

IN THE SUPREME COURT OF OHIO

STATE EX REL. ADAM MILLER	:	
1099 Hudson Run Place	:	
Apartment 109	:	CASE NO.
Columbus, Ohio 43228	:	
	:	
and	:	
	:	
STATE EX REL. ANTHONY CALDWELL	:	Original Action Pursuant to
3492 Rosburg Drive	:	Ohio Const., Article XI
Columbus, Ohio 43228	:	
	:	Original Action in Mandamus
Relators,	:	
	:	Expedited Election Matter Under
vs.	:	S.Ct.Prac.R. 12.08
	:	
FRANK LAROSE, in his official capacity	:	Peremptory Writ Requested
as Ohio Secretary of State	:	
22 North Front Street, 16 th Floor	:	
Columbus, Ohio 43215	:	
	:	
and	:	
	:	
FRANKLIN COUNTY, OHIO	:	
BOARD OF ELECTIONS	:	
1700 Morse Road	:	
Columbus, Ohio 43229	:	
	:	
Respondent.	:	

VERIFIED COMPLAINT FOR WRIT OF MANDAMUS

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INTRODUCTION

1. This matter arises from improper, illegal, and unconstitutional actions taken by Ohio election officials related to the implementation of a general assembly district plan for the primary election of members to the Ohio House, Ohio Senate, and State Central Committee.

2. Ohio Constitution, Article XI, Section 9(C) guarantees all Ohio citizens the right to thirty days to change residence to be eligible for election when “a general assembly district plan is made pursuant to this section.”

3. As this Court is well aware, Ohio’s Redistricting Commission failed multiple times to produce a constitutional plan and this Court was forced to invalidate each and every plan that the Ohio Redistricting Commission submitted. Following this Court’s May 25, 2022 ruling that the May 5, 2022 general assembly district plan was unconstitutional and invalid, on May 27, 2022, a federal panel sitting in the Southern District of Ohio issued a ruling in *Gonidakis v. LaRose* directing Respondent Ohio Secretary of State Frank LaRose (“Respondent LaRose”) to implement a general assembly district plan that this Court had previously held to be invalid because it violated the Ohio constitution. The general assembly district plan made by the *Gonidakis* court will be referred to in this complaint as the “*Gonidakis* Plan.”

4. On May 28, 2022, Respondent LaRose issued Directive 2022-034, which purports to implement the *Gonidakis* Plan. However, Respondent LaRose’s Directive 2022-034 violates the constitutional rights of Ohioans, including Relators Representative Adam Miller (“Relator Miller”) and Relator Anthony Caldwell (“Relator Caldwell”) (collectively, “Relators”).

5. Respondent LaRose’s Directive 2022-034 directs the Franklin County Board of Elections to violate Relator Miller’s constitutional right to change residences in order to be eligible for election within thirty (30) days after a general assembly district plan is made. *See* Ohio

Constitution, Article XI, Section 9(C). Moreover, Respondent LaRose's Directive 2022-034 is a barrier to ballot access and therefore further violates Respondents' U.S. Constitutional First Amendment right to freedom of association.

6. The purpose of this action is to protect Ohioans' constitutional rights by ordering (1) Respondent LaRose to rescind the requirement that Form 2-ZA applies and/or was due on March 10, 2022 and (2) Respondent Franklin County Board of Elections to validate Relator Miller's Declaration of Candidacy, thereby guaranteeing that Relator Miller appropriately and timely appears on the Democratic primary ballot for Ohio House District 6.

NATURE OF THE ACTION AND JURISDICTION

7. Relators seek relief under two separate Ohio constitutional provisions, both of which grant this Court original jurisdiction over this lawsuit.

8. This matter is an original action for a writ of mandamus commenced pursuant to this Court's original jurisdiction under Article IV, Section 2(B)(1)(b) of the Ohio Constitution and Chapter 2731 of the Ohio Revised Code, both of which govern mandamus actions, as well as Article IV, Section 2(B)(1)(f), which gives the Court original jurisdiction "[i]n any cause on review as may be necessary to its complete determination."

9. Additionally, this original action is appropriately before this Court as an apportionment case under Ohio Constitution Article XI, Section 9(C), which provides that "a general assembly district plan made pursuant to this section shall allow thirty days for persons to change residence in order to be eligible for election." Article XI, Section 9(A) gives this Court "exclusive, original jurisdiction in all cases arising under this article."

10. Relators' action seeks an Order, Judgment, and/or Writ from this Court compelling Respondent LaRose to rescind Directive 2022-034's requirements regarding Form 2-ZA and

directing Respondents LaRose and Franklin County Board of Elections to certify Relator Miller's Declaration of Candidacy for Ohio House District 6 for the August 2, 2022 primary for the Democratic party. Specifically, Relators seek an Order, Judgment, and/or Writ of Mandamus ordering Respondent LaRose to direct county boards of elections to certify any declarations of candidacy that were filed before 4 pm on February 2, 2022 and are otherwise valid, without regard to whether the filer seeking to appear on the ballot filed Form 2-ZA by March 10, 2022 and ordering Respondent Franklin County Board of Elections to certify Relator Miller's Declaration of Candidacy for Ohio House District 6. A true and correct copy of Directive 2022-034 is attached as **Exhibit A**. A true and correct copy of Form 2-ZA is attached as **Exhibit B**.

11. Relators affirmatively allege that they acted with the utmost diligence and that there has been no unreasonable delay or lapse of time in asserting their rights given that Directive 2022-034 was issued on May 28, 2022, the Saturday of the Memorial Day holiday weekend, and given that this action was commenced three business days after Respondent Secretary of State LaRose issued Directive 2022-034. Relators also affirmatively allege that there is no prejudice to the Respondents. *See State ex rel. Polo v. Cuyahoga Cty. Bd. of Elections*, 74 Ohio St.3d 143, 145, 656 N.E.2d 1277 (1995).

PARTIES

12. Relator Representative Adam Miller ("Relator Miller") is a citizen of Ohio and a qualified elector affiliated with the Democratic party and resides at 1099 Hudson Pl., Apt. 109, Columbus, Ohio 43228, which is in Ohio House District 6 in the general assembly district plan applicable to the August 2, 2022 primary election. Relator Miller currently serves as a Member of the Ohio House of Representatives, House District 17. He was elected in 2020 to a two-year term that commenced on January 1, 2021 and will expire on December 31, 2022. Relator Miller desires

to be a candidate for the Democratic nomination for the Ohio House District 6 at the August 2, 2022 primary election. Relator Miller is also a military veteran and continues to serve the United States as a military member. From time to time, Relator Miller is called to active/reserve military duty as part of his service to this country.

