

**IN THE SUPREME COURT OF OHIO**

State ex rel. WILLIAM DEMORA, et al., : Case No. 2022-0661  
: :  
Relators, : Original Action in Mandamus  
: :  
v. : Expedited Election Matter  
: Pursuant to S.Ct.Prac.R. 12.08  
FRANK LAROSE, et al., :  
: :  
Respondents. : :

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**MERIT BRIEF OF RESPONDENT  
OHIO SECRETARY OF STATE FRANK LAROSE**

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Donald J. McTigue\* (0022849)  
*\*Counsel of Record*  
Derek S. Clinger (0092075)  
McTigue Colombo & Clinger, LLC  
545 East Town Street  
Columbus, Ohio 43215  
Phone: (614) 263-7000  
dmctigue@electionlawgroup.com  
dclinger@electionlawgroup.com

*Counsel for Relators*

Larry J. Obhof, Jr.\* (0088823)  
*\*Counsel of Record*  
Shumaker, Loop & Kendrick, LLP  
41 South High Street, Suite 2400  
Columbus, Ohio 43215  
Phone: (614) 463-9441  
lobhof@shumaker.com

Douglas G. Haynam (0019773)  
Alia A. Kadri (0100721)  
Shumaker, Loop & Kendrick, LLP  
1000 Jackson Street  
Toledo, Ohio 43604  
mwagoner@shumaker.com  
dhaynam@shumaker.com  
akadri@shumaker.com

*Counsel for Respondent Ohio Secretary of  
State Frank LaRose*

Gary Tyack (0017524)  
Franklin County Prosecutor  
Amy L. Hiers (0065028)  
Andrea C. Hofer (0101258)  
Assistant Prosecuting Attorneys  
373 South High Street, 13th Floor  
Columbus, Ohio 43215  
Phone: (614) 525-3520

ahiers@franklincountyohio.gov  
ahofer@franklincountyohio.gov

*Counsel for Respondent Franklin County  
Board of Elections*

Mathias H. Heck, Jr.  
Montgomery County Prosecutor  
Ward C. Barrentine (0074366)  
Nathaniel S. Peterson (0095312)  
Assistant Prosecuting Attorneys  
301 West Third Street  
P.O. Box 972  
Dayton, Ohio 45422  
barrentinew@mcohio.org  
petersonn@mcohio.org

*Counsel for Respondent Montgomery County  
Board of Elections*

Bill Hayes (0011733)  
Licking County Prosecutor  
Carolyn J. Carnes (0066756)  
Mark W. Altier (0017882)  
Assistant Prosecuting Attorneys  
20 S. Second Street  
Newark, Ohio 43055  
ccarnes@lcounty.com  
maltier@lcounty.com

*Counsel for Respondents Licking County  
Board of Elections*

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## **I. INTRODUCTION**

Parties seeking a writ of mandamus face an exacting standard. They must demonstrate by clear and convincing evidence that they have a clear legal right to the requested relief, and that the Respondent is under a clear legal duty to perform the requested act. Furthermore, in mandamus actions challenging a decision of the Secretary of State, Relators must show that the Secretary engaged in fraud or corruption, abused his discretion, or acted in clear disregard of applicable law. Relators do not meet that high standard in this case.

Relators here are individuals who allege that they would like to run in this year's primary election for either the Ohio General Assembly or the Democratic Party's state central committee. They each filed either a declaration of candidacy and petition, or a declaration of intent to be a write-in candidate, well after the applicable deadlines for the scheduled May 3, 2022 primary election. For reasons discussed below and already well known to this Court, the primary election held on May 3, 2022 did not include races for the General Assembly or state central committee. Subsequently, on May 27, 2022, a panel of the U.S. District Court for the Southern District of Ohio ordered the Secretary of State to "push back" those primary elections to August 2, 2022.

In this action, Relators ask this Court to order the Secretary of State to direct the Respondent boards of elections to accept their declarations of candidacy or declarations of intent to be write-in candidates. Yet they do not have a clear legal right to the requested relief. At the time that each of them filed, there was no August 2 primary election scheduled. Nor is Respondent Secretary of State under a clear legal duty to direct boards of elections to accept untimely declarations and petitions.

Candidate filing deadlines are set by the Revised Code. The Secretary of State is not permitted to move those deadlines or create a new filing deadline. For declarations of candidacy

and petitions, the statutory deadline is the ninetieth day before the date of the primary election. *See* R.C. 3513.05. For declarations of intent to be a write-in candidate, the deadline is the seventy-second day preceding the date of the primary election. *See* R.C. 3513.041.

Respondent Secretary of State recognizes that a change in the primary election date *could* operate to re-open the filing period under certain circumstances. Indeed, the Secretary's office acknowledged (in other litigation) that the statutory deadlines are tied to the date of the primary election and can move by operation of law when the date changes. Here, however, the federal court's order setting the new primary date occurred *67 days* before August 2, well after the ninetieth day out (under R.C. 3513.05) and the seventy-second day out (under R.C. 3513.041).

Relators' declarations were not valid when they filed them because at those times, August 2 was not the primary election date. Until the May 27 federal court order, there was no primary date other than May 3. Yet Relators are seeking to retroactively validate them based on subsequent events. The Secretary of State does not have the authority to issue such a directive. These are difficult issues, to be sure. However, the Secretary of State did not act in clear disregard of applicable law.

Additionally, the requested relief would be disruptive to the orderly administration of the election and would infringe on the rights of Ohio's voters. As the federal panel emphasized in its May 27 Order, we have reached "the last possible moment." *Gonidakis v. LaRose*, No. 2:22-cv-0773, 2022 WL 1709146, \*1 (S.D. Ohio May 27, 2022) (hereinafter "*Gonidakis*, May 27 Order). Although the primary election date itself is August 2, the boards of elections must begin sending the ballots that go to overseas military and civilian personnel ("UOCAVA ballots") no later than 46 days *before* that date, in this case by June 17. R.C. 3511.04. Thus, voting will be underway just nine days after the filing of this brief. The relief sought by Relators here would disrupt the

election and risk jeopardizing the rights of the voters. It would prioritize candidates over the voters. Relators do not have a clear legal right to that relief, and the Secretary of State does not have a clear legal obligation to provide it.

## **II. STATEMENT OF FACTS**

This case is an outgrowth of Ohio’s experience with the legislative reapportionment process over the past ten months. As this Court is aware, since September 2021 to the present, various state legislative district maps for election to the Ohio General Assembly have been adopted by the Ohio Redistricting Commission, but each one thus far has been invalidated by a majority of this Court. Additionally, on May 27, 2022, Respondent Secretary of State Frank LaRose was ordered by a three-judge panel of the U.S. District Court for the Southern District of Ohio to “to push back Ohio’s state primaries to August 2, 2022, and to implement Map 3 for this year’s elections *only*.” *Gonidakis*, May 27 Order at \*1 (emphasis in original). As a result of this Order, on May 28, 2022 the Secretary issued Directive 2022-34, which gives rise to the issues in this litigation. The relevant factual and procedural history is included below.

Following the 2020 decennial census, the Ohio Redistricting Commission adopted a General Assembly district plan in September 2021 (“Map 1”). On September 23, 2021, various groups and individuals filed lawsuits with the Ohio Supreme Court challenging the constitutionality of Map 1 under state law. On January 12, 2022, in a 4-3 decision this Court invalidated Map 1 and ordered the Ohio Redistricting Commission to be reconstituted and to adopt a district plan (within ten days) that conformed with the Court’s reading of the Ohio Constitution. *See League of Women Voters of Ohio v. Ohio Redistricting Comm’n*, \_\_ Ohio St. 3d \_\_, \_\_ N.E.3d \_\_, 2022-Ohio-65.

On January 22, 2022, the Ohio Redistricting Commission adopted a second General Assembly district plan (“Map 2”). Again, various groups and individuals challenged the new map, this time by filing objections with this Court.

Ohio’s primary election date was scheduled for May 3, 2022 per R.C. 3501.01(E)(1). Pursuant to R.C. 3513.05, candidates for party nominations for election to the General Assembly or party state central committee were required to file a declaration of candidacy and petition no later than 4:00 p.m. on the ninetieth day before the primary election, February 2, 2022. The deadline to file for such offices as a write-in candidate was February 22, 2022. *See* R.C. 3513.041.

With the February 2, 2022 candidate filing deadline fast approaching, the General Assembly acted to remove the uncertainty caused by the reapportionment litigation. The legislature amended and passed Substitute House Bill 93, including within it numerous provisions of temporary law that modified certain petition requirements for candidates for the U.S. House, the General Assembly, and party state central committees. These changes were designed to allow filings to be considered valid if the petitions were circulated, or even filed, before the new district plans were known. The act relaxed requirements regarding matching the district number and the candidate’s residence address indicated on the filing; the board of elections with which the documents are filed; the date of the petition signatures; and where the signers reside. Sub. H.B. No. 93, Section 4. These portions of the bill were passed with an emergency clause, and became effective immediately upon the Governor’s signature on January 28, 2022, prior to the candidate filing deadline of February 2.

Section 4(G) of House Bill 93 made clear that the Secretary of State did not have the ability to alter candidate filing deadlines. The bill generally allowed the Secretary to “adjust any deadlines pertaining to the administration of the May 3rd primary election.” *Id.* However, the bill also

specifically excluded from this “[t]he deadline to file a declaration of candidacy, declaration of candidacy and petition, or declaration of intent to be a write-in candidate.” *Id.*

Map 2 was in place on February 2, 2022, although it was before this Court on pending objections. On February 7, 2022, a majority of this Court sustained the objections relating to Map 2 and invalidated that district map. *See League of Women Voters of Ohio v. Ohio Redistricting Comm’n*, \_\_ Ohio St. 3d \_\_, \_\_ N.E.3d \_\_, 2022-Ohio-342, ¶ 67. The Court further ordered the Ohio Redistricting Commission to adopt a new General Assembly district plan within ten days. *Id.* at ¶ 68.

On February 18, 2022, a group of voters and activists sued the Ohio Redistricting Commission and the Ohio Secretary of State in the U.S. District Court for the Southern District of Ohio. The plaintiffs alleged that they lacked any legislative districts that would allow them to organize, campaign and ultimately vote for offices as they had in past election cycles. *Gonidakis v. LaRose*, No. 2:22-cv-0773, 2022 WL 1175617, \*1 (S.D. Ohio Apr. 20, 2022) (hereinafter “*Gonidakis*, April 20 Order”). As relief, they asked the federal court to impose a map to ensure that Ohio would hold a primary election for General Assembly candidates this year. *Id.*

On February 24, 2022, the Ohio Redistricting Commission adopted a third General Assembly district plan (“Map 3”). Secretary LaRose “immediately began implementing [Map 3] in hopes of including the state-legislative races on the May 3 primary ballot.” *Gonidakis*, April 20 Order at \*8. As before, however, various groups and individuals filed objections to the new map. On March 16, 2022, a majority of this Court sustained the objections and invalidated Map 3. *See League of Women Voters of Ohio v. Ohio Redistricting Comm’n*, \_\_ Ohio St. 3d \_\_, \_\_ N.E.3d \_\_, 2022-Ohio-789. The Court further ordered the Ohio Redistricting Commission to adopt a new General Assembly district plan no later than March 28, 2022. *Id.* at ¶ 45.

On March 23, 2022, Secretary LaRose issued Directive 2022-31. The directive indicated that due to the uncertainty over legislative districts and because early voting for the May 3 primary was fast approaching, “it is not possible to include the primary contests for the Ohio House, Ohio Senate, and State Central Committee on the May 3, 2022 Primary Election ballot” and that those races would not appear on the ballot. Relators’ Brief, Ex. B (REL\_EVID\_012).

On March 28, 2022, the Ohio Redistricting Commission adopted a fourth General Assembly district plan (“Map 4”). Once again, various groups and individuals filed objections with this Court. On April 14, 2022, a majority of this Court sustained the objections and invalidated Map 4. *See League of Women Voters of Ohio v. Ohio Redistricting Comm’n*, \_\_\_ Ohio St. 3d \_\_\_, \_\_\_ N.E.3d \_\_\_, 2022-Ohio-1235. The Court further ordered the Ohio Redistricting Commission to adopt a new General Assembly-district plan no later than May 6, 2022. *Id.* at ¶ 79.

The day after this Court invalidated Map 3, the federal court plaintiffs in *Gonidakis* requested a three-judge panel under 28 U.S.C. § 2284, a preliminary injunction barring use of the 2010 maps, and a schedule to impose a district map. *See Gonidakis*, April 20 Order. On April 20, 2022, that federal panel issued a Memorandum Opinion and Order. In its Order, the federal court indicated that “everyone agrees that legal and practical requirements preclude Ohio from holding a primary election for its state legislature on May 3, the date provided by statute.” *Id.* at \*1. The panel held out “hope that the State can resolve the deadlock,” but emphasized that “the [United States] Supreme Court has told us that at some point we must intervene to protect the right to vote.” *Id.*

The federal court did not order immediate relief in its April 20, 2022 opinion and therefore did not set a new primary election date. Rather, the court foreshadowed what it would do if state officials remained unable to reach agreement on a map: “[W]e stay our hand until May 28. But

if the State remains unable to implement its own valid map that satisfies federal law, then we must implement Map 3 to safeguard the rights of Ohio’s voters.” *Id.* at \*2. The court further indicated that in that eventuality, it would order the state legislative primary races to be held on the already-existing special election date of August 2, 2022. *Id.* However, the court emphasized that these future orders *were contingent upon future events*. *See id.* (“If the State fails to act, however, this timeline will ensure Ohioans can vote in the election ...”) (emphasis added); *id.* (“In the event that Ohio does not reach a resolution before May 28, we will order that the state-legislative primary races be held on the special-election date of August 2, 2022.”) (emphasis added).

Ohio subsequently held a primary election on May 3, 2022. The May 3 election did not contain contests for the General Assembly or State Central Committee. Nor, at that time, was there a date certain for those races to appear on the ballot.

On May 5, the Ohio Redistricting Commission re-adopted Map 3. Once again, various groups and individuals filed objections with this Court. On May 25, 2022, a majority of this Court sustained objections and once again invalidated Map 3. *See League of Women Voters of Ohio v. Ohio Redistricting Comm’n*, \_\_\_ Ohio St. 3d \_\_\_, \_\_\_ N.E.3d \_\_\_, 2022-Ohio-1727. The Court further ordered the Ohio Redistricting Commission to adopt a new General Assembly district plan no later than June 3, 2022. *Id.* at ¶ 6.

Following this Court’s order again invalidating Map 3, on May 27, 2022, the federal panel in the *Gonidakis* case ordered Secretary LaRose “to push back Ohio’s state primaries to August 2, 2022, and to implement Map 3 for this year’s elections *only*.” *Gonidakis*, May 27 Order at \*1 (emphasis in original). The court emphasized that it had waited “until the last possible moment,” as U.S. Supreme Court precedent requires. *Id.*

Subsequent to the federal court's order, on May 28, 2022 the Secretary of State issued Directive 2022-34. Among other things, the directive instructs boards of elections that the federal court order "did not alter the partisan candidate filing deadlines for the primary election." Relators' Brief, Ex. A (REL\_EVID\_003). Thus, pursuant to the Directive, candidate filings for party nominations for the General Assembly or party state central committee remained due February 2, 2022, and the write-in filing deadline remained February 22, 2022. *See id.*

Relators filed this action in mandamus on May 31, 2022. They allege that Directive 2022-34 is legally erroneous. Compl. at ¶ 2. Among other relief, they ask this Court to order Secretary LaRose "to direct the county boards of elections to (1) accept declarations of candidacy that were filed before 4 p.m. on May 4, 2022, and are otherwise valid, and (2) accept any declarations of intent to be a write-in candidate that were filed before 4 p.m. on May 23, 2022 and are otherwise valid." *Id.*

### **III. ARGUMENT**

#### **A. Standard of Review.**

It is well established that relief in the form of mandamus is extraordinary relief. *See, e.g., State ex rel. Rashada v. Pianka*, 112 Ohio St.3d 44, 2006-Ohio-6366, 857 N.E.2d 1220, ¶ 2. To be entitled to the requested writ of mandamus, relators must establish by clear and convincing evidence three elements: (1) the relator has a clear legal right to the requested relief; (2) the respondent is under a clear legal duty to perform the requested act; and (3) the relator has no plain and adequate remedy at law. *State ex rel. Linnabary v. Husted*, 138 Ohio St.3d 535, 2014-Ohio-1417, 8 N.E.3d 940, ¶ 13, citing *State ex rel Waters v. Spaeth*, 131 Ohio St.3d 55, 2012-Ohio-69, 960 N.E.2d 452, ¶ 6. Relators must prove that they are entitled to the writ by clear and convincing evidence. *Id.* Additionally, "all three of these requirements must be met in order for

mandamus to lie.” *State ex rel. Kirtz v. Corrigan*, 61 Ohio St.3d 435, 438, 575 N.E.2d 186 (1991).

