

**IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO**

OHIO DEMOCRATIC PARTY, ET AL.,

Plaintiffs,

-v-

**FRANK LAROSE, in his official capacity as Ohio
Secretary of State.**

Defendant.

CASE NO. 20 CV 4997

JUDGE STEPHEN L MCINTOSH

MOTION FOR PRELIMINARY INJUNCTION AND EXPEDITED SCHEDULE

Now come the Plaintiffs Ohio Democratic Party and Jay Michael Houlahan, and respectfully move the Court, pursuant to Civ. R. 65, for a preliminary injunction enjoining the enforcement of Defendant Ohio Secretary of State Frank LaRose's interpretation of R.C. 3509.03 as prohibiting voters from making their application for an absentee ballot by emailing an image of their request to the director of the county board of elections, or by other viable electronic forms of transmission, in contravention of the plain terms of R.C. 3509.03. Plaintiffs also respectfully request the Court to order Defendant LaRose to include instructions in his office's statewide mailing of absentee ballot applications to registered Ohio voters that they can submit their completed application by emailing an image of their request to the director of the county board of elections or by other viable electronic forms of transmission, such as facsimile machine, and to direct the county boards of elections to accept and process absentee ballot requests that are sent by email or other viable electronic forms of transmission, so long as the requests are timely and contain the required information set forth in R.C. 3503.09. Plaintiffs further request the Court to

order Defendant LaRose to convey and/or communicate notice of this Court's judgment and order, along with a copy of the Court's judgment and order, to all of Ohio's county boards of elections.

Further, due to the proximity of the November 3, 2020 election and Defendant LaRose's forthcoming statewide mailing of absentee ballot applications to registered Ohio voters, Plaintiffs respectfully request the Court to schedule a status conference to set an expedited briefing and preliminary injunction hearing schedule as soon as possible. The Plaintiffs will expeditiously make a good faith effort to consult with attorneys for Defendant LaRose to propose a schedule to the Court.

As set forth in Plaintiffs' Memorandum of Law in Support of the Motion for Preliminary Injunction and the Complaint, Plaintiffs have established that they are likely to succeed on the merits; the Plaintiffs will suffer irreparable harm if the Court does not enjoin Defendant LaRose; there will be no injury to others caused by granting the relief requested herein; and that the public interest will be served by granting the relief requested herein..

Respectfully submitted,

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**MEMORANDUM IN SUPPORT OF
PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION**

This case presents a straightforward question of statutory interpretation, and that question is whether R.C. 3509.03 prohibits qualified electors from submitting their completed absentee ballot applications to their county board of elections via email or other viable form of electronic transmission, such as by facsimile. Under this provision, qualified electors who want to request an absentee ballot “shall make written application for those ballots to the director of elections of the county in which the elector’s voting residence is located.” R.C. 3509.03(A). As is apparent, there is no language in this provision that prohibits qualified electors from submitting their completed absentee ballot applications to their county board of elections via email or other viable form of electronic transmission, such as facsimile. Yet, Defendant Ohio Secretary of State Frank LaRose (“Defendant LaRose”) has reached the opposite conclusion. In a recent directive to county boards of elections, Directive 2020-13 (Exh. A), Defendant LaRose instructed that qualified electors who wish to vote an absentee ballot must submit their request in person or by mail. As a result of Defendant LaRose’s instruction, voters, to request an absentee ballot, will have to either have to spend time and money to travel to their board of elections and risk their health amidst the coronavirus pandemic, or spend time and money on postage and an envelope, and in some instances travel to a post office, to request an absentee ballot.