13. Relator Anthony Caldwell (“Relator Caldwell”) is a citizen of Ohio, registered to vote in the State of Ohio, and an active voter affiliated with the Democratic party. He is also qualified elector of Ohio House District 6. Relator Caldwell signed Relator Miller’s Declaration of Candidacy and wishes to cast his vote for Relator Miller in the August 2, 2022 primary election. Relator Caldwell’s interest in electing members of the General Assembly has been prejudiced by Respondents’ violation of the Ohio Constitution, Article XI, Sec. 9. Relator Caldwell has been denied the freedom of association to vote for his preferred candidate because of the additional requirements Respondent LaRose imposed in Directive 2022-034 by requiring candidates to submit Form 2-ZA by March 10, 2022 even though the applicable general assembly district plan was only implemented on May 27, 2022 by the federal three-judge panel in *Gonidakis v. LaRose*.

14. Respondent Secretary of State Frank LaRose is Ohio’s chief election officer and has duties to “[i]ssue instructions by directives and advisories . . .to members of the [county boards of elections] as to the proper methods of conducting elections,” “[p]repare rules and instructions for the conduct of elections,” “[d]etermine and prescribe the forms of ballots,” and “[c]ompel the observance by election officers in the several counties of the requirements of the election laws.” R.C. 3501.05(B), (C), (G), and (M). The boards of elections must perform “duties as prescribed by law or the rules, directives, or advisories of the secretary of state.” R.C. 3501.11(P).

15. Respondent Franklin County Board of Elections is the duly established and acting election authority for Franklin County, Ohio, pursuant to R.C. 3501.06. Pursuant to R.C.

3501.11(K)(1), the Franklin County Board of Elections has the duty to “[r]eview, examine, and certify the sufficiency and validity of petitions and nomination papers” for candidates in Franklin County, Ohio, including candidates for Ohio House District 6 under the general assembly district plan in place for the August 2, 2022 primary election.

ALLEGATIONS IN SUPPORT OF CLAIMS

I. Ohio’s Ballot Access Requirements

16. The Ohio General Assembly consists of 99 elected state representatives from 99 house districts and 33 elected state senators from 33 senate districts.

17. To be a candidate for a major party nomination for election to the General Assembly, a qualified person must file a declaration of candidacy, with the required signatures, and pay a filing fee to the appropriate county board of elections by 4 p.m. on the 90th day before the primary election. Ohio Revised Code 3513.05 states, in relevant part:

Each person desiring to become a candidate for a party nomination at a primary election or for election to an office or position to be voted for at a primary election, except persons desiring to become joint candidates for the offices of governor and lieutenant governor and except as otherwise provided in section 3513.051 of the Revised Code, shall, not later than four p.m. of the ninetieth day before the day of the primary election, file a declaration of candidacy and petition and pay the fees required under divisions (A) and (B) of section 3513.10 of the Revised Code.

18. A petition to be a candidate for major party nomination to the General Assembly must be signed by at least 50 qualified electors. R.C. 3513.05.

19. The filing fee for General Assembly candidates is \$85. R.C. 3513.10(A)-(B).

II. Timing of Ohio’s Primary Election for the General Assembly Was Moved Due to the Ohio Redistricting Commission’s Inability to Adopt a Valid and Constitutional General Assembly District Plan.

20. Ohio’s 2022 primary election for General Assembly was initially scheduled for May 3, 2022, which by operation of state law determined that declarations of candidacy and petitions were required to be filed in the applicable county board of elections by 4 p.m. on February 4, 2022.

21. However, because the Ohio Redistricting Commission repeatedly failed to adopt a valid and constitutional general assembly district plan following the federal census, the primary election for General Assembly did not occur on May 3, 2022 because there were no constitutionally drawn Ohio House or Ohio Senate districts.

III. The Ohio Redistricting Commission Repeatedly Fails to Make a Constitutional General Assembly District Plan.

22. In Ohio, 2021 was a redistricting year and the State was bound to follow a new, constitutionally mandated process, including placing the map-drawing responsibilities in a newly formed Ohio Redistricting Commission.

A. The First Plan is Invalidated.

23. The Ohio Redistricting Commission adopted its first plan in September 2021 (“First Plan”). This Court invalidated the First Plan on January 12, 2022 because it did not meet the standard in Article XI, Section 6(A) of the Ohio Constitution, which requires that no plan be drawn primarily to favor a political party, or the proportionality standard in Article XI, Section (B), which requires that the statewide proportion of districts whose voters favor each political party correspond closely to the statewide preferences of the voters of Ohio. *See League of Women Voters of Ohio v. Ohio Redistricting Commission*, Slip Opinion No. 2022-Ohio-65. The Court ordered the Ohio Redistricting Commission to be reconstituted and to adopt a new plan in conformity with

the standards set forth in Article XI, Sections 6(A)-(B) within ten days of the judgment. *Id.* at ¶ 139.

B. House Bill 93 is Passed to Address Issues Related to the May 3, 2022 Primary.

24. The Ohio Legislature recognized the problems that would arise given the Ohio Redistricting Commission’s inability to make a constitutionally valid general assembly district plan and passed H.B. 93, including Sections 3 and 4, two emergency sections which related to the primary election. Sections 3 and 4 became effective on January 28, 2022.

25. Section 4 expressly states that it is applicable only to “the primary election to be held on May 3, 2022.” H.B. 93, Section 4.

26. H.B. 93, Section 4(B) states that “[a] declaration of candidacy . . . filed by a person seeking nomination for the office of member of the . . . Ohio House of Representatives . . . shall not be considered invalid on the basis that it does not include the number of the district the filer seeks to represent or that it includes an incorrect district number.”

