

IN THE OHIO SUPREME COURT

STATE EX REL. AMES	)	CASE NO. 2022-0860
	)	
Relator,	)	
	)	
v.	)	ORIGINAL ACTION IN
	)	MANDAMUS (Expedited Election Matter)
OHIO SECRETARY OF STATE	)	
FRANK LAROSE et al.	)	
	)	
Respondents.	)	

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ANSWER OF THE RESPONDENT PORTAGE COUNTY BOARD OF ELECTIONS

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The Respondent Portage County Board of Elections, by and through counsel, hereby responds and answers Relator's Complaint as follows:

FIRST DEFENSE

1. Relator's Complaint fails to state a claim upon which relief may be granted.

SECOND DEFENSE

2. Relator's Complaint fails to establish a clear legal right for the extraordinary relief of a writ of mandamus, nor a legal duty upon the Respondent(s).

THIRD DEFENSE

3. The defense of laches applies in this case. "On May 27 a three-judge panel of the United States District Court for the Southern District of Ohio imposed a map for Ohio to use for this year's General Assembly Elections and ordered Secretary LaRose to push back Ohio's state legislative and state-central committee primaries to August 2, 2022." *State ex rel. Jones v. LaRose*, Slip Opinion No. 2022-Ohio-2445, ¶ 6 (S.D. May 27, 2022) citing *Gonidakis v. LaRose*, S.D. Ohio No. 2:22-cv-0773, 2022 U.S. Dist. LEXIS 95341, \* 5 (S.D. Apr. 20, 2022). A portion of the Ohio Secretary of State's May 28, 2022 Directive 2022-34, at page 8, provides that "[v]oters may request

a ballot for either major political party or an issues-only ballot, if applicable, regardless of their participation in the May 3, 2022 Primary Election.” Secretary of State Directive 2022-34, Instructions for the August 2, 2022 Primary Election. (Exhibit 1, attached and incorporated by reference herein). The Ohio Supreme Court has noted in the recently decided *Jones* case that June 17, 2022 was the deadline for finalizing ballots under the Uniformed and Overseas Citizens Absentee Voting Act, 52 U.S.C. 20302. *State ex rel. Jones*, Slip Opinion No. 2022-Ohio-2445, ¶ 16 (“[n]ot only has early voting begun, but the election itself is less than three weeks away.”)

The Relator filed this mandamus action on July 8, 2022 and the doctrine of laches applies as an affirmative defense in this matter.

#### FOURTH DEFENSE

#### QUALIFIED ELECTORS HAVE A CONSTITUTIONAL RIGHT TO VOTE FOR STATE LEGISLATIVE CANDIDATES AND STATE-COMMITTEE CANDIDATES AT THE AUGUST 2, 2022 PRIMARY

4.As noted by the three-judge panel for the United States District Court for the Southern District of Ohio “[e]veryone agrees that legal and practical requirements preclude Ohio from holding a primary election for its state legislature on May 3, the date provided by statute.” *Gonidakis v. LaRose*, No. 2:22-cv-0773, 2022 WL 1175617, at \* 1 (S.D. Ohio Ap. 20, 2022). “Undeniably the Constitution of the United States protects the right of all qualified citizens to vote, in state as well as federal elections.” *Id.* at \* 15. The “Constitution applies once a state decides to hold a primary.” *Id.* (citation omitted). When state law requires a primary, not holding a primary violates the Constitution. *Id.* at \* 17 (citation omitted). On May 27, 2022, the three-judge panel ordered “Secretary of State Frank LaRose to push back Ohio’s state primaries to August 2, 2022, and to implement Map 3 for this year’s elections *only*.” *Gonidakis v. LaRose*, No. 2:22-cv-0773, 2022 WL 1709146, at \* 1 (S.D. May 27, 2022) (Emphasis in the original).

## FIFTH DEFENSE

5. In answering paragraph 1 of Relator's Complaint, the Respondent Portage County Board of Elections ("Portage BOE") admits this is an original and the Ohio Secretary of State Frank LaRose, and the Boards of Elections of Summit, Portage, and Geauga Counties are named as Respondents, and that the Ohio Constitution and referenced Ohio Revised Code sections speak for themselves.

