

IN THE SUPREME COURT OF OHIO

State of Ohio *ex rel.* Ohio Democratic Party

697 East Broad St., Suite 101
Columbus OH 43215

State of Ohio *ex rel.* Norman Wernet

2585 Bexley Park Rd.
Bexley, OH 43209

and

State of Ohio *ex rel.* Eric Duffy

185 Crestview Rd.
Columbus, OH 43202

Relators,

v.

**Frank LaRose, in his official capacity as
Ohio Secretary of State**

22 North Fourth St., 16th Floor
Columbus, OH 43215

Respondent.

Case No. _____

Original Action in Mandamus Pursuant to
Article IV, Section 2(B)(1)(b) of the Ohio
Constitution

Expedited Election Case Pursuant to
Supreme Court Rule of Practice 12.08

Peremptory and Alternative Writs
Requested

VERIFIED COMPLAINT FOR WRIT OF MANDAMUS

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** Applications for admission *pro hac vice*
forthcoming

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This original action in mandamus is brought in the name of the State of Ohio on the relation of the Ohio Democratic Party, Norman Wernet, and Eric Duffy (collectively, “Relators”). Directive 2024-21 is contrary to law. Relators request that the Court issue a writ of mandamus directing Respondent Ohio Secretary of State Frank LaRose to (i) rescind Directive 2024-21 and (ii) instruct county election officials to accept absentee ballots from voters and their authorized family members and assistants without the Directive’s legally unauthorized attestation, including via drop box.

INTRODUCTION

1. No one disputes that Ohio’s elections are secure. Secretary LaRose has repeatedly celebrated the state’s election system as the gold standard for other states to follow and made clear that fraud is exceedingly rare. Indeed, Governor DeWine has said that he does not want to see more changes to Ohio’s voting laws—and that anyone who wants to make such changes should first prove that they are necessary.

2. Yet, in response to a federal court simply ordering him to comply with the federal Voting Rights Act’s protections for voters with disabilities, Secretary LaRose has taken it upon himself to instead attempt to rewrite the statute governing return of absentee ballots.

3. Federal law allows voters with disabilities to have a person of their choice aid them in returning their ballots. Ohio law broadly allows voters to have certain, delineated family members do the same. Neither imposes special attestation burdens to do so.

4. Nonetheless, Secretary LaRose issued Directive 2024-21 (the “Directive”), which requires an authorized family member or designated assistant delivering a ballot for a voter to sign an attestation *inside* the board of elections office, during operating hours. In doing so, the Directive expressly prohibits such authorized individuals from returning their family member’s or a person with disabilities’ ballot via the secure drop box *outside* the board of elections office, available 24/7.

Verification of Donald J. McTigue (“McTigue Verification”), Ex. A at 1–2.¹

5. As a result, absentee voters and their assistants face new hurdles to voting. And all voters will be subjected to longer lines and wait times at their board of elections offices.

6. To justify this new Directive, Secretary LaRose cites “applicable state and federal law.” *Id.* But in reality, the Directive *violates* applicable state and federal law. Indeed, the Directive is directly contrary to the Ohio Revised Code, the Ohio Constitution, and the federal Voting Rights Act that it purports to uphold.

7. The Secretary’s duty is to enforce Ohio’s election laws as written by the General Assembly, and as cabined by federal law, not to lawlessly redraft those laws on the eve of an election. The Revised Code unambiguously provides for a voter’s family member to return that voter’s absentee ballot inside the board’s office or via drop box. The Ohio Constitution requires the State to treat all similarly situated voters equally. And, as Secretary LaRose recognizes, a federal court order allows any voter with disabilities to designate a person of their choice to return their absentee ballot. The law does not permit the Directive’s haphazard, discriminatory approach to absentee ballot delivery.

8. This Court has “consistently” exercised its mandamus jurisdiction “[w]hen the issue is whether the secretary of state has misdirected boards of elections regarding their duties.” *State ex rel. Painter v. Brunner*, 2011-Ohio-35, ¶ 24. And it has not hesitated to issue a writ compelling the rescission of an unlawful directive when the secretary of state errs. *See, e.g., id.* ¶¶ 31, 52.

¹ Last week, the Secretary issued Advisory 2024-03, which clarifies that county boards *may* set up systems for drive-through drop-offs staffed by at least two election office employees (one Republican and one Democrat), where authorized individuals may complete their attestation forms—at least during whatever limited hours of operation counties choose to establish in their discretion. *McTigue Verification*, Ex. G at 2.

9. The Court should do the same here. It should grant the writ.

NATURE OF THE ACTION AND JURISDICTION

10. This is an original action commenced under Article IV, Section 2(B)(1)(b) of the Ohio Constitution and Chapter 2731 of the Ohio Revised Code.

11. Directive 2024-21 is contrary to law. Accordingly, Relators seek a writ of mandamus directing Respondent Secretary LaRose to (i) rescind Directive 2024-21 and (ii) instruct county election officials to accept absentee ballots from voters and their authorized family members and assistants without the Directive’s legally unauthorized attestation, including via drop box.

12. This Court has jurisdiction over this action under Article IV, Section 2(B)(1)(b), which gives the Court original jurisdiction in mandamus actions. *See Painter*, 2011-Ohio-35, at ¶ 30 (“If the secretary of state ‘has, under the law, misdirected the members of the boards of elections as to their duties, the matter may be corrected through the remedy of mandamus.’” (alteration adopted) (quoting *State ex rel. Colvin v. Brunner*, 2008-Ohio-5041, ¶ 20)).

13. Relators affirmatively allege that they have acted with the utmost diligence, that there has been no unreasonable delay or lapse of time in asserting their rights, and that there is no prejudice to Respondent. Specifically, the Secretary issued Directive 2024-21 on Saturday, August 31, 2024 and followed up with an advisory on September 20, which “serve[d] as a clarification to Directive 2024-21.” *McTigue Verification*, Ex. G at 1. This action is being filed just one week later.

14. Because this action is being filed fewer than 90 days before November 5, 2024, it is an expedited election case subject to the schedule set out in Supreme Court Rule of Practice 12.08. Directive 2024-21 was issued as a temporary directive for the 2024 general election, for which absentee and early voting begin on October 8, 2024.

