

In the  
**Supreme Court of Ohio**

State ex rel. Corey Speweik : Case No. 2020-0382  
: :  
Relator, : Original Action in Mandamus  
: :  
v. : :  
: :  
The Wood County Board of Elections, :  
and The Honorable Frank LaRose :  
: :  
Respondents.

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**OHIO SECRETARY OF STATE FRANK LAROSE'S ANSWER**

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Earlier tonight, Ohio Secretary of State Frank LaRose filed a motion to dismiss this action. In addition, and in response to the Court's order, he files this answer.

1. Secretary LaRose denies for want of knowledge the allegations in paragraph 1.
2. Secretary LaRose denies for want of knowledge the allegations in paragraph 2.
3. Secretary LaRose denies that the "General Assembly set the election date as the third Tuesday after the first Monday in a presidential year." There is no one "election date" under Ohio law, but rather several throughout the year, and the complaint omits key information about the month in which *primary elections* are to take place. The relevant law provides that, "[i]n all years in which a presidential primary election is held, all primary elections shall be held on the third Tuesday after the first Monday in March except as otherwise authorized by a municipal or county charter." R.C. 3501.01(E)(2).
4. Secretary LaRose admits that the coronavirus was known to exist and to be spreading in some locations in 2019. Secretary LaRose denies for want of knowledge that the virus's spread was "known around the world." Compl. ¶4.
5. Secretary LaRose denies that "the General Assembly" knew of the virus's spread—the General Assembly is not a sentient being. Secretary LaRose denies for want of information whether *members* of the General Assembly knew of the virus's spread. Secretary LaRose admits that the General Assembly did not change the primary election date.
6. Secretary LaRose admits that Ohio has had ample opportunity for absentee and early voting pursuant to statute.
7. Secretary LaRose admits that he has repeatedly issued public statements and press releases stating voting in Ohio will be safe and secure despite the Coronavirus. Secretary LaRose denies the allegations of paragraph 7 of the complaint to the extent they suggest he currently believes the primary election could safely proceed on March 17, 2020. To the contrary, in the last few hours, Ohio's Health Director, Dr. Amy Acton, issued an order requiring the closure of polls to protect public safety. *In re: Closure of Polling Locations in the State of Ohio on Tuesday, March 17, 2020, Director's Order.*

8. Secretary LaRose admits that the General Assembly did not change the primary date in light of the coronavirus's spread. Secretary LaRose denies for want of information that individual legislators, or the body as a collective, failed to act despite "knowing of virus issues." Compl. ¶8.
9. Secretary LaRose admits that, in a press conference with the Governor, he announced a plan to seek to change the date of the primary election through the Franklin County courts. The allegation that neither the governor nor the Secretary had "power" to change the date "by executive fiat" is a legal conclusion to which no response is required. To the extent a response is required, Secretary LaRose denies that he has ordered a change in the election date by executive action.
10. Paragraph 10 of the complaint consists of legal conclusions to which no response is required.
11. Relator's allegation that "[c]hanging the primary date fundamentally violates the bedrock separation of powers implicit in the Ohio Constitution" is a legal conclusion for which no response is required. All other allegations in paragraph 11 of the complaint are denied.
12. Paragraph 12 of the complaint consists of legal conclusions to which no response is required. To the extent a response is required, Secretary LaRose admits that he has a clear, core legal duty to comply with Ohio's election laws.
13. Paragraph 13 of the complaint consists of legal conclusions to which no response is required.
14. Paragraph 14 of the complaint consists of a legal conclusion to which no response is required.
15. Paragraph 15 of the complaint consists of a legal conclusion to which no response is required.
16. Secretary LaRose denies that the Relator is entitled to the relief sought in paragraph 16 of the complaint.

## **AFFIRMATIVE DEFENSES**

### **FIRST DEFENSE**

Secretary LaRose has no clear legal duty to perform any of the action requested by Relator. Among other reasons, Health Director Dr. Amy Acton issued an order requiring the closure of polls on March 17. *In re: Closure of Polling Locations in the State of Ohio on Tuesday, March 17, 2020, Director's Order*. The Secretary will not violate a clear legal duty by complying with an order from Ohio's Health Director during a pandemic.

### **SECOND DEFENSE**

Relator has no clear legal right to the relief sought from Secretary LaRose.

### **THIRD DEFENSE**

Relator has an adequate remedy at law.

### **FOURTH DEFENSE**

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

Respectfully submitted,

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/s Benjamin M. Flowers

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served this 17th day of March,

2020, by e-mail, on the following:

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