Because Defendant LaRose’s instruction is in contravention of the plain text of R.C. 3509.03, Plaintiffs Ohio Democratic Party (“Plaintiff ODP”) and Jay Michael Houlahan (“Plaintiff Houlahan”) filed the instant action seeking declaratory and injunctive relief to ensure that Ohioans can request an absentee ballot for the November 3, 2020 general election by emailing an image of

their signed absentee ballot application to their county board of elections and by other viable electronic forms of transmission, such as facsimile machine.¹

BACKGROUND

I. Ohio's No-Fault Absentee Voting System

Ohio's 2020 general election is scheduled to take place on November 3, 2020. As part of the voting process, the Ohio Elections Code authorizes a system of no-fault absentee voting in which any qualified elector may vote by absentee ballot at an election. *See* R.C. 3509.02(A); *see also* Ohio Secretary of State Directive 2019-28, Section 1.01-.02 (Ch. 5, Ohio Elections Official Manual) (Exh. B). Absentee ballots for the November 3, 2020 general election will be sent to Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA") voters beginning on September 18, 2020 and to non-UOCAVA voters beginning on October 6, 2020. *See* R.C. 3511.04 (UOCAVA voters); R.C. 3509.01 (non-UOCAVA voters).

A qualified elector who wishes to cast an absentee ballot "shall make written application for those ballots to the director of elections of the county in which the elector's voting residence is located." R.C. 3509.03(A). The Ohio Elections Code provides that the written application for an absentee ballot "need not be in any particular form" but that it must contain the following: (1) the

¹ Plaintiff ODP is one of Ohio's two legally recognized major political parties whose candidates for local, state, and federal offices will stand for election at the November 3, 2020 general election. Compl., ¶ 6. Plaintiff ODP has hundreds of thousands of members from across the state, including many eligible voters, who regularly support and vote for candidates affiliated with Plaintiff ODP; more than 800,000 ODP members participated in Ohio's 2020 primary election. *Id.* Many of Plaintiff ODP's members are likely to request an absentee ballot for the November 3, 2020 general election. *Id.* Moreover, Plaintiff ODP plans to devote significant financial resources to its "get out the vote" (GOTV) efforts for the 2020 general election, including a concentrated effort to encourage Ohio voters to vote by absentee ballot. *Id.*

Plaintiff Houlahan is a qualified elector of Franklin County, Ohio who is eligible to request and cast an absentee ballot at Ohio's 2020 general election. Compl., ¶ 7. Plaintiff Houlahan desires to submit an application for an absentee ballot to his county board of elections via email and to have his application processed in the same manner as a hard-copy application. *Id.*

elector's name, (2) the elector's signature;² (3) the address at which the elector is registered to vote; (4) the elector's date of birth; (5) the elector's driver's license number, the last four digits of the elector's social security number, or a copy of the elector's current and valid photo identification, a copy of a military identification, or a copy of a current utility bill, bank statement, government check, paycheck, or other government document, other than a notice of voter registration mailed by a board of elections under R.C. 3503.19, that shows the name and address of the elector; (6) a statement identifying the election for which the absentee ballot is requested; (7) a statement that the person requesting the ballots is a qualified elector; (8) if the request is a primary election ballot, the elector's party affiliation, and (9) if the elector desires ballots to be mailed to the elector, the address to which those ballot shall be mailed. R.C. 3509.03(B). The Ohio Secretary of State has prescribed a standard application that voters may use to request an absentee ballot, Form No. 11-A, though voters are not required to use this form to request such a ballot.

The Ohio Elections Code requires each application for an absentee ballot to be "delivered to the director [of the board of elections]," beginning January 1st of the election year or 90 days before the election, whichever is earlier, and no later than 12:00 p.m. on the Saturday before Election Day. R.C. 3509.03(D); *see also* Directive 2019-28 at *5-5 (Exh. B).

