

**In the
Supreme Court of Ohio**

MERYL NEIMAN, et al.,

Relators,

v.

SECRETARY OF STATE FRANK LAROSE, et al.,

Respondents.

:
:
: **Case No. 2022-0298**
:
: Original Action Filed Pursuant to
: Ohio Constitution, Article XIX,
: Section 3(A) and Article IV
: Section2(B)(1)(f)
:
:

LEAGUE OF WOMEN VOTERS OF OHIO, et al.,

Petitioners,

v.

SECRETARY OF STATE FRANK LAROSE, et al.,

Respondents.

:
:
: **Case No. 2022-0303**
:
: Original Action Pursuant to
: Ohio Const., Art. XIX
:
: Apportionment Case
:

**OHIO SECRETARY OF STATE FRANK LAROSE'S
RESPONSE TO PETITIONERS' MERIT BRIEF**

OHIO ATTORNEY GENERAL

JULIE M. PFEIFFER (0069762)

Counsel of Record

JONATHAN D. BLANTON (0070035)

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 Respondent

Secretary of State Frank LaRose

LEAGUE OF WOMEN VOTERS OF OHIO, et al., :

Petitioners, : **Case No. 2022-0303**

v. : Original Action Pursuant to

SECRETARY OF STATE FRANK LAROSE, et al., : Ohio Const., Art. XIX

Respondents. : Apportionment Case

FREDA J. LEVENSON (0045916)
 ACLU of Ohio Foundation, Inc.
 4506 Chester Avenue
 Cleveland, Ohio 44103
 Tel: 614-586-1972 x 125
 flevenson@acluohio.org

DAVID J. CAREY (0088787)
 ACLU OF OHIO FOUNDATION, INC.
 1108 City Park Avenue, Suite 203
 Columbus, OH 43206
 Tel: 614-586-1972 x2004
 dcarey@acluohio.org

ALORA THOMAS (PHV 22010-2022)
 JULIE A. EBENSTEIN (PHV 25423-2022)
 ACLU Foundation
 125 Broad Street
 New York, NY 10004
 Tel: 212-519-7866
 athomas@aclu.org

ROBERT D. FRAM (PHV-25414)
 DONALD BROWN (PHV -25480)
 DAVID DENUYL (PHV-25452)
 JANELELLE LAMB
 Covington & Burling LLP
 Salesforce Tower
 415 Mission Street, Suite 5400
 San Francisco, CA 94105-2533
 Tel: 415-591 6000
 rfram@cov.com

Counsel for Petitioners

JAMES SMITH (PHV 25421-2022)
 SARAH SUWANDA (PHV 25602-2022)
 ALEX THOMSON (PHV 25462-2022)
 KIMBERLY PLUMER
 COVINGTON & BURLING LLP
 One CityCenter
 850 Tenth Street, NW
 Washington, DC 20001-4956
 Tel: 202-662-6000
 jmsmith@cov.com

ANUPAM SHARMA (PHV 25418-2022)
 YALE FU (PHV 25419-2022)
 COVINGTON & BURLING LLP
 3000 El Camino Real
 5 Palo Alto Square, 10th Floor
 Palo Alto, CA 94306-2112
 Tel: 650- 632-4700
 asharma@cov.com

Counsel for Petitioners

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
 Tel: 919-329-3812
 phil.strach@nelsonmullins.com

*Counsel for Respondents House Speaker Bob
 Cupp and Senate President Matt Huffman*

ERIK JAMESON CLARK (0078732)

Counsel of Record

ASHLEY THEODORA MERINO
(0096853)

Organ Law LLP

1330 Dublin Road

Columbus, Ohio 43215

Tel: 614-481-0900 | Fax: 614-481-0904

ejclark@organlegal.com

amerino@organlegal.com

Counsel for Ohio Redistricting Commission

RETRIEVED FROM DEMOCRACYDOCKET.COM

MERYL NEIMAN, et al.,

Relators,

v.