This Court has emphasized the difficult burden a party must meet when seeking mandamus against the Secretary of State. “ ‘Moreover, ‘[i]n extraordinary-writ actions challenging a decision of the secretary of state, the standard is whether the secretary engaged in fraud, corruption, or abuse of discretion, or acted in clear disregard of applicable law.’ ” *Linnabary*, at ¶ 14, quoting *State ex rel. Lucas Cty. Republican Party Exec. Comm. v. Brunner*, 125 Ohio St.3d 427, 2010-Ohio-1876, 928 N.E.2d 1072, ¶ 9. Relators make no allegations of fraud or corruption, “so the dispositive issue is whether [the Secretary] abused his discretion or clearly disregarded applicable law . . . .” *Id.*

Additionally, “ ‘[w]hen an election statute is subject to two different, but equally reasonable, interpretations, the interpretation of the Secretary of State, the state’s chief election officer, is entitled to more weight.’ ” *Id.* at ¶ 23, quoting *State ex rel. Herman v. Klopffleisch*, 72 Ohio St.3d 581, 586, 651 N.E.2d 995 (1995). Where the Secretary of State’s interpretation of a statute is reasonable, that interpretation is entitled to judicial deference. *Id.*; *see also State ex rel Colvin v. Brunner*, 120 Ohio St.3d 110, 2008-Ohio-5041, 896 N.E.2d 979, ¶ 57 (“The secretary of state’s construction is reasonably supported . . . the court must defer to that reasonable interpretation.”).

#### **B. Relators Are Not Entitled To The Relief That They Seek.**

Relators argue that “Secretary LaRose acted in clear disregard of the applicable legal provisions by calculating filing deadlines for the August 2, 2022 primary election based on the date of May 3, 2022, instead of when the primary will actually be held.” Relators’ Brief at 13. They quote the statutory language for R.C. 3513.05 and R.C. 3513.041, which set the periods for

filing. And as their textual analysis suggests—and as the Secretary of State acknowledged in the *Gonidakis* litigation—in ordinary circumstances candidate filing deadlines are set by the Revised Code. For declarations of candidacy and petitions, the statutory deadline is the ninetieth day before the date of the primary election. *See* R.C. 3513.05. For declarations of intent to be a write-in candidate, the deadline is the seventy-second day preceding the date of the primary election. *See* R.C. 3513.041.

Significantly, however, Relators’ analysis is incomplete. It ignores the critical fact that August 2 *was not the primary election date* until the *Gonidakis* panel ordered it on May 27. And the Revised Code does not speak to circumstances where an election date is set after the passage of the standard elections deadlines. On the dates that Relators actually filed their declarations and petitions, there was no primary election scheduled (other than May 3). A person cannot file a valid declaration of candidacy and petition for an election date that does not legally exist. Therefore, the declarations and petitions were invalid. The Secretary of State does not have a clear legal duty to direct the boards of elections to accept invalid declarations and petitions.

**1. The Secretary of State followed applicable Ohio law and is complying with the federal court’s order in *Gonidakis*.**

*a) Relators did not timely file for the May 3, 2022 primary election.*

The primary elections for General Assembly and party state central committee were scheduled for May 3, 2022. Candidates for party nominations for those positions were required to file a declaration of candidacy and petition no later than 4:00 p.m. on the ninetieth day before the primary election, February 2, 2022. *See* R.C. 3513.05. The deadline to file for the General Assembly as a write-in candidate was February 22, 2022. *See* R.C. 3513.041.

There was, of course, uncertainty as the filing deadlines approached. This Court invalidated Map 1 on January 12, 2022 and ordered the Ohio Redistricting Commission to adopt a new district

plan within ten days. *See League of Women Voters of Ohio, 2022-Ohio-65* at ¶ 138. The Commission adopted Map 2 on January 22, 2022. The validity of that map was soon challenged in this Court. This created uncertainty for candidates who had already filed; who had gathered signatures in areas that were no longer within the districts in which they resided; or who were unsure whether the then-current map would hold up.

The General Assembly acted to address that uncertainty by passing Substitute House Bill 93. The bill included numerous provisions of temporary law that modified petition requirements for candidates for the U.S. House, the General Assembly, and party central committees. These changes were designed to allow filings to be considered valid if the petitions were circulated, or even filed, before the new district plans were known. The act relaxed requirements regarding the district number and the candidate's residence address indicated on the filing; the board of elections with which the documents are filed; the date of the petition signatures; and where the signers resided. Sub. H.B. No. 93, Section 4.

Among other changes, the act indicated that a filing would 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. *Id.* Under certain circumstances, the act allowed candidates for the General Assembly to move to a new district and file an addendum with the board of elections informing the board of their move. *Id.* The act specified that a petition signature must not be considered invalid on the ground that the signer does not reside in the district the filer seeks to represent, as long as (1) the signer lives in a county in which the filer's district had territory under the district plans adopted in the fall of 2021 and (2) the signer lives in a county in which the district the filer currently seeks to represent has territory. *Id.*

These changes and others created greater flexibility for potential candidates, in light of the overall circumstances. The bill also gave the Secretary of State greater latitude to adjust “deadlines pertaining to the administration of the May 3rd primary election.” *Id.* at Section 4(G). However, the bill specifically excluded from this the Secretary’s ability to alter “[t]he deadline to file a declaration of candidacy, declaration of candidacy and petition, or declaration of intent to be a write-in candidate.” *Id.*

These loosened requirements were a bi-partisan solution to the uncertainty that candidates and potential candidates faced. The final version of the bill passed the Senate unanimously and received a bi-partisan, supermajority concurrence vote in the House of Representatives. *See* Legislative Service Commission, House Bill 93, *available at* <https://www.legislature.ohio.gov/legislation/legislation-votes?id=GA134-HB-93> (last accessed June 7, 2022) (showing January 26, 2022 votes of 33-0 in the Ohio Senate and 74-19 in the Ohio House of Representatives). These sections of House Bill 93 were passed with an emergency clause, and became effective immediately upon the Governor’s signature on January 28, 2022, prior to the candidate filing deadline of February 2. After that February 2 filing deadline, under Section 4 of House Bill 93, candidates who had timely filed could submit an addendum indicating their intent to move into another district. Like other potential candidates, Relators had the opportunity to take advantage of these loosened filing requirements. Yet they chose not to do so.

After this Court invalidated Map 3, the Secretary of State issued Directive 2022-30. In that directive, the Secretary directed the boards of elections to “pause” the petition review process after the candidate certification deadline but before all protests were completed. Directive 2022-30. After it became clear that federal judicial intervention was not immediately forthcoming, on March 23, 2022 the Secretary issued Directive 2022-31, which stated that it was no longer possible to

include the primary contests for the General Assembly and party state central committees on the May 3, 2022 primary election ballot. Relators' Brief, Ex. B (REL\_EVID\_012). On March 28, 2022, the Ohio Redistricting Commission adopted Map 4.

*b) The Secretary of State is complying with the Gonidakis panel's orders.*

The challenges posed to the standard elections calendar were neither unanticipated nor disregarded by the *Gonidakis* panel. On March 30, the federal panel in *Gonidakis* held a hearing that addressed numerous issues related to the Ohio redistricting process and election procedures. This included significant discussion—and hours of testimony—about the filing deadlines, their bases in the Ohio Revised Code, and the practical implications of altering those deadlines. For example, Ohio Deputy Attorney General Jonathan Blanton indicated that he had spoken with the Secretary of State and understood his preferred course of action. Resp'ts Ex. 1, p. 75. Blanton indicated that the use of Map 3 with a primary date that fell less than 90 days away would not re-open the filing period:

“That would, in terms of timing, allow for the use of the more compressed time frame because the map three calendar would be a continuation of what has already been done. So it wouldn't be reopening candidate filing. It wouldn't be reopening the certification of candidates and petitions which is that 90-day window. We would be back down more to about a 55-day window, 46 of which is UOCAVA, and then the administration ahead of that affords the opportunity to handle protests, to do programming, to do clean up.”

Resp'ts Ex. 1 at 76.

Although this was in reference to a potential primary date later in May to hold one unified primary election, rather than two separate primary elections, the pre-election time frame contemplated was similar to (and likely the basis for) the time frame ultimately adopted by the *Gonidakis* panel.

The Secretary of State's Director of Elections also made clear that, in order for a primary election to take place on August 2 with the full elections calendar intact, the panel needed to issue an order by April 20 that specified a particular district plan and order August 2 as the primary date. Resp'ts Ex. 1 at 83-84, 112-113; Relators' Brief, Ex. K (REL\_EVID\_116). In fact, all parties seemingly agreed with that point. Resp'ts Ex. 1 at 111, 236-237, 239-240, 242, 243-244. So while Relators correctly state that Director Grandjean indicated that the "90-day statutory deadlines [] are tied to the date of the primary election" and would "reset by operation of law," it is important to keep her statement in context. *See* Relators' Brief at 16. Her statement was premised on the federal panel issuing an order setting August 2 as the legislative primary date *more* than 90 days before August 2. But that is not the Secretary's position where, as here, the primary date was set *less* than 90 days out. Indeed, the *Gonidakis* panel understood this distinction. In its April 20 Opinion, the *Gonidakis* panel indicated that Map 3 would be its fallback option in part because "some of the statutory periods have already gone into effect under Map 3, such as the 30 days for candidates to move and 90 days to register." *Gonidakis*, April 20 Order at \* 24.

Again, the *Gonidakis* panel did not order immediate relief in its April 20, 2022 opinion and therefore did not set a new primary election date at that time. The court foreshadowed what it would do if state officials remained unable to reach agreement on a map. *Id.* at \*1. However, this potential future order was contingent upon future events that may or may not occur. *See id.* ("If the State fails to act, however, this timeline will ensure Ohioans can vote in the election ....") (emphasis added); *id.* ("In the event that Ohio does not reach a resolution before May 28, we will order that the state-legislative primary races be held on the special-election date of August 2, 2022.") (emphasis added). Relators acknowledge this in their brief. *See* Relators' Brief at 6

(recognizing that the court “did not actually issue” an order setting the August 2, 2022 primary date until May 27, 2022).

It was against this backdrop that Relators each purported to file either a declaration of candidacy and petition, or a declaration of intent to run as a write-in candidate. Each listed August 2 as the primary election date on their filing. Relators’ Brief, Exs. C-F. Yet at the time of those filings, August 2 was not the primary date—it was just one possible outcome, depending upon the future actions of various state actors. In short, they filed for an election that, at the time of their filings, did not exist in state law.

Eventually, on May 27, 2022, the Secretary of State was ordered by the *Gonidakis* panel “to push back Ohio’s state primaries to August 2, 2022, and to implement Map 3” for this year’s elections only. *Gonidakis*, May 27 Order at \*1. But *that* ruling, finally setting the primary date, was 67 days prior to August 2—a shorter time period than those under R.C. 3513.05 and R.C. 3513.041. Notably, the panel’s order did not discuss re-opening the filing periods.

As a result of this order, on May 28, 2022 the Secretary issued Directive 2022-34. Among other things, the directive instructs boards of elections to hold the primary election for General Assembly and party state central committee on August 2, pursuant to the *Gonidakis* court’s order. The order also instructs the boards of elections to reject declarations of candidacy and declarations of intent that were filed after the deadlines applicable to the May 3, 2022 primary. Relators’ Brief, Ex. A (REL\_EVID\_003).

c) *The Secretary of State does not have a clear legal duty to require boards of elections to accept Relators’ declarations or petitions.*

Relators argue that the Secretary of State “misdirected” the boards of elections by instructing them to apply the filing deadlines as they existed for the scheduled May 3, 2022 primary. But the Secretary of State did not have a clear legal duty to instruct otherwise. The texts

of R.C. 3513.05 and R.C. 3513.041 make clear that the filing window would have re-opened if the primary election date was changed to a date more than 90 days out. But those statutes do not contemplate the unusual situation here, where a court ordered the Secretary to “push back” the election to a date that is less than 90 days away. *See Judy v. Ohio Bur. of Motor Vehicles*, 100 Ohio St. 3d 122, 2003-Ohio-5277, 797 N.E.2d 45, ¶ 19 (courts must “give effect to the words used” in the statute and must not “delete words used” or “insert words not used”), *opinion modified on denial of reh'g*, 100 Ohio St.3d 1536, 2003-Ohio-6611, 800 N.E.2d 369, ¶ 19; *see also Cleveland Elec. Illuminating Co. v. City of Cleveland*, 37 Ohio St.3d 50, 524 N.E.2d 441, paragraph three of the syllabus (1988) (“In matters of construction, it is the duty of this court to give effect to the words used, not to delete words used or to insert words not used.”).

No matter how they frame the issue, Relators seek to retroactively re-open the filing period and require the boards of elections to accept petitions that were improperly filed. The August 2 primary was ordered by the *Gonidakis* panel on May 27, but the Relators would have the Secretary retroactively order a May 4 candidate filing deadline. The Secretary does not have a clear legal duty to instruct the boards to do this. Nor does he have the discretion to do so. He is broadly precluded from holding elections other than in the time, place and manner set by the Revised Code. *See* R.C. 3501.40. And House Bill 93 demonstrates the legislature’s intent for the 2022 primary. The General Assembly substantially loosened candidate requirements and gave the Secretary of State administrative flexibility in many regards, while specifically prohibiting him from moving filing dates. *See* Sub. H.B. No. 93, Section 4(G).

Relators point to alleged inconsistencies in Directive 2022-34 to bolster their claims. For example, on multiple occasions they point out that Directive 2022-34 directs that the filing deadline for local ballot measures and local options was May 4, 2022. They claim that this fact

rebutts “any claim Secretary LaRose makes that he set the deadlines in good faith.” Relators’ Brief at 21; *see also id.* at 18 (“Secretary LaRose’s attempt to pin the deadlines on the *Gonidakis* decision is further belied by the other deadlines set forth in Directive 2022-34, which *are* based on the August 2, 2022 date.”) (emphasis in original). This alleged inconsistency is illusory. This “inconsistency” is illusory. August 2 is a regularly-scheduled special election date. R.C. 3501.01(D). It was not, however, the regularly-scheduled General Assembly primary election date. That occurred only by operation of the *Gonidakis* court’s order on May 27. By contrast, local option election precincts are not determined through the redistricting process, and thus any attempted comparison between the two processes is an unwarranted diversion.

One final point bears emphasis. Relators’ analysis is based on the assumption that filing deadlines serve to protect the interests of the candidates. This is true, but it is only part of the story. These deadlines also serve the important function of ensuring that the Secretary of State and the boards of elections have enough time to run a fair and orderly election. This Court has long recognized the important state interests protected by election provisions, such as, *inter alia*, conducting orderly and fair elections, maintaining the integrity of the election process and ensuring ballot access, and avoiding voter confusion. *State ex rel. Purdy v. Clermont Cty. Bd. of Elections*, 77 Ohio St.3d 338, 344, 1997-Ohio-278, 673 N.E.2d 1351. *See also State ex rel. Canales-Flores v. Lucas Cty. Bd. of Elections*, 108 Ohio St.3d 129, 2005-Ohio-5642, 841 N.E.2d 757, ¶ 39.

This is even more critical in Ohio, which for years has had very generous early and absentee voting laws that require a substantial window of time prior to the actual election date for boards to finalize, prepare, and electronically test their ballots. As noted *supra*, the boards of elections must have UOCAVA ballots ready by no later than June 17, 2022. *See* R.C. 3511.04. The Secretary of

State does not have a clear legal duty to issue directives that could violate other statutes or jeopardize the administration of the election.

**C. Granting the Requested Relief This Close to the August 2 Primary Would Result in Voter Confusion and in the Violation of Other State Election Laws.**

Granting the Relators' requested relief would place a heavy burden on Ohio's boards of elections and endanger the orderly conduct of the August 2 primary election. Courts have recognized that modification and alteration of election laws close to an election result in voter confusion and impede the orderly conduct of the election itself. *See Purcell v. Gonzalez*, 549 U.S. 1 (2006). Changes to election rules near an election can create both voter and administrator confusion. *Democratic Nat'l Comm. v. Wisconsin State Legislature*, 141 S.Ct. 28, 31, 208 L.Ed.2d 247 (2020) (*Kavanaugh, J.*, concurring in denial of application to vacate stay). "Even seemingly innocuous late-in-the-day judicial alterations to state election laws can interfere with administration of an election and cause unanticipated consequences." *Id.*; *see also Ohio Democratic Party v. LaRose*, 10th Dist. Franklin No. 20AP-421, No. 20AP-428, 2020-Ohio-4664. In this instance, granting the Relators relief would result in the violation of other aspects of Ohio's election laws to the detriment of the election process.