Upon receipt of an application for an absentee ballot containing the required information as provided by R.C. 3509.03, the Ohio Elections Code requires the director of a county board of elections to verify that the applicant is a qualified elector, and, if so, to "deliver to the applicant in

² An elector's "signature," as used in Title XXXV of the Revised Code, generally means that person's "written, cursive-style legal mark written in that person's own hand." R.C. 3501.011(A); *see also* Directive 2019-28, Section 1.03 at *5-2 n.5 (Exh. B). For persons who do not use a cursive-style legal mark during the course of their regular business and legal affairs, "signature" means that person's "other legal mark that the person uses during the course of that person's regular business and legal affairs that is written in the person's own hand." R.C. 3501.011(B). For purposes of requesting an absentee ballot, the legal mark of a registered elector "shall be considered to be the mark of that elector as it appears on the elector's voter registration record." R.C. 3501.011(C).

person or mail directly to the applicant by special delivery mail, air mail, or regular mail, postage prepaid, proper absent voter's ballots.” R.C. 3509.04(B).

Importantly, the General Assembly did not specify in RC. 3509.03 or elsewhere in the Ohio Election Code (Title XXXV) the manner in which absentee ballot applications can or must be “made” to the county boards of elections. As a result, nothing in R.C. 3509.03 or elsewhere in the Ohio Election Code prohibits voters from requesting an absentee ballot by emailing an image of their signed absentee ballot request to their county board of election or by other viable electronic forms of transmission, such as facsimile machine.

II. Defendant LaRose’s Directive 2020-13

Despite the absence of language in the Ohio Election Code prohibiting voters from requesting an absentee ballot by emailing an image of their signed absentee ballot request to their county board of election, Defendant LaRose has concluded that he lacks statutory authority to instruct county boards of elections that qualified electors may submit an application for an absentee ballot via email or by other viable electronic forms of transmission, such as facsimile machine, and/or Defendant LaRose has interpreted R.C. 3509.03 as precluding voters from requesting absentee ballots in this manner.³

On July 17, 2020, Defendant LaRose issued Directive 2020-13 to the county boards of elections in which he announced that his office would mail an absentee ballot application to every registered Ohio voter in “active” or “confirmation” status. Directive 2020-13 at *1 (Exh. A). Defendant LaRose indicated in the Directive that the United States Postal Service (“USPS”) is expected to deliver these applications during the first two weeks of September 2020. *Id.* Defendant

³ As the Ohio Secretary of State, Defendant LaRose is charged with supervising the administration of the election laws statewide and “[i]ssu[ing] instructions by directives and advisories...to members of the boards as to the proper methods of conducting elections” and “[p]repar[ing] rules and instructions for the conduct of elections.” R.C. 3501.05(B)-(C).

LaRose also indicated that, “in early October,” he would “supplement the first mailing” by mailing an absentee ballot application to any individual who has registered to vote or changed their name or address between July 29, 2020 and October 2, 2020. *Id.*

Citing R.C. 3509.03, Defendant LaRose included an instruction in Directive 2020-13 that voters must submit their absentee ballot applications to their respective county boards of elections either “in person or by mail, with the voter affixing a first-class stamp.” *Id.* Similar instructions for voters to submit their absentee ballot applications to their county boards of elections either in person or by mail appear elsewhere on Defendant LaRose’s website. *See* Ohio Secretary of State, *Application for Absentee Ballot to Vote by Mail*, <https://www.ohiosos.gov/elections/voters/absentee-ballot/> (last accessed July 29, 2020) (“Print the downloaded document, sign, put the completed form in an envelope with the correct postage and mail it to your county board of elections.”); Ohio Secretary of State, *Absentee Voting*, <https://www.ohiosos.gov/elections/voters/absentee-voting/> (last accessed July 29, 2020) (“Mail the request form back to your own county board of elections.”); Directive 2019-28, Section 1.03, *5-3 n.8 (Exh. B) (explaining that voters can fill out an absentee application, in-person at the board of elections, and take their absentee ballot home with them if during the early voting period).

As a result of Defendant LaRose’s instruction for submitting absentee ballot requests, voters, to request an absentee ballot, will either need to spend money on postage and an envelope and in some instances travel to a post office, or to spend money on transportation and time to travel to their county board of elections in order to request an absentee ballot.