SECRETARY OF STATE FRANK LAROSE, et al.,

Respondents.

:
:
: **Case No. 2022-0298**
:
: Original Action Filed Pursuant to
: Ohio Constitution, Article XIX,
: Section 3(A) and Article IV
: Section2(B)(1)(f)
:

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

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
Tel: 919-329-3812
phil.strach@nelsonmullins.com

*Counsel for Respondents House Speaker
Bob Cupp and Senate President Matt
Huffman*

RETRIEVED FROM DEMOCRACYDOCKET.COM

**In the
Supreme Court of Ohio**

MERYL NEIMAN, et al.,	:	
	:	
<i>Relators,</i>	:	Case No. 2022-0298
	:	
v.	:	Original Action Filed Pursuant to
	:	Ohio Constitution, Article XIX,
SECRETARY OF STATE FRANK LAROSE, et al.,	:	Section 3(A) and Article IV
	:	Section2(B)(1)(f)
<i>Respondents.</i>	:	
	:	

LEAGUE OF WOMEN VOTERS OF OHIO, et al.,	:	
	:	
<i>Petitioners,</i>	:	Case No. 2022-0303
	:	
v.	:	Original Action Pursuant to
	:	Ohio Const., Art. XIX
SECRETARY OF STATE FRANK LAROSE, et al.,	:	
	:	Apportionment Case
<i>Respondents.</i>	:	
	:	

**RESPONDENT SECRETARY OF STATE FRANK LAROSE'S
RESPONSE TO PETITIONERS' MERIT BRIEF**

Ohio Secretary of State Frank LaRose adopts and incorporates *Respondents Huffman and Cupp's Merits Brief* as his response to Petitioners' Merit Brief.

In addition, on one finer point, this Court should reject the *Neiman* Petitioners' request for an injunction affecting the 2022 election. *See Neiman Compl., Prayer for Relief*, at 46-47. The Second Plan has been fully implemented by the 88 county boards of elections for the 2022 election. The 2022 Primary Election was held on May 3, 2022, using the Second Plan. Over 1.6 million Ohioans voted for their 2022 congressional primary candidates, and the winners will be certified for the 2022 general election ballot in the very near future. The *Neiman* Petitioners ignore these

election realities and still ask this Court to do what courts have been resoundingly unwilling to do and have cautioned against: change an election procedure to affect the outcome of the election. *See, e.g.,* citing *Purcell v. Gonzalez*, 549 U.S. 1, 4-5 (2006) (*per curiam*) (denying preliminary injunction because, although plaintiffs had established third parties would not be unjustifiably harmed by an injunction, “court orders affecting elections , can themselves result in voter confusion[,] [a]s an election draws closer, that risk increase”); *Thompson v. DeWine*, 959 F.3d 804, 813 (6th Cir. 2020) (citing *Purcell* in staying district court’s preliminary injunction); *Estill v. Cool*, 295 F. App’x 25, 27 (6th Cir. 2008) (upholding denial of preliminary injunction where ballot printing and distribution was scheduled to begin the day after the Sixth Circuit issued its opinion, 19 days after the preliminary injunction motion was denied); *SEIU Local 1 v. Husted*, 698 F.3d 341, 345 (6th Cir. 2012), citing *Purcell*, 549 U.S. at 4-5 (“As a general rule, last-minute injunctions changing election procedures are strongly disfavored.”). “Court orders affecting elections especially conflicting court orders, can themselves result in voter confusion and consequent incentive to remain away from the polls. As an election draws closer, that risk will increase.” *Purcell*, 549 U.S. at 4-5; *see also Thompson*, 959 F.3d at 813.