5. In Answering paragraph 2 of the Complaint, the Portage BOE acknowledges Relator is seeking the extraordinary relief described but denies that Relator is entitled to any such relief.

6. The allegations in paragraph 3 of the Complaint are denied.

7. Admit the allegations in paragraph 4 and 5 of the Complaint.

8. In answering paragraph 6, 7 and 8 of the Complaint, the referenced Ohio Revised Code sections speak for themselves, and no response is required to the extent the paragraphs contain conclusions of law.

9. In answering paragraph 9, the Complaint states a conclusion for which no response is necessary, any remaining allegations are denied.

10. In answering paragraphs 10 and 11 of the Complaint, the exhibits speak for themselves, and it is denied the information contained in the exhibits warrant the extraordinary relief of mandamus in this matter.

11. Paragraphs 12 and 13 of the Complaint are admitted.

12. In answering paragraph 14 of the Complaint, it is admitted the General Assembly and state central-committee candidates were not on the ballot at the May 3, 2022 primary, and that the United States District Court for the Southern District issued an order that Ohio's state legislative and state-central committee primaries be pushed back to August 2, 2022. *State ex rel. Jones v.*

*LaRose*, Slip Opinion 2022-Ohio-2445, ¶ 6 citing *Gonidakis v. LaRose*, S.D. Ohio No. 2:22-cv-0773, 2022 U.S. Dist. LEXIS 96341, \*5 (May 27, 2022).

13. In answering paragraph 15 through paragraph 29 of the Complaint, to the extent legal conclusions are stated no answer is necessary; and *Gonidakis v. LaRose*, No. 2:22-cv-0773, 2022 WL 1175617 (S.D. Ohio Apr. 20, 2022); *Gonidakis v. LaRose*, No. 2:22-cv-0773, 2022 WL 1709146 (S.D. Ohio May 27, 2022) and referenced Ohio Revised Code sections speak for themselves; any allegations contained in those paragraphs asserting or suggesting the cited cases and statutory provisions provide a basis for the relief sought in this case are denied.

14. In answering paragraph 30, the Complaint provides a legal conclusion and standard, which speaks for itself, and no answer is necessary.

15. In Answering paragraph 31 of the Complaint, the allegations are denied because qualified electors have the right under the Constitution to vote for state legislative and state central committee candidates at the August 2, 2022 primary.

16. In Answering paragraph 32, the Complaint provides a legal conclusion for which no answer is necessary, and the Ohio Supreme Court has recently held that R.C. 3513.05 applies in relation to the August 2, 2022 primary date concerning certain “original relators” who timely filed a mandamus action on May 31, 2022. *State ex rel. DeMora v. LaRose*, Slip Opinion No. 2022-Ohio2173, ¶ 2-3. (Concerning certain relators in the *DeMora* case the Court allowed declarations of candidacy that had been filed before 4:00 p.m. on May 2, 2022 and declarations of intent to write-in candidates filed before 4:00 p.m. on May 23, 2022 and “otherwise valid” and that those particular candidates be certified to the August 2, 2022 primary ballot.)

17. In answering paragraphs 33, 34 and 35 of the Complaint, the allegations that only the voters who participated at the May 3, 2022 primary-which did not include state legislative and

state central committee candidates- may only vote at the August 2, 2022 primary are denied, and in accordance with the United States Constitution, all qualified elector may vote at the August 2, 2022 primary regardless of whether those qualified electors voted at the May 3, 2022 primary.

18. In Answering paragraph 36 of the Complaint, the above answers of the Respondent Portage BOE are incorporated by reference herein.

19. The allegations in paragraphs 37, 38 and 39 of the Complaint are denied, and pursuant to the Constitution.

20. Any and all other allegations in the Relator's Complaint that were not expressly admitted or denied, are hereby denied.

21. In response to the Relator's Prayer for Relief, it is denied that the Relator is entitled to any relief in this case.

WHEREFORE, the Respondent Portage County Board of Elections respectfully requests the Court deny the request for relief in this Complaint and that this matter be dismissed at costs to Relator.