27. H.B. 93, Section 4(C) states, in relevant part:

- (1) A declaration of candidacy . . . filed by a person seeking a nomination for the office of member of the . . . Ohio House of Representatives shall not be considered invalid on the basis that it contains the filer’s former residence address that is not located in the district the filer seeks to represent, so long as the filer does all of the following not later than the deadline for the filer to change residence under division (C) of Article XI, Section 9, Ohio Constitution:
 - (a) Becomes a resident of the district the filer seeks to represent;
 - (b) Files with the board of elections an addendum to the declaration of candidacy . . . that indicates the filer’s new residence address;
 - (c) Submits a notice of change of address for voter registration purposes.

C. The Second Plan is Adopted and Relator Miller Files His Declaration of Candidacy.

28. On January 22, 2022, the Ohio Redistricting Commission adopted its second general assembly district plan (the “Second Plan”). The Second Plan was made pursuant to Ohio Constitution Article XI, Section 4(B) which states, in relevant part:

In the event that any section of this constitution relating to redistricting, any general assembly district plan made by the Ohio redistricting commission, or any district is determined to be invalid by an unappealed final order of a court of competent jurisdiction then, notwithstanding any other provisions of this constitution, the commission shall be reconstituted as provided in Section 1 of this article, convene, and ascertain and determine a general assembly district plan in conformity with such provisions of this constitution as are then valid, including establishing terms of office and election of members of the general assembly from districts designated in the plan, to be used until the next time for redistricting under this article in conformity with such provisions of this constitution as are then valid.

29. The Second Plan was in place on the February 2, 2022, 4 p.m. deadline for submitting declarations of candidacy based on the operation of state law and the then-anticipated May 3, 2022 primary election.

30. Under the Second Plan, Relator Miller’s residence, 1600 Roxbury Road, Columbus, Ohio (“Roxbury Address”), was located within Ohio House District 6.

31. On February 1, 2022, Relator Miller submitted his Declaration of Candidacy for Ohio House District 6, along with the requisite number of signatures and filing fee. A true and correct copy of Relator Miller’s Declaration of Candidacy is attached as **Exhibit C**.

32. Relator Anthony Caldwell signed Relator Miller’s Declaration of Candidacy for Ohio House District 6.

33. Relator Miller’s Roxbury Address appears on Relator Miller’s Declaration of Candidacy for Ohio House District 6.

34. Relator Miller's Declaration of Candidacy indicated that he sought the Democratic Party's nomination for Ohio House District 6.

D. Respondent LaRose Issued Directive 2022-03 on January 31, 2022.

35. On January 31, 2022, Respondent LaRose issued Directive 2022-03 which set forth the steps a filing candidate must take to alert the county boards of election that the filing candidate intended to exercise his or her constitutional right under Article XI, Section 4(C) to change their residence to be eligible for election in a district in which the candidate may not currently reside, given that the First Plan was invalid and the Second Plan was made pursuant to an order of the Ohio Supreme Court. A true and correct copy of Directive 2022-03 is attached as **Exhibit D**.

36. Directive 2022-03 states in relevant part:

boards [of elections] are prohibited from invalidating a declaration of candidacy . . . by a person seeking nomination for Ohio House . . . on the basis that it contains the filer's former residence address that is *not* located in the district the filer seeks to represent, **so long as the filer takes the three actions listed below no later than** Tuesday, February 22, 2022:

- (1) Becomes a resident of the district the filer seeks to represent;
- (2) Files an addendum to the declaration of candidacy . . . with the board of elections that indicates the filer's new address; and
- (3) Updated their voter registration record to reflect their new residency.

(Directive 2022-03 at pp. 3 (emphasis in original; footnote excluded).)

37. Directive 2022-03 references a template addendum to be provided to the candidates, which was Form 2-Z. A true and accurate copy of Form 2-Z is attached as **Exhibit E**.

38. Form 2-Z required the filing candidate to declare under penalty of election falsification:

- The filer's current voting residence address;
- The filer's former voting residence address;
- The office and district number of the office the filer sought;

- The filer’s political party membership.

39. Respondent LaRose decreed that Form 2-Z must be filed with the board of elections by February 22, 2022—which was 30 days after the Ohio Redistricting Commission adopted the Second Plan, which was made pursuant Article XI, Section 9.

E. The Second Plan is Invalidated and a Third Plan is Adopted.

40. On February 7, 2022, this Court ruled the Second Plan to be invalid and in violation of the Ohio Constitution and directed the Ohio Redistricting Commission to return to the table and adopt a general assembly district plan that complied with the standards set forth in Article XI. *Women Voters of Ohio v. Ohio Redistricting Commission*, Slip Opinion No. 2022-Ohio-342, ¶¶ 67-68.

41. On February 24, 2022—after missing the deadline to submit a third set of maps to the Ohio Supreme Court—the Ohio Redistricting Commission adopted a third plan (the “Third Plan”). The Third Plan was also made pursuant to Ohio Constitution Article XI, Section 9.

42. In the Third Plan, for the first time, Relator Miller’s Roxbury Address was drawn into House District 7, resulting in Relator Miller being double-bunked with Democratic Minority Leader Representative Allison Russo.

F. Respondent LaRose Issues Directive 2022-026.

43. On February 26, 2022, Respondent LaRose issued Directive 2022-026 to the County Boards of Elections. A true and correct copy of Directive 2022-026 is attached as **Exhibit F**.

44. In Directive 2022-026, Respondent LaRose stated that the Ohio Redistricting Commission “approved a motion that I made to authorize me to issue to the boards of election

directives by which House and Senate candidates who have filed to run shall comply with Article XI, Section 9(C), if any candidates wish to do so.” (Directive 2022-026, at p. 4.)

45. Neither Respondent LaRose nor the Ohio Redistricting Commission had the power or authority to issue additional ballot requirements to House or Senate candidates who sought to exercise the constitutional right guaranteed in Article XI, Section 9(C) to change residence to be eligible for election. Further the Ohio Redistricting Commission had no power to authorize Respondent LaRose to erect barriers to ballot access like the requirement that Form 2-ZA must be filed by March 10, 2022.

46. Directive 2022-026 acknowledged that when “Ohio Redistricting Committee (sic) adopts a new district plan pursuant to an order of the Ohio Supreme Court [], a candidate is allowed up to 30 days to change their residence to be eligible for election in a district in which the candidate may not currently reside.” (*Id.*)

47. Directive 2022-026 recounted H.B. 93, Section 4(C), which required that to avail oneself of the constitutional right found in Article XI, Section 9(C), a filer must (1) become a resident of the district the filer seeks to represent; (2) file with the board of elections an addendum indicating the filer’s new residence address; and (3) submit a notice of change of address for voter registration purposes. (*Id.* at p. 5.)