If this Court issues the writ of mandamus, it will sow confusion on the eve of an election and impose significant additional work on an unknown number of county boards of elections. The Relators seek "an Order, Judgement and/or Writ of Mandamus ordering Secretary of State Frank LaRose . . . to direct the county boards of elections to (1) accept any declarations of candidacy that were filed before 4 p.m. on May 4, 2022 that are otherwise valid, and (2) accept any declarations of intent to be a write-in candidate that were filed before 4 p.m. on May 23, 2022 that are otherwise valid." Compl. at ¶ 2. Clearly the relief sought is not narrowly focused on the six Relators, but extends to any party that filed in advance of what would be a new and second May 4 filing deadline.

As of this time, this Respondent does not know how many individuals would be brought within the Relators' requested relief.

Nevertheless, for each of the six identified Relators, the Respondent Boards of Election would be required under R.C. 3513.05 to carry out a number of significant and time consuming steps to qualify them to the ballot, including the following: (1) verifying the signatures and other aspects of the petitions, (2) allowing the public inspection of the petitions for ten days, (3) receiving protests against partisan candidate positions six days later, and (4) conducting a hearing on any protest received by a board. Completing the process in an orderly way is important to assure a sound election on August 2.

In reality, however, the election only ends on August 2. Functionally, it begins on June 17. The boards of election must have the UOCAVA ballots that go to overseas military and civilian personnel ready by no later than 46 days before an election. R.C. 3511.04; Resp'ts Ex. 2, ¶¶ 15, 33; *Voting Schedule for the 2022 Elections*, Frank LaRose: Ohio Secretary of State, available at <https://www.ohiosos.gov/elections/voters/current-voting-schedule/2022-schedule/> (last accessed June 7, 2022). To have those ballots ready to be sent, the ballots and the candidates on them must be locked down and finalized well in advance of June 17. Secretary LaRose's Directive 2022-34 seeks to have the candidates finalized (*i.e.*, candidates' petitions certified as valid by boards, any protests against certified candidates filed with boards, protests scheduled and heard by boards, and protests decided by boards) no later than June 10, 2022. That date will have passed before this Court will be able to act in this case. There simply is not enough time to get these alleged "new" candidates through this whole process by June 10.

The boards can only now complete these tasks for the candidates that filed before the February 2 petition deadline because so much of this work was done by the boards in March. *See*

Resp'ts Ex. 2 at ¶ 36. Based on Directive 2022-28, the boards had certified (or not certified) by March 14, 2022, the General Assembly and State Central Committee candidates who filed by February 2. Directive 2022-28 at 4; Resp'ts Ex. 2 at ¶ 36. Directive 2022-34 directed the boards to re-certify the same candidates by June 3. Resp'ts Ex. 2 at ¶ 34. Granting the Relators' requested relief would at a minimum require the Secretary of State to issue a new Directive modifying the dates in Directive 2022-34,<sup>1</sup> and would result in the UOCAVA ballots being materially late in being issued, which would violate R.C. 3511.04.

In short, there are competing statutes and competing interests here. There are other laws, beyond Relators' interpretation of the filing deadlines, which must be followed. The state's compelling interest in orderly elections administration outweighs the request to retroactively recognize a new second filing deadline to put "new" candidates on the ballot. *See* Resp'ts Ex. 2 at ¶ 39.

Finally, the Relators' alternative remedy to set a new filing deadline for both petitions and statements of write-in candidacy on the tenth day following this Court's decision in this matter would significantly exacerbate the inability of the August 2 election to be conducted in a fair and reasonable manner and result in even more violations of Ohio election law. Beyond a significant delay in mailing of UOCAVA ballots, a new filing deadline in late June would certainly interfere with the timely implementation of domestic absentee and early in-person voting, both of which are scheduled to start on July 5. Relators' alternative remedy would not just impact the orderly administration of the election, it would create a substantial risk of curtailing the right of Ohio voters to reasonably cast their votes in conformance with Ohio's election laws.

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<sup>1</sup> As the Sixth Circuit recently noted, "Rewriting a state's election procedures or moving deadlines rarely ends with one court order. Moving one piece on the game board invariably leads to additional moves. . . ." *Thompson v. Dewine*, 959 F.3d 804, 813 (6th Cir.2020).

#### **D. Conclusion**

For the reasons set forth above, Relators' request for writ of mandamus and any alternative relief should be **DENIED**.

Respectfully submitted,

/s/ Larry J. Obhof, Jr.

Larry J. Obhof, Jr. (0088823)

*\*Counsel of Record*

Shumaker, Loop & Kendrick, LLP

41 South High Street, Suite 2400

Columbus, OH 43215

(614) 463-9441

[lobhof@shumaker.com](mailto:lobhof@shumaker.com)

Douglas G. Haynam (0019773)

Alia A. Kadri (0100721)

Shumaker, Loop & Kendrick, LLP

1000 Jackson Street

Toledo, OH 43604

(419) 241-9000

[mwagone@shumaker.com](mailto:mwagone@shumaker.com)

[dhaynam@shumaker.com](mailto:dhaynam@shumaker.com)

[akadri@shumaker.com](mailto:akadri@shumaker.com)

*Counsel for Respondent*

*Ohio Secretary of State Frank LaRose*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 8th day of June, 2022, the foregoing *Merit Brief of Respondent Ohio Secretary of State Frank LaRose* was filed electronically and served by electronic mail upon the following:

Donald J. McTigue (0022849)  
*\*Counsel of Record*  
Derek S. Clinger (0092075)  
McTigue Colombo & Clinger LLC  
545 E. Town Street  
Columbus, OH 43215  
dmctigue@electionlawgroup.com  
dclinger@electionlawgroup.com

*Counsel for Relators*

Mathias H. Heck, Jr.  
Montgomery County Prosecutor  
Ward C. Barrentine (0074366)  
Nathaniel S. Peterson (0095312)  
Assistant Prosecuting Attorneys  
301 West Third Street  
P.O. Box 972  
Dayton, Ohio 45422  
barrentinw@mcoho.org  
petersonn@mcoho.org

*Counsel for Respondent*  
*Montgomery County Board of Elections*

Gary Tyack (0017524)  
Franklin County Prosecutor  
Amy L. Hiers (0065028)  
Deputy Chief Counsel and  
Director of Litigation  
Andrea C. Hofer (0101258)  
Assistant Prosecuting Attorney  
373 S. High Street, 13th Floor  
Columbus, Ohio 43215  
ahiers@franklincountyohio.gov  
ahofer@franklincountyohio.gov

*Counsel for Respondent*  
*Franklin County Board of Elections*

Bill Hayes (0011733)  
Licking County Prosecutor  
Carolyn J. Carnes (0066756)  
Mark W. Altier (0017882)  
Assistant Prosecuting Attorneys  
20 S. Second Street  
Newark, Ohio 43055  
ccarnes@lcounty.com  
maltier@lcounty.com

*Counsel for Respondent*  
*Licking County Board of Elections*

/s/ Larry J. Obhof, Jr.  
Larry J. Obhof, Jr. (0088823)  
*Counsel for Respondent*  
*Ohio Secretary of State*  
*Frank LaRose*

**IN THE SUPREME COURT OF OHIO**

State ex rel. WILLIAM DEMORA, et al.,	:	Case No. 2022-0661
	:	
Relators,	:	Original Action in Mandamus
	:	
v.	:	Expedited Election Matter
	:	Pursuant to S.Ct.Prac.R. 12.08
FRANK LAROSE, et al.,	:	
	:	
Respondents.	:	

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**APPENDIX OF CITED LEGAL AUTHORITY**

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R.C. 3511.04	
.....	1
R.C. 3501.01	
.....	3
Sub. H.B. No. 93	
.....	10
Ohio Secretary of State’s Directive 2022-30	
.....	44
Ohio Secretary of State’s Directive 2022-28	
.....	46

## Section 3511.04 | Ballot sent by mail, facsimile machine or other means.

Ohio Revised Code / Title 35 Elections /  
Chapter 3511 Armed Services Absent Voter's Ballots

*Effective: March 20, 2019    Latest Legislation: House Bill 41 - 132nd General Assembly*

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(A) If a director of a board of elections receives an application for uniformed services or overseas absent voter's ballots that does not contain all of the required information, the director promptly shall notify the applicant of the additional information required to be provided by the applicant to complete that application.

(B) Not later than the forty-sixth day before the day of each general or primary election, and at the earliest possible time before the day of a special election held on a day other than the day on which a general or primary election is held, the director of the board of elections shall mail, send by facsimile machine, send by electronic mail, send through internet delivery if such delivery is offered by the board of elections or the secretary of state, or otherwise send uniformed services or overseas absent voter's ballots then ready for use as provided for in section [3511.03](#) of the Revised Code and for which the director has received valid applications prior to that time. Thereafter, and until twelve noon of the third day preceding the day of election, the director shall promptly, upon receipt of valid applications for them, mail, send by facsimile machine, send by electronic mail, send through internet delivery if such delivery is offered by the board of elections or the secretary of state, or otherwise send to the proper persons all uniformed services or overseas absent voter's ballots then ready for use.

If, after the seventieth day before the day of a general or primary election, any other question, issue, or candidacy is lawfully ordered submitted to the electors voting at the general or primary election, the board shall promptly provide a separate official issue, special election, or other election ballot for submitting the question, issue, or candidacy to

those electors, and the director shall promptly mail, send by facsimile machine, send by electronic mail, send through internet delivery if such delivery is offered by the board of elections or the secretary of state, or otherwise send each such separate ballot to each person to whom the director has previously mailed or sent other uniformed services or overseas absent voter's ballots.

A board of elections that mails or otherwise delivers uniformed services or overseas absent voter's ballots to an elector under this section shall not prepay the return postage for those ballots. In mailing uniformed services or overseas absent voter's ballots, the director shall use the fastest mail service available, but the director shall not mail them by certified mail.

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## Available Versions of this Section

June 1, 2014 – Senate Bill 205 - 130th General Assembly

March 20, 2019 – Amended by House Bill 41 - 132nd General Assembly

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## Section 3501.01 | Election procedure - election officials definitions.

Ohio Revised Code / Title 35 Elections /  
Chapter 3501 Election Procedure; Election Officials

*Effective: September 30, 2021    Latest Legislation: Senate Bill 80 - 134th General Assembly*

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As used in the sections of the Revised Code relating to elections and political communications:

(A) "General election" means the election held on the first Tuesday after the first Monday in each November.

(B) "Regular municipal election" means the election held on the first Tuesday after the first Monday in November in each odd-numbered year.

(C) "Regular state election" means the election held on the first Tuesday after the first Monday in November in each even-numbered year.

(D) "Special election" means any election other than those elections defined in other divisions of this section. A special election may be held only on the first Tuesday after the first Monday in May, August, or November, or on the day authorized by a particular municipal or county charter for the holding of a primary election, except that in any year in which a presidential primary election is held, no special election shall be held in May, except as authorized by a municipal or county charter, but may be held on the third Tuesday after the first Monday in March.

(E)(1) "Primary" or "primary election" means an election held for the purpose of nominating persons as candidates of political parties for election to offices, and for the purpose of electing persons as members of the controlling committees of political parties and as delegates and alternates to the conventions of political parties. Primary elections shall be

held on the first Tuesday after the first Monday in May of each year except in years in which a presidential primary election is held.

(2) "Presidential primary election" means a primary election as defined by division (E)(1) of this section at which an election is held for the purpose of choosing delegates and alternates to the national conventions of the major political parties pursuant to section [3513.12](#) of the Revised Code. Unless otherwise specified, presidential primary elections are included in references to primary elections. In years in which a presidential primary election is held, all primary elections shall be held on the third Tuesday after the first Monday in March except as otherwise authorized by a municipal or county charter.

(F) "Political party" means any group of voters meeting the requirements set forth in section [3517.01](#) of the Revised Code for the formation and existence of a political party.

(1) "Major political party" means any political party organized under the laws of this state whose candidate for governor or nominees for presidential electors received not less than twenty per cent of the total vote cast for such office at the most recent regular state election.

(2) "Minor political party" means any political party organized under the laws of this state that meets either of the following requirements:

(a) Except as otherwise provided in this division, the political party's candidate for governor or nominees for presidential electors received less than twenty per cent but not less than three per cent of the total vote cast for such office at the most recent regular state election. A political party that meets the requirements of this division remains a political party for a period of four years after meeting those requirements.

(b) The political party has filed with the secretary of state, subsequent to its failure to meet the requirements of division (F)(2)(a) of this section, a petition that meets the requirements of section [3517.01](#) of the Revised Code.

A newly formed political party shall be known as a minor political party until the time of the first election for governor or president which occurs not less than twelve months subsequent to the formation of such party, after which election the status of such party shall be determined by the vote for the office of governor or president.

(G) "Dominant party in a precinct" or "dominant political party in a precinct" means that political party whose candidate for election to the office of governor at the most recent regular state election at which a governor was elected received more votes than any other person received for election to that office in such precinct at such election.

(H) "Candidate" means any qualified person certified in accordance with the provisions of the Revised Code for placement on the official ballot of a primary, general, or special election to be held in this state, or any qualified person who claims to be a write-in candidate, or who knowingly assents to being represented as a write-in candidate by another at either a primary, general, or special election to be held in this state.

(I) "Independent candidate" means any candidate who claims not to be affiliated with a political party, and whose name has been certified on the office-type ballot at a general or special election through the filing of a statement of candidacy and nominating petition, as prescribed in section [3513.257](#) of the Revised Code.

(J) "Nonpartisan candidate" means any candidate whose name is required, pursuant to section [3505.04](#) of the Revised Code, to be listed on the nonpartisan ballot, including all candidates for judge of a municipal court, county court, or court of common pleas, for member of any board of education, for municipal or township offices in which primary elections are not held for nominating candidates by political parties, and for offices of municipal corporations having charters that provide for separate ballots for elections for these offices.

(K) "Party candidate" means any candidate who claims to be a member of a political party and who has been certified to appear on the office-type ballot at a general or special election as the nominee of a political party because the candidate has won the primary election of the candidate's party for the public office the candidate seeks, has been nominated under section [3517.012](#), or is selected by party committee in accordance with section [3513.31](#) of the Revised Code.

(L) "Officer of a political party" includes, but is not limited to, any member, elected or appointed, of a controlling committee, whether representing the territory of the state, a district therein, a county, township, a city, a ward, a precinct, or other territory, of a major or minor political party.

(M) "Question or issue" means any question or issue certified in accordance with the Revised Code for placement on an official ballot at a general or special election to be held in this state.

(N) "Elector" or "qualified elector" means a person having the qualifications provided by law to be entitled to vote.

(O) "Voter" means an elector who votes at an election.

(P) "Voting residence" means that place of residence of an elector which shall determine the precinct in which the elector may vote.

(Q) "Precinct" means a district within a county established by the board of elections of such county within which all qualified electors having a voting residence therein may vote at the same polling place.

(R) "Polling place" means that place provided for each precinct at which the electors having a voting residence in such precinct may vote.

(S) "Board" or "board of elections" means the board of elections appointed in a county pursuant to section [3501.06](#) of the Revised Code.

(T) "Political subdivision" means a county, township, city, village, or school district.

(U) "Election officer" or "election official" means any of the following:

(1) Secretary of state;

(2) Employees of the secretary of state serving the division of elections in the capacity of attorney, administrative officer, administrative assistant, elections administrator, office manager, or clerical supervisor;

(3) Director of a board of elections;

(4) Deputy director of a board of elections;

(5) Member of a board of elections;

(6) Employees of a board of elections;

(7) Precinct election officials;

(8) Employees appointed by the boards of elections on a temporary or part-time basis.

(V) "Acknowledgment notice" means a notice sent by a board of elections, on a form prescribed by the secretary of state, informing a voter registration applicant or an applicant who wishes to change the applicant's residence or name of the status of the application; the information necessary to complete or update the application, if any; and if the application is complete, the precinct in which the applicant is to vote.

(W) "Confirmation notice" means a notice sent by a board of elections, on a form prescribed by the secretary of state, to a registered elector to confirm the registered elector's current

address.

(X) "Designated agency" means an office or agency in the state that provides public assistance or that provides state-funded programs primarily engaged in providing services to persons with disabilities and that is required by the National Voter Registration Act of 1993 to implement a program designed and administered by the secretary of state for registering voters, or any other public or government office or agency that implements a program designed and administered by the secretary of state for registering voters, including the department of job and family services, the program administered under section [3701.132](#) of the Revised Code by the department of health, the department of mental health and addiction services, the department of developmental disabilities, the opportunities for Ohioans with disabilities agency, and any other agency the secretary of state designates. "Designated agency" does not include public high schools and vocational schools, public libraries, or the office of a county treasurer.

(Y) "National Voter Registration Act of 1993" means the "National Voter Registration Act of 1993," 107 Stat. 77, 42 U.S.C.A. 1973gg.

(Z) "Voting Rights Act of 1965" means the "Voting Rights Act of 1965," 79 Stat. 437, 42 U.S.C.A. 1973, as amended.

(AA) "Photo identification" means a document that meets each of the following requirements:

(1) It shows the name of the individual to whom it was issued, which shall conform to the name in the poll list or signature pollbook.