PARTIES

15. Relator Ohio Democratic Party (“ODP”) is one of Ohio’s two legally recognized major political parties whose candidates for local, state, and federal office will stand for election at the November 5, 2024 general election. McTigue Verification, Ex. B ¶ 3. ODP has thousands of members across the state who regularly support and vote for candidates associated with ODP. *Id.*, Ex. B ¶ 4. And it counts among its constituents the several million Ohio voters who support Democratic candidates. *Id.*

16. Hundreds of thousands of ODP’s members and constituents will vote by absentee ballot this year. *Id.*, Ex. B ¶ 5. Every election, many ODP members and constituents rely on authorized family members—or, if they have disabilities, designated assistants—to return their ballots for them. Likewise, every election, many ODP members and constituents assist their family members and voters with disabilities by returning absentee ballots on their behalf. *Id.*, Ex. B ¶ 6. This is a presidential election year, with a hotly-contested United States Senate race on the ballot, and many ODP members and constituents will once again plan to have others aid their return of absentee ballots in compliance with state and federal law. *Id.*, Ex. B ¶ 7.

17. Authorized family members and designated assistants often rely on drop boxes to return absentee ballots because of their schedules and because of the burdens associated with going into a board of elections office during the early voting period, which coincides with the absentee ballot return period. *Id.*, Ex. B ¶ 8. These burdens include difficulties parking and waiting in line. *Id.*, Ex. B ¶ 9. In addition, many Ohioans experience mail irregularities that deter them from using the postal service to return their own or others’ absentee ballots. *Id.*

18. ODP will be directly injured if the Directive is not rescinded. *Id.*, Ex. B ¶ 10. Specifically, ODP will have to expend additional resources to educate its members about how to comply with the Directive. *Id.* ODP will also have to dedicate additional resources towards

mitigating the impact of the Directive on voter turnout—both because it eliminates a ballot return method that is available 24/7 from the close of voter registration through election day, which many of its members rely on, and because it will cause long lines, deterring many voters and their assistants. *See Id.*, Ex. B ¶ 11. This impact will be particularly acute because each county, no matter its population, maintains only a single site at which absentee ballots can be returned in person. *Id.*, Ex. B ¶ 12.

19. Relator Norman Wernet is a qualified elector in the State of Ohio. *Id.*, Ex. C ¶ 2. He intends to cast an absentee ballot in this year’s general election, as does his wife. *Id.*, Ex. C ¶ 3. Relator Wernet plans to assist his wife, who has early-stage dementia, by dropping off her ballot at the drop box in Franklin County along with his own. *Id.* He plans to vote by drop box in 2024 because of a recent experience with mail theft; voting by drop box provides him the assurance that his ballot will arrive directly at the board of elections and will be counted. *Id.*, Ex. C ¶ 4. Relator Wernet is a senior citizen who would have difficulty returning his and his wife’s ballots if the Directive is not rescinded. *Id.* Being forced to park his car, walk up to several blocks, and wait in line to complete an attestation form will be taxing on his time and his health. *Id.*

20. Relator Eric Duffy is a qualified elector in the State of Ohio who votes in Franklin County. *Id.*, Ex. D ¶ 2. Relator Duffy is blind and, although he has often voted in person using accessible voting machines in the past, he has recently been in and out of the hospital and was just released from his most recent hospital stay yesterday. *Id.*, Ex. D ¶ 3. He is now unsure of whether his health will permit him to vote in person this year and therefore plans to vote absentee. *Id.* Rather than mailing his ballot, he intends to rely on the assistance of a trusted friend to return his ballot in person, as he would like to ensure his ballot arrives on time and is properly counted. *Id.*, Ex. D ¶ 4. Relator Duffy’s preferred assistant could return his ballot by drop box but has difficulty

walking and standing in line for extended periods of time, and so could not readily return the ballot in person to election officials at the board of elections office. *See id.*, Ex. D ¶ 5. If the Directive is not rescinded, Relator Duffy would no longer be able to receive “assistance by a person of [his] choice.” 52 U.S.C. § 10508; *McTigue Verification*, Ex. D ¶ 6.

21. Respondent Frank LaRose is the Ohio Secretary of State and the State’s chief election officer.

22. Under Revised Code Section 3501.05(B), (M), Secretary LaRose is charged with issuing “instructions by directives and advisories in accordance with Section 3501.053 of the Revised Code to members of the boards as to the proper methods of conducting elections” and “[c]ompel[ling] the observance by election officers in the several counties of the requirements of the election laws.” Purportedly pursuant to that authority, Secretary LaRose has issued Directive 2024-21 and directed election officials to “post a notification on each drop box indicating that voter-assisted ballots must be returned inside the board office, where the voter assistant will be asked to complete the attestation form.” *McTigue Verification*, Ex. A at 2.

23. Secretary LaRose is not vested with authority to change or enact laws. *See State ex rel. Hildreth v. LaRose*, 2023-Ohio-3667, ¶ 22 (clarifying that judiciary is never required to defer to Secretary’s interpretation or application of election statutes). Further, Secretary LaRose’s election administration duties with respect to issuing directives in accordance with Section 3501.053 must be consistent with Ohio and federal law. *See Painter*, 2011-Ohio-35, at ¶ 52 (granting writ of mandamus where Secretary’s “instructions to the board of elections were not justified by Ohio law or the pertinent federal court orders”).

FACTS

24. Pursuant to statute duly adopted by the General Assembly, Ohio has long allowed authorized family members to return an absent voter’s ballot to the county board of elections office

on their behalf. *See* R.C. 3509.05(C)(1). Ohio law has never required such family members to complete any form of attestation to deliver the ballot.

25. Also pursuant to statute, Ohio allows county boards of elections to place a “secure receptacle”—colloquially known as a “drop box”—“outside the office of the board, on the property on which the office of the board is located, for the purpose of receiving absent voter’s ballots under this section.” R.C. 3509.05(C)(3)(a). Drop boxes are required to “be open to receive ballots at all times” “during the period beginning on the first day after the close of voter registration before the election and ending at seven-thirty p.m. on the day of the election.” R.C. 3509.05(C)(3)(b).

26. On April 7, 2023, Ohio enacted a series of changes to its election laws, *see* Am.Sub.H.B. No. 458, 2022 Ohio Laws 175, which criminalize knowingly returning another’s absentee ballot unless authorized to do so under law, *see* R.C. 3599.21(A)(9), (C).