48. Directive 2022-026 acknowledged that on February 24, 2022 the Third Plan was “made pursuant to” Article XI, Section 9, and that the thirty-day period to change residence ended on March 26, 2022. (*Id.* at p. 5.)

49. Through Directive 2022-026, Respondent LaRose directed boards of elections to “ask all such House and Senate candidates who may wish to change their residence to run in

another district to file the addendum contemplated by Section 4(C)(1)(b) of H.B. 93 with the board no later than **4:00 pm on March 10, 2022.**” (*Id.* at p. 5 (emphasis in original).)

50. Directive 2022-026 consistently referred to candidates who want to “run in another district.” These references include:

- “Thus, Section 9(C)’s irreducible minimum is that any such candidate must be given 30 days to change their residence to **run in another district.**”
- “While Section 4(C) of H.B. 93 attempts to implement Article XI, Section 9(C) by stating the three requirements that a candidate must undertake to qualify under Section 9(C) to **run in another district**, I am interpreting Section 4(C) of H.B. 93 to mean that as long as we allow any such candidate the constitutionally required 30 days to change their residence, which we are, the constitutional requirement is satisfied.”
- “Thus, the requirement in Section 4(C)(1)(b) of filing the addendum indicating an intention to **run in another district** can be done as the first step in the process, not the second step.”
- “Once a candidate files the addendum with the board stating their intention to be a candidate **in another district**, the candidate may later perfect their residency in the new district and change their voter registration to the new district within the remainder of the 30-day period
- “Contact all such candidates by phone and/or email, inform them of this constitutional provision, and inquire of each of them whether they intend to change their residence to **run in another district** and confirm such contact with any candidate by March 1, 2022.”
- “Ask all such House and Senate candidates who may wish to change their residence to **run in another district** to file the addendum contemplated by Section 4(C)(1)(b) of H.B. 93 with the board the no later than 4:00 p.m. on March 10, 2022.”

(*Id.* at p. 5 (emphasis added).)

51. An Ohio Attorney General Opinion issued in 1991 indicates that one cannot evaluate a “new district” based on population or boundaries, because population and boundaries can always change. Instead, that opinion—which is also a redistricting opinion relating to the residency of general assembly candidates—states that the District Number is controlling.

District numbers are the only constant. Regardless of how the territory encompassed within the former districts may be combined or divided, there will continue to be ninety-nine House of Representatives districts, each identified by a single number. Of course, there may be a few districts, such as single-county districts, whose boundaries will not change with reapportionment. To apply to the representatives of those districts a “geographic” or “population” test rather than a “numerical designation” test, however, will undermine uniform application of the law. No matter how appealing, at first glance, a deviation from the numerical designation standard may be, no other standard is provided for in the statute and no other standard will permit a uniform application of the statute.

1991 Ohio Op. Atty. Gen. 2-233 (Ohio A.G.), 1991 Ohio Op. Atty. Gen. No. 91-045, 1991 WL 576921, at *4. While the statute referred to by the Ohio Attorney General in that matter is no longer applicable, the analysis is the same. The only identifier that makes sense for determining “new” or “old” or “different” Districts is the District Number. To focus on the geographic boundaries or population would create uncertainty. Indeed, even forms issued by Respondent LaRose refer to District Numbers.

52. Between February 26 and March 10, Relator Miller was performing active/reserve military duty and related travel for eight days. Relator Miller’s military duty and related travel is entitled to the protections of the Servicemembers Civil Relief Act (“SCRA”), such that he should not be prejudiced. 50 U.S.C. § 3901 *et seq.* The purpose of the SCRA is to provide “temporary suspension of judicial and administrative proceedings that may adversely affect the civil rights of servicemembers during their military service.” 50 U.S.C. § 3092.

53. Directive 2022-024 referenced and attached a template addendum labelled Form 2-ZA. *See* Exhibit B.

54. Form 2-ZA represents an additional barrier to the ballot.

55. Unlike Form 2-Z, Form 2-ZA did not require the filing candidate to identify his or her current and prior address and the district and office that the filer sought. Instead, Form 2-ZA required the filing candidate to elect one of two options:

Option A: I currently reside in the district of the office in which I seek to represent.

Option B: I do not currently reside in the district of the office in which I seek to represent and I intend to move into district __ (insert district number) by March 26, 2022.

56. Further, Directive 2022-024 states that “even if a candidate files the addendum with a board of elections, the board must invalidate an Ohio House or Ohio Senate declaration of candidacy . . . if the filer ***does not*** take ***all*** three actions required in Section 4(C) of H.B. 93 on or before **March 26, 2022.**” (Directive 2022-024 at p. 6 (emphasis in original).)

57. However, based on the clear language of Directive 2022-024, Form 2-ZA did not apply to Relator Miller to the extent that Relator Miller did not wish to change his residence “to run in another district.” On February 1, 2022, Relator Miller filed his Declaration of Candidacy indicating his intent to run for Ohio House District 6. To the extent that he intended to change his residence to become eligible for election, it would not have been to run in “another district”; it would have been to run in the district that appeared on his Declaration of Candidacy—Ohio House District 6.

G. Respondent LaRose is Sued Regarding Form 2-ZA and the Third Plan is Invalidated.

58. On March 11, 2022, Representative Bride Rose Sweeney (“Rep. Sweeney”) filed a complaint in the Franklin County Court of Common Pleas challenging Form 2-ZA as a “new ballot access requirement for and restriction upon General Assembly candidates who wish to exercise their constitutional right to change residences.” A true and correct copy of the March 11, 2022 Complaint for *Sweeney v. LaRose*, Case No. 22-CV-1564 is attached as **Exhibit G**.

59. Rep. Sweeney sought a temporary restraining order and preliminary injunction prohibiting Respondent LaRose from enforcing Form 2-ZA as a prerequisite to exercising the constitutional right found in Article XI, Section 9(C). Critical to that argument was that Respondent LaRose required that Form 2-ZA be submitted on March 10, 2022—just 14 days into the 30-day window in which candidates had the constitutional right to change residence in order to be eligible for election.