(2) It shows the current address of the individual to whom it was issued, which shall conform to the address in the poll list or signature pollbook, except for a driver's license or a state identification card issued under section [4507.50](#) of the Revised Code, which may show

either the current or former address of the individual to whom it was issued, regardless of whether that address conforms to the address in the poll list or signature pollbook.

- (3) It shows a photograph of the individual to whom it was issued.
- (4) It includes an expiration date that has not passed.
- (5) It was issued by the government of the United States or this state.

*Last updated July 14, 2021 at 11:08 AM*

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## Available Versions of this Section

September 29, 2013 – Senate Bill 193, Senate Bill 109, House Bill 59 - 130th General Assembly

September 9, 2015 – House Bill 153, House Bill 64 - 131st General Assembly

September 29, 2015 – House Bill 153 - 131st General Assembly

October 17, 2019 – Amended by House Bill 166 - 133rd General Assembly

September 30, 2021 – Amended by Senate Bill 80 - 134th General Assembly

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# AN ACT

To amend sections 111.42, 111.43, 111.45, 111.46, 111.48, 111.99, 149.43, 315.25, 317.13, 317.32, 319.28, 2303.12, and 5301.255 and to enact sections 111.431 and 321.25 of the Revised Code and to repeal Section 4 of S.B. 258 of the 134th General Assembly to make changes to the Address Confidentiality Program administered by the Secretary of State, to make changes to county recorder fees, to modify certain requirements for the 2022 primary election, and to declare an emergency.

*Be it enacted by the General Assembly of the State of Ohio:*

SECTION 1. That sections 111.42, 111.43, 111.45, 111.46, 111.48, 111.99, 149.43, 315.25, 317.13, 317.32, 319.28, 2303.12, and 5301.255 be amended and sections 111.431 and 321.25 of the Revised Code be enacted to read as follows:

Sec. 111.42. (A) A person to whom all of the following applies may apply to the secretary of state with the assistance of an application assistant to become a participant in the address confidentiality program, in which an address designated by the secretary of state serves as the person's address or the address of the minor, incompetent, or ward on whose behalf the person is applying:

(1) The applicant is an adult who is applying on behalf of the person's self or is a parent or guardian applying on behalf of a minor, incompetent, or ward.

(2) The applicant or the minor, incompetent, or ward, as applicable, resides, works, or attends a school or an institution of higher education in this state.

~~(3) The applicant or the minor, incompetent, or ward, as applicable, is changing residence.~~

~~(4)~~The applicant fears for the safety of the applicant, a member of the applicant's household, or the minor, incompetent, or ward on whose behalf the application is made because the applicant, household member, minor, incompetent, or ward is a victim of domestic violence, menacing by stalking, human trafficking, trafficking in persons, rape, or sexual battery.

~~(5)~~~~(4)~~The applicant or the minor, incompetent, or ward, as applicable, is not a tier I sex offender/child-victim offender, a tier II sex offender/child-victim offender, or a tier III sex offender/child-victim offender.

(B) An application to become a participant in the address confidentiality program shall be made on a form prescribed by the secretary of state and filed in the office of the secretary of state in the manner prescribed by the secretary of state. The application shall contain all of the following:

(1) A notarized statement by the applicant that the applicant fears for the safety of the applicant, a member of the applicant's household, or the minor, incompetent, or ward on whose behalf the application is made because the applicant, household member, minor, incompetent, or

ward is a victim of domestic violence, menacing by stalking, human trafficking, trafficking in persons, rape, or sexual battery;

(2) A statement that the application assistant recommends that the applicant or the minor, incompetent, or ward, as applicable, participate in the address confidentiality program;

(3) A knowing and voluntary designation of the secretary of state as the agent for the purposes of receiving service of process and the receipt of mail;

(4) The mailing address and telephone number or numbers at which the secretary of state may contact the applicant;

(5) The address or addresses of the applicant's residence, school, institution of higher education, business, or place of employment that the applicant requests not be disclosed for the reason that disclosure will increase the risk that the applicant, a member of the applicant's household, or the minor, incompetent, or ward on whose behalf the application is made will be threatened or physically harmed by another person;

(6) The signature of the applicant, the name and signature of the application assistant who assisted the applicant, and the date on which the applicant and the application assistant signed the application;

(7) Except for a claim based on the performance or nonperformance of a public duty that was manifestly outside the scope of the officer's or employee's office or employment or in which the officer or employee acted with malicious purpose, in bad faith, or in a wanton or reckless manner, a voluntary release and waiver of all future claims against the state for any claim that may arise from participation in the address confidentiality program.

(C) Upon receiving a properly completed application under division (B) of this section, the secretary of state shall, within ten business days, do all of the following:

(1) Certify the applicant or the minor, incompetent, or ward on whose behalf the application is filed as a program participant;

(2) Designate each eligible address listed in the application as a confidential address;

(3) Issue the program participant a unique program participant identification number;

(4) Issue the program participant an address confidentiality program authorization card, which shall be valid during the period that the program participant remains certified to participate in the address confidentiality program, and which shall include the address at which the program participant may receive mail through the office of the secretary of state;

(5) Provide information to the program participant concerning all of the following:

(a) The manner in which the program participant may use the secretary of state as the program participant's agent for the purposes of receiving mail and receiving service of process and the types of mail that the secretary of state will forward to the program participant;

~~(6) Provide information to the program participant concerning the~~ (b) The process to register to vote and to vote as a program participant, if the program participant is eligible to vote;

(c) The process to file a real property confidentiality notice with the county recorder concerning any real property in which the program participant acquires an ownership interest after being certified a program participant and after the effective date of this amendment;

(d) The process to authorize the secretary of state to disclose confidential information concerning the program participant under certain circumstances, as described in division (E) of

section 111.43 of the Revised Code.

(D) A program participant shall update the person's application information, within thirty days after any change has occurred, by submitting a notice of change to the office of the secretary of state on a form prescribed by the secretary of state. The secretary of state may, with proper notice, cancel a program participant's certification if the participant is found to be unreachable for a period of sixty days or more.

(E) The certification of a program participant shall be valid for four years after the date of the filing of the application for the program participant unless the certification is withdrawn or invalidated before the end of that four-year period.

(F)(1) A program participant who continues to be eligible to participate in the address confidentiality program may renew the program participant's certification by submitting a renewal application to the secretary of state with the assistance of an application assistant. The renewal application shall be on a form prescribed by the secretary of state and shall contain all of the information described in division (B) of this section.

(2) The secretary of state may prescribe by rule a grace period during which a program participant whose certification has expired may renew the program participant's certification without being considered to have ceased being a program participant during that period.

(3) When a program participant renews the program participant's certification, the program participant shall continue to use the program participant's original program participant identification number.

(G) A tier I sex offender/child-victim offender, a tier II sex offender/child-victim offender, or a tier III sex offender/child-victim offender is not eligible to participate in the address confidentiality program described in sections 111.41 to 111.99 of the Revised Code.

Sec. 111.43. (A) A program participant may request that a governmental entity, other than a board of elections, use the address designated by the secretary of state as the program participant's address. Except as otherwise provided in division ~~(D)~~-(F) of this section and in section 111.44 of the Revised Code, if the program participant requests that a governmental entity use that address, the governmental entity shall accept that address. The program participant ~~may~~ shall provide the program participant's address confidentiality program authorization card as proof of the program participant's status.

(B) A program participant who acquires an ownership interest in real property in this state after being certified as a program participant and after the effective date of this amendment may submit a real property confidentiality notice to the county recorder of the county in which the real property is located, as described in section 111.431 of the Revised Code.

(C) If a program participant's employer, school, or institution of higher education is not a governmental entity, the program participant may request that the employer, school, or institution of higher education use the address designated by the secretary of state as the program participant's address. The program participant may provide the program participant's address confidentiality program authorization card as proof of the program participant's status.

~~(C)(1)~~-(D)(1) The office of the secretary of state shall, on each day that the secretary of state's office is open for business, place all of the following that the secretary of state receives on behalf of a program participant into an envelope or package and mail that envelope or package to the program

participant at the mailing address the program participant provided to the secretary of state for that purpose:

(a) First class letters, flats, packages, or parcels delivered via the United States postal service, including priority, express, and certified mail;

(b) Packages or parcels that are clearly identifiable as containing pharmaceutical agents or medical supplies;

(c) Packages, parcels, periodicals, or catalogs that are clearly identifiable as being sent by a governmental entity;

(d) Periodicals to which the program participant subscribes;

~~(e)~~ Packages, parcels, ~~periodicals~~, or catalogs that have received prior authorization from the office of the secretary of state for forwarding under this section.

(2) Except as provided in divisions ~~(C)(1)(a)-(D)(1)(a)~~ to ~~(d)-(e)~~ of this section, the office of the secretary of state shall not forward any packages, parcels, periodicals, or catalogs received on behalf of a program participant.

(3) The secretary of state may contract with the United States postal service to establish special postal rates for the envelopes or packages used in forwarding a program participant's mail under this section.

(4)(a) Upon receiving service of process on behalf of a program participant, the office of the secretary of state shall immediately forward the process by certified mail, return receipt requested, to the program participant at the mailing address the program participant provided to the secretary of state for that purpose. Service of process upon the office of the secretary of state on behalf of a program participant constitutes service upon the program participant under rule 4.2 of the Rules of Civil Procedure.

(b) The secretary of state may prescribe by rule the manner in which process may be served on the secretary of state as the agent of a program participant.

(c) Upon request by a person who intends to serve process on an individual, the secretary of state shall confirm whether the individual is a program participant but shall not disclose any other information concerning a program participant.

~~(D)-(E)(1)~~ A program participant may submit to the secretary of state, on a form prescribed by the secretary of state, an authorization for the secretary of state to disclose confidential information concerning the program participant under one or more of the following circumstances, as indicated on the authorization form:

(a) To an official or employee of the United States postal service for the purpose of performing the secretary of state's duties under division (D) of this section;

(b) To any of the following persons for the purpose of confirming the program participant's status as a program participant, for the purpose of verifying the program participant's residence address, or for other similar purposes in order to assist the program participant:

(i) A judge or magistrate;

(ii) An official or employee of the bureau of motor vehicles;

(iii) A school administrator;

(iv) An administrator of a public assistance program;

(v) An administrator of a food pantry.

(c) To another person identified on the authorization form for a purpose indicated on the authorization form.

(2) A person authorized under division (E)(1) of this section to receive a program participant's confidential information may request only the information that the person or the person's office requires under normal circumstances. The person shall not require the disclosure of information as a condition of receiving any services to which the applicant or participant is otherwise entitled.

(3) Upon receiving a request for information concerning a program participant who has submitted a valid authorization form under division (E)(1) of this section, the secretary of state shall determine whether the authorization form permits the secretary of state to disclose the information to the requestor and, if so, within ten business days, shall disclose that information to the requestor along with the following statement: "You are not permitted to redisclose the following information for any reason. Failure to protect the confidentiality of this information is a violation of state law."

(F) Division (A) of this section does not apply to a municipal-owned public utility. The confidential addresses of participants of the address confidentiality program that are maintained by a municipal-owned public utility are not a public record and shall not be released by a municipal-owned public utility or by any employee of a municipal-owned public utility.

Sec. 111.431. (A) A program participant who acquires an ownership interest in real property in this state after being certified as a participant in the address confidentiality program may submit a real property confidentiality notice to the county recorder of the county in which the real property is located. The program participant shall provide the program participant's address confidentiality program authorization card as proof of the program participant's status. A real property confidentiality notice shall be on a form prescribed by the secretary of state and shall include all of the following:

(1) The program participant's full name;

(2) The last four digits of the program participant's social security number;

(3) The date the program participant's certification expires;

(4) The program participant's program participant identification number;

(5) The address at which the program participant may receive mail through the office of the secretary of state;

(6) The legal description and street address of the real property in which the program participant has an ownership interest, which shall be the same as the legal description and street address included on any instrument concerning the real property that includes the program participant's name and that has been presented to the county recorder for recording;

(7) A fictitious name, chosen by the secretary of state, that may be used by a county recorder, auditor, treasurer, or engineer or the clerk of the court of common pleas for internal indexing purposes;

(8) The program participant's signature.

(B) When the county recorder receives a properly completed real property confidentiality notice under division (A) of this section, the county recorder promptly shall transmit copies of the notice to the secretary of state, and to the county auditor, treasurer, and engineer.

(C)(1) Except as otherwise provided in divisions (D) and (F) of this section, after a program participant has submitted a properly completed real property confidentiality notice under division (A)

of this section, the county recorder, auditor, treasurer, and engineer shall not disclose to any person the program participant's name, telephone number, electronic mail address, or program participant identification number, the address at which the program participant may receive mail through the office of the secretary of state, or any other information that may be used to identify the program participant, in conjunction with the legal description, parcel identification number, or street address of the real property in which the program participant has an ownership interest or any other information that may be used to identify the real property. If the county recorder receives a request for that information for the purpose of performing a title examination, the county recorder shall comply with division (G) of this section, and inform the requestor of the procedure to apply to the secretary of state for authorization under division (E) of this section. If the county recorder, auditor, treasurer, or engineer receives a real property confidentiality notice under this section, the county recorder, auditor, treasurer, or engineer shall bring any existing publicly available records or databases into conformity with this section not later than five business days after receiving the real property confidentiality notice.

(2) If a program participant is a party to a court of common pleas proceeding, the program participant may provide a properly completed real property confidentiality notice to the clerk of the court of common pleas. Upon such notice, the clerk of the court of common pleas shall notify the secretary of state that the program participant has provided a real property confidentiality notice to the clerk of the court of common pleas, and shall not otherwise disclose to any person the information described in division (C)(1) of this section.

(D) The county recorder, auditor, treasurer, or engineer or the clerk of the court of common pleas may disclose the information described in division (C) of this section if any of the following apply:

(1) The information is disclosed to the staff of the county recorder, auditor, treasurer, or engineer or the staff of the clerk of the court of common pleas in order to carry out the duties of the office.

(2) The program participant is the person to whom the information is to be disclosed.

(3) The program participant has provided a notarized statement to the secretary of state, authorizing the disclosure to that person for a specific purpose described in the statement, and the secretary of state has issued a written authorization to the county recorder, auditor, treasurer, or engineer, or to the clerk of the court of common pleas, as applicable, to disclose the information to that person.

(4) The person to whom the information is to be disclosed provides a written authorization issued by the secretary of state under division (E) of this section to disclose the information for the purpose of performing a title examination.

(5) A court of competent jurisdiction orders the disclosure, as described in section 111.46 of the Revised Code.

(E)(1) A person who requires access to the information described in division (C) of this section for the purpose of performing a title examination may apply to the secretary of state for a written authorization.

(2) The person shall submit to the secretary of state, on a form prescribed by the secretary of state, a written application that includes all of the following:

- (a) The applicant's name, title, address, and affiliated organization, if any;
- (b) The purpose for which the applicant is requesting access to the information;
- (c) The applicant's relationship to the program participant, if any;
- (d) A legal description of the real property subject to the title examination;
- (e) A statement that the applicant will treat the information as confidential and will use the information only for the purpose identified in the application;
- (f) The applicant's signature;
- (g) Any other information required by the secretary of state.

(3) After the secretary of state receives an application submitted under division (E) of this section, the secretary of state shall, within ten business days, provide the applicant with a written response approving or denying the application. The secretary of state shall approve the application if the secretary of state determines that the application is properly completed; that the information the applicant seeks is subject to division (C) of this section; and that the applicant is seeking the information only for the purpose of performing a bona fide title examination. If the information the applicant seeks is not subject to division (C) of this section, the secretary of state shall, within ten business days, notify the applicant of that fact and, if applicable, shall send a notice to the county recorder, auditor, treasurer, and engineer and to the clerk of the court of common pleas under division (F)(3) of this section.

(F) Upon the occurrence of any of the following, the county recorder, auditor, treasurer, and engineer and the clerk of the court of common pleas shall cease to keep confidential the information described in division (C) of this section and shall make the information available to the public in the same manner as other information concerning real property:

(1) The program participant ceases to hold a recorded ownership interest in the real property that is the subject of the real property confidentiality notice. When the county recorder receives notice that the program participant has ceased to hold that ownership interest, the county recorder promptly shall revoke the real property confidentiality notice and notify the secretary of state, and the county auditor, treasurer, and engineer of that revocation. The secretary of state shall then, if applicable, notify the clerk of the court of common pleas of that revocation.

(2) The program participant submits a notarized revocation of the real property confidentiality notice to the county recorder. Upon receiving the revocation, the county recorder promptly shall transmit copies of the revocation to the secretary of state, and to the county auditor, treasurer, and engineer, and the secretary of state shall, if applicable, transmit a copy of the revocation to the clerk of the court of common pleas.

(3) The county recorder, auditor, treasurer, or engineer or the clerk of the court of common pleas receive a notice from the secretary of state that the program participant's certification has been canceled under section 111.45 of the Revised Code.

(4) Pursuant to the order of a court of competent jurisdiction.