27. Accordingly, anyone who returns the absentee ballot of a voter and is not that voter’s spouse, father, mother, father-in-law, mother-in-law, grandfather, grandmother, brother, or sister of the whole or half blood, or the voter’s son, daughter, adopting parent, adopted child, stepparent, stepchild, uncle, aunt, nephew, or niece can be charged with a felony of the fourth degree. *Id.*; *see also* R.C. 3509.05(C)(1). Newly revised Section 3599.21 does not, however, impose any attestation or other certification requirements on authorized family members as a condition of being authorized to return the absentee ballot of their family member.

28. Ohio law already criminalized knowingly possessing another’s absentee ballot unless authorized. *See* R.C. 3599.21(A)(10).

29. Section 208 of the Voting Rights Act provides: “Any voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by

a person of the voter’s choice, other than the voter’s employer or agent of that employer or officer or agent of the voter’s union.” 52 U.S.C. § 10508. Neither Ohio provision referenced above authorizes anyone other than a designated family member to provide such assistance to voters with disabilities.

30. On July 22, 2024, the U.S. District Court for the Northern District of Ohio permanently enjoined the enforcement of Sections 3599.21(A)(9) and 3599.21(A)(10) “against any disabled voter or against any individual who assists any disabled voter with the return of the disabled voter’s absentee ballot to the extent such enforcement contradicts Section 208 of the Voting Rights Act, with immediate effect.” *League of Women Voters of Ohio v. LaRose*, No. 1:23-CV-02414, 2024 WL 3495332, *20 (N.D. Ohio July 22, 2024).

31. In response, nearly six weeks after the federal court’s decision took effect, Secretary LaRose issued Directive 2024-21.

32. The Directive purportedly “sets forth procedures for enforcement of Ohio law regarding the return of an absent voter’s ballot.” Specifically, Secretary LaRose stated that he was “acting under [his] authority to compel the observance of election laws, in this case Ohio’s prohibition on ‘ballot harvesting,’ a process by which an individual attempts to collect and return absent voters’ ballots of other persons without accountability.” *McTigue Verification*, Ex. A at 1.

33. Rather than implementing the federal court order, Secretary LaRose made up his own new voting restrictions—not just on voters with disabilities whose rights were at issue in the prior lawsuit, but on other voters who simply were not implicated at all by the claim in that case.

34. The Directive explains that, “[a]s a practical matter,” the new restrictions it imposes “mean[] that only a voter’s personal ballot may be returned via drop box.” *Id.*, Ex. A at 2. In other words, “the only individual who may use a drop box to return the ballot is the voter.” *Id.*

35. This is because the Directive “provides that [a designated] assistant delivering a ballot for another must sign an attestation that they comply with applicable state and federal law,” “[t]o ensure compliance with applicable state and federal laws.” *Id.* That is true both as to those returning a ballot as authorized by a voter with disabilities, and those returning a ballot as authorized by a family member.

36. Moreover, because “[d]rop boxes are monitored by video surveillance and typically unstaffed,” the Directive “also requires boards to post a notification on each drop box indicating that voter-assisted ballots must be returned inside the board office, where the voter assistant will be asked to complete the attestation form.” *Id.*

37. According to the Directive, “[a]ll individuals who are delivering ballots for a family member or disabled voter may either mail the ballot to the county board of elections or return the ballot to a county board of elections official at the county board of elections office and complete an attestation at the board of elections.” *Id.*

38. Boards are required by the Directive to provide the person assisting a voter with an attestation form, which requires the individual to declare under penalty of election falsification, a fifth-degree felony:

- (1) That they are returning a ballot on behalf of a family member under R.C. 3509.05 (C)(1), and that they have been lawfully designated to assist another voter with the return of an absentee ballot; or
- (2) If the person is assisting a disabled voter, that they are complying with Section 208 of the Voting Rights Act and that they are not the voter’s employer or agent of that employer or officer or agent of the voter’s union.

Id., Ex. A at 2–3.

39. A copy of the attestation form is attached as Exhibit E to the McTigue Verification.

40. Under the Directive, then: (1) absentee ballots deposited in mailboxes will be counted without any attestation, including when those ballots are deposited by those assisting voters with disabilities or family members as authorized by law; (2) absentee ballots deposited in drop boxes by voters will be counted without any attestation; but (3) those delivering ballots on behalf of others as expressly authorized by law cannot place them in drop boxes at all and can only return them to the board office if they undergo an attestation process.

41. Unsurprisingly, local election officials have expressed concerns about the Directive.

42. For example, Hamilton County Commissioner Denise Driehaus said the Directive requiring individuals to go into the board of elections and sign an “attestation” seems a bridge too far: “So, you have to go inside to sign a form saying, ‘I am doing what I am doing.’ . . . It makes no sense.” *Id.*, Ex. F at 3.

43. Likewise, the chair of Hamilton County’s Board of Elections expressed her belief that the Directive is “illegal” and ignores the safeguards already built into the system: “I can’t go anywhere near [the drop] box (alone),” she said, referring to the requirement that one Democrat and one Republican do every election-related job. *Id.*, Ex. F at 3.

44. Last week, Secretary LaRose issued Advisory 2024-03 “as a clarification to Directive 2024-21.” *Id.*, Ex. G at 1.

45. The Advisory explained that “Boards of elections are permitted, in-fact highly encouraged, to consider as a best practice, developing a streamlined, convenient drive-through ballot drop-off system during periods of high-volume turnout.” *Id.*, Ex. G at 1.

46. The Advisory further states that “to utilize such a plan,” a board of elections must meet certain requirements, including pairing one Republican and one Democrat together to receive

absentee ballots outside the board of elections office, setting and publicizing a schedule for such outdoor drop-offs, and requiring all individuals dropping off another voter's ballot to complete the attestation form. *Id.*, Ex. G at 2.

47. As of the filing of this Complaint, Relators have not seen any such specific schedules for drive-through ballot drop-off systems. While drop boxes must be available 24/7 under Ohio law, to Relators' knowledge, there are no counties in Ohio that intend to have county officials manning an outdoor drop-off around-the-clock.

48. In the meantime, voters, volunteers, and campaign organizers have continued to elevate concerns and confusion about the Directive to ODP's leadership.

COUNT I – MANDAMUS

49. Relators restate and incorporate by reference all prior paragraphs as though fully set forth in this paragraph.

50. The issuance of the Directive to county election officials on August 31, 2024 violates the Ohio Constitution, the laws of the State of Ohio, and Section 208 of the Voting Rights Act of 1965.