LEGAL STANDARD

A party requesting a preliminary injunction must ordinarily show that: (1) there is a substantial likelihood that the plaintiff will prevail on the merits, (2) the plaintiff will suffer

irreparable injury if the injunction is not granted, (3) no third parties will be unjustifiably harmed if the injunction is granted, and (4) the public interest will be served by the injunction. *See, e.g., Vineyard Christian Fellowship of Columbus v. Anderson*, 2015-Ohio-5083, 53 N.E.3d 910, ¶ 11 (10th Dist.)

ARGUMENT

I. Plaintiffs Have a Strong Likelihood of Success on the Merits of Their Claims.

Plaintiffs have a strong likelihood of success on the merits of their claims. Both the plain text of the relevant statute and constitutional case law strongly favor enjoining Defendant’s interpretation of R.C. 3509.03 that requires voters to submit their absentee ballot applications in person or by mail. Moreover, this result is consistent with the Court’s duties to “avoid unduly technical interpretations that impede the public policy favoring free, competitive elections,” and to “liberally construe election laws in favor of the right to vote.” *State ex rel. Myles v. Brunner*, 120 Ohio St.3d 328, 2008-Ohio-5097, ¶ 22, 26.

A. R.C. 3509.03 does not prohibit qualified electors from applying for an absentee ballot by emailing an image of their application to their county board of elections or by other viable electronic form of transmission.

Plaintiffs have a strong likelihood of success on the merits of their claim that R.C. 3509.03 does not prohibit qualified electors from making application for an absentee ballot by emailing an image of their application to their county board of elections or by other viable electronic form of transmission, such as facsimile machine as stated in Count 1 of the Complaint.

The critical statutory provision at issue is R.C. 3509.03(A), which provides:

Except as provided in division (B) of section 3509.08 of the Revised Code, any qualified elector desiring to vote absent voter's ballots at an election shall make written application for those ballots to the director of elections of the county in which the elector's voting residence is located.

As is apparent from the plain text of the statute, the General Assembly did not specify in R.C. 3509.03 (or elsewhere in the Ohio Election Code) that absentee ballot applications must be submitted to the county boards of elections either in person or by mail. There is no requirement that a physical application be submitted, nor is there a requirement that the qualified elector submit an application containing their original, “wet-ink” signature. Instead, the General Assembly provided that so long as the application, which the General Assembly emphasized “need not be in any particular form,” is timely submitted and contains all the information required by R.C. 3509.03, the county boards of elections must send the voter an absentee ballot. *See* R.C. 3509.04.

In contrast, when the General Assembly has intended for election-related documents to be submitted or filed in a particular manner, it has made such a requirement clear. For instance, with respect to the manner in which an elector may return their voted absentee ballot to the board of elections, the General Assembly specified that an elector “shall” either (1) “mail the [absentee ballot] identification envelope to the director from whom it was received” or (2) “deliver it to the director,” either “personally” by the voter or by a close relative of the voter. R.C. 3509.05(A), third paragraph (emphasis added). The General Assembly further clarified that an absentee ballot “shall be transmitted to the director in no other manner, except as provided in section 3509.08 of the Revised Code.” *Id.* (emphasis added). As another example, the General Assembly specified that if a voter is directed to provide information that was missing from their absentee ballot identification envelope, the voter must provide this information on a form that is delivered to the board “in person or by mail.” R.C. 3509.06(D)(3)(b) and R.C. 3509.06(E)(2) (emphasis added).

As another example, and with respect to the manner in which a person may register to vote or change their registration, the General Assembly specified that a person can do so: “[1] in person at any state or local office of a designated agency, at the office of the registrar or any deputy

registrar of motor vehicles, at a public high school or vocational school, at a public library, at the office of a county treasurer, or at a branch office established by the board of elections, or [2] in person, through another person, or [3] by mail at the office of the secretary of state or at the office of a board of elections. [4] A registered elector may also change the elector's registration on election day at any polling place where the elector is eligible to vote, in the manner provided under section 3503.16 of the Revised Code.” R.C. 3503.19(A). Elsewhere in the Revised Code, the General Assembly specified that a voter may register to vote or change their registration [5] using an online voter registration system established by the Secretary of State. R.C. 3503.20.