(G) Nothing in this section shall preclude an individual's name from being recorded and indexed for the purpose of giving notice of an ownership interest, lien, or other encumbrance on real property. On such records, if the record contains the information described in division (C) of this section, the county auditor, recorder, treasurer, or engineer, or the clerk of the court of common pleas, if applicable, shall redact the legal description of the property, parcel identification number, or street

address of the real property in which the program participant has an ownership interest or any other information that may be used to identify the real property, on any versions of the documents available to the public. The county auditor, recorder, treasurer, or engineer, for the purpose of indexing a program participant's records, may use the program participant's fictitious name listed in the program participant's real property confidentiality notice.

(H) A real estate broker or real estate salesperson as defined in section 4735.01 of the Revised Code, a land professional under section 4735.023 of the Revised Code, a title examiner, an attorney, or a county official shall not be held liable for damages resulting from the failure to discover a defect in title, failure to properly index or record a person's interest in property, or failure to alert a professional to rely on confidential information, when such failure was the proximate result of an individual's participation in the address confidentiality program, unless the real estate broker, real estate salesperson, land professional, title examiner, attorney, or county official was negligent in failing to do so.

Sec. 111.45. (A) The secretary of state shall cancel the certification of a program participant if any of the following are true:

- (1) The program participant's application contained one or more false statements.
- (2) The program participant has filed a written, notarized request with the secretary of state, on a form prescribed by the secretary of state, asking to cease being a program participant.
- (3) The program participant's certification has expired and the program participant has not renewed the certification in accordance with division (F) of section 111.42 of the Revised Code not later than the deadline specified by the secretary of state by rule to renew the certification.

(B) Upon canceling a certification under division (A) of this section, the secretary of state shall ~~notify, within ten business days, do both of the following:~~

- (1) ~~Notify the director of the board of elections of the county in which the former program participant resides;~~
- (2) ~~Notify the county recorder, auditor, treasurer, and engineer and the clerk of the court of common pleas of each county in which the former program participant has filed real property confidentiality notices under section 111.431 of the Revised Code that have not been revoked under that section.~~

Sec. 111.46. (A) The secretary of state shall make available to the attorney general, for inclusion ~~into~~ in the Ohio law enforcement gateway, the name, telephone number, and confidential address of each program participant. Access to information in the gateway regarding an address confidentiality program participant may only be granted to chiefs of police, village marshals, county sheriffs, county prosecuting attorneys, and a designee of each of these individuals.

~~(B)(1)(a)~~ A city director of law or similar chief legal officer who requires access to a program participant's confidential address or telephone number for a legitimate governmental purpose may petition the court of common pleas of Franklin county to order the secretary of state to make that confidential address or telephone number available to the petitioner.

~~(B)(b)~~ A city director of law or similar chief legal officer who requires access to information that is subject to a real property confidentiality notice under section 111.431 of the Revised Code for a legitimate governmental purpose may petition the court of common pleas of the county in which the real property is located or the court of common pleas of Franklin county to make that information

available to the petitioner.

(2) Upon the filing of a petition under division (B)(1) of this section, the court shall fix a date for a hearing on it and shall require the clerk of the court to serve a notice of the date, time, place, and purpose of the hearing upon the petitioner. The clerk also shall serve that notice upon the secretary of state so that the secretary of state may send the notice to the program participant in accordance with division ~~(C)~~(B)(3) of this section, and, if applicable, upon the county recorder, auditor, treasurer, or engineer or the clerk of the court of common pleas of the county in which the real property is located.

~~(C)~~(3) Upon receiving a notice under division (B)(2) of this section, the secretary of state immediately shall send a copy of the notice to the program participant by certified mail, return receipt requested.

~~(D)~~(4) At a hearing held under this section, the petitioner shall appear, and the program participant or the program participant's attorney may appear and be heard. After the hearing and considering the testimony, the court shall issue the requested order only if it appears to the court by clear and convincing evidence that the disclosure of the ~~program participant's confidential address or telephone number~~ information to the petitioner is necessary for a legitimate governmental purpose.

~~(E)~~(C) Upon request by a city director of law or similar chief legal officer, who intends to petition ~~the~~ a court for access to an individual's ~~address or telephone number~~ confidential information under division (B) of this section, the secretary of state shall, within ten business days, confirm whether the individual is a program participant but shall not disclose any other information concerning a program participant.

(D) If a program participant is a child's parent, guardian, or legal custodian, the program participant is a party to a child custody or child support proceeding concerning the child, and another party to the proceeding requests the court to disclose the program participant's confidential address or telephone number, or if the court seeks to disclose the confidential information sua sponte, the court shall do all of the following:

(1) If a party requests the disclosure, direct the requestor to file a pleading detailing the necessity for the disclosure;

(2) Schedule a hearing on the matter;

(3) Provide the program participant with a copy of the pleading, if filed; and

(4) Provide the parties adequate notice of the hearing.

If a party requests the disclosure of a participant's confidential information, or if the court seeks to release the confidential information sua sponte, the requestor shall have the burden to show, or the court must find, by clear and convincing evidence, that the disclosure is necessary, and that the disclosure does not pose a risk of harm to the program participant or the child. If the requestor does not meet this burden or the court does not make this finding, the court shall deny the request. If the requestor meets this burden or the court makes this finding, the court shall document its findings of fact, and may direct the program participant to release the confidential address or telephone number, or the court may disclose the program participant's confidential address or telephone number.

Sec. 111.48. There is in the state treasury the address confidentiality program fund. The fund shall consist of money paid into the fund pursuant to division ~~(B)(10)~~(B)(11) of section 2929.18 and division (D) of section 2929.28 of the Revised Code and any money appropriated to the fund by the

general assembly or donated to the fund. The secretary of state shall use the money in the fund for the purpose of administering the address confidentiality program described in sections 111.41 to 111.47 of the Revised Code.

Sec. 111.99. (A) No person who submits an application under section 111.42 of the Revised Code shall knowingly make a false attestation in the application that the applicant fears for the applicant's safety, the safety of a member of the applicant's household, or the safety of the minor, incompetent, or ward on whose behalf the application is made because the applicant, household member, minor, incompetent, or ward is a victim of domestic violence, menacing by stalking, human trafficking, trafficking in persons, rape, or sexual battery.

(B) ~~No person~~ (1) As used in division (B) of this section:

(a) "Public official" means any officer, employee, or duly authorized representative or agent of a public office.

(b) "Public office" means any state agency, public institution, political subdivision, other organized body, office, agency, institution, or entity established by the laws of this state for the exercise of any function of government.

(2) No public official who has access to a confidential address or telephone number or to information that is subject to a real property confidentiality notice under section 111.431 of the Revised Code because of the person's employment or status as a public official position shall knowingly disclose that confidential address or telephone number information to any person, except as required or permitted by law.

(C) No person who obtains a confidential address or telephone number from the Ohio law enforcement gateway shall knowingly disclose that confidential address or telephone number to any person, except as is necessary for a law enforcement purpose when related to the performance of official duties, or for another legitimate governmental purpose.

(D) No person who obtains a confidential address or telephone number from the secretary of state under division (E) of section 111.43 of the Revised Code shall knowingly disclose that information to any person, except for the purpose for which the disclosure was authorized under that division.

(E) No person who obtains information that is subject to a real property confidentiality notice under section 111.431 of the Revised Code for the purpose of conducting a title examination under division (E) of that section shall knowingly disclose that confidential information to any person, except for the purpose identified in the application submitted under that division.

(F) Whoever violates this section is guilty of a misdemeanor of the first degree.

Sec. 149.43. (A) As used in this section:

(1) "Public record" means records kept by any public office, including, but not limited to, state, county, city, village, township, and school district units, and records pertaining to the delivery of educational services by an alternative school in this state kept by the nonprofit or for-profit entity operating the alternative school pursuant to section 3313.533 of the Revised Code. "Public record" does not mean any of the following:

(a) Medical records;

(b) Records pertaining to probation and parole proceedings, to proceedings related to the imposition of community control sanctions and post-release control sanctions, or to proceedings

related to determinations under section 2967.271 of the Revised Code regarding the release or maintained incarceration of an offender to whom that section applies;

(c) Records pertaining to actions under section 2151.85 and division (C) of section 2919.121 of the Revised Code and to appeals of actions arising under those sections;

(d) Records pertaining to adoption proceedings, including the contents of an adoption file maintained by the department of health under sections 3705.12 to 3705.124 of the Revised Code;

(e) Information in a record contained in the putative father registry established by section 3107.062 of the Revised Code, regardless of whether the information is held by the department of job and family services or, pursuant to section 3111.69 of the Revised Code, the office of child support in the department or a child support enforcement agency;

(f) Records specified in division (A) of section 3107.52 of the Revised Code;

(g) Trial preparation records;

(h) Confidential law enforcement investigatory records;

(i) Records containing information that is confidential under section 2710.03 or 4112.05 of the Revised Code;

(j) DNA records stored in the DNA database pursuant to section 109.573 of the Revised Code;

(k) Inmate records released by the department of rehabilitation and correction to the department of youth services or a court of record pursuant to division (E) of section 5120.21 of the Revised Code;

(l) Records maintained by the department of youth services pertaining to children in its custody released by the department of youth services to the department of rehabilitation and correction pursuant to section 5139.05 of the Revised Code;

(m) Intellectual property records;

(n) Donor profile records;

(o) Records maintained by the department of job and family services pursuant to section 3121.894 of the Revised Code;

(p) Designated public service worker residential and familial information;

(q) In the case of a county hospital operated pursuant to Chapter 339. of the Revised Code or a municipal hospital operated pursuant to Chapter 749. of the Revised Code, information that constitutes a trade secret, as defined in section 1333.61 of the Revised Code;

(r) Information pertaining to the recreational activities of a person under the age of eighteen;

(s) In the case of a child fatality review board acting under sections 307.621 to 307.629 of the Revised Code or a review conducted pursuant to guidelines established by the director of health under section 3701.70 of the Revised Code, records provided to the board or director, statements made by board members during meetings of the board or by persons participating in the director's review, and all work products of the board or director, and in the case of a child fatality review board, child fatality review data submitted by the board to the department of health or a national child death review database, other than the report prepared pursuant to division (A) of section 307.626 of the Revised Code;

(t) Records provided to and statements made by the executive director of a public children services agency or a prosecuting attorney acting pursuant to section 5153.171 of the Revised Code

other than the information released under that section;

(u) Test materials, examinations, or evaluation tools used in an examination for licensure as a nursing home administrator that the board of executives of long-term services and supports administers under section 4751.15 of the Revised Code or contracts under that section with a private or government entity to administer;

(v) Records the release of which is prohibited by state or federal law;

(w) Proprietary information of or relating to any person that is submitted to or compiled by the Ohio venture capital authority created under section 150.01 of the Revised Code;

(x) Financial statements and data any person submits for any purpose to the Ohio housing finance agency or the controlling board in connection with applying for, receiving, or accounting for financial assistance from the agency, and information that identifies any individual who benefits directly or indirectly from financial assistance from the agency;

(y) Records listed in section 5101.29 of the Revised Code;

(z) Discharges recorded with a county recorder under section 317.24 of the Revised Code, as specified in division (B)(2) of that section;

(aa) Usage information including names and addresses of specific residential and commercial customers of a municipally owned or operated public utility;

(bb) Records described in division (C) of section 187.04 of the Revised Code that are not designated to be made available to the public as provided in that division;

(cc) Information and records that are made confidential, privileged, and not subject to disclosure under divisions (B) and (C) of section 2949.221 of the Revised Code;

(dd) Personal information, as defined in section 149.45 of the Revised Code;

(ee) The confidential name, address, and other personally identifiable information of a program participant in the address confidentiality program established under sections 111.41 to 111.47 of the Revised Code, including the contents of any application for absent voter's ballots, absent voter's ballot identification envelope statement of voter, or provisional ballot affirmation completed by a program participant who has a confidential voter registration record, ~~and~~ records or portions of records pertaining to that program that identify the number of program participants that reside within a precinct, ward, township, municipal corporation, county, or any other geographic area smaller than the state; and any real property confidentiality notice filed under section 111.431 of the Revised Code and the information described in division (C) of that section. As used in this division, "confidential address" and "program participant" have the meaning defined in section 111.41 of the Revised Code.

(ff) Orders for active military service of an individual serving or with previous service in the armed forces of the United States, including a reserve component, or the Ohio organized militia, except that, such order becomes a public record on the day that is fifteen years after the published date or effective date of the call to order;

(gg) The name, address, contact information, or other personal information of an individual who is less than eighteen years of age that is included in any record related to a traffic accident involving a school vehicle in which the individual was an occupant at the time of the accident;

(hh) Protected health information, as defined in 45 C.F.R. 160.103, that is in a claim for payment for a health care product, service, or procedure, as well as any other health claims data in

another document that reveals the identity of an individual who is the subject of the data or could be used to reveal that individual's identity;

(ii) Any depiction by photograph, film, videotape, or printed or digital image under either of the following circumstances:

(i) The depiction is that of a victim of an offense the release of which would be, to a reasonable person of ordinary sensibilities, an offensive and objectionable intrusion into the victim's expectation of bodily privacy and integrity.

(ii) The depiction captures or depicts the victim of a sexually oriented offense, as defined in section 2950.01 of the Revised Code, at the actual occurrence of that offense.

(jj) Restricted portions of a body-worn camera or dashboard camera recording;

(kk) In the case of a fetal-infant mortality review board acting under sections 3707.70 to 3707.77 of the Revised Code, records, documents, reports, or other information presented to the board or a person abstracting such materials on the board's behalf, statements made by review board members during board meetings, all work products of the board, and data submitted by the board to the department of health or a national infant death review database, other than the report prepared pursuant to section 3707.77 of the Revised Code.

(ll) Records, documents, reports, or other information presented to the pregnancy-associated mortality review board established under section 3738.01 of the Revised Code, statements made by board members during board meetings, all work products of the board, and data submitted by the board to the department of health, other than the biennial reports prepared under section 3738.08 of the Revised Code;

(mm) Telephone numbers for a victim, as defined in section 2930.01 of the Revised Code, a witness to a crime, or a party to a motor vehicle accident subject to the requirements of section 5502.11 of the Revised Code that are listed on any law enforcement record or report, other than when requested by an insurer or insurance agent investigating an insurance claim resulting from a motor vehicle accident.

A record that is not a public record under division (A)(1) of this section and that, under law, is permanently retained becomes a public record on the day that is seventy-five years after the day on which the record was created, except for any record protected by the attorney-client privilege, a trial preparation record as defined in this section, a statement prohibiting the release of identifying information signed under section 3107.083 of the Revised Code, a denial of release form filed pursuant to section 3107.46 of the Revised Code, or any record that is exempt from release or disclosure under section 149.433 of the Revised Code. If the record is a birth certificate and a biological parent's name redaction request form has been accepted under section 3107.391 of the Revised Code, the name of that parent shall be redacted from the birth certificate before it is released under this paragraph. If any other section of the Revised Code establishes a time period for disclosure of a record that conflicts with the time period specified in this section, the time period in the other section prevails.

(2) "Confidential law enforcement investigatory record" means any record that pertains to a law enforcement matter of a criminal, quasi-criminal, civil, or administrative nature, but only to the extent that the release of the record would create a high probability of disclosure of any of the following:

(a) The identity of a suspect who has not been charged with the offense to which the record pertains, or of an information source or witness to whom confidentiality has been reasonably promised;

(b) Information provided by an information source or witness to whom confidentiality has been reasonably promised, which information would reasonably tend to disclose the source's or witness's identity;

(c) Specific confidential investigatory techniques or procedures or specific investigatory work product;

(d) Information that would endanger the life or physical safety of law enforcement personnel, a crime victim, a witness, or a confidential information source.

(3) "Medical record" means any document or combination of documents, except births, deaths, and the fact of admission to or discharge from a hospital, that pertains to the medical history, diagnosis, prognosis, or medical condition of a patient and that is generated and maintained in the process of medical treatment.

(4) "Trial preparation record" means any record that contains information that is specifically compiled in reasonable anticipation of, or in defense of, a civil or criminal action or proceeding, including the independent thought processes and personal trial preparation of an attorney.

(5) "Intellectual property record" means a record, other than a financial or administrative record, that is produced or collected by or for faculty or staff of a state institution of higher learning in the conduct of or as a result of study or research on an educational, commercial, scientific, artistic, technical, or scholarly issue, regardless of whether the study or research was sponsored by the institution alone or in conjunction with a governmental body or private concern, and that has not been publicly released, published, or patented.

(6) "Donor profile record" means all records about donors or potential donors to a public institution of higher education except the names and reported addresses of the actual donors and the date, amount, and conditions of the actual donation.

(7) "Designated public service worker" means a peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, county or multicounty corrections officer, community-based correctional facility employee, youth services employee, firefighter, EMT, medical director or member of a cooperating physician advisory board of an emergency medical service organization, state board of pharmacy employee, investigator of the bureau of criminal identification and investigation, judge, magistrate, or federal law enforcement officer.