A. Violation of Section 3509.05(C)(1)

51. First and foremost, "under Ohio statutory law, the secretary of state's instructions to the board of elections . . . were erroneous because there is no exception to the [relevant] statutory requirement," *Painter*, 2011-Ohio-35, at ¶ 36—here, that drop boxes serve the purpose of receiving absent voters' ballots, whether returned by the voter or by an authorized family member.

52. Section 3509.05(C)(1) states that electors wishing to vote by absentee ballot "may personally deliver [the ballot] to the office of the board, or *the spouse of the elector, the father, mother, father-in-law, mother-in-law, grandfather, grandmother, brother, or sister of the whole or half blood, or the son, daughter, adopting parent, adopted child, stepparent, stepchild, uncle,*

aunt, nephew, or niece of the elector may deliver it to the office of the board.” (emphasis added).

53. In the same subsection, Ohio law provides that “[t]he board of elections may place not more than one secure receptacle outside the office of the board, on the property on which the office of the board is located, *for the purpose of receiving absent voter’s ballots under this section.*” R.C. 3509.05(C)(3)(a) (emphasis added). The “purpose” of the drop box is therefore to receive ballots “under [the] section” that permits specific family members to return absentee ballots. *Id.*

54. Likewise, subsection (C)(1)’s reference to the “office of the board” plainly includes a drop box located *at* the office of the board. *State v. Marcum*, 2016-Ohio-1002, ¶ 8 (“In determining [legislative] intent, we first look to the plain language of the statute.”). Secretary LaRose has also acknowledged that drop boxes located at the office of the board are part of the board of elections office. *See* Def. Ohio Sec’y of State’s Mem. in Opp’n to Pls.’ Mot. for Permanent Inj., *A Philip Randolph Inst. of Ohio v. LaRose*, No. 1:20-cv-01908, 2020 WL 6497772, at *3 (N.D. Ohio Sept. 16, 2020) (“. . . any county in Ohio had more than one *drop box located anywhere other than the board of elections*”) (emphasis added)).

55. The drop box “shall be open to receive ballots only during the period beginning on the first day after the close of voter registration before the election and ending at seven-thirty p.m. on the day of the election” and “shall be open to receive ballots *at all times during that period.*” R.C. 3509.05(C)(3)(b) (emphasis added).

56. Further, Section 3509.05(C)(1) does not require that designated family members “deliver” absentee ballots to *an official* at the office of the board. Nor does subsection (C)(3)(b) require that the *voter* personally deliver their own ballot if voting via drop box. And, certainly, the section in question does not impose a requirement that designated family members complete an

attestation before delivering an absentee ballot.

57. “Generally, a court cannot add a requirement that does not exist in a statute.” *Ohio Democratic Party v. LaRose*, 2020-Ohio-4778, ¶ 25. Simply put, the Secretary of State cannot make up new requirements and voting restrictions out of whole cloth.

58. Moreover, in interpreting this same statute, the Court has expressly recognized that the absence of express statutory language requiring the voter to personally deliver the ballot is fatal to any attempt to discount votes on that basis. *See In re Election of Member of Rock Hill Bd. of Edn.*, 76 Ohio St.3d 601, 603 (1996) (in “the absence of statutory language in R.C. 3509.05 specifying that an elector must personally place his or her ballot in the mail back to the Board of Elections . . . the . . . absentee ballots at issue must be counted”).

59. The Directive is thus contrary to the Revised Code, which plainly requires counties that offer a drop box for voters to return their ballots to be open to receive all “ballots” returned pursuant to Section 3509.05(C)(3)(b), and to be open at *all* times “beginning on the first day after the close of voter registration before the election and ending at seven-thirty p.m. on the day of the election” if they are returned by voters or by one of the designated family members listed in Section 3509.05(C)(1).

60. The Directive bars the return of many such ballots via drop box, and sharply truncates the times during which such ballots can be returned. The Secretary’s issuance of the Directive is thus void because it violates the Revised Code’s express terms and imposes an extra-legal condition on the return of ballots not imposed by the Ohio General Assembly.

B. Violation of Article I, Section 2 of the Ohio Constitution

61. Second, the Directive is contrary to the Ohio Constitution, which Secretary LaRose is obligated to uphold by his oath of office. *See* Ohio Const., art. XV, §7 (“Every person chosen

or appointed to any office under this state, before entering upon the discharge of its duties, shall take an oath or affirmation, to support the constitution of the United States, and of this state, and also an oath of office”).

62. The Ohio Constitution, Article I, Section 2, states that “[a]ll political power is inherent in the people,” that “[g]overnment is instituted for their equal protection and benefit,” and that “[the people] have the right to alter, reform, or abolish the same, whenever they may deem necessary.” Ohio’s Equal Protection Clause guarantees “that all similarly situated individuals be treated in a similar manner. . . . In other words, laws are to operate equally upon persons who are identified in the same class.” *State ex rel. Patterson v. Indus. Comm.*, 77 Ohio St.3d 201, 204 (1996).

63. The Directive violates the Ohio Constitution by depriving voters with disabilities and voters who rely on a designated family member to return their ballots for them via drop box of equal protection of the laws, because it has created a situation where Ohio’s boards of elections will permit certain voters to vote by delivering their ballot via drop box while prohibiting others from doing so. *Sherman v. Ohio Pub. Emps. Retirement Sys.*, 2020-Ohio-4960, ¶ 14 (“[T]his provision requires that the government treat all similarly situated persons alike”).

64. The Directive cannot stand. *See Painter*, 2011-Ohio-35, at ¶¶ 41, 52 (holding that erroneous directives “may have caused much greater equal-protection concerns” and invalidating them by mandamus).

C. Section 208 of the Voting Rights Act of 1965

65. Finally, although the Secretary cited “applicable state and federal laws” to justify the Directive, the Directive runs afoul of federal law, too.

66. Section 208 of the Voting Rights Act of 1965 provides that “[a]ny voter who

requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union." 52 U.S.C. § 10508.

67. The Directive violates Section 208 of the Voting Rights Act because it prevents voters with disabilities from receiving assistance from "a person of the voter's choice." For example, with the Directive in place, Relator Duffy will need to find someone other than his preferred assistant to return his ballot.

68. The Directive thus cannot be justified by federal law. *See Painter*, 2011-Ohio-35, at ¶¶ 43–44, 52 (holding that erroneous directives were not justified by federal law and invalidating them by mandamus).

D. Mandamus Elements

69. Directive 2024-21 violates clear legal provisions and/or is an abuse of discretion by Respondent.

70. This Court will grant a writ of mandamus when a relator establishes (i) a clear legal right to the requested relief, (ii) a clear legal duty on the part of the respondent to provide it, and (iii) the lack of an adequate remedy in the ordinary course of law.