60. The Third Plan was also subject to constitutional challenge and this Court invalidated the Third Plan on March 16, 2022. The Court again ordered the Ohio Redistricting Commission to meet and to adopt a new plan in conformity with the Ohio Constitution by March 28, 2022. *See League of Women Voters of Ohio v. Ohio Redistricting Commission*, Slip Opinion No. 2022-Ohio-789, at ¶ 45.

61. On March 17, 2022, the *Sweeney v. LaRose* court held a hearing on the motions for temporary restraining and preliminary injunction.

62. At the March 17, 2022 hearing, counsel for Respondent LaRose stipulated “that the March 10th deadline in Directive 2022-26 is no longer applicable and the previously filed form 2-ZA is not binding” in exchange for Rep. Sweeney withdrawing her motion. (Mar. 17, 2022 Transcript from *Sweeney v. LaRose*, at 3:4-24.) A true and correct copy of the March 17, 2022 Transcript from *Sweeney v. LaRose* is attached as **Exhibit H**.

H. Respondent LaRose Delays the Primary for the Ohio House, Ohio Senate, and State Central Committee.

63. On March 23, 2022, Respondent LaRose issued Directive 2022-031, which stated that it was not possible to hold the primary election on May 3, 2022 as to the Ohio House, Ohio Senate, and State Central Committee. A true and correct copy of Directive 2022-031 is attached as **Exhibit I**.

64. Further, in Directive 2022-031, Respondent LaRose directed that “a board’s decision to certify or reject [General Assembly] candidates’ petitions for the May 3, 2022 Primary Election is null and void” and that “[board of elections] members must acknowledge this on the record at their next board meeting.” (Directive 2022-031 at p. 2.)

I. The Fourth Plan is Ruled Invalid and the Federal Panel in *Gonidakis v. LaRose* Issued an Order Regarding the Primary Election Date and General Assembly District Plan.

65. On March 28, 2022, the Ohio Redistricting Commission adopted its fourth general assembly district plan (the “Fourth Plan”).

66. On April 14, 2022, this Court invalidated the Fourth Plan because it failed to meet the constitutional requirements. *See League of Women Voters of Ohio v. Ohio Redistricting Commission*, Slip Opinion No. 2022-Ohio-1235. The Court again instructed the Ohio Redistricting Commission to make a new plan that was consistent with the constitutional requirements.

67. On April 20, 2022, a three-judge panel in the Southern District of Ohio issued an order in the *Gonidakis v. LaRose* lawsuit. The order stated that if a general assembly district plan was not in place on May 28, 2022 it would order the Third Plan to be implemented for only the 2022 election cycle. *Gonidakis v. LaRose*, Case No. 2:22-cv-0773, 2022 WL 1175617 (S.D. Ohio Apr. 20, 2022). Further, the court’s order stated that it would order the primary election for the Ohio House, Ohio Senate, and State Central Committee to be held on August 2, 2022, the date already scheduled for a special election. *Id.*

68. The May 3, 2022 primary election was held for offices that did not include the Ohio House, the Ohio Senate, and the State Central Committee.

IV. The Primary Election for General Assembly and State Central Committee is Rescheduled for August 2, 2022.

A. The Ohio Redistricting Commission Adopts a New Plan, Which is Invalidated, and the *Gonidakis* Court Issues an Order Setting the Primary for August 2, 2022.

69. On May 5, 2022, the Ohio Redistricting Commission adopted a fifth plan, which was identical to the Third Plan (the “Re-Adopted Third Plan”).

70. On May 25, 2022, the Court invalidated the Re-Adopted Third Plan. *See League of Women Voters of Ohio v. Ohio Redistricting Commission*, Slip Opinion No. 2022-Ohio-1727.

71. On May 27, 2022, the three-judge federal panel in *Gonidakis* issued an order stating that “[a]ssuming no map is approved by midnight on Saturday, May 28, we order Secretary of State Frank LaRose to push back Ohio’s state primaries to August 2, 2022, and to implement Map 3 for this year’s elections only.” *Gonidakis v. LaRose*, Case No. 2:22-cv-0773, 2022 WL 1709146, at *1 (S.D. Ohio May 27, 2022).

72. The Ohio Redistricting Commission did not adopt a new plan by midnight on Saturday, May, 28, 2022.

B. Respondent LaRose Issues Directive 2022-034 and Resurrects the Requirement that Form 2-ZA Was Required to Be Filed by March 10, 2022.

73. On Saturday, May 28, 2022, Respondent LaRose issued Directive 2022-034. *See* Exhibit A.

74. Directive 2022-034 states that the federal court “did not alter the partisan candidate filing deadlines for the primary election.” Therefore, Respondent LaRose states that the deadline for filing declarations of candidacy remains February 2, 2022, per R.C. 3513.05.

75. Respondent LaRose then unilaterally revived Form 2-ZA and stated his intention to enforce the March 10, 2022 deadline that had been found in Directive 2022-026 that had passed

82 days before the *Gonidakis* Plan was imposed. Worse yet, Respondent LaRose had previously stipulated in *Sweeney v. LaRose* that Form 2-ZA and the March 10, 2022 deadline was no longer binding. (March 17, 2022 Transcript from *Sweeney v. LaRose*, at 3:4-24.)

76. In Directive 2022-034, Respondent LaRose ordered for the *first time* that “[i]f a board did not receive a Form 2-ZA addendum by March 10, 2022 indicating that a candidate [] intended to change their residence to a new district, the board must meet by Friday, June 3, 2022, to re-certify or reject declarations of candidacy filed by the February 2, 2022 deadline for State Representative . . . based on the Third District Map.” (Directive 2022-034 at p. 2.)