(8) "Designated public service worker residential and familial information" means any information that discloses any of the following about a designated public service worker:

(a) The address of the actual personal residence of a designated public service worker, except for the following information:

(i) The address of the actual personal residence of a prosecuting attorney or judge; and

(ii) The state or political subdivision in which a designated public service worker resides.

(b) Information compiled from referral to or participation in an employee assistance program;

(c) The social security number, the residential telephone number, any bank account, debit card, charge card, or credit card number, or the emergency telephone number of, or any medical

information pertaining to, a designated public service worker;

(d) The name of any beneficiary of employment benefits, including, but not limited to, life insurance benefits, provided to a designated public service worker by the designated public service worker's employer;

(e) The identity and amount of any charitable or employment benefit deduction made by the designated public service worker's employer from the designated public service worker's compensation, unless the amount of the deduction is required by state or federal law;

(f) The name, the residential address, the name of the employer, the address of the employer, the social security number, the residential telephone number, any bank account, debit card, charge card, or credit card number, or the emergency telephone number of the spouse, a former spouse, or any child of a designated public service worker;

(g) A photograph of a peace officer who holds a position or has an assignment that may include undercover or plain clothes positions or assignments as determined by the peace officer's appointing authority.

(9) As used in divisions (A)(7) and (15) to (17) of this section:

"Peace officer" has the meaning defined in section 109.71 of the Revised Code and also includes the superintendent and troopers of the state highway patrol; it does not include the sheriff of a county or a supervisory employee who, in the absence of the sheriff, is authorized to stand in for, exercise the authority of, and perform the duties of the sheriff.

"Correctional employee" means any employee of the department of rehabilitation and correction who in the course of performing the employee's job duties has or has had contact with inmates and persons under supervision.

"County or multicounty corrections officer" means any corrections officer employed by any county or multicounty correctional facility.

"Youth services employee" means any employee of the department of youth services who in the course of performing the employee's job duties has or has had contact with children committed to the custody of the department of youth services.

"Firefighter" means any regular, paid or volunteer, member of a lawfully constituted fire department of a municipal corporation, township, fire district, or village.

"EMT" means EMTs-basic, EMTs-I, and paramedics that provide emergency medical services for a public emergency medical service organization. "Emergency medical service organization," "EMT-basic," "EMT-I," and "paramedic" have the meanings defined in section 4765.01 of the Revised Code.

"Investigator of the bureau of criminal identification and investigation" has the meaning defined in section 2903.11 of the Revised Code.

"Federal law enforcement officer" has the meaning defined in section 9.88 of the Revised Code.

(10) "Information pertaining to the recreational activities of a person under the age of eighteen" means information that is kept in the ordinary course of business by a public office, that pertains to the recreational activities of a person under the age of eighteen years, and that discloses any of the following:

(a) The address or telephone number of a person under the age of eighteen or the address or

telephone number of that person's parent, guardian, custodian, or emergency contact person;

(b) The social security number, birth date, or photographic image of a person under the age of eighteen;

(c) Any medical record, history, or information pertaining to a person under the age of eighteen;

(d) Any additional information sought or required about a person under the age of eighteen for the purpose of allowing that person to participate in any recreational activity conducted or sponsored by a public office or to use or obtain admission privileges to any recreational facility owned or operated by a public office.

(11) "Community control sanction" has the meaning defined in section 2929.01 of the Revised Code.

(12) "Post-release control sanction" has the meaning defined in section 2967.01 of the Revised Code.

(13) "Redaction" means obscuring or deleting any information that is exempt from the duty to permit public inspection or copying from an item that otherwise meets the definition of a "record" in section 149.011 of the Revised Code.

(14) "Designee," "elected official," and "future official" have the meanings defined in section 109.43 of the Revised Code.

(15) "Body-worn camera" means a visual and audio recording device worn on the person of a peace officer while the peace officer is engaged in the performance of the peace officer's duties.

(16) "Dashboard camera" means a visual and audio recording device mounted on a peace officer's vehicle or vessel that is used while the peace officer is engaged in the performance of the peace officer's duties.

(17) "Restricted portions of a body-worn camera or dashboard camera recording" means any visual or audio portion of a body-worn camera or dashboard camera recording that shows, communicates, or discloses any of the following:

(a) The image or identity of a child or information that could lead to the identification of a child who is a primary subject of the recording when the law enforcement agency knows or has reason to know the person is a child based on the law enforcement agency's records or the content of the recording;

(b) The death of a person or a deceased person's body, unless the death was caused by a peace officer or, subject to division (H)(1) of this section, the consent of the decedent's executor or administrator has been obtained;

(c) The death of a peace officer, firefighter, paramedic, or other first responder, occurring while the decedent was engaged in the performance of official duties, unless, subject to division (H)(1) of this section, the consent of the decedent's executor or administrator has been obtained;

(d) Grievous bodily harm, unless the injury was effected by a peace officer or, subject to division (H)(1) of this section, the consent of the injured person or the injured person's guardian has been obtained;

(e) An act of severe violence against a person that results in serious physical harm to the person, unless the act and injury was effected by a peace officer or, subject to division (H)(1) of this section, the consent of the injured person or the injured person's guardian has been obtained;

(f) Grievous bodily harm to a peace officer, firefighter, paramedic, or other first responder, occurring while the injured person was engaged in the performance of official duties, unless, subject to division (H)(1) of this section, the consent of the injured person or the injured person's guardian has been obtained;

(g) An act of severe violence resulting in serious physical harm against a peace officer, firefighter, paramedic, or other first responder, occurring while the injured person was engaged in the performance of official duties, unless, subject to division (H)(1) of this section, the consent of the injured person or the injured person's guardian has been obtained;

(h) A person's nude body, unless, subject to division (H)(1) of this section, the person's consent has been obtained;

(i) Protected health information, the identity of a person in a health care facility who is not the subject of a law enforcement encounter, or any other information in a health care facility that could identify a person who is not the subject of a law enforcement encounter;

(j) Information that could identify the alleged victim of a sex offense, menacing by stalking, or domestic violence;

(k) Information, that does not constitute a confidential law enforcement investigatory record, that could identify a person who provides sensitive or confidential information to a law enforcement agency when the disclosure of the person's identity or the information provided could reasonably be expected to threaten or endanger the safety or property of the person or another person;

(l) Personal information of a person who is not arrested, cited, charged, or issued a written warning by a peace officer;

(m) Proprietary police contingency plans or tactics that are intended to prevent crime and maintain public order and safety;

(n) A personal conversation unrelated to work between peace officers or between a peace officer and an employee of a law enforcement agency;

(o) A conversation between a peace officer and a member of the public that does not concern law enforcement activities;

(p) The interior of a residence, unless the interior of a residence is the location of an adversarial encounter with, or a use of force by, a peace officer;

(q) Any portion of the interior of a private business that is not open to the public, unless an adversarial encounter with, or a use of force by, a peace officer occurs in that location.

As used in division (A)(17) of this section:

"Grievous bodily harm" has the same meaning as in section 5924.120 of the Revised Code.

"Health care facility" has the same meaning as in section 1337.11 of the Revised Code.

"Protected health information" has the same meaning as in 45 C.F.R. 160.103.

"Law enforcement agency" has the same meaning as in section 2925.61 of the Revised Code.

"Personal information" means any government-issued identification number, date of birth, address, financial information, or criminal justice information from the law enforcement automated data system or similar databases.

"Sex offense" has the same meaning as in section 2907.10 of the Revised Code.

"Firefighter," "paramedic," and "first responder" have the same meanings as in section 4765.01 of the Revised Code.

(18) "Insurer" and "insurance agent" have the same meanings as in section 3905.01 of the Revised Code.

(B)(1) Upon request and subject to division (B)(8) of this section, all public records responsive to the request shall be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours. Subject to division (B)(8) of this section, upon request by any person, a public office or person responsible for public records shall make copies of the requested public record available to the requester at cost and within a reasonable period of time. If a public record contains information that is exempt from the duty to permit public inspection or to copy the public record, the public office or the person responsible for the public record shall make available all of the information within the public record that is not exempt. When making that public record available for public inspection or copying that public record, the public office or the person responsible for the public record shall notify the requester of any redaction or make the redaction plainly visible. A redaction shall be deemed a denial of a request to inspect or copy the redacted information, except if federal or state law authorizes or requires a public office to make the redaction.

(2) To facilitate broader access to public records, a public office or the person responsible for public records shall organize and maintain public records in a manner that they can be made available for inspection or copying in accordance with division (B) of this section. A public office also shall have available a copy of its current records retention schedule at a location readily available to the public. If a requester makes an ambiguous or overly broad request or has difficulty in making a request for copies or inspection of public records under this section such that the public office or the person responsible for the requested public record cannot reasonably identify what public records are being requested, the public office or the person responsible for the requested public record may deny the request but shall provide the requester with an opportunity to revise the request by informing the requester of the manner in which records are maintained by the public office and accessed in the ordinary course of the public office's or person's duties.

(3) If a request is ultimately denied, in part or in whole, the public office or the person responsible for the requested public record shall provide the requester with an explanation, including legal authority, setting forth why the request was denied. If the initial request was provided in writing, the explanation also shall be provided to the requester in writing. The explanation shall not preclude the public office or the person responsible for the requested public record from relying upon additional reasons or legal authority in defending an action commenced under division (C) of this section.

(4) Unless specifically required or authorized by state or federal law or in accordance with division (B) of this section, no public office or person responsible for public records may limit or condition the availability of public records by requiring disclosure of the requester's identity or the intended use of the requested public record. Any requirement that the requester disclose the requester's identity or the intended use of the requested public record constitutes a denial of the request.

(5) A public office or person responsible for public records may ask a requester to make the request in writing, may ask for the requester's identity, and may inquire about the intended use of the information requested, but may do so only after disclosing to the requester that a written request is not mandatory, that the requester may decline to reveal the requester's identity or the intended use,

and when a written request or disclosure of the identity or intended use would benefit the requester by enhancing the ability of the public office or person responsible for public records to identify, locate, or deliver the public records sought by the requester.

(6) If any person requests a copy of a public record in accordance with division (B) of this section, the public office or person responsible for the public record may require that person to pay in advance the cost involved in providing the copy of the public record in accordance with the choice made by the person requesting the copy under this division. The public office or the person responsible for the public record shall permit that person to choose to have the public record duplicated upon paper, upon the same medium upon which the public office or person responsible for the public record keeps it, or upon any other medium upon which the public office or person responsible for the public record determines that it reasonably can be duplicated as an integral part of the normal operations of the public office or person responsible for the public record. When the person requesting the copy makes a choice under this division, the public office or person responsible for the public record shall provide a copy of it in accordance with the choice made by that person. Nothing in this section requires a public office or person responsible for the public record to allow the person requesting a copy of the public record to make the copies of the public record.

(7)(a) Upon a request made in accordance with division (B) of this section and subject to division (B)(6) of this section, a public office or person responsible for public records shall transmit a copy of a public record to any person by United States mail or by any other means of delivery or transmission within a reasonable period of time after receiving the request for the copy. The public office or person responsible for the public record may require the person making the request to pay in advance the cost of postage if the copy is transmitted by United States mail or the cost of delivery if the copy is transmitted other than by United States mail, and to pay in advance the costs incurred for other supplies used in the mailing, delivery, or transmission.

(b) Any public office may adopt a policy and procedures that it will follow in transmitting, within a reasonable period of time after receiving a request, copies of public records by United States mail or by any other means of delivery or transmission pursuant to division (B)(7) of this section. A public office that adopts a policy and procedures under division (B)(7) of this section shall comply with them in performing its duties under that division.

(c) In any policy and procedures adopted under division (B)(7) of this section:

(i) A public office may limit the number of records requested by a person that the office will physically deliver by United States mail or by another delivery service to ten per month, unless the person certifies to the office in writing that the person does not intend to use or forward the requested records, or the information contained in them, for commercial purposes;

(ii) A public office that chooses to provide some or all of its public records on a web site that is fully accessible to and searchable by members of the public at all times, other than during acts of God outside the public office's control or maintenance, and that charges no fee to search, access, download, or otherwise receive records provided on the web site, may limit to ten per month the number of records requested by a person that the office will deliver in a digital format, unless the requested records are not provided on the web site and unless the person certifies to the office in writing that the person does not intend to use or forward the requested records, or the information contained in them, for commercial purposes.

(iii) For purposes of division (B)(7) of this section, "commercial" shall be narrowly construed and does not include reporting or gathering news, reporting or gathering information to assist citizen oversight or understanding of the operation or activities of government, or nonprofit educational research.

(8) A public office or person responsible for public records is not required to permit a person who is incarcerated pursuant to a criminal conviction or a juvenile adjudication to inspect or to obtain a copy of any public record concerning a criminal investigation or prosecution or concerning what would be a criminal investigation or prosecution if the subject of the investigation or prosecution were an adult, unless the request to inspect or to obtain a copy of the record is for the purpose of acquiring information that is subject to release as a public record under this section and the judge who imposed the sentence or made the adjudication with respect to the person, or the judge's successor in office, finds that the information sought in the public record is necessary to support what appears to be a justiciable claim of the person.

(9)(a) Upon written request made and signed by a journalist, a public office, or person responsible for public records, having custody of the records of the agency employing a specified designated public service worker shall disclose to the journalist the address of the actual personal residence of the designated public service worker and, if the designated public service worker's spouse, former spouse, or child is employed by a public office, the name and address of the employer of the designated public service worker's spouse, former spouse, or child. The request shall include the journalist's name and title and the name and address of the journalist's employer and shall state that disclosure of the information sought would be in the public interest.

(b) Division (B)(9)(a) of this section also applies to journalist requests for:

(i) Customer information maintained by a municipally owned or operated public utility, other than social security numbers and any private financial information such as credit reports, payment methods, credit card numbers, and bank account information;

(ii) Information about minors involved in a school vehicle accident as provided in division (A)(1)(gg) of this section, other than personal information as defined in section 149.45 of the Revised Code.

(c) As used in division (B)(9) of this section, "journalist" means a person engaged in, connected with, or employed by any news medium, including a newspaper, magazine, press association, news agency, or wire service, a radio or television station, or a similar medium, for the purpose of gathering, processing, transmitting, compiling, editing, or disseminating information for the general public.

(10) Upon a request made by a victim, victim's attorney, or victim's representative, as that term is used in section 2930.02 of the Revised Code, a public office or person responsible for public records shall transmit a copy of a depiction of the victim as described in division (A)(1)(ii) of this section to the victim, victim's attorney, or victim's representative.

(C)(1) If a person allegedly is aggrieved by the failure of a public office or the person responsible for public records to promptly prepare a public record and to make it available to the person for inspection in accordance with division (B) of this section or by any other failure of a public office or the person responsible for public records to comply with an obligation in accordance with division (B) of this section, the person allegedly aggrieved may do only one of the following,

and not both:

(a) File a complaint with the clerk of the court of claims or the clerk of the court of common pleas under section 2743.75 of the Revised Code;

(b) Commence a mandamus action to obtain a judgment that orders the public office or the person responsible for the public record to comply with division (B) of this section, that awards court costs and reasonable attorney's fees to the person that instituted the mandamus action, and, if applicable, that includes an order fixing statutory damages under division (C)(2) of this section. The mandamus action may be commenced in the court of common pleas of the county in which division (B) of this section allegedly was not complied with, in the supreme court pursuant to its original jurisdiction under Section 2 of Article IV, Ohio Constitution, or in the court of appeals for the appellate district in which division (B) of this section allegedly was not complied with pursuant to its original jurisdiction under Section 3 of Article IV, Ohio Constitution.

(2) If a requester transmits a written request by hand delivery, electronic submission, or certified mail to inspect or receive copies of any public record in a manner that fairly describes the public record or class of public records to the public office or person responsible for the requested public records, except as otherwise provided in this section, the requester shall be entitled to recover the amount of statutory damages set forth in this division if a court determines that the public office or the person responsible for public records failed to comply with an obligation in accordance with division (B) of this section.

The amount of statutory damages shall be fixed at one hundred dollars for each business day during which the public office or person responsible for the requested public records failed to comply with an obligation in accordance with division (B) of this section, beginning with the day on which the requester files a mandamus action to recover statutory damages, up to a maximum of one thousand dollars. The award of statutory damages shall not be construed as a penalty, but as compensation for injury arising from lost use of the requested information. The existence of this injury shall be conclusively presumed. The award of statutory damages shall be in addition to all other remedies authorized by this section.

The court may reduce an award of statutory damages or not award statutory damages if the court determines both of the following:

(a) That, based on the ordinary application of statutory law and case law as it existed at the time of the conduct or threatened conduct of the public office or person responsible for the requested public records that allegedly constitutes a failure to comply with an obligation in accordance with division (B) of this section and that was the basis of the mandamus action, a well-informed public office or person responsible for the requested public records reasonably would believe that the conduct or threatened conduct of the public office or person responsible for the requested public records did not constitute a failure to comply with an obligation in accordance with division (B) of this section;

(b) That a well-informed public office or person responsible for the requested public records reasonably would believe that the conduct or threatened conduct of the public office or person responsible for the requested public records would serve the public policy that underlies the authority that is asserted as permitting that conduct or threatened conduct.