Citing that risk, in *League of Women Voters v. LaRose*, No. 2:20-cv-1638, 2020 U.S. Dist. LEXIS 91631, at 31 (S.D. Ohio Apr. 3, 2020), the Court rejected the plaintiffs’ request to preliminarily enjoin H.B. 197, the bill passed in response to the disruption to Ohio’s March 2020 primary caused by COVID-19. The court noted that the “public has an interest in a free and fair election [and in] avoiding further voter confusion.” *Id.* Even amidst the COVID-19 outbreak, the court concluded, “because further changes to the election procedure could cause significant additional voter confusion, the court finds that the public interest factor weighs against granting Plaintiffs their requested relief.” *Id.*

The *Neiman* Petitioners’ request to stop the Secretary of State from “calling, holding, supervising, administering, or certifying any elections under the [Second Plan]” while they litigate their claims is, to say the least, extraordinarily ill-advised. *Neiman Comp.*, at 46. Again, the May 3 Primary Election has already happened. All of the voters who have voted for their congressional candidates fully expect the winners to be on the November general election ballot. Changing the districts before the November 2022 General Election would mean that, in November, thousands of Ohio voters would be choosing between Republican or Democratic congressional candidates who were not on their May 3 primary ballot. Issuing an injunction that would prevent the winners from appearing on the general election ballot destroys the status quo and wreaks havoc on election administration. What is more, allowing an election to occur then enjoining the winners from proceeding on to the general election certainly would cause significant voter confusion, it would cripple Ohioans’ trust and confidence in their elections, and it would be astoundingly unfair—not just to Ohio voters, but to the congressional candidates who have spent effort, time, and resources in campaigning for a spot on the primary ticket. It is safe to assume that voters expect their votes to count and to be counted. An injunction that would block the winners and nullify the entire election *after* all of the votes have been cast would wreak havoc on voter confidence for decades to come. This is precisely what the *Neiman* Petitioners demand, and this Court should summarily deny it.

For the reasons stated in Huffman and Cupp’s merits brief and for the foregoing additional reason, Secretary LaRose respectfully requests that this Court sustain the Ohio Redistricting Commission’s Second Plan passed on March 2, 2022, and dismiss these consolidated actions with prejudice.

Respectfully submitted,
OHIO ATTORNEY GENERAL

/s/ Julie M. Pfeiffer

JULIE M. PFEIFFER (0069762)
Counsel of Record
JONATHAN BLANTON (0070035)
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 Respondent
Secretary of State Frank LaRose

RETRIEVED FROM DEMOCRACYDOCS.COM

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Ohio Secretary of State Frank Larose's Response to Petitioners' Merit Brief was sent via email this the 25th day of May, 2022 to the following:

Freda J. Levenson (0045916)
flevenson@acluohio.org

David J. Carey (0088787)
dcarey@acluohio.org

Alora Thomas (PHV 22010-2022)
Julie A. Ebenstein (PHV 25423-2022)
athomas@aclu.org

Robert D. Fram (PHV-25414)
Donald Brown (PHV -25480)
David Denuyl (PHV-25452)
Janeelle Lamb
COVINGTON & BURLING LLP
rfram@cov.com

James Smith (PHV 25421-2022)
Sarah Suwanda (PHV 25602-2022)
Alex Thomson (PHV 25462-2022)
Kimberly Plumer
COVINGTON & BURLING LLP
jmsmith@cov.com

Counsel for LWV Petitioners

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
phil.strach@nelsonmullins.com

*Counsel for Respondents House Speaker Bob
Cupp and Senate President Matt Huffman*

Anupam Sharma (PHV 25418-2022)
Yale Fu (PHV 25419-2022)
COVINGTON & BURLING LLP
asharma@cov.com

Counsel for LWV Petitioners

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 Neiman Petitioners

Erik Jameson Clark (0078732)
Counsel of Record
Ashley Theodora Merino (0096853)
ejclark@organlegal.com
amerino@organlegal.com

Counsel for Ohio Redistricting Commission

/s/ Julie M. Pfeiffer

JULIE M. PFEIFFER (0069762)