71. Relators have a clear legal right to the requested relief because the issuance of the Directive to county election officials on August 31, 2024 violates the Revised Code, the Ohio Constitution, and Section 208 of the Voting Rights Act of 1965.

72. Respondent Secretary LaRose has a clear legal duty to provide the requested relief because he is charged with "[i]ssu[ing] instructions by directives" and with compelling "the observance by election officers in the several counties of the requirements of the election laws." R.C. 3501.05(B), (M).

73. Relators lack an adequate remedy at law because this Court has original jurisdiction over the subject matter of the action and has recognized that “[i]f the secretary of state ‘has, under the law, misdirected the members of the boards of elections as to their duties, the matter may be corrected through the remedy of mandamus.’” *Painter*, 2011-Ohio-35, at ¶ 30 (quoting *Colvin*, 2008-Ohio-5041, at ¶ 20). Accordingly, “because of [the Court’s] recognition of mandamus as the appropriate remedy and the need to resolve this election dispute in a timely fashion, relators lack an adequate remedy in the ordinary course of the law.” *Id.*

PRAYER FOR RELIEF

Accordingly, Relators respectfully request that this Court:

A. Issue a peremptory writ of mandamus directing Respondent Secretary LaRose to (i) rescind Directive 2024-21 and (ii) instruct county election officials to accept absentee ballots from voters and their authorized family members and assistants without the Directive’s legally unauthorized attestation, including via drop box;

B. In the alternative, if the Court requires further evidence or briefing, issue an alternative writ of mandamus and order an expedited briefing schedule on the same;

C. Retain jurisdiction of this action to render any and all further orders that the Court may from time to time deem appropriate; and

D. Grant such other or further relief the Court deems appropriate, including, but not limited to, an award of Relators’ reasonable costs.

Respectfully submitted,

/s Donald J. McTigue

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VERIFICATION OF DONALD J. McTIGUE

Franklin County


/ss

State of Ohio

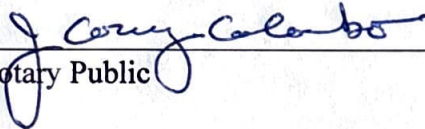
I, Donald J. McTigue, having been duly sworn and cautioned according to law, hereby state that I am over the age of eighteen years and am competent to testify as to the facts set forth below based on my personal knowledge and having personally examined all records referenced in this affidavit, and further state as follows:

1. I am an attorney at law licensed to practice in the State of Ohio and I serve as legal counsel to Relators in this action.
2. Exhibit A is a true and correct copy of Directive 2024-21.
3. Exhibit B is a true and correct copy of the Affidavit of Elizabeth Walters, Chairwoman of the Ohio Democratic Party.
4. Exhibit C is a true and correct copy of the Affidavit of Relator Norman Wernet.
5. Exhibit D is a true and correct copy of the Affidavit of Relator Eric Duffy.
6. Exhibit E is a true and correct copy of the attestation form.
7. Exhibit F is a true and correct copy of a Cincinnati Public Radio news article by Howard Wilkinson entitled, "Analysis: Frank LaRose changes the rules for using ballot drop boxes ahead of November election."
8. Exhibit G is a true and correct copy of Advisory 2024-03.

9. I have read the Complaint filed in this action and affirm that the factual allegations contained therein are true and accurate.


Donald J. McTigue

Sworn to before me this 27th day of September 2024.


Notary Public



JOHN COREY COLOMBO
Attorney at Law
Notary Public, State of Ohio
My Commission Has **No Expiration**
Section 147.03 R.C.

My commission expires DOES NOT EXPIRE

Exhibit A

DIRECTIVE 2024-21

August 31, 2024

To: All County Boards of Elections

Board Members, Directors, and Deputy Directors

Re: Enforcement of Absent Voter's Ballot Provisions and Compliance with State and Federal Laws

SUMMARY

This directive sets forth procedures for enforcement of Ohio law regarding the return of an absent voter's ballot. I am acting under my statutory authority to compel the observance of election laws,¹ in this case Ohio's prohibition on "ballot harvesting," a process by which an individual attempts to collect and return absent voters' ballots of other persons without accountability. To ensure compliance with applicable state and federal laws, this directive provides that a designated assistant delivering a ballot for another must sign an attestation that they comply with applicable law.

BACKGROUND AND OVERVIEW

Among other requirements, Ohio law generally prohibits a person from returning the absent voter's ballot of another to the office of a board of elections, unless "[t]he person is a relative who is authorized to do so under division (C)(1) of section 3509.05 of the Revised Code," or "[t]he person is, and is acting as, an employee or contractor of the United States postal service or a private carrier."² There is an important exception for disabled voters, and the persons assisting them, under a recent federal court decision applying Section 208 of the Voting Rights Act.³ However, Ohio's prohibition on ballot harvesting is still required to be enforced with respect to voters who are not disabled.

It is important to ensure the integrity of each vote delivered on behalf of an absent voter. The security of the delivery of absentee ballots remains paramount, especially as it applies

¹ See R.C. 3501.05.

² R.C. 3599.21(A)(9).

³ See *League of Women Voters of Ohio, et al., v. Larose, et al.*, 1:23-cv-02414 (N.D. Ohio) (July 22, 2024).

to the use of unattended drop box receptacles. To ensure compliance with applicable state and federal laws, this directive provides that an assistant delivering a ballot for another must sign an attestation that they comply with applicable state and federal law. As a practical matter, this means that only a voter’s personal ballot may be returned via drop box.

Drop boxes are monitored by video surveillance and typically unstaffed. Therefore, this directive also requires boards to post a notification on each drop box indicating that voter-assisted ballots must be returned inside the board office, where the voter assistant will be asked to complete the attestation form.

INSTRUCTIONS

Each board of elections must share this directive with its legal counsel, the county prosecuting attorney. We understand that UOCAVA ballots must be mailed and regular absentee voting begins in less than 40 days.

I. USE OF SECURE ABSENTEE BALLOT DROP BOX

A. Attestation of Assistant Delivering a Ballot to a Board of Elections

To ensure compliance with state and federal law, and to protect the security of absentee ballot delivery, the only individual who may use a drop box to return the ballot is the voter. All individuals who are delivering ballots for a family member or disabled voter may either mail the ballot to the county board of elections or return the ballot to a county board of elections official at the county board of elections office and complete an attestation at the board of elections.