The General Assembly has also made it clear when election-related documents require an original, “wet-ink” signature to be filed with elections officials. For instance, the Ohio Elections Code provides that “[e]ach signature of a voter who signs an initiative or referendum petition shall be an original signature of that voter in ink,” and that “[o]nly initiative and referendum petitions containing those original signatures in ink shall be filed with the office of the secretary of state or a board of elections.” R.C. 3519.051.

Based on the plain language of R.C. 3509.03, as well as the language used by the General Assembly in related provisions of the Ohio Election Code, it is apparent that the legislative intent of R.C. 3509.03 is to require absentee ballot requests to be made in writing, however the written request is made, as opposed to oral requests.⁴ By not specifying how a written application for an absentee ballot is to be “made,” the General Assembly indicated that so long as the required information is on the written application, which can be in any form, then the request is valid.

Defendant LaRose, in concluding that he lacks statutory authority to instruct county boards of elections that qualified electors may submit an application for an absentee ballot via email or

⁴ Oral requests for absentee ballots can only be made in-person at a county board of elections’ designated early voting location during the early voting period. *See* Directive 2019-28, Section 1.03 at *5-3 (Exh. B).

by other viable electronic form of transmission such as by facsimile, and/or in interpreting R.C. 3509.03 as precluding voters from requesting absentee ballots in this manner, has inserted a prohibition where one does not exist. *See State v. Taniguchi*, 74 Ohio St.3d 154, 156, 656 N.E.2d 1286 (1995) (“[a] court should give effect to the words actually employed in a statute, and should not delete words used, or insert words not used, in the guise of interpreting the statute”). For this reason, Defendant LaRose’s interpretation of R.C. 3509.03 as precluding voters submitting completed applications for absentee ballots via email or by other viable electronic form of transmission such as facsimile is entitled to no deference. *Myles, supra*, ¶ 26 (rejecting a former Secretary’s interpretation of R.C. 3509.03 that inserted a requirement that did not exist in the statute).

Accordingly, Plaintiffs are likely to succeed on their claim that R.C. 3509.03 does not prohibit qualified electors from making application for an absentee ballot by emailing an image of their application to their county board of elections or by other viable electronic form of transmission, such as facsimile machine.

B. Qualified electors have a right under R.C. 3509.03 to apply for an absentee ballot by emailing an image of their application to their county board of elections or by other viable electronic form of transmission, and to have their application processed in the same manner as a hard-copy application.

Plaintiffs have a strong likelihood of success on the merits of their claim that R.C. 3509.03 does not prohibit qualified electors from making application for an absentee ballot by emailing an image of their application to their county board of elections or by other viable electronic form of transmission, such as facsimile machine, as stated in Count 2 of the Complaint.

In the absence of a statutory provision specifying how a voter shall be able to “make” their absentee ballot application to the director of the board of elections, a voter must be permitted to make their application via email or by other viable electronic form of transmission, such as

facsimile machine, so long as their request contains all the requirements set forth in R.C. 3509.03. *See State ex rel. Orange Twp. Bd. of Trustees v. Delaware Cty. Bd. of Elections*, 135 Ohio St.3d 162, 2013-Ohio-36, ¶¶ 26-27 (holding that “in the absence” of a rule or policy regarding the manner in which the documents may be “filed with” or “certified to” the board of elections, an email transmission of the documents “was adequate to be considered a ‘certification to’ the board.”). Holding otherwise, particularly in the absence of a public policy reason for doing so (*see infra*), would be inconsistent with the Court’s duties to “avoid unduly technical interpretations that impede the public policy favoring free, competitive elections,” and to “liberally construe election laws in favor of the right to vote.” *State ex rel. Myles v. Brunner*, 120 Ohio St.3d 328, 2008-Ohio-5097, ¶¶ 22, 26.