Respectfully submitted,

VICTOR V. VIGLUICCI (0012579)  
PORTAGE COUNTY PROSECUTOR

  
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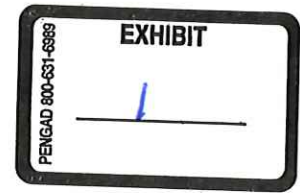
CERTIFICATE OF SERVICE

I hereby certify that a copy of the Respondent Portage County Board of Elections' Answer to the Relator's Complaint seeking a writ of mandamus has been sent by electronic mail to the **Relator Brian M. Ames** at [bmames00@gmail.com](mailto:bmames00@gmail.com), and by electronic mail to **Assistant Attorney General Bridget Coontz** at [bridget.coontz@ohioago.gov](mailto:bridget.coontz@ohioago.gov). and by regular U.S. mail to **Summit County Prosecutor Sheri Bevan Walsh** at 53 University Avenue, Akron, Ohio 44308, and **Geauga County Prosecutor James R. Flaiz** by regular U.S. mail at 231 Main Street, 3<sup>rd</sup> Floor, Chardon, Ohio 44024 on this 22<sup>nd</sup> day of July, 2022.

  
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Christopher J. Meduri  
Assistant Prosecutor  
Counsel for Respondent  
Portage County Board of Election

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**DIRECTIVE 2022-34**

May 28, 2022

To: All County Boards of Elections  
Board Members, Directors, and Deputy Directors

Re: Instructions for the August 2, 2022 Primary Election

**SUMMARY**

On May 27, 2022, a three-judge federal panel for the Southern District of Ohio (2-1) ordered, “[a]ssuming no map is approved by midnight on Saturday, May 28, we order Secretary of State Frank LaRose to push back Ohio’s state primaries to August 2, 2022, and to implement Map 3 for this year’s elections *only*.”<sup>1</sup> The Ohio Redistricting Commission’s rules require at least 24 hours public notice prior to holding a meeting and no such notice has been provided to the public. Therefore, boards of elections are required to implement the General Assembly district plan that was adopted by the Ohio Redistricting Commission on February 24, 2022, and to conduct a primary election for the offices of State Representative, State Senator, and Member of State Central Committee on August 2, 2022.

**INSTRUCTIONS**

**PART ONE: FEDERAL COURT ORDER AND AUGUST 2, 2022 PRIMARY ELECTION**

**I. AUGUST 2, 2022 PRIMARY ELECTION**

The federal court order requires the Secretary of State’s Office to conduct a primary election on August 2, 2022 for the offices of State Representative, State Senator, and Member of State Central Committee. In addition, boards may conduct a Special Election on August 2, 2022 for local questions and issues that were filed by May 4, 2022 (90 days before Election Day).<sup>2</sup> If a local option petition was filed by May 4, 2022, the local option question(s) may be placed on the August 2, 2022 primary election ballot.<sup>3</sup> The board must contact the local option petitioner and confirm in writing whether the petitioner intends for the question to appear on the ballot in the primary election or general election.

**II. STATE HOUSE AND SENATE DISTRICT MAPS**

The State House and Senate district shape files, equivalency files, legal descriptions, and most populous county lists for the Third District Map (adopted on February 24, 2022) are linked on the Secretary of State’s website under the heading for this Directive. Based on information collected from the boards, it is our understanding that 86 of the 88 counties have the Third District

<sup>1</sup> *Gonidakis, et al., v. LaRose, et al.*, Case No. 2:22-cv-0773 (S.D. Ohio May 27, 2022).

<sup>2</sup> R.C. 3501.01(D).

<sup>3</sup> R.C. 4301.33(B), 4301.331(B), 4301.332(B), 4301.333(A), 4301.334(A), and 4301.356.

Map programmed into their systems. If a board's voter registration system and central tabulating system are not programmed to reflect the Third District Map, the board must immediately begin working with its vendor(s) to reprogram its systems and complete reprogramming as soon as possible, but no later than Tuesday, **June 7, 2022**.