77. In Directive 2022-034, Respondent LaRose opines that rather than candidates having 30 days from May 27, 2022—when the *Gonidakis* Plan was imposed, following the invalidation of the Re-Adopted Third Plan—to change their residence to be eligible for election, that there are only 10 days left for candidates to change residences because the Ohio Redistricting Commission adopted the Third Plan on Feb. 24, 2022 and the act of adopting the Third Plan triggered 30-day right to change residences. (*Id.* at p. 3.) However, Respondent LaRose stated that because the Ohio Supreme Court invalidated the Third Plan on day 20 (March 16, 2022), candidates have 10 more days to move from May 27, 2022—the effective date of the *Gonidakis* Plan. (*Id.*)

78. In Directive 2022-034, for the first time, Respondent LaRose states that “[a] board of election may not accept a Form 2-ZA addendum filed after March 10, 2022.” (*Id.*)

C. Form 2-ZA Should Not Be a Barrier to the Validation of Relator Miller’s Declaration of Candidacy.

79. First, Respondent LaRose previously stipulated that Form 2-ZA was moot and no longer required. Respondent LaRose must be judicially estopped from changing his position as to Form 2-ZA. “Courts apply judicial estoppel in order to ‘preserve[] the integrity of the courts by

preventing a party from abusing the judicial process through cynical gamesmanship, achieving success on one position, and then arguing the opposing to suit an exigency of the moment.” *Greer-Burger v. Temsesi*, (2007) 116 Ohio St.3d 324, 879 N.E.2d 174, 2002-Ohio-6442, ¶25 (quoting *Griffith v. Wal-Mart Stores, Inc.* (6th Cir. 1998) 135 F.3d 376, 380 (quoting *Teledyne Industries, Inc. v. Nat’l Labor Relations Bd.* (6th Cir. 1990) 911 F.2d 1214, 1217)). Judicial estoppel applies where an opponent took a contrary position, under oath in a prior proceeding, and the prior position was accepted by the court. *Id.* (citing *Griffith*, at 380). All of the elements of judicial estoppel are found here.

80. Second, even if Secretary LaRose were not subject to judicial estoppel, the requirement that Form 2-ZA be submitted by March 10, 2022 is an unreasonable restriction on the constitutional right found in the Ohio Constitution, Article XI, Section 4(C), which allows for 30 days to move to be eligible for election. Requiring a candidate to profess, under penalty of felony, their intent on day 14 of 30 is an unfair restraint on candidates’ constitutional right under the Ohio Constitution, Article XI.

81. Third, the February 24, 2022 requirement that Form 2-ZA be submitted by March 10, 2022, is particularly unfair and unlawful as to Relator Miller. Relator Miller is a servicemember and between February 24, 2022 to March 10, 2022, Relator Miller spent eight days performing active/reserve military duty, including related travel, and he is entitled to protection under the SCRA.

82. Simply put, as of March 10, 2022, given the incredibly short timeframe set forth in Directive 2022-024 and Relator Miller’s active/reserve military duty, Relator Miller could not and did not know whether he would move from his Roxbury Road address in order to be eligible for election in Ohio House District 6 or whether he would remain in his Roxbury Road residence and

seek election for Ohio House District 7. On March 10, 2022, Relator Miller could not have attested to either option A or option B on Form 2-ZA under the penalty of election falsification. Moreover, requiring Relator Miller to make such an attestation with 16 days left in the 30-day window guaranteed by the Ohio Constitution cannot be countenanced.

83. Indeed, in March, Relator Miller was also considering whether he could run for Ohio Senate District 25, rather than the Ohio House District 6. A lawsuit was filed in the Franklin County Court of Common Pleas to determine whether Relator Miller could change his candidacy to the Senate. While the lawsuit was pending, the Third Plan was invalidated and Relator Miller voluntarily dismissed the lawsuit. However, at no time did Relator Miller ever withdraw his Declaration of Candidacy for Ohio House District 6.

84. But even if Relator Miller had intended on March 10, 2022 to move from the Roxbury address, any move would have been to Ohio House District 6—which is the *same district* for which Relator Miller had listed on his Declaration of Candidacy, not another or “new” district. This is significant because throughout Directive 2022-026, LaRose couched all of his language in regard to a “new district” and states that he has the authority to require a candidate to first state their intention and then “perfect their residency in the *new district* and change their voter registration to the *new district*” within the 30-day window. (Directive 2022-026 at p. 4 (emphasis added).)

85. Here, Relator Miller seeks the *same house district* that appears on his Declaration of Candidacy. He never asked to “run in another district.” Nothing in the Directive 2022-026 addresses candidates who would continue to run in the same district, but who would need to change their residence to live within the district that appears on the Declaration of Candidacy. *See* Directive 2022-026 at p. 5.

86. Fourth, Form 2-ZA emanated from HB 93, Section 4, which by its plain terms applies only to the primary on May 3, 2022.

87. Fifth, Respondent Frank LaRose is denying Relators Miller and Caldwell their constitutional right to freedom of association found in the First and Fourteenth Amendments of the U.S. Constitution. The *Gonidakis* Plan was only implemented on May 27, 2022 and Respondent Frank LaRose's Directive 2022-034 effectively prohibits Relator Miller or any other candidate from asserting their full thirty-day right under Article XI, Section 4(C) to change residence to be eligible for election and prohibits any person from filing a new Declaration of Candidacy based on the *Gonidakis* Plan.

D. Relator Miller Has Taken Reasonable Steps to Exercise His Constitutional Rights.

88. Relator Miller took reasonable steps to timely exercise his constitutional right to move pursuant to the Ohio Constitution. Relator Miller closely followed the actions of the Ohio Supreme Court, the federal panel in *Gonidakis*, and the Ohio Redistricting Commission. When the *Gonidakis* court issued the April 20, 2022 order indicating that if a constitutional general assembly district plan was not adopted by May 28, 2022 that it would select the previously invalidated Third Plan and the Ohio Redistricting Commission made the decision to re-adopt the Third Plan on May 5, 2022, Relator Miller anticipated that it was likely that the *Gonidakis* court would enforce the Third Plan.

89. In anticipation of the *Gonidakis* Plan, on May 11, 2022, Relator Miller signed a lease for 1099 Hudson Run Place, Apartment 109, Columbus Ohio 43228 (the "Hudson Run Address") which is located in Ohio House District 6 under the *Gonidakis* Plan. On May 11, 2022, Relator Miller also changed the address on his voter registration to the Hudson Run Address and also updated his driver's license to reflect his Hudson Run Address.

90. Relator Miller provided copies of the lease, the voter registration, and the driver's license update to Respondent Franklin County Board of Elections on May 12, 2022.

91. On May 31, 2022, the first business day following the issuance of Directive 2022-034, Realtor Miller caused a letter to be hand delivered to Respondent Franklin County Board of Elections, to the attention of Director Antone White and Manager of Petitions Jeffrey Mackey. Copies of the letter were also provided via email on the same day. A true and correct copy of the May 31, 2022 letter is attached as **Exhibit J**, including evidence of hand delivery.