Accordingly, Plaintiffs are likely to succeed on their claim that R.C. 3509.03 does not prohibit qualified electors from making application for an absentee ballot by emailing an image of their application to their county board of elections or by other viable electronic form of transmission, such as facsimile machine.

C. Refusal to accept to qualified electors’ applications for absentee ballots that are timely emailed or transmitted by other viable electronic forms of transmission constitutes a denial of the electors’ rights to due process and equal protection.

Plaintiffs also have a strong likelihood of success on their claims that refusal to accept to qualified electors’ applications for absentee ballots that are timely emailed or transmitted by other viable electronic forms of transmission constitutes a denial of the electors’ due process and equal protection rights guaranteed by the Ohio Constitution as stated in Counts 3 and 4 of the Complaint.

Ohioans’ rights to equal protection and due process are guaranteed by Article I, Sections 2 and 16 of the Ohio Constitution respectively, and the Ohio Supreme Court has explained that these provisions are coextensive with, and in some instances, stronger than, those provisions of the federal Constitution. *See State v. Noling*, 149 Ohio St.3d 327, 2016-Ohio-8252, ¶ 11 (“Because

the Equal Protection Clause of the Ohio Constitution is coextensive with, or stronger than, that of the federal Constitution, the Ohio Supreme Court cites both.”)

It is well-settled that the right to vote is a “precious” and “fundamental” right. *Obama for Am. v. Husted*, 697 F.3d 423, (6th Cir. 2012) quoting *Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 670, 86 S. Ct. 1079, 16 L. Ed. 2d 169 (1966). And the United States Court of Appeals for the Sixth Circuit has explained that “right to vote is protected in more than the initial allocation of the franchise,” and that equal protection “applies as well as to the manner of its exercise.” *Id.* quoting *League of Women Voters v. Brunner*, 548 F.3d 463, 477 (6th Cir. 2008). In other words, a “citizen has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction.” *Id.* quoting *Dunn v. Blumstein*, 405 U.S. 330, 336 (1972). “Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person's vote over that of another.” *Id.* citing *Bush v. Gore*, 531 U.S. 98, 104, (2000).

With Defendant LaRose’s interpretation of R.C. 3509.03 as prohibiting qualified electors from submitting their absentee ballot applications via email or facsimile, the State is arbitrarily and disparately valuing one person’s vote over that of another. In accordance with federal law, Ohio permits UOCAVA voters to submit their absentee ballot applications via email or facsimile. *See* 52 U.S.C. § 20302(a)(6)(A); R.C. 3511.02(A)(1). Given that Ohio already allows a class of voters to request an absentee ballot via email or facsimile, there is no compelling, important, or rational interest or reason for treating qualified non-UOCAVA voters differently. Indeed, federal courts have previously rejected Ohio’s attempts to “dole out special voting privileges” to UOCAVA voters that were not also extended to non-UOCAVA voters. *See, Obama for Am.*, 697 F.3d at 428-436 (affirming the district court’s conclusion that providing military Ohio voters with

increased in-person early voting opportunities compared to non-military voters violates the Equal Protection Clause).

Defendant LaRose cannot justify this disparate treatment between UOCAVA and non-UOCAVA voters, and, therefore, Plaintiffs are likely to succeed on their claims that refusal to accept to qualified electors' applications for absentee ballots that are timely emailed or transmitted by other viable electronic forms of transmission constitutes a denial of the electors' due process and equal protection rights guaranteed by the Ohio Constitution.

II. Plaintiffs Will Suffer Irreparable Injury if the Injunction is Not Granted.

Plaintiffs, Plaintiff ODP's members, and all non-UOCAVA voters in Ohio will be irreparably harmed absent a preliminary injunction. It is well-settled that when constitutional rights are threatened or impaired, irreparable injury is presumed. *See, e.g., Obama for Am.*, 697 F.3d at 436. A restriction on the fundamental right vote, including restrictions upon the exercise of such fundamental right, therefore constitutes irreparable injury. *Id.*

III. Issuing a Preliminary Injunction Would Not Harm Third Parties.

There would be absolutely no harm to other voters or the integrity of the election by allowing qualified electors to apply for an absentee ballot by emailing an image of their application to their county board of elections or by other viable form of electronic transmission. Just the opposite, issuing a preliminary injunction would only foster civic participation.