### **III. PRECINCT BOUNDARY CHANGES**

Boards of elections that had members of county central committee on the ballot could not change the number of precincts or precinct boundaries between January 1, 2022, and the May 3, 2022 Primary Election.<sup>4</sup> Boards of elections are not required to re-precinct in response to redistricting. However, new Ohio House and Senate districts may increase the number of split precincts in the county, and boards may choose to realign precinct boundaries to reduce splits. Boards may combine precincts within their jurisdiction. However, boards should note the following:<sup>5</sup>

- Changes in precinct boundaries must not occur during the 25 days immediately preceding a primary or general election.
- A precinct cannot contain more than 1,400 electors in active status.

### **IV. CERTIFICATION OF CANDIDATE PETITIONS AND PROTESTS**

The federal court order did not alter the partisan candidate filing deadlines for the primary election. The filing deadline for candidates for State Representative, State Senator, or Member of State Central Committee to file a declaration of candidacy was 4:00 p.m. on February 2, 2022.<sup>6</sup> Write-in candidates for the primary election were required to file their declaration of intent to be a write-in candidate by February 22, 2022.<sup>7</sup> If a declaration of candidacy or declaration of intent to be a write-in candidate was filed after those filing deadlines, the board must reject the candidacy.<sup>8</sup>

If a board **did not** receive a Form 2-ZA addendum by March 10, 2022 indicating that a candidate for State Representative or State Senator intended to change their residence to a new district, the board must meet by Friday, **June 3, 2022**, to re-certify or reject declarations of candidacy filed by the February 2, 2022 deadline for State Representative, State Senator, and Member of State Central Committee based on the Third District Map. If the board **did** receive a Form 2-ZA by March 10, 2022, indicating a State Representative or State Senator candidate's intent to change districts, the board must wait to re-certify or reject declarations of candidacy until Wednesday, **June 8, 2022**. If a candidate for State Representative, State Senator, or Member of State Central Committee withdraws their candidacy before the board meets, the board must not recertify that candidate to appear on the ballot.

Directive 2022-26 established a protest deadline of March 17, 2022; however, the Supreme Court of Ohio issued its decision regarding the Third District Map the day before that deadline.<sup>9</sup>

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<sup>4</sup> R.C. 3501.18(A).

<sup>5</sup> R.C. 3501.18.

<sup>6</sup> R.C. 3513.05.

<sup>7</sup> R.C. 3513.041.

<sup>8</sup> Note that R.C. 3513.10 prohibits returning a filing fee to a candidate.

<sup>9</sup> See *League of Women Voters of Ohio v. Ohio Redistricting Comm.*, 2022-Ohio-789.



Therefore, protests may be filed against candidates for the primary election no later than 4:00 p.m. on Monday, **June 6, 2022** for certifications done by Friday, **June 3, 2022** and by 4:00 p.m. on Thursday, **June 9, 2022** for certifications done by Wednesday, **June 8, 2022**. Protest hearings must be held, and protests decided no later than Friday, **June 10, 2022**.

## **V. OHIO CONSTITUTION ARTICLE XI, SECTION 9(C)**

Pursuant to Article XI, Section 9(C), “Notwithstanding any provision of this constitution or any law regarding the residence of senators and representatives, a general assembly district plan made pursuant to this section shall allow thirty days for persons to change residence in order to be eligible for election.” On February 24, 2022, the Ohio Redistricting Commission adopted the Third District Map. Thirty days following February 24, 2022 was March 26, 2022. However, the Ohio Supreme Court decision in *League of Women Voters*,<sup>10</sup> issued on March 16, 2022, effectively paused the implementation of the Third District Map for the May 3, 2022 Primary Election. As such, there are ten remaining days for candidates for State Representative or State Senator to change residence in order to be eligible for the August 2, 2022 Primary Election. Candidates for State Representative and State Senator may establish residency in a new district no later than **June 7, 2022** (ten days following the implementation of the May 27, 2022 federal court order).