92. The May 31, 2022 letter constitutes as an addendum to Relator Miller's Declaration of Candidacy, notifying the Franklin County Board of Elections that Relator Miller seeks the Democratic nomination for Ohio House District 6 and that Relator Miller is a resident of Ohio House District 6 at the Hudson Run Address. The May 31, 2022 letter urged Respondent Franklin County Board of Elections to validate Relator Miller's Declaration of Candidacy.

93. On June 2, 2022, Relator Miller received an Acknowledgement Notice dated May 23, 2022 that his application to update his voter registration to reflect the Hudson Run Address had been accepted. A true and correct copy of the Acknowledgement Notice is attached as **Exhibit K**.

COUNT I
Violation of Ohio Constitution, Article XI

94. Relators restate and incorporate paragraphs 1 through 92 as if fully rewritten herein.

95. Relator Miller timely filed his Declaration of Candidacy and petition for Ohio House District 6 for the August 2, 2022 primary for the Democratic party with the Franklin County Board of Elections prior to February 2, 2022, under the Second Plan. Under the Third Plan, Relator Miller's residence was no longer located in Ohio House District 6. On May 11, 2022, Relator Miller moved to be eligible for election in the Ohio House District 6 under the *Gonidakis* Plan.

The *Gonidakis* Plan was finally ordered on May 28, 2022. Relator Miller advised the Franklin County Board of Elections of his new address and intent to run for election in the Ohio House District 6 on May 12, 2022.

96. Under Article XI, Section 9(C) of the Ohio Constitution, after a general assembly district plan is made following the invalidation of a prior general assembly plan, any person seeking to run for election must be allowed thirty days to change residence in order to be eligible for election.

97. Article XI, Section 9 does not authorize Respondent LaRose to shorten or limit the time “for persons to change residence in order to be eligible for election.”

98. In Directive 2022-034, Respondent LaRose directed the Board of Elections “to re-certify or reject declarations of candidacy” on Friday, June 3 if the candidate did not file Form 2-ZA by March 10, 2022, even though Respondent LaRose’s deadline for filing Form 2-ZA was only fourteen days after the Third Plan was first adopted, and over two months before the *Gonidakis* Plan was ultimately imposed.

99. Respondent LaRose acted in clear disregard of applicable law and/or abused his direction by issuing Directive 2022-034, because it fails to provide for candidates to be allowed thirty days to change residence to be eligible for election.

100. Respondent LaRose further acted in clear disregard of applicable law and/or abused his discretion by issuing Directive 2022-034, because it resurrects Form 2-ZA and the March 10, 2022 date by which to file it. Form 2-ZA lacks any basis in law and appears to exist for the sole purpose of limiting candidates’ constitutional right to 30 days to move to be eligible for election following the implementation of the Third Plan.

101. Respondent LaRose has a clear legal duty to direct the county boards of elections to allow candidates thirty days to change residence to be eligible for election, to accept any written communication within the 30-day period that notifies the board of elections that the candidate has moved to be eligible to run for a specific district and/or the specific district the candidate seeks to represent, and to “re-certify or reject declarations of candidacy” only after the thirty days has expired.

102. Relators have a corresponding clear legal right to have Respondent LaRose correctly direct the county boards of elections to allow candidates thirty days to change residence to be eligible for election, to accept any written communication within the 30-day period that notifies the board of elections that the candidate has moved to be eligible to run for a specific district and/or the specific district the candidate seeks to represent, and to “re-certify or reject declarations of candidacy” only after the thirty days has expired.

103. Respondent Franklin County Board of Elections has a clear legal duty to certify Relator Miller as a Democratic candidate for Ohio House District 6 at the August 2, 2022 primary election.

104. Relators have a corresponding clear legal right to have Relator Miller’s name certified as a Democratic candidate for Ohio House District 6 at the August 2, 2022 primary election.

105. Relators lack an adequate remedy in the ordinary course of the law due to the proximity of the August 2, 2022 primary election.

COUNT II
Violation of First and Fourteenth Amendments

106. Relators restate and incorporate paragraphs 1 through 104 as if fully rewritten herein.

107. Relators have a constitutional right to ballot access and freedom of association under the U.S. Constitution and the First Amendment, which is incorporated to the states through the Fourteenth Amendment. *See Lee v. Keith*, 463 F.3d 763, 767-768 (7th Cir. 2006) (ballot access restrictions imposed severe burden on freedom of association).

108. Relator Caldwell supports Relator Miller and would vote for Relator Miller if Relator Miller is a candidate on the ballot in the August 2, 2022 primary election. Ballot access is considered to be a right of the voters who support a candidate. *Rosen v. Brown*, 970 F.2d 169, 175 (6th Cir. 1992).

109. “It is beyond debate in Supreme Court jurisprudence that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the liberty assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech.” *Duncan v. Husted*, 125 F.Supp.3d 674, 679 (S.D. Ohio 2015) (quoting *Tashjian v. Republican Party of Conn.*, 479 U.S. 208, 214 (1986) (internal quotations omitted)).

110. “Ballot-access restrictions . . . place burdens on two kinds of rights”: the right of freedom of association and the right to effectively cast votes, though those rights are not absolute and some restrictions are permitted. *Id.* The U.S. Supreme Court has long held that “candidate-eligibility requirements in state election laws” concern fundamental constitutional rights. *Id.* (citing *Anderson v. Celebrezze*, 460 U.S. 780 (1983)).

111. Respondent LaRose’s Directive 2022-034 and the requirement that candidates must have filed Form 2-ZA by March 10, 2022 and denying Relator Miller access to the ballot by withholding his right to change residence to be eligible for election under the Ohio Constitution injures Relators and violated their First and Fourteenth Amendment rights to freedom of

association. By denying Relator Miller access to the ballot, Relator Caldwell is denied the opportunity to vote for his candidate of choice.

112. Respondent LaRose has no compelling state interest in requiring Form 2-ZA to be filed by March 10, 2022. Respondent LaRose cannot reasonably argue that the form is required at all, much less that it is required by March 10, 2022. Indeed, Form 2-ZA does not even tell the boards of elections what the candidate's address is or will be. Moreover, time still exists for the board of elections to verify and validate declarations of candidacy. Directive 2022-034 states that some petitions and declarations of candidacy will not be validated until June 7, 2022.