Additionally, there would be no additional administrative burden on state or county election administrators. Defendant LaRose has not yet sent the statewide mailing of absentee ballot applications announced in Directive 2020-13, and there is still time for him to update his instructions to voters and boards of elections that completed applications can be emailed or faxed to the boards of elections. And with respect to the county boards of elections, the process for them

to review and verify the absentee ballot request would be the same regardless of whether the application is submitted electronically or in physical form. Either way, county election administrators, pursuant to R.C. 3509.04, would have to verify that the applicant is a qualified elector and provided all the information required by R.C. 3509.03, and, if so, send the voter an absentee ballot. Moreover, all 88 county boards of elections have an email address and facsimile number (Compl. ¶¶ 45-46), and they are, therefore, already equipped with the needed technology to receive applications via email or facsimile. Thus, there would be no additional burden imposed on state or county election administrators by granting injunctive relief.

IV. The Public Interest Will be Served by Granting Injunctive Relief

For similar reasons, the public interest would undoubtedly be served by granting a preliminary injunction. This is because granting injunctive relief would help facilitate the right to vote—the most “precious” and “fundamental” right—by reducing the time and financial burdens associated with requesting an absentee ballot in person or by mail. Moreover, given the fact that the country is facing a global pandemic requiring many Ohioans to remain at home to prevent the spread of the coronavirus, allowing voters to request an absentee ballot through no-contact, electronic transmission would help serve the public health.

In contrast, no vital public purpose or public interest is served by rejecting electors’ applications for absentee ballots because they were emailed or faxed instead of submitted in person or by mail. So long as all the required information is in the application and elections officials are able to verify that the applicant is a qualified elector, it makes no difference how the application is “made” to the board of elections.

Accordingly, Plaintiffs have met their burden for the issuance of a preliminary injunction.

CONCLUSION

Having met their burden, Plaintiffs respectfully request this Court to grant the preliminary injunction and enjoin the enforcement of Defendant LaRose's interpretation of R.C. 3509.03 as prohibiting voters from making their application for an absentee ballot by emailing an image of their request to the director of the county board of elections, or by other viable electronic forms of transmission, in contravention of the plain terms of R.C. 3509.03. Plaintiffs also respectfully request the Court to order Defendant to include instructions in his office's forthcoming statewide mailing of absentee ballot applications to registered Ohio voters that they can submit their completed application by emailing an image of their request to the director of the county board of elections or by other viable electronic forms of transmission, such as facsimile machine, and to direct the county boards of elections to accept and process absentee ballot requests that are sent by email or other viable electronic forms of transmission, so long as the requests are timely and contain the required information set forth in R.C. 3503.09. Plaintiffs further request the Court to order Defendant to convey and/or communicate notice of this Court's judgment and order, along with a copy of the Court's judgment and order, to all of Ohio's county boards of elections.

Further, due to the proximity of the November 3, 2020 election and Defendant LaRose's forthcoming statewide mailing of absentee ballot applications to registered Ohio voters, Plaintiffs respectfully request the Court to schedule a status conference to set an expedited briefing and preliminary injunction hearing schedule as soon as possible. The Plaintiffs will expeditiously make a good faith effort to consult with attorneys for Defendant LaRose to propose a schedule to the Court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Motion was sent via email this the 31st day of July 2020 to the following:

Ohio Attorney General
Bridget E. Coontz, Esq.
Section Chief, Constitutional Offices Section
Bridget.Coontz@OhioAttorneyGeneral.gov

Counsel for Ohio Secretary of State Frank LaRose

/s/ Derek S. Clinger
Derek S. Clinger