

**IN THE SUPREME COURT OF OHIO**

**State ex rel. One Person One Vote, et al.** :  
: **Case No. 2023-0630**  
: **Relators,** :  
: **vs.** :  
: **Frank LaRose,** :  
: **Respondent.** :

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**AMICUS BRIEF OF THE CITY OF COLUMBUS  
IN SUPPORT OF RELATORS**

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**CITY OF COLUMBUS,  
DEPARTMENT OF LAW  
ZACH KLEIN**

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## STATEMENT OF AMICUS CURIAE

The City of Columbus is a municipal corporation, the largest city in Ohio, the county seat for Franklin County, and the State's capital. It is home to over 906,000 people.

<https://www.census.gov/quickfacts/columbuscityohio> It has an interest in insuring that the rights of its residents to vote are not impeded or compromised.

The City has been at the forefront in advertising the existence of the Franklin County Board of Elections early vote center and publicizing the hours that the center is open so that individuals know when and how they can cast their ballots. It has done this even in situations in which the Franklin County Board of Elections has failed to advertise that information to the public. *See, e.g., Columbus City Ordinance 2977-2018.*

The City has a particular interest in making sure that the laws of the State of Ohio are followed and that elections are held in a manner prescribed by law. Because Ohio law does not allow for a statewide vote on a proposed constitutional amendment during an August special election, the City of Columbus files this amicus brief and asks the Court to grant the relief requested by the Relators.

### INTRODUCTION

The 1912 Constitutional Convention recognized and guaranteed that all political power remains with the citizens of Ohio. The right to initiative and referendum gives the citizens the power to ultimately serve as a check on an unrepresentative General Assembly. That was why the initiative and referendum were so important to the delegates of the 1912 Convention and why the citizens of Ohio overwhelmingly approved that right.

The modern day General Assembly and Secretary of State have recognized that August elections are devices that are used to "game the system" by allowing a low turnout election to

pass issues despite their general lack of support. That is why the General Assembly banned August special elections except in the most limited of circumstances. This Court should grant the Writ of Mandamus requested by the Relators and order the Secretary of State to rescind Directive 2023-007 as that Directive is contrary to law.

## ARGUMENT

### **Amicus Proposition of Law I:**

When Ohio statutory law provides specific dates upon which an election can be held, the Secretary of State may not issue a Directive calling for a statewide election on a different date.

#### **I. The 1912 Constitutional Convention overwhelmingly supported the notion of guaranteeing the sovereignty of the people.**

In 1910, Ohioans voted overwhelmingly to call a constitutional convention by a vote of 693,263 in favor and 67,718 opposed. Warner, L. Ohio's Constitutional Convention of 1912, Ohio State Archeological and Historical Quarterly vol. 61, n. 1 at 12 (Jan. 1951), <http://developmental.law.csuohio.edu/lawlibrary/resources/lawpubs/ohioconlaw/documents/Warner.pdf>. The biggest driver for the convention was the progressive movement that sought to incorporate various reforms and protections into the Constitution including municipal home rule, direct primaries, the initiative and referendum, equal suffrage, improvements to the court system, and legal protections for workers. *Id.* at 13. In fact, the progressive charge was so loud that the “director of the Ohio State Board of Commerce dispatched ‘boilerplate’ articles to the rural press attacking the proposal as communistic, assessed business to defray the expense [of campaigning against the progressives], and organized support for conservative candidates.” *Id.* at 15.

Much as today, the lead-up to the 1912 convention saw a split between rural and urban interests. In fact, a leading progressive was able to convince various liquor interests to support the initiative and referendum. *Id.* He pointed out that the General Assembly tended to favor

prohibition interests because of the strength of an over-representation of rural counties whereas the initiative and referendum process would give full representation to the wet urban counties.

*Id.* When the 1912 Constitutional Convention began on January 9, its purpose was to frame a new charter reflecting “the improved and progressive conditions” of the twentieth century world.

*Id.* at 17 quoting temporary convention chair Judge Dennis Dwyer, *Proceeds and Debates*, I, 24.