113. When Respondent LaRose wanted to abide by the Ohio Constitution, he knew how to do it. In Directive 2022-003, Respondent LaRose introduced Form 2-Z which was to be filed on the 30th day of the Article XI, Section 9(C) thirty-day period and it contained the information that was actually necessary to the boards of election: (1) the candidate's prior address; (2) the candidate's current address; and (3) office and district number being sought by the candidate.

114. The burdens to Relators' rights imposed by Form 2-ZA lack legitimacy. Instead, it appears that Form 2-ZA is a product of a "gotcha game" intended to interrupt a candidate's thirty-day period for choosing to change residence in order to be eligible for election.

115. Respondent LaRose has implemented severe burdens on the freedom-of-association rights. Therefore, these burdens are subject to strict and exacting legal scrutiny, narrow tailoring, and evidence of a compelling state interest. *See Duncan v. Husted*, 125 F.Supp.3d 674, 680 (S.D. Ohio 2015).

116. Moreover, the ballot access issue here and truncated time period were the creation of the Ohio Redistricting Commission and its inability to meet the constitutional mandate in Article XI. Respondent LaRose is a member of the Ohio Redistricting Commission and he must shoulder

the blame for the tight timeframe presented by the August 2, 2022 primary. He should not be permitted to violate Ohioans' constitutional rights in yet another way.

117. Finally, Relator Miller provided all the information that is required by Form 2-ZA in advance of the June 3, 2022 and June 8, 2022 deadlines for verifying petitions in Directive 2022-034. Requiring Respondents LaRose and the Franklin County Board of Elections to accept Relator Miller's May 31, 2022 letter as an addendum to his Declaration of Candidacy would cause neither prejudice to the State nor delay to the August 2, 2022 primary election.

118. With respect to Directive 2022-34, Respondent LaRose has, under the law, misdirected the Franklin County Board of Elections as to their duties with respect to Relator Miller's Declaration of Candidacy for the Democratic nomination for Ohio House District 6 for the August 2, 2022 primary election.

119. Respondent LaRose's Directive 2022-034 and requirement that Form 2-ZA be filed by March 10, 2022 is an abuse of discretion and/or in clear disregard for the applicable law.

120. Respondents LaRose and the Franklin County Board of Elections have a clear legal duty to conduct the primary election on August 2, 2022 in a manner that does not trample on the constitutional rights of freedom of association and access to the ballot as guaranteed by the U.S. Constitution.

121. Relators have a corresponding clear legal right to freedom of association and access to the ballot as guaranteed by the U.S. Constitution and to have Respondent LaRose and the Franklin County Board of Elections conduct the primary election on August 2, 2022 in a manner that does not trample on the constitutional rights of freedom of association and access to the ballot as guaranteed by the U.S. Constitution.

122. Respondent Franklin County Board of Elections has a clear legal duty to certify Relator Miller's name for placement on the August 2, 2022 primary election ballot as a candidate for the Democratic nomination for Ohio House District 6.

123. Relators have a corresponding legal right to have Relator Miller's name placed on the August 2, 2022 primary election ballot as a candidate for the Democratic nomination for Ohio House District 6.

124. Relators lacks an adequate remedy in the ordinary course of the law due to the proximity of the August 2, 2022 election.

PRAYER FOR RELIEF

WHEREFORE, Relators respectfully pray that the Court grant the following relief:

- A. With respect to Count I:
 - 1) Issue an Order, Judgment, and/or Writ of Mandamus compelling Respondent LaRose, with respect to the August 2, 2022 primary election for General Assembly and State Central Committee candidates, to direct the county boards of elections as follows:
 - i. to allow candidates thirty days to move to be eligible for election;
 - ii. to accept at any time within the thirty-day period, which in this case can be no less than June 7, 2022, any written communication that notifies the board of elections (1) that the candidate has moved to be eligible for election and/or (2) the district the candidate seeks to represent;
 - iii. to certify or reject declarations of candidacy only after the thirty days has expired; and

- iv. to direct the Franklin County Board of Elections to certify Relator Miller's name as a Democratic candidate for Ohio House District 6 at the August 2, 2022 primary election.
- 2) Issue an Order, Judgment, and/or Writ of Mandamus compelling the Franklin County Board of Elections, with respect to the August 2, 2022 primary election for General Assembly and State Central Committee candidates, as follows:
- i. to allow candidates thirty days to move to be eligible for election;
 - ii. to accept at any time within the thirty-day period, which in this case can be no less than June 7, 2022, any written communication from a candidate that notifies the board of elections that the candidate has moved to be eligible for election and/or the district the candidate seeks to represent;
 - iii. to certify or reject declarations of candidacy only after the thirty days has expired; and
 - iv. to certify Relator Miller's name as a Democratic candidate for the Ohio House District 6 at the August 2, 2022 primary election.

B. With respect to Count II:

- 1) Issue an Order, Judgment, and/or Writ of Mandamus compelling Respondent LaRose to rescind Directive 2022-034 and Form 2-ZA.
- 2) Issue an Order, Judgment, and/or Writ of Mandamus compelling the Franklin County Board of Elections to rescind their decisions, if any, made pursuant to Directive 2022-034 and Form 2-ZA.

- 3) Issue an Order, Judgment, and/or Writ of Mandamus compelling the Respondents LaRose and Franklin County Board of Elections to certify Relator Miller's name as a Democratic candidate for the Ohio House District 6 at the August 2, 2022 primary election.
- C. Grant a Peremptory Writ of Mandamus ordering the relief set forth above after the filing of the Answers to the Complaint;
- D. Assess the costs of this action against the Secretary of State; and
- E. Award such other relief as may be appropriate.

Respectfully submitted,

/s/ Marc J. Kessler

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VERIFICATION

STATE OF OHIO)
)
COUNTY OF FRANKLIN)

ss:

I, REPRESENTATIVE ADAM MILLER, after being first duly sworn according to law, declare that I am over the age of eighteen years and am competent to testify as to the factual allegations set forth above in the Complaint, that I have read the allegations and referenced exhibits, and that such allegations are true and accurate based on my personal knowledge.


REPRESENTATIVE ADAM MILLER

SWORN TO before me and SUBSCRIBED in my presence this 2nd day of June, 2022.



LINDA LEE
Notary Public
State of Ohio
My Comm. Expires
February 24, 2026



NOTARY PUBLIC