Boards are required to provide the person assisting a voter with an attestation form which declares under penalty of election falsification:

- (1) That they are returning a ballot on behalf of a family member under R.C. 3509.05 (C)(1), and that they have been lawfully designated to assist another voter with the return of an absentee ballot;⁴ or

⁴ See R.C. 3599.21(A)(9).

- (2) If the person is assisting a disabled voter, that they are complying with Section 208 of the Voting Rights Act and that they are not the voter's employer or agent of that employer or officer or agent of the voter's union.⁵

The attached Form No. 12-P meets the requirements of this directive.

B. Drop Box Signage

Each board of elections must post a weather resistant notice at or on a drop box specifying the security protocols for its use, including clear instructions on who is eligible to return such a ballot under this directive, as well as instructions for someone other than the voter attempting to return a ballot. The Secretary of State has issued the attached Drop Box Protocol Sign Template (the "Template") meeting the requirements of this directive, and will be providing a laminated copy of the Template to each county's board of elections. The signage required by this directive supersedes prior signage requirements.

A board of elections may make its own sign, provided that it uses substantially the same language found in the Template. If a board chooses to make its own sign and needs assistance, please contact the appropriate regional liaison at the Secretary of State's office.

II. REFERRAL OF POTENTIAL BALLOT HARVESTING

Current security measures for drop boxes remain in place, including the 24/7 surveillance of drop boxes. Ongoing routine monitoring of drop boxes should continue, specifically monitoring for individuals who are dropping off more than one ballot. My office will vigorously investigate and refer for prosecution any individual engaged in ballot harvesting in violation of Ohio law. It is recommended that any allegation of ballot harvesting be reported to the Public Integrity Division – Election Integrity Unit of the Secretary of State at EIU@OhioSoS.gov.

If you have any questions regarding this directive, please contact the Secretary of State's Elections Counsel at 614-728-8789.

⁵ See 52 U.S.C. §10508.

Yours in service,

A handwritten signature in blue ink that reads "Frank LaRose". The signature is fluid and cursive, with the first name "Frank" and last name "LaRose" clearly legible.

Frank LaRose
Ohio Secretary of State

Exhibit B

IN THE SUPREME COURT OF OHIO

**State of Ohio *ex rel.* Citizens Not
Politicians, *et al.*,**

Relators,

v.

Ohio Ballot Board, *et al.*,

Respondents.

Case No. _____

Original Action in Mandamus Pursuant to
Article XVI, Section 1 of the Ohio
Constitution

Expedited Election Case
Pursuant to Supreme Court Rule of
Practice 12.08

Peremptory and Alternative Writs
Requested

**AFFIDAVIT OF ELIZABETH WALTERS ON BEHALF OF RELATOR OHIO
DEMOCRATIC PARTY**

I, Elizabeth Walters, having been duly sworn and cautioned according to law, hereby state that I am over the age of eighteen years and am competent to testify to the facts set forth below based on my personal knowledge, and further state as follows:

1. I am the Chairwoman of the Ohio Democratic Party (“ODP”).
2. Our offices are at 697 East Broad Street, Columbus, in the State of Ohio.
3. ODP is one of Ohio’s two legally recognized major political parties whose candidates for local, state, and federal office will stand for election at the November 5, 2024 general election.
4. We have thousands of members across the state who regularly support and vote for ODP candidates, and we count among our constituents several million Ohio voters who support Democratic candidates.
5. Hundreds of thousands of ODP’s members and constituents will cast their ballots via absentee ballot this year.
6. Every election, many ODP members and constituents rely on authorized family members—or, if they have disabilities, designated assistants—to return their ballots for them. Likewise, every election, many ODP members and constituents assist their family members and voters with disabilities by returning absentee ballots on their behalf.
7. Because this is a presidential election year, and there is a hotly-contested United States Senate race on the ballot as well, many ODP members and constituents will once again plan to have others aid their return of absentee ballots.

8. Our members and constituents and those who assist them often rely on drop boxes to return absentee ballots because of their schedules and because of the burdens associated with going into a board of elections office during the early voting period, which coincides with the absentee ballot return period.
9. These burdens include difficulties parking and waiting in line. In addition, many ODP members and constituents—as well as their family members and assistants—experience mail irregularities that deter them from using the postal service to return their own or others’ absentee ballots.
10. ODP will be directly injured if Directive 2024-21 is not rescinded. Specifically, we will have to expend additional resources to educate our members and constituents about how to comply with Directive 2024-21.
11. ODP will also have to dedicate additional resources towards mitigating the impact of Directive 2024-21 on voter turnout—both because it eliminates a ballot return method that many of our members and constituents rely on and because it will cause long lines, deterring many voters and their family members and assistants.
12. This impact will be particularly acute because each county, no matter its population, maintains only a single site at which absentee ballots can be returned in person.
13. I am aware that some counties are working on plans to attempt to accommodate periods of high-volume turnout, but to my knowledge, there are no counties in Ohio that intend to have county officials manning an outdoor drop-off around-the-clock.
14. ODP’s voters, volunteers, and organizers have elevated concerns and confusion about Directive 2024-21 to our leadership, including to me. The concerns and confusion have increased in the past week, as news about the Directive has spread and as voters begin to make their plans for absentee and early voting, which begin on October 8.

Elizabeth Walters

Elizabeth Walters
Chairwoman, Ohio Democratic Party

State of Texas _____;

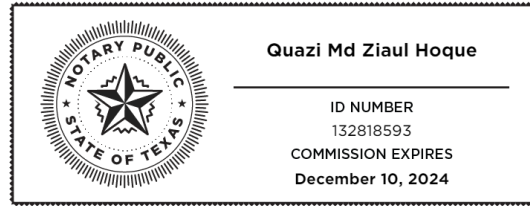
County of Dallas _____; ss.

Sworn to before me this 27th day of September, 2024. by Elizabeth Walters

Quazi Md Ziaul Hoque

Printed Name, Notary Public

Quazi Md Ziaul Hoque
Signature, Notary Public



My commission expires 12/10/2024

Electronically signed and notarized online using the Proof platform.

Exhibit C

IN THE SUPREME COURT OF OHIO

**State of Ohio *ex rel.* Ohio Democratic
Party, *et al.*,**

Relators,

v.

**Frank LaRose, in his official capacity as Ohio
Secretary of State,**

Respondent.