Theodore Roosevelt addressed the convention, reminding the delegates that “unless representative government does absolutely represent the people it is not representative government at all.” *Ohio Capital Journal*, *A Charter of Democracy* (reprint of Roosevelt’s Speech to the 1912 Convention), <https://ohiocapitaljournal.com/2023/03/31/teddy-roosevelts-speech-to-the-1912-ohio-constitutional-convention/> In addressing the idea of the initiative and referendum, Roosevelt said, “legislative bodies have not been responsive to the popular will. Therefore I believe that the State should provide for the possibility of direct popular action in order to make good such legislative failure.” *Id.* “Action by the initiative or referendum ought not to be the normal way of legislation, but the power to take it should be provided in the constitution, so that if the representatives fail truly to represent the people on some matter of sufficient importance to rouse popular interest, then the people shall have in their hands the facilities to make good the failure.” *Id.*

This was the backdrop upon which the people approved what became Art. II Sec. 1a-g of the Constitution – the right of initiative and referendum. That vote was 57.5% in favor of the amendment with 42.5% opposed – a figure such that it would fail under S.J.R. 2 and Directive 2023-07. *See*, Cleveland-Marshall Law School, *Ohio Constitution Law and History: Table of Proposed Amendments* <https://guides.law.csuohio.edu/c.php?g=190570&p=1258419>

## II. Statewide elections can only be held in accordance with the Revised Code.

Just last year, the General Assembly passed H.B. 458 which greatly limited the ability to hold August elections. In giving sponsor testimony to the Ohio House, Representative Hall testified “[t]he premise of the bill and goal is quite simple: to eliminate the ability of having a “Special election” in August, except when held to nominate or elect candidates for the United States House of Representatives.” Ohio House of Representatives, Rep. Thomas Hall, Sponsor Testimony, October 9, 2021. Hall testified to his fellow Representatives, about how August elections “gam[e] the system” by “trying to pass [issues] ... when most of the electorate is not engaged in the process.” *Id.* He testified that the only exceptions for an August election under his bill would be: (1) to fill vacant seats in the Congressional delegation, the Senate, or other offices deemed necessary; (2) to allow local communities or political subdivisions to piggyback levies onto special elections if they agree to pay the apportioned share of the election; or (3) if a local community or political subdivision were going into fiscal emergency. *Id.* He summed his purpose up for sponsoring this bill by testifying, “August special elections are costly to taxpayers and fail to engage a meaningful amount of the electorate in the process. They should be eliminated from the elections calendar.” *Id.*

Secretary of State LaRose also testified in favor of H.B. 458 by stating, “just a handful of voters end up making big decisions. The side that wins is often the one that has a vested interest in the passage of the issue up for consideration.” Frank LaRose Testimony to the Ohio House of Representatives, Entitled HB 458 – Ending Unnecessary Special Elections. LaRose pointed out that these August Elections are not “how democracy is supposed to work. More importantly, it doesn’t have to. Voters are just as capable of voting on these important issues during the standard primary and general elections and there is no reason why these contests can’t happen at

the regularly scheduled primary and general elections which occur twice a year.” *Id.* In fact, he complained and recognized that an “August special election is the last thing election officials should be dealing with as they ready themselves for an important November election that begins with the start of early voting in October. These unnecessary “off-cycle” elections aren’t good for taxpayers, election officials, or the civic health of our state. It’s time for them to go!” *Id.*

Both Hall and LaRose provided identical testimony to the Ohio Senate when it began deliberating H.B. 458. The intent of the General Assembly, by passing H.B. 458, is clear. As the Respondent himself stated, August special elections “aren’t good for taxpayers, elections officials, or the civic health of our state. It’s time for them to go!”

This reasoning was highly persuasive. The General Assembly passed H.B. 458 in order to outlaw these August special elections except in the most limited of circumstances. It did so, no doubt, based upon low turnout and the amount of work that boards of elections need to do to get ready for November general elections. Yet, now, the Secretary of State has issued a Directive in contravention of Ohio law attempting to hold a statewide election in August when there is no statutory authority to do so and when the General Assembly, just last year, prohibited such an election from taking place.

## CONCLUSION

For the foregoing reasons, this Court should grant the writ requested by the Relators and order the Secretary of State to rescind Directive 2023-007 and cancel the August 8, 2023 election on S.J.R. 2.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that on May 18, 2023, the foregoing Amicus Brief of the City of Columbus in Support of Relators was filed electronically using the Court's e-filing system. I further certified that the foregoing was served via electronic mail upon the following:

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