(3) In a mandamus action filed under division (C)(1) of this section, the following apply:

(a)(i) If the court orders the public office or the person responsible for the public record to comply with division (B) of this section, the court shall determine and award to the relator all court costs, which shall be construed as remedial and not punitive.

(ii) If the court makes a determination described in division (C)(3)(b)(iii) of this section, the court shall determine and award to the relator all court costs, which shall be construed as remedial and not punitive.

(b) If the court renders a judgment that orders the public office or the person responsible for the public record to comply with division (B) of this section or if the court determines any of the following, the court may award reasonable attorney's fees to the relator, subject to division (C)(4) of this section:

(i) The public office or the person responsible for the public records failed to respond affirmatively or negatively to the public records request in accordance with the time allowed under division (B) of this section.

(ii) The public office or the person responsible for the public records promised to permit the relator to inspect or receive copies of the public records requested within a specified period of time but failed to fulfill that promise within that specified period of time.

(iii) The public office or the person responsible for the public records acted in bad faith when the office or person voluntarily made the public records available to the relator for the first time after the relator commenced the mandamus action, but before the court issued any order concluding whether or not the public office or person was required to comply with division (B) of this section. No discovery may be conducted on the issue of the alleged bad faith of the public office or person responsible for the public records. This division shall not be construed as creating a presumption that the public office or the person responsible for the public records acted in bad faith when the office or person voluntarily made the public records available to the relator for the first time after the relator commenced the mandamus action, but before the court issued any order described in this division.

(c) The court shall not award attorney's fees to the relator if the court determines both of the following:

(i) That, based on the ordinary application of statutory law and case law as it existed at the time of the conduct or threatened conduct of the public office or person responsible for the requested public records that allegedly constitutes a failure to comply with an obligation in accordance with division (B) of this section and that was the basis of the mandamus action, a well-informed public office or person responsible for the requested public records reasonably would believe that the conduct or threatened conduct of the public office or person responsible for the requested public records did not constitute a failure to comply with an obligation in accordance with division (B) of this section;

(ii) That a well-informed public office or person responsible for the requested public records reasonably would believe that the conduct or threatened conduct of the public office or person responsible for the requested public records would serve the public policy that underlies the authority that is asserted as permitting that conduct or threatened conduct.

(4) All of the following apply to any award of reasonable attorney's fees awarded under division (C)(3)(b) of this section:

(a) The fees shall be construed as remedial and not punitive.

(b) The fees awarded shall not exceed the total of the reasonable attorney's fees incurred before the public record was made available to the relator and the fees described in division (C)(4)(c) of this section.

(c) Reasonable attorney's fees shall include reasonable fees incurred to produce proof of the reasonableness and amount of the fees and to otherwise litigate entitlement to the fees.

(d) The court may reduce the amount of fees awarded if the court determines that, given the factual circumstances involved with the specific public records request, an alternative means should have been pursued to more effectively and efficiently resolve the dispute that was subject to the mandamus action filed under division (C)(1) of this section.

(5) If the court does not issue a writ of mandamus under division (C) of this section and the court determines at that time that the bringing of the mandamus action was frivolous conduct as defined in division (A) of section 2323.51 of the Revised Code, the court may award to the public office all court costs, expenses, and reasonable attorney's fees, as determined by the court.

(D) Chapter 1347. of the Revised Code does not limit the provisions of this section.

(E)(1) To ensure that all employees of public offices are appropriately educated about a public office's obligations under division (B) of this section, all elected officials or their appropriate designees shall attend training approved by the attorney general as provided in section 109.43 of the Revised Code. A future official may satisfy the requirements of this division by attending the training before taking office, provided that the future official may not send a designee in the future official's place.

(2) All public offices shall adopt a public records policy in compliance with this section for responding to public records requests. In adopting a public records policy under this division, a public office may obtain guidance from the model public records policy developed and provided to the public office by the attorney general under section 109.43 of the Revised Code. Except as otherwise provided in this section, the policy may not limit the number of public records that the public office will make available to a single person, may not limit the number of public records that it will make available during a fixed period of time, and may not establish a fixed period of time before it will respond to a request for inspection or copying of public records, unless that period is less than eight hours.

The public office shall distribute the public records policy adopted by the public office under this division to the employee of the public office who is the records custodian or records manager or otherwise has custody of the records of that office. The public office shall require that employee to acknowledge receipt of the copy of the public records policy. The public office shall create a poster that describes its public records policy and shall post the poster in a conspicuous place in the public office and in all locations where the public office has branch offices. The public office may post its public records policy on the internet web site of the public office if the public office maintains an internet web site. A public office that has established a manual or handbook of its general policies and procedures for all employees of the public office shall include the public records policy of the public office in the manual or handbook.

(F)(1) The bureau of motor vehicles may adopt rules pursuant to Chapter 119. of the Revised Code to reasonably limit the number of bulk commercial special extraction requests made by a person for the same records or for updated records during a calendar year. The rules may include

provisions for charges to be made for bulk commercial special extraction requests for the actual cost of the bureau, plus special extraction costs, plus ten per cent. The bureau may charge for expenses for redacting information, the release of which is prohibited by law.

(2) As used in division (F)(1) of this section:

(a) "Actual cost" means the cost of depleted supplies, records storage media costs, actual mailing and alternative delivery costs, or other transmitting costs, and any direct equipment operating and maintenance costs, including actual costs paid to private contractors for copying services.

(b) "Bulk commercial special extraction request" means a request for copies of a record for information in a format other than the format already available, or information that cannot be extracted without examination of all items in a records series, class of records, or database by a person who intends to use or forward the copies for surveys, marketing, solicitation, or resale for commercial purposes. "Bulk commercial special extraction request" does not include a request by a person who gives assurance to the bureau that the person making the request does not intend to use or forward the requested copies for surveys, marketing, solicitation, or resale for commercial purposes.

(c) "Commercial" means profit-seeking production, buying, or selling of any good, service, or other product.

(d) "Special extraction costs" means the cost of the time spent by the lowest paid employee competent to perform the task, the actual amount paid to outside private contractors employed by the bureau, or the actual cost incurred to create computer programs to make the special extraction. "Special extraction costs" include any charges paid to a public agency for computer or records services.

(3) For purposes of divisions (F)(1) and (2) of this section, "surveys, marketing, solicitation, or resale for commercial purposes" shall be narrowly construed and does not include reporting or gathering news, reporting or gathering information to assist citizen oversight or understanding of the operation or activities of government, or nonprofit educational research.

(G) A request by a defendant, counsel of a defendant, or any agent of a defendant in a criminal action that public records related to that action be made available under this section shall be considered a demand for discovery pursuant to the Criminal Rules, except to the extent that the Criminal Rules plainly indicate a contrary intent. The defendant, counsel of the defendant, or agent of the defendant making a request under this division shall serve a copy of the request on the prosecuting attorney, director of law, or other chief legal officer responsible for prosecuting the action.

(H)(1) Any portion of a body-worn camera or dashboard camera recording described in divisions (A)(17)(b) to (h) of this section may be released by consent of the subject of the recording or a representative of that person, as specified in those divisions, only if either of the following applies:

(a) The recording will not be used in connection with any probable or pending criminal proceedings;

(b) The recording has been used in connection with a criminal proceeding that was dismissed or for which a judgment has been entered pursuant to Rule 32 of the Rules of Criminal Procedure, and will not be used again in connection with any probable or pending criminal proceedings.

(2) If a public office denies a request to release a restricted portion of a body-worn camera or

dashboard camera recording, as defined in division (A)(17) of this section, any person may file a mandamus action pursuant to this section or a complaint with the clerk of the court of claims pursuant to section 2743.75 of the Revised Code, requesting the court to order the release of all or portions of the recording. If the court considering the request determines that the filing articulates by clear and convincing evidence that the public interest in the recording substantially outweighs privacy interests and other interests asserted to deny release, the court shall order the public office to release the recording.

Sec. 315.25. (A) The county engineer shall make and keep, in a book provided for that purpose, an accurate record of all surveys made by ~~him the engineer~~ or ~~his the engineer's~~ deputies for the purpose of locating any land or road lines, or fixing any corner or monument by which it may be determined, whether official or otherwise. Such surveys shall include corners, distances, azimuths, angles, calculations, plats, and a description of the monuments set up, with such references thereto as will aid in finding the names of the parties for whom the surveys are made, and the date of making such surveys. Such book shall be kept as a public record by the engineer at ~~his the engineer's~~ office, and it shall be at all proper times open to inspection and examination by all persons interested therein. Any other surveys made in the county by competent surveyors, certified by such surveyor to be correct and deemed worthy of preservation, may, by order of the board of county commissioners, be recorded by the engineer.

(B) The county engineer shall keep confidential information that is subject to a real property confidentiality notice under section 111.431 of the Revised Code, in accordance with that section.

Sec. 317.13. (A) Except as otherwise provided in division (B) of this section, the county recorder shall record in the official records, in legible handwriting, typewriting, or printing, or by any authorized photographic or electronic process, all deeds, mortgages, plats, or other instruments of writing that are required or authorized by the Revised Code to be recorded and that are presented to the county recorder for that purpose. The county recorder shall record the instruments in regular succession, according to the priority of presentation, and shall enter the file number at the beginning of the record. On the record of each instrument, the county recorder shall record the date and precise time the instrument was presented for record. All records made, prior to July 28, 1949, by means authorized by this section or by section 9.01 of the Revised Code shall be deemed properly made.

(B) The county recorder may refuse to record an instrument of writing presented for recording if the instrument is not required or authorized by the Revised Code to be recorded or the county recorder has reasonable cause to believe the instrument is materially false or fraudulent. This division does not create a duty upon a recorder to inspect, evaluate, or investigate an instrument of writing that is presented for recording.

(C) If a person presents an instrument of writing to the county recorder for recording and the county recorder, pursuant to division (B) of this section, refuses to record the instrument, the person has a cause of action for an order from the court of common pleas in the county that the county recorder serves, to require the county recorder to record the instrument. If the court determines that the instrument is required or authorized by the Revised Code to be recorded and is not materially false or fraudulent, it shall order the county recorder to record the instrument.

(D) The county recorder shall keep confidential information that is subject to a real property confidentiality notice under section 111.431 of the Revised Code, in accordance with that section. A

copy of the real property confidentiality notice shall accompany subsequent recordings of the property, unless the program participant's certification has been canceled under section 111.431 or 111.45 of the Revised Code.

Sec. 317.32. The county recorder shall charge and collect the following fees, to include, except as otherwise provided in division (A)(2) of this section, base fees for the recorder's services and housing trust fund fees collected pursuant to section 317.36 of the Revised Code:

(A)(1) Except as otherwise provided in division (A)(2) of this section, for recording and indexing an instrument if the photocopy or any similar process is employed, a base fee of seventeen dollars for the first two pages and a housing trust fund fee of seventeen dollars, and a base fee of four dollars and a housing trust fund fee of four dollars for each subsequent page, size eight and one-half inches by fourteen inches, or fraction of a page, including the caption page, of such instrument;

(2) For recording and indexing an instrument described in division (D) of section 317.08 of the Revised Code if the photocopy or any similar process is employed, a fee of twenty-eight dollars for the first two pages to be deposited as specified elsewhere in this division, and a fee of eight dollars to be deposited in the same manner for each subsequent page, size eight and one-half inches by fourteen inches, or fraction of a page, including the caption page, of that instrument. If the county recorder's technology fund has been established under section 317.321 of the Revised Code, of the twenty-eight dollars, fourteen dollars shall be deposited into the county treasury to the credit of the county recorder's technology fund and fourteen dollars shall be deposited into the county treasury to the credit of the county general fund. If the county recorder's technology fund has not been established, the twenty-eight dollars shall be deposited into the county treasury to the credit of the county general fund.

(B) For certifying a ~~photocopy~~ copy or electronic record from the record previously recorded, a base fee of one dollar and a housing trust fund fee of one dollar per page, size eight and one-half inches by fourteen inches, or fraction of a page; for each certification if the recorder's seal is required, except as to instruments issued by the armed forces of the United States, a base fee of fifty cents and a housing trust fund fee of fifty cents;

(C) For entering or indexing any ~~marginal~~ reference by separate recorded instrument, a base fee of two dollars and a housing trust fund fee of two dollars for each ~~marginal~~ reference set out in that instrument, in addition to the fees set forth in division (A)(1) of this section;

(D) For indexing in the real estate mortgage records, pursuant to section 1309.519 of the Revised Code, financing statements covering crops growing or to be grown, timber to be cut, minerals or the like, including oil and gas, accounts subject to section 1309.301 of the Revised Code, or fixture filings made pursuant to section 1309.334 of the Revised Code, a base fee of two dollars and a housing trust fund fee of two dollars for each name indexed;

(E) For filing zoning resolutions, including text and maps, in the office of the recorder as required under sections 303.11 and 519.11 of the Revised Code, a base fee of twenty-five dollars and a housing trust fund fee of twenty-five dollars, regardless of the size or length of the resolutions;

(F) For filing zoning amendments, including text and maps, in the office of the recorder as required under sections 303.12 and 519.12 of the Revised Code, a base fee of ten dollars and a housing trust fund fee of ten dollars regardless of the size or length of the amendments;

(G) For photocopying a document, other than at the time of recording and indexing as

provided for in division (A)(1) or (2) of this section, a base fee of one dollar and a housing trust fund fee of one dollar per page, size eight and one-half inches by fourteen inches, or fraction thereof;

(H) For local facsimile transmission of a document, a base fee of one dollar and a housing trust fund fee of one dollar per page, size eight and one-half inches by fourteen inches, or fraction thereof; for long distance facsimile transmission of a document, a base fee of two dollars and a housing trust fund fee of two dollars per page, size eight and one-half inches by fourteen inches, or fraction thereof;

(I) For recording a declaration executed pursuant to section 2133.02 of the Revised Code or a durable power of attorney for health care executed pursuant to section 1337.12 of the Revised Code, or both a declaration and a durable power of attorney for health care, a base fee of at least fourteen dollars but not more than twenty dollars and a housing trust fund fee of at least fourteen dollars but not more than twenty dollars.

In any county in which the recorder employs the photostatic or any similar process for recording maps, plats, or prints the recorder shall determine, charge, and collect for the recording or rerecording of any map, plat, or print, a base fee of five cents and a housing trust fund fee of five cents per square inch, for each square inch of the map, plat, or print filed for that recording or rerecording, with a minimum base fee of twenty dollars and a minimum housing trust fund fee of twenty dollars; for certifying a copy from the record, a base fee of two cents and a housing trust fund fee of two cents per square inch of the record, with a minimum base fee of two dollars and a minimum housing trust fund fee of two dollars.

The fees provided in this section shall be paid upon the presentation of the instruments for record or upon the application for any certified copy of the record, except that the payment of fees for providing copies of instruments conveying or extinguishing agricultural easements to the office of farmland preservation in the department of agriculture under division (H) of section 5301.691 of the Revised Code shall be governed by that division, and payment of fees for electronic recording may be made by electronic funds transfer, automated clearing house, or other electronic means after presentation.

The fees provided for in this section shall not apply to the recording, indexing, or making of a certified copy or to the filing of any instrument by a county land reutilization corporation, its.

The fees provided for in this section shall not apply to the recording, indexing, or making of a certified copy or to the filing of any instrument by a county land reutilization corporation's wholly owned subsidiary; or any other electing subdivision as defined in section 5722.01 of the Revised Code if the wholly owned subsidiary or the electing subdivision is acting in capacity consistent with the purpose of the land reutilization program.

Sec. 319.28. (A) Except as otherwise provided in division (B) of this section, on or before the first Monday of August, annually, the county auditor shall compile and make up a general tax list of real and public utility property in the county, either in tabular form and alphabetical order, or, with the consent of the county treasurer, by listing all parcels in a permanent parcel number sequence to which a separate alphabetical index is keyed, containing the names of the several persons, companies, firms, partnerships, associations, and corporations in whose names real property has been listed in each township, municipal corporation, special district, or separate school district, or part of either in the auditor's county, placing separately, in appropriate columns opposite each name, the

description of each tract, lot, or parcel of real estate, the value of each tract, lot, or parcel, the value of the improvements thereon, and of the names of the several public utilities whose property, subject to taxation on the general tax list and duplicate, has been apportioned by the department of taxation to the county, and the amount so apportioned to each township, municipal corporation, special district, or separate school district or part of either in the auditor's county, as shown by the certificates of apportionment of public utility property. If the name of the owner of any tract, lot, or parcel of real estate is unknown to the auditor, "unknown" shall be entered in the column of names opposite said tract, lot, or parcel. Such lists shall be prepared in duplicate. On or before the first Monday of September in each year, the auditor shall correct such lists in accordance with the additions and deductions ordered by the tax commissioner and by the county board of revision, and shall certify and on the first day of October deliver one copy thereof to the county treasurer. The copies prepared by the auditor shall constitute the auditor's general tax list and treasurer's general duplicate of real and public utility property for the current year.