Case No. _____

Original Action in Mandamus Pursuant to
Article XVI, Section 1 of the Ohio
Constitution

Expedited Election Case
Pursuant to Supreme Court Rule of
Practice 12.08

Peremptory and Alternative Writs
Requested

AFFIDAVIT OF RELATOR NORMAN WERNET

I, Norman Wernet, having been duly sworn and cautioned according to law, hereby state that I am over the age of eighteen years and am competent to testify to the facts set forth below based on my personal knowledge, and further state as follows:

1. I reside at 2585 Bexley Park Road, Bexley, in the State of Ohio.
2. I am qualified to vote in the State of Ohio, and I am registered to vote in Franklin County, Ohio.
3. Both my wife and I intend to cast an absentee ballot in this year's general election. I plan to assist my wife, who has early-stage dementia, by dropping off her ballot at the drop box in Franklin County along with my own.
4. I plan to vote by drop box in 2024 because of a recent experience I had with mail theft. It is very important to me to have my vote counted and I do not feel comfortable risking my ballot not being received if my mail is stolen again. Voting by drop box provides me with the assurance that my ballot will arrive directly at the board of elections and will be counted.
5. I am also a senior citizen and would have difficulty returning our ballots if Directive 2024-21 is not rescinded, as I would be forced to park my car, potentially walk up to several blocks, and wait in line for an uncertain length of time to complete an attestation form before walking back to my car—all of which would be taxing on my time and my health.

Norman Wernet

Norman Wernet

State of Texas ;

County of Harris ; ss.

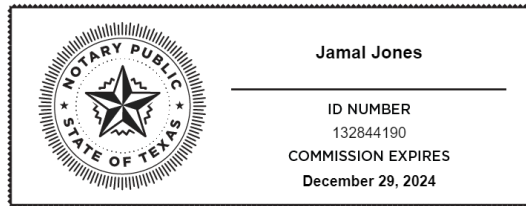
Sworn to before me this 27th day of September, 2024.

Jamal Jones

Printed Name, Notary Public



Signature, Notary Public



My commission expires 12/29/2024

Electronically signed and notarized online using the Proof platform.

Exhibit D

IN THE SUPREME COURT OF OHIO

**State of Ohio *ex rel.* Ohio Democratic
Party, *et al.*,**

Relators,

v.

**Frank LaRose, in his official capacity as Ohio
Secretary of State,**

Respondent.

Case No. _____

Original Action in Mandamus Pursuant to
Article XVI, Section 1 of the Ohio
Constitution

Expedited Election Case
Pursuant to Supreme Court Rule of
Practice 12.08

Peremptory and Alternative Writs
Requested

AFFIDAVIT OF RELATOR ERIC DUFFY

I, Eric Duffy, having been duly sworn and cautioned according to law, hereby state that I am over the age of eighteen years and am competent to testify to the facts set forth below based on my personal knowledge, and further state as follows:

1. I reside at 185 Crestview Rd., Columbus, in the State of Ohio.
2. I am qualified to vote in the State of Ohio, and I am registered to vote in Franklin County, Ohio.
3. I am blind and, although I have often voted in person using accessible voting machines in the past, I have recently been in and out of the hospital and was just released from my most recent hospital stay yesterday. I am unsure of whether my health will permit me to vote in person this year. As a result, I plan to vote absentee.
4. Rather than mailing my ballot, I intend to rely on the assistance of a trusted friend to return my ballot in person, as I want to make sure that my ballot arrives on time and is properly counted.
5. However, my preferred assistant has difficulty walking and standing in line for extended periods of time. I am confident that my preferred assistant could deliver my ballot to a drop box. However, I do not feel comfortable asking them to park at or near the board of elections office, walk into the office, stand in line, and then walk back to their car, as I am unsure of whether they could do so safely and without pain and significant exertion.
6. As a result, if Directive 2024-21 is not rescinded, I will no longer be able to receive assistance from a person of my choice.

[Handwritten signature]

Eric Duffy

State of Ohio;

County of Franklin; ss.

Sworn to before me this 27th day of September 2024.

Stacey Hauff
Signature, Notary Public



Stacey N. Hauff, Attorney at Law
Notary Public, State of Ohio
My Commission Has No Expiration Date
Sec 147.03 RC

My commission expires _____

Exhibit E

Please select the checkbox next to your intended absentee ballot delivery method, fill out the required information, and deliver this with the ballot to a board of elections official in the board of elections office.



Family Member Absentee Ballot Delivery Attestation

R.C. 3509.05, R.C. 3599.21(A)(9)

I, _____, hereby attest that I
full name of assistor

am returning a ballot for _____
full name of voter

a family member defined under R.C 3509.05 and that I am one of the following: spouse of the voter, the father, mother, father-in-law, mother-in-law, grandfather, grandmother, brother, or sister of the whole or half blood, or the son, daughter, adopting parent, adopted child, stepparent, stepchild, uncle, aunt, nephew, or niece of the voter.

Signature X _____

Today's Date: _____

WHOEVER COMMITS ELECTION FALSIFICATION IS GUILTY OF A FELONY OF THE FIFTH DEGREE.



Disabled Voter Absentee Ballot Delivery Attestation

VRA Section 208

I, _____, hereby attest that I
full name of assistor

am returning a ballot for _____
full name of voter

who has designated me to assist them. The person I am assisting is a disabled voter, as defined by state or federal law, and I am not the voter's employer or agent of that employer or officer or agent of the voter's union under Section 208 of the Voting Rights Act, 52 U.S.C. §10508.

Signature X _____

Today's Date: _____

WHOEVER COMMITS ELECTION FALSIFICATION IS GUILTY OF A FELONY OF THE FIFTH DEGREE.

Exhibit F

Analysis: Frank LaRose changes the rules for using ballot drop boxes ahead of November election

Howard Wilkinson: :

-
-
-

ANALYSIS: LaRose found 137 non-citizens registered to vote. It's not as serious as it sounds

Tuesday morning a group of Cincinnati's best-known Democratic elected officials and their supporters gathered for a press conference outside the Hamilton County Board of Elections where they had to compete with ambulance sirens and highway traffic to get their message out.

You can either make it easier for people to vote or you are making it harder said U.S. Rep. Greg Landsman. The secretary of state has chosen to make it harder

others don't like it. So stop doing this stuff

LaRose's press secretary sent a written response to [redacted] when asked for comment.

It must be football season because the uninformed Monday morning quarterbacks are out in full force LaRose said. This is why election laws should be made at the Statehouse not the courthouse.