Pursuant to Directive 2022-26, candidates for State Representative or State Senator were required to file a Form 2-ZA addendum to their petitions by March 10, 2022. The most populous board of elections where the Form 2-ZA addendum was filed by March 10, 2022, was required to transfer the petition to the most populous county board of elections for the district that the candidate seeks to represent. The most populous county’s board of elections for the candidate’s new district must confirm that the candidate filed an addendum, became a resident of the district the candidate seeks to represent, and updated their voter registration to reflect their new residence within the district no later than Tuesday, **June 7, 2022**. Boards that received Form 2-ZA from a former most-populous county board of elections must contact any filer informing them of the Tuesday, **June 7, 2022** deadline no later than 4:00 p.m. on Tuesday, **May 31, 2022**, but as soon as practicable. A board of elections may not accept a Form 2-ZA addendum filed after March 10, 2022.

## **VI. CANDIDATE WITHDRAWALS**

Once filed, a candidate petition cannot be withdrawn or amended.<sup>11</sup> However, a candidate may withdraw their candidacy at any time before the primary by filing a written statement of withdrawal with the most populous county board of elections for the district.<sup>12</sup> The federal court order was issued less than 70 days before Election Day. As a result, the deadline to withdraw and not appear on the ballot is Monday, **June 13, 2022**. If a candidate withdraws after that date, the board cannot remove the name of the withdrawn candidate from the ballot. The board of elections must post a notice at each polling place on the day of the election, and enclose with each absentee ballot, a notice that votes for the withdrawn candidate will be void and will not be counted.<sup>13</sup>

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<sup>10</sup> *League of Women Voters of Ohio v. Ohio Redistricting Comm.*, 2022-Ohio-789.

<sup>11</sup> R.C. 3501.38(I).

<sup>12</sup> R.C. 3513.30(B) and (D).

<sup>13</sup> R.C. 3513.30(E).

Boards must inform candidates certified to the primary election ballot that Monday **June 13, 2022**, is the deadline to withdraw and be removed from the ballot.

#### **VII. INDEPENDENT CANDIDATES FOR OHIO HOUSE AND SENATE FOR THE NOVEMBER 8, 2022 GENERAL ELECTION**

According to R.C. 3513.257, nominating petitions to run as an independent candidate must be filed by 4:00 p.m. on the day before the day of the primary election immediately preceding the general election at which the candidacy is to be voted on. Due to the August 2, 2022 date for the General Assembly's primary election, the independent candidate filing deadline for candidates for State Representative or State Senator is 4:00 p.m. on Monday, **August 1, 2022**. Boards of elections must certify the validity and sufficiency of independent candidates' nominating petitions for State Representative or State Senator no later than Monday, **August 22, 2022**, and protests against the candidates' nominating petitions must be filed no later than Friday, **August 26, 2022**.

#### **VIII. CAMPAIGN FINANCE DEADLINES**

Campaign committees for candidates on the August 2, 2022 Primary Election ballot, and non-candidate committees that attempt to influence the August 2, 2022 Primary Election, are required to file a Pre-Primary Report on Thursday, **July 21, 2022** (12 days before the August 2, 2022 Primary Election) to reflect activity through Wednesday, **July 13, 2022** (20 days before the August 2, 2022 Primary Election), if the committee raised or spent \$1,000 or more to influence the August 2, 2022 Primary Election by the close of business on Wednesday, **July 13, 2022**.

Campaign committees for candidates on the August 2, 2022 Primary Election ballot, and non-candidate committees that attempt to influence the August 2, 2022 Primary Election are required to file a Post-Primary Report on Friday, **September 9, 2022** (38 days after the August 2, 2022 Primary Election) to reflect activity through Friday, **September 2, 2022** (31 days after the August 2, 2022 Primary Election). Contribution limits for General Assembly candidates did not reset after the May 3, 2022 election.<sup>14</sup> However, the contribution limits for General Assembly candidates will reset after the August 2, 2022 election.

#### **IX. POLLING LOCATIONS AND PRECINCT ELECTION OFFICIALS**

Boards of elections must contact all polling locations to ensure availability for the August 2, 2022 Primary Election. Boards that employ outside organizations/companies for delivery of voting equipment and supplies must confirm availability and establish a delivery schedule.

