreparably harmed or that they are entitled to any relief. Further answering, Article XIX, Section 3 of the Ohio Constitution and the cited cases speak for themselves.

PRAYER FOR RELIEF

71. Secretary LaRose denies that Petitioners are entitled to any relief as prayed for in the Complaint.

72. Secretary LaRose denies all allegations set forth in the Prayer for Relief and specifically denies that Petitioners are entitled to any relief.

73. Secretary LaRose denies each allegation contained in any titles or section headers not expressly admitted or denied herein.

74. Secretary LaRose denies each allegation in the Complaint not expressly admitted or denied herein.

FIRST DEFENSE

1. Petitioners failed to state a claim upon which relief can be granted.

SECOND DEFENSE

2. The March 2 Congressional Plan is constitutional.

THIRD DEFENSE

3. Petitioners fail to state a legal claim against Secretary LaRose in his official capacity as Secretary of State. Secretary LaRose is a proper party for remedial purposes only.

FOURTH DEFENSE

4. Petitioners are not entitled to relief pursuant to *Purcell v. Gonzalez*, 549 U.S. 1, 4-5 (2006).

RESERVATION OF ADDITIONAL DEFENSES

5. Secretary LaRose reserves the right to add additional defenses, including affirmative defenses, as they become known or as the case progresses.

Respectfully submitted,
OHIO ATTORNEY GENERAL

/s/ Julie M. Pfeiffer

JULIE M. PFEIFFER (0069762)

Counsel of Record

JONATHAN D. BLANTON (0070035)

Deputy Attorney General

MICHAEL A. WALTON (0092201)

ALLISON D. DANIEL (0096186)

Assistant Attorneys General

Constitutional Offices Section

30 E. Broad Street, 16th Floor

Columbus, Ohio 43215

Tel: 614-466-2872 | Fax: 614-728-7592

Julie.Pfeiffer@OhioAGO.gov

Jonathan.Blanton@OhioAGO.gov

Michael.Walton@OhioAGO.gov

Allison.Daniel@OhioAGO.gov

Counsel for Defendant Frank LaRose

CERTIFICATE OF SERVICE

I hereby certify that the foregoing *Ohio Secretary Of State Frank LaRose's Answer* was sent via email this the 15th day of April, 2022 to the following:

DONALD J. MCTIGUE (0022849)
DEREK S. CLINGER (0092075)
dmctigue@electionlawgropu.com
dclinger@electionlawgroup.com

ABHA KHANA
BEN STAFFORD
akhanna@elias.law
bstafford@elias.law

JYOTI JASRASARIA
SPENCER W. KLEIN
HARLEEN K. GAMBHIR
RAISA CRAMER
jjasrasaria@elias.law
sklein@elias.law
hgambhir@elias.law

Counsel for Petitioners

/s/ Julie M. Pfeiffer

JULIE M. PFEIFFER (0069762)
Assistant Attorney General

RETRIEVED FROM DEMOCRACYDOCKET.COM