RELATED: [Ohio Secretary of State orders limits on use of secure ballot drop boxes in this fall's election](#)

LaRose says the ruling in the recent lawsuit filed by the ACL with help from the League of Women Voters of Ohio forced his hand.

This ruling effectively creates an unintended loophole in Ohio's ballot harvesting law that we must address. LaRose wrote in the letter to boards of elections [according to the Columbus Dispatch](#). I suspect this is exactly the outcome the League of Women Voters of Ohio intended. Under the guise of assisting the disabled, their legal strategy seeks to make Ohio's elections less secure and more vulnerable to cheating, especially as it relates to the use of drop boxes.

'It makes no sense'

At Tuesday's press conference in Norwood Hamilton County Democratic Party Chairwoman Wendy McFarlin who also chairs the county board of elections said she believes LaRose's directive is illegal.

Only a dictator can change the law and Frank LaRose is not a dictator, McFarlin said.

She pointed out that for every job in the board of elections there are two people doing that job - one Democrat and one Republican.

I can't go anywhere near that box alone, McFarlin said.

By chance as folks were leaving the press conference two employees - each with his own key - were opening the drop box to take out absentee ballot requests.

Five years ago LaRose issued a directive to the county boards of elections saying that they could have only one secure ballot drop box per county.

In contrast in Washington state the city of Seattle and King County have over 100 boxes where voters can drop off ballots.

COMMENTARY: Frank LaRose says he's about 'election integrity.' His actions say otherwise

At the Tuesday press conference Cincinnati Mayor Aftabureval said he believes LaRose and his allies in the Ohio GOP are doing all of this for their party candidate for president.

The plan Aftabureval believes is to undermine voters' trust in the system while intimidating and suppressing voters - particularly voters of color.

It really all comes back to Donald Trump, Aftabureval said. They are going to do everything they can to fix things so Trump doesn't have to accept defeat in November.

Hamilton County Commissioner Denise Driehaus said LaRose's requirement that a person dropping off a ballot for a disabled relative go into the board of elections and sign an attestation seems a bridge too far.

So you have to go inside to sign a form saying I am doing what I am doing, Driehaus said. It makes no sense.

Exhibit G

ADVISORY 2024-03

September 20, 2024

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

Re: Employing Bipartisan Elections Officials to Receive Absentee Ballots Outside of
the Boards of Elections Offices

BACKGROUND

This advisory serves as a clarification to Directive 2024-21, Enforcement of Absent Voter's Ballot Provisions and Compliance with State and Federal Laws. Boards of elections are permitted, in-fact highly encouraged, to consider as a best practice, developing a streamlined, convenient drive-through ballot drop-off system during periods of high-volume turnout. For example, some boards have successfully managed high-volume ballot return periods in the past by stationing trained, bipartisan teams of elections officials outside of the office of the board of elections to receive absentee ballots from voters or those delivering an absentee ballot on behalf of another, in a drive-through format.¹ In addition to the requirements and best practices discussed below, if a board is interested in discussing how to successfully do this, please feel free to give us a call or connect with another board that has done so in the past.

EXPLANATION

Boards of elections may consider, by a majority vote, implementing this traffic mitigation plan using permanent or temporary board employees who have undergone a criminal background check and received appropriate training (hereinafter, "board employees").

¹ "Outside the office of the board of elections" means *immediately* outside the office of the board of elections, not remote locations miles from the office of the board. So, boards may station bipartisan teams of employees directly in front of the office of the board, behind the office of the board, right around the corner from the office of the board, or across the street from the office of the board, whichever of these options works best considering the vehicular traffic flow around the office of the board.

If the board members vote to utilize such a plan, the board must also determine and document how the following requirements will be met:

- (1) At least two board of elections employees, one Republican and one Democrat, must be paired together and trained to receive absentee ballots outside the board of elections office;
- (2) The board of elections must have sufficient additional staff at the board office to continue the successful operation of all other duties of the board of elections;
- (3) The board of elections must provide the bipartisan team with an appropriate container into which the delivered absentee ballots will be received and maintain the secure and bipartisan chain of custody of the ballots until they are deposited and stored under dual lock with other voted ballots inside the board of elections office;
- (4) The board of elections must engage with its law enforcement point of contact to develop a plan for appropriate traffic control while the drive-through system is being utilized;
- (5) The board of elections must post appropriate signage outside the board of elections office instructing voters on where to park or drive to return absentee ballots;
- (6) The board of elections must set a schedule of days and hours during which bipartisan teams of board employees will be stationed outside the office of a board of elections to receive absentee ballots and publicize that schedule on the board's website and social media. The staffed collection schedule may begin when early, in-person voting begins but must conclude at 7:30 p.m. on Election Day;²
- (7) The board must require the bipartisan team of board employees to require any person assisting another with the return of a ballot to complete [Form 12-P: Absentee Ballot Delivery Attestation](#) as required by Directive 2024-21; and
- (8) If there is a line for drive-through ballot drop off, the board of elections must mark or personally monitor³ the last voter in line at 7:30 p.m. on Election Day to allow those who are in line at 7:30 p.m. to drop off their ballot.

Additionally, boards of elections should consider the following best practices when implementing a streamlined, bipartisan ballot drop-off plan:

² If a court order is issued extending voting hours on election day, the Secretary of State's office will provide additional guidance.

³ The bipartisan team must mark or personally monitor the last voter in line at 7:30 p.m. on Election Day in a manner similar to how precinct election officials mark or personally monitor lines at a polling location.

- Use of directional signage and traffic cones for traffic management. Boards of elections may coordinate with their county engineer or local road department to borrow such assets;
- Provide board staff with reflective vests for their safety and to designate them as official board staff;
- Provide sufficient quantities of “I voted” stickers, poll worker recruitment flyers, and the attached election security sheet to provide to voters who utilize the drive-through ballot drop off;
- Provide a pop-up canopy to shield elections officials from the elements; and
- Coordinate with local media to publicize designated dates and times for drive-through ballot drop off.

A reminder for board employees receiving absentee ballots that any allegation of ballot harvesting must be reported to the Public Integrity Division – Election Integrity Unit of the Secretary of State at EIU@OhioSoS.gov. My office will vigorously investigate and refer for prosecution any individual engaged in ballot harvesting in violation of Ohio law.

If you have any questions concerning this Advisory, please contact the Secretary of State’s elections counsel at (614) 728-8789.

Yours in service,



Frank LaRose
Ohio Secretary of State