Any board that changes polling locations for the August 2, 2022 Primary Election must mail notice to registered voters in the precinct(s)<sup>15</sup> and do all of the following:

- (1) Issue a press release to local media containing information regarding the new polling location(s);
- (2) Post a notice in a clear and conspicuous place at the previous polling location that redirects voters to the new polling location;
- (3) Update the polling location on the board of election's website;

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<sup>14</sup> R.C. 3517.102(A).

<sup>15</sup> R.C. 3501.21.

- (4) Update the board of election's voter registration system with the new polling location;
- (5) Provide the updated precinct and polling location packet to the Secretary of State's Office immediately. Once the packet is sent, email the updated list to [SWVRD@OhioSOS.gov](mailto:SWVRD@OhioSOS.gov);
- (6) Update the board of election's election management system, if possible; and
- (7) Update the board of election's electronic pollbook, if possible.

All new polling locations must comply with the Americans with Disabilities Act ("ADA").

In any election, a board of elections, by a vote of at least three members of the board, may opt to have a single voting location serve more than one precinct.<sup>16</sup> If a multi-precinct voting location uses electronic pollbooks, the board may reduce the number of precinct election officials from four per precinct to two, so long as the board approves the reduction by the affirmative vote of at least three of its member.<sup>17</sup>

Each new precinct election official must be trained in-person on the county's voting equipment before participating in the person's first election as a precinct election official, and programs of instruction must be scheduled within 60 days before the election.<sup>18</sup> Precinct election officials, other than voting location managers, who have been previously trained, need only receive instruction once every three years, when the county changes voting equipment, or when the board or Secretary of State considers the instruction necessary.<sup>19</sup> For this election, boards are not required to retrain precinct election officials who received training within the past three years, so long as the county has not changed voting equipment. However, voting location managers must receive training before the August 2, 2022 Primary Election if they were not trained before the May 3, 2022 Primary Election.<sup>20</sup>

## **X. SECURITY OF VOTING EQUIPMENT**

Each board must review the security requirements outlined in Chapters 3 and 6 of the Election Official Manual. During precinct election official training, boards must provide instructions to precinct election officials on the importance of maintaining the security of voting equipment and electronic pollbooks, verifying that all voting equipment is properly sealed, and recording information per the board's instructions on the custody log.

Boards of elections must use a Chain of Custody Log (Form 400 or a local equivalent) to document the exchange of custody of voting equipment, election supplies, and/or ballots. Boards of elections must train precinct election officials on inspection of tamper-evident seals to ensure precinct election officials know how to inspect the physical security of the voting equipment at their location.

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<sup>16</sup> R.C. 3501.22(A)(2).

<sup>17</sup> R.C. 3501.22(A)(2)(c).

<sup>18</sup> R.C. 3501.27(B).

<sup>19</sup> Chapter 6, page 184 of the Election Official Manual.

<sup>20</sup> R.C. 3501.27(B).

## **PART TWO: FORM OF THE BALLOT**

### **I. BALLOT LAYOUT**

Instead of issuing a separate Directive with specific details covering ballot layout and proofing, the Secretary of State's Office is issuing this portion of the Directive, which must be used in conjunction with Chapter 5 of the Election Official Manual when preparing ballots for this election.

#### **A. VERIFYING DISTRICT RELATIONSHIPS**

Before programming any aspect of the central tabulating system for the August 2, 2022 Primary Election, boards of elections must verify the accuracy of district relationships in the central tabulating system against the county's voter registration system.<sup>21</sup> This is to ensure that each voter receives the correct ballot style (*i.e.*, the correct combination of candidate offices and issues) based upon that voter's residential address.

#### **B. OFFICIAL BALLOT FORMS**

Each board of elections is to provide a separate ballot for each political party listing candidates for nomination or election in a primary election.<sup>22</sup> Accordingly, the following ballot forms are posted to the Secretary of State's website under the heading for this Directive:

- Official Democratic Primary Ballot;
- Official Republican Primary Ballot; and
- Official Questions and Issues Ballot.

The names of all candidates, who have not withdrawn (*see* Part One, Section VI of this Directive), must be arranged, rotated, and printed upon the ballot in accordance with the provisions of Ohio Revised Code Chapters 3505, 3506, and 3513 and Chapter 5 of the Election Official Manual.

#### **C. ORDER OF OFFICES FOR PRIMARY BALLOTS<sup>23</sup>**

1. The order of offices for **Democratic Party** ballots shall be as follows:

- Member of State Central Committee, Man
- Member of State Central Committee, Woman
- State Senator
- State Representative

2. The order of offices for Republican Party ballots shall be as follows:

- Member of State Central Committee, Man

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<sup>21</sup> Boards must proof and verify the accuracy of all districts including, but not limited to, Ohio House, Ohio Senate, and State Central Committee districts.

<sup>22</sup> R.C. 3513.13.

<sup>23</sup> R.C. 3513.13.

- Member of State Central Committee, Woman
- State Senator
- State Representative

#### **D. BLANK SPACES FOR WRITE-IN VOTES**

A write-in space must be provided on the ballot for every office for which the board of elections received a valid declaration of intent to be a write-in candidate.<sup>24</sup> However, the board may not accept declarations of intent to be a write-in candidate for state central committee.<sup>25</sup> If no valid declarations of candidacy were filed for state central committee, the office does not appear on the ballot.<sup>26</sup>

#### **E. OFFICIAL QUESTIONS AND ISSUES BALLOT<sup>27</sup>**

Offices for which candidates may be nominated or elected are presented on the ballot first, followed by the questions and issues. The Official Questions and Issues Ballot must be used for all voting systems. The ballot form also contains examples of some of the local questions and issues that may appear on the ballot in your county. Not every category or type of question/issue will appear on every ballot in every county.

Additional instructions on headings, ballot language, and percentage of votes can be found in Chapter 5 of the Election Official Manual. For questions and issues that were filed in time for the August 2, 2022 Special Election, the questions and issues must be grouped together in the following political subdivision order:

- School and Other Districts
- County
- Municipal
- Township

Each board of elections may determine the specific order in which the questions/issues within each group are placed on the ballot in that county, however, a board should adopt a method for doing so (i.e., ordered alphabetically or by date filed, etc.). Absentee ballots must contain identical ordering of issues within groups to regular ballots.

Boards must review the appropriate sections of the Ohio Revised Code, local charter (if applicable), and the Questions and Issues Handbook for ballot language and formats that are not on the Official Questions and Issues Ballot.

## **II. BOARD WEBSITES AND FEDERAL WRITE-IN ABSENTEE VOTERS (“FWAB”) NOTICE**

Boards of elections must remove from their website and Voter Information Lookup the Special Notice prescribed in Directive 2022-31. Boards must also remove the following disclaimer

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<sup>24</sup> R.C. 3513.041 and R.C. 3513.14.

<sup>25</sup> See 1970 Ohio Atty.Gen.Ops. No. 70-011.

<sup>26</sup> R.C. 3513.14.

<sup>27</sup> R.C. 3505.06.

from their FWAB notice: “The content of this notice may change if a court order or legislative act requires a primary election for the General Assembly and State Central Committee in August.”

### **III. ABSENTEE BALLOTS AND APPLICATIONS**

Boards of elections must send a copy of each absentee ballot style (including candidates and questions and issues) to the Secretary of State’s Office at least 47 days before the election, by Thursday, **June 16, 2022**. Absentee ballots must be uploaded to the SharePoint site.<sup>28</sup>

Voters may request a ballot for either major political party or an issues-only ballot, if applicable, regardless of their participation in the May 3, 2022 Primary Election. An absentee ballot application must identify the election for which absent voter's ballots are requested.<sup>29</sup> However, an absentee ballot application that is marked for the primary election must not be rejected due to an error in the date of the election, so long as it is otherwise clear that the voter is requesting a ballot for the August 2, 2022 Primary Election.

The voter registration deadline is Tuesday, **July 5, 2022**. Each board of elections must have absentee ballots printed and ready for use by Friday, **June 17, 2022** (46 days before the August 2, 2022 Primary Election) for Uniformed and Overseas Citizens Absentee Voting Act (“UOCAVA”) voters.<sup>30</sup> Absentee voting, by mail and in-person for non-UOCAVA voters, begins on Wednesday, **July 6, 2022** for regular (non-UOCAVA) absentee voters.<sup>31</sup> Boards must conduct in-person early voting according to the days and hours set forth in Chapter 7 of the Election Official Manual (page 201) for a primary election.

## **PART THREE – BALLOTS**

### **I. ABSENTEE BALLOT OUTSOURCING**

Chapter 7 of the Election Official Manual requires a board of elections that seeks to outsource the printing and mailing of absentee ballots to vendors or any third party to receive prior written authorization from the Director of Elections. A board that received written authorization to outsource absentee ballot mailings for the May 3, 2022 Primary Election need only submit an application that includes updates to its last application, including a copy of the new contract with the vendor and confirmation of the county prosecutor’s review.

To outsource absentee ballot processing for the August 2, 2022 election, a board must in a public meeting vote to outsource the printing and mailing of absentee ballots by Tuesday, **June 7, 2022**. Boards must submit a copy of the contract for the August 2, 2022 election to our Office by Tuesday, **June 14, 2022** via email at [Results@OhioSoS.gov](mailto:Results@OhioSoS.gov), along with any updates to their processes and plans from their May 3, 2022 Primary Election application.

### **II. TESTING OF ABSENTEE AND ELECTION DAY BALLOTS**

In addition to the logic and accuracy testing requirements outlined in Chapter 5 of the Election Official Manual, all ballots produced and used by the board must be tested to ensure that

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<sup>28</sup> Chapter 5, Section 5.04 of the Election Official Manual.

<sup>29</sup> R.C. 3509.03.

<sup>30</sup> R.C. 3511.04.

<sup>31</sup> R.C. 3509.01.



the ballots interact properly with the voting system and electronic pollbooks. The board of elections must test absentee ballots printed at the board of elections or from a printing vendor. The board must also test ballots produced for Election Day to ensure the correct information is displayed in any barcodes produced on the stubs. For boards that produce a unique barcode containing ballot style information and a consecutive number on the ballot stub, a sampling of each precinct's ballots must be tested for accuracy. Pre-printed paper ballots used by precincts on Election Day must also be scanned in the precinct-based and central count scanner to ensure ballots properly scan and tabulate.

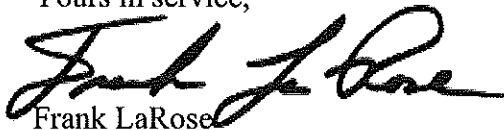
#### **PART FOUR: PRE-PAYMENT AND CHARGE-BACKS FOR LOCAL ISSUES**

The entire cost of special elections held on a day other than the day of a primary or general election, both in odd- and even-numbered years, is charged to the political subdivision that places an issue on the ballot. However, the August 2, 2022 Special Election will be held on the same date as a statewide primary election. Therefore, a political subdivision submitting the special election may be charged only for the cost of ballots and advertising. The State will be responsible for the remainder of the cost of the election.<sup>32</sup> Our Office will inform boards as soon as possible of any additional funding that the General Assembly makes available to conduct the August 2, 2022 Special Election. Our Office is actively engaged with legislative leaders to facilitate this necessary funding.

Prior to the federal court's order to conduct an August 2, 2022 Primary Election, political subdivisions submitting a question or issue for placement on the ballot were required to prepay 65 percent of the estimated cost of the election. Not later than Monday, **October 1, 2022**, the board must provide the true and accurate cost of ballots and advertising to each political subdivision that submitted a question or issue for placement on the ballot. Presuming the political subdivision prepaid more than the actual cost of ballots and advertising for the special election, the board of elections must promptly notify the board of county commissioners of that difference. The county commissioners then must remit the amount of the overpayment from the county elections revenue fund to the political subdivision within 30 days after receiving that notification.<sup>33</sup>

Each board of elections director must share this Directive with its legal counsel, the county prosecuting attorney, and its voter registration system and voting equipment vendors as soon as possible. If you have any questions regarding this Directive, please contact the Secretary of State's elections counsel at (614) 728-8789.

Yours in service,

  
Frank LaRose  
Ohio Secretary of State

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<sup>32</sup> R.C. 3501.17(D).

<sup>33</sup> R.C. 3501.17(J)(2) and (3).