Once a permanent parcel numbering system has been established in any county as provided by the preceding paragraph, such system shall remain in effect until otherwise agreed upon by the county auditor and county treasurer.

(B)(1) An individual, or the spouse of that individual, whose residential and familial information is not a public record under divisions (A)(1)(p) and (A)(7) of section 149.43 of the Revised Code may submit an affidavit to the county auditor requesting the county auditor to remove the name of the individual filing the affidavit from any record made available to the general public on the internet or a publicly accessible database, and from the general tax list and duplicate of real and public utility property, and to instead insert the individual's initials on any such record, and on the general tax list and duplicate of real and public utility property as the name of the individual that appears on the deed.

(2) Upon receiving an affidavit described in division (B)(1) of this section, the county auditor shall act within five business days in accordance with the request to remove the individual's name from any record made available to the general public on the internet or a publicly accessible database, and from the general tax list and duplicate of real and public utility property and insert the individual's initials on any such record and on the general tax list and duplicate of real and public utility property, if practicable. If the removal and insertion is not practicable, the county auditor shall verbally or in writing within five business days after receiving the affidavit explain to the individual why the removal and insertion is impracticable.

(C) The county auditor shall keep confidential information that is subject to a real property confidentiality notice under section 111.431 of the Revised Code, in accordance with that section.

Sec. 321.25. The county treasurer shall keep confidential information that is subject to a real property confidentiality notice under section 111.431 of the Revised Code, in accordance with that section.

Sec. 2303.12. (A) The clerk of the court of common pleas shall keep at least four books. They shall be called the appearance docket, trial docket and printed duplicates of the trial docket for the use of the court and the officers thereof, journal, and execution docket. ~~He~~ The clerk shall also keep a record in book form or ~~he~~ the clerk may prepare a record by using any photostatic, photographic, miniature photographic, film, microfilm, or microphotographic process, electrostatic process,

perforated tape, magnetic tape, or other electromagnetic means, electronic data processing, machine readable media, graphic or video display, or any combination thereof, which correctly and accurately copies or reproduces the original document, paper, or instrument in writing. ~~He~~ The clerk shall use materials that comply with the minimum standards of quality for permanent photographic records prescribed by the National Bureau of Standards. ~~He~~ The clerk shall keep an index to the trial docket and to the printed duplicates of the trial docket and of the journal direct, and to the appearance docket, record, and execution docket, direct and reverse. All clerks keeping records and information by the methods described in this section shall keep and make readily available to the public the machine and equipment necessary to reproduce the records and information in a readable form.

(B) The clerk of the court of common pleas shall keep confidential information that is subject to a real property confidentiality notice under section 111.431 of the Revised Code, in accordance with that section.

Sec. 5301.255. (A) A memorandum of trust that satisfies both of the following may be presented for recordation in the office of the county recorder of any county in which real property that is subject to the trust is located:

(1) The memorandum shall be executed by the trustee of the trust and acknowledged by the trustee of the trust in accordance with section 5301.01 of the Revised Code.

(2) The memorandum shall state all of the following:

(a) The name and address of the trustee of the trust;

(b) The date of execution of the trust;

(c) The powers specified in the trust relative to the acquisition, sale, or encumbering of real property by the trustee or the conveyance of real property by the trustee, and any restrictions upon those powers.

(B) A memorandum of trust that satisfies divisions (A)(1) and (2) of this section also may set forth the substance or actual text of provisions of the trust that are not described in those divisions.

(C) A memorandum of trust that satisfies divisions (A)(1) and (2) of this section shall constitute notice only of the information contained in it.

(D) Upon the presentation for recordation of a memorandum of trust that satisfies divisions (A)(1) and (2) of this section and the payment of the requisite fee prescribed in section 317.32 of the Revised Code, a county recorder shall record the memorandum of trust in the official records described in division (A)~~(18)~~(17) of section 317.08 of the Revised Code, if the memorandum of trust describes specific real property, or in the official records described in division (A)~~(24)~~(23) of that section, if the memorandum of trust does not describe specific real property.

SECTION 2. That existing sections 111.42, 111.43, 111.45, 111.46, 111.48, 111.99, 149.43, 315.25, 317.13, 317.32, 319.28, 2303.12, and 5301.255 of the Revised Code are hereby repealed.

SECTION 3. That Section 4 of S.B. 258 of the 134th General Assembly is hereby repealed.

SECTION 4. Notwithstanding any contrary provision of the Revised Code, all of the following apply to the primary election to be held on May 3, 2022:

(A) To be eligible to appear as a candidate for nomination, or to receive votes as a write-in candidate, for the office of member of the United States House of Representatives, a person shall file the applicable declaration of candidacy and petition or declaration of intent to be a write-in candidate not later than four p.m. on March 4, 2022, in the manner specified under Title XXXV of the Revised Code.

(B) A declaration of candidacy, declaration of candidacy and petition, nominating petition, or declaration of intent to be a write-in candidate filed by a person seeking nomination for the office of member of the United States House of Representatives, the Ohio Senate, the Ohio House of Representatives, or the state central committee of a political party 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. If the filer seeks nomination for the office of member of the Ohio Senate, the Ohio House of Representatives, or the state central committee of a political party, the document shall be deemed to include the number of the applicable district in which the filer resides. If the filer seeks nomination for the office of member of the United States House of Representatives, the filer shall notify the election officials in writing of the district the filer seeks to represent.

(C)(1) A declaration of candidacy, declaration of candidacy and petition, nominating petition, or declaration of intent to be a write-in candidate filed by a person seeking nomination for the office of member of the Ohio Senate or 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, declaration of candidacy and petition, nominating petition, or declaration of intent to be a write-in candidate that indicates the filer's new residence address;

(c) Submits a notice of change of address for voter registration purposes.

(2) After a filer notifies the board of elections of the filer's new residence address under division (C)(1) of this section, the signatures on the filer's petition shall be verified under this section on the basis of the filer's new residence address.

(D) A signature on a declaration of candidacy and petition or nominating petition filed by a person seeking nomination for the office of member of the United States House of Representatives, the Ohio Senate, the Ohio House of Representatives, or the state central committee of a political party shall not be considered invalid on the ground that the signer does not reside in the district the filer seeks to represent, so long as one of the following applies:

(1) The filer seeks nomination for the office of member of the United States House of Representatives and both of the following are true:

(a) The district the filer sought to represent under the congressional district plan described in S.B. 258 of the 134th General Assembly had territory in the county in which the signer resides. The filer shall notify the election officials in writing of the district the filer sought to represent under that act.

(b) The congressional district the filer seeks to represent has territory in the county in which

the signer resides.

(2) The filer seeks nomination for the office of member of the Ohio Senate and both of the following are true:

(a) The Senate district in which the filer resided under the General Assembly district plan adopted by the Ohio Redistricting Commission in September 2021 had territory in the county in which the signer resides.

(b) The Senate district the filer seeks to represent has territory in the county in which the signer resides.

(3) The filer seeks nomination for the office of member of the Ohio House of Representatives and both of the following are true:

(a) The House district in which the filer resided under the General Assembly district plan adopted by the Ohio Redistricting Commission in September 2021 had territory in the county in which the signer resides.

(b) The House district the filer seeks to represent has territory in the county in which the signer resides.

(4) The filer seeks nomination for the office of member of the state central committee of a political party to represent a congressional district and both of the following are true:

(a) The district in which the filer resided under the congressional district plan described in S.B. 258 of the 134th General Assembly had territory in the county in which the signer resides.

(b) The congressional district the filer seeks to represent has territory in the county in which the signer resides.

(5) The filer seeks nomination for the office of member of the state central committee of a political party to represent a Senate district and both of the following are true:

(a) The Senate district in which the filer resided under the General Assembly district plan adopted by the Ohio Redistricting Commission in September 2021 had territory in the county in which the signer resides.

(b) The Senate district the filer seeks to represent has territory in the county in which the signer resides.

(E) If a person seeking nomination for the office of member of the United States House of Representatives, the Ohio Senate, the Ohio House of Representatives, or the state central committee of a political party files a declaration of candidacy, declaration of candidacy and petition, nominating petition, or declaration of intent to be a write-in candidate with a board of elections and that board subsequently becomes aware that the filer is seeking to represent a district for which a different board of elections is the appropriate office to process the filing under Chapter 3513. of the Revised Code, the board of elections that originally received the filing promptly shall transfer that filing to the appropriate board of elections.

(F) A signature on a declaration of candidacy and petition or nominating petition filed by a person seeking nomination for the office of member of the United States House of Representatives, the Ohio Senate, the Ohio House of Representatives, or the state central committee of a political party shall not be considered invalid on the ground that the signature was signed before a district plan of the applicable type was adopted or enacted or took effect, provided that, in accordance with sections 3513.262 and 3513.263 of the Revised Code, a signature on a nominating petition is not

valid if it is dated more than one year before the date the nominating petition is filed.

(G) Except for the following deadlines, the Secretary of State may adjust any deadlines pertaining to the administration of the May 3, 2022, primary election as the Secretary of State determines necessary to accommodate the shorter timeframe to prepare to hold the election on May 3, 2022, and to ensure that ballots are prepared and made available in the times and manner required under Title XXXV of the Revised Code and federal election law:

(1) The deadline to file a declaration of candidacy, declaration of candidacy and petition, or declaration of intent to be a write-in candidate;

(2) The deadline to certify a ballot issue or question to the election officials or to file a petition with the election officials to place a question or issue on the ballot at the May 3, 2022, primary election or a special election on that date;

(3) The deadline for the boards of elections to have uniformed services and overseas absent voter's ballots printed and ready for use, unless the Secretary of State obtains a waiver pursuant to 52 U.S.C. 20302(g) for the May 3, 2022, primary election;

(4) Any deadline that, under the Revised Code, falls on or after April 3, 2022.

SECTION 5. Sections 3 and 4 of this act are hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety. The reason for such necessity is to allow candidates and election officials sufficient time to prepare for the 2022 primary election. Therefore, Sections 3 and 4 of this act shall go into immediate effect.

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*Speaker* \_\_\_\_\_ *of the House of Representatives.*

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*President* \_\_\_\_\_ *of the Senate.*

Passed \_\_\_\_\_, 20\_\_\_\_

Approved \_\_\_\_\_, 20\_\_\_\_

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*Governor.*

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

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*Director, Legislative Service Commission.*

Filed in the office of the Secretary of State at Columbus, Ohio, on the \_\_\_\_ day of \_\_\_\_\_, A. D. 20 \_\_\_\_.

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*Secretary of State.*

File No. \_\_\_\_\_ Effective Date \_\_\_\_\_



**DIRECTIVE 2022-30**

March 17, 2022

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

Re: *League of Women Voters of Ohio, et al. v. Ohio Redistricting Commission, et al.* Decision and Additional Instructions

**SUMMARY**

Last night, the Supreme Court of Ohio ruled (4-3) in [\*League of Women Voters of Ohio, et al. v. Ohio Redistricting Commission, et al.\*](#) that the third Ohio General Assembly district plan adopted by the Ohio Redistricting Commission on February 24, 2022, does not comply with Article XI of Ohio’s Constitution. Thus, the Court ruled that the General Assembly district plan is invalid and ordered the Ohio Redistricting Commission to adopt a new district plan by March 28, 2022.<sup>1</sup>

However, federal litigation is still pending regarding the February 24, 2022 General Assembly district maps. As such, boards of elections are prohibited from altering or sending ballots and must pause any reprogramming of voter registration and tabulating systems until my Office provides additional instruction.

**INSTRUCTIONS**

**I. BALLOTS AND VOTER REGISTRATION SYSTEMS**

Boards of elections are prohibited from altering or sending ballots until my Office provides additional information in light of ongoing federal litigation.<sup>2</sup> Additionally, boards must pause any reprogramming of voter registration and tabulating systems until my Office provides additional instruction.

**II. OTHER REQUIREMENTS ASSOCIATED WITH MAY 3, 2022 PRIMARY ELECTION**

The General Assembly has not changed the date of the primary election. Boards of elections must do all of the following:

- Continue to prepare for an election on May 3, 2022;
- Continue to recruit precinct election officials and conduct precinct election official training;

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<sup>1</sup> See *League of Women Voters of Ohio v. Ohio Redistricting Comm.*, Slip Opinion No. 2022-Ohio-789.

<sup>2</sup> See *Gonidakis, et al. v. LaRose, et al.*, Case No. 2:22-CV-773 (S.D. Ohio 2022).

- Post the 46-day Federal Write-In Absentee Ballot (“FWAB”) notice that was updated and provided to boards of elections on Wednesday, March 16, 2022 by March 18, 2022;<sup>3</sup>
- Advertise in newspaper(s) the places, dates, times, qualifications, and methods for voter registration by March 22, 2022.<sup>4</sup>

**III. NOTICE ON WEBSITE AND VOTER INFORMATION LOOKUP**

Boards must prominently display notice on their website and specifically in their Voter Information Lookup tool that states, “On March 16, 2022, the Supreme Court of Ohio invalidated the Ohio General Assembly district plan adopted on February 24, 2022. Voter district information for Ohio House, Ohio Senate, and State Central Committee will be updated as soon as that information is available.”

**IV. PROTESTS AGAINST CANDIDATES FOR OHIO HOUSE, OHIO SENATE, AND STATE CENTRAL COMMITTEE**

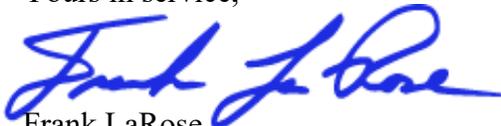
Boards of elections must not hold any protest hearings regarding General Assembly and State Central Committee candidates and notify the protestor and any candidate whose candidate certification was challenged that the protest is cancelled at this time.

**V. BOARD OFFICES MAY BE CLOSED ON MARCH 26, 2022**

Boards of elections are no longer required to be open to the public on Saturday, March 26, 2022.

If you have any questions regarding this Directive, please contact the Secretary of State’s Office at (614) 728-8789.

Yours in service,



Frank LaRose  
Ohio Secretary of State

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<sup>3</sup> [R.C. 3511.16\(C\)](#); [R.C. 3509.01\(B\)\(1\)](#).

<sup>4</sup> [R.C. 3503.12](#).



## **DIRECTIVE 2022-28**

March 9, 2022

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

Re: Ballots and Candidates for May 3, 2022 Primary Election for All Offices

### **SUMMARY**

On February 22, 2022, the Secretary of State's Office issued [Directive 2022-25](#) to provide the form of the official ballot for the May 3, 2022; however, the offices of U.S. Representative to Congress ("U.S. House"), Ohio House, Ohio Senate, and State Central Committee were not included due to delays in redistricting. Since then, the Ohio Redistricting Commission adopted district maps for the Ohio House, Ohio Senate, and U.S. House.<sup>1</sup> This Directive provides the forms of the official ballots to be used in the May 3, 2022 Primary Election, together with the names of all statewide candidates to be printed on those ballots.<sup>2</sup> This Directive supersedes [Directive 2022-25](#) and the forms of the ballot that accompanied [Directive 2022-25](#). This Directive also clarifies the requirements regarding candidate withdrawals.

### **INSTRUCTIONS**

Boards of elections must not print ballots until after the March 17, 2022 protest deadline for the offices of U.S. House, Ohio House, Ohio Senate, and State Central Committee. However, boards may begin to program and proof ballots as soon as candidates are certified to appear on the ballot. The most populous board of a district must immediately notify less populous counties if a protest is resolved against a candidate.

Please note that, in lieu of issuing a separate Directive with specific details covering ballot layout and proofing the Secretary of State's Office is issuing this Directive, which must be used in conjunction with [Chapter 5 of the Election Official Manual](#) when preparing ballots for this election. [Chapter 5 of the Election Official Manual](#) provides specific instructions on the following subjects:

- Ballot format;
- Voter instructions;
- Ballot stubs;
- Partisan primary elections;
- Candidate ballots (names, restrictions, political party, rotation, etc.);
- Questions and issues ballot;
- Ballot proofs;

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<sup>1</sup> See Directives [2022-26](#) and [2022-27](#).

<sup>2</sup> [R.C. 3505.01](#).

- Bid requirements;
- Ballot quantities;
- Logic and accuracy testing; and
- Public test.

## **I. VERIFYING DISTRICT RELATIONSHIPS**

Before programming any aspect of the central tabulating system for the May 3, 2022 Primary Election, boards of elections must verify the accuracy of district relationships in the central tabulating system against the county’s voter registration system.<sup>3</sup> This is to ensure that each voter receives the correct ballot style (i.e., the correct combination of candidate offices and issues) based upon that voter’s residential address.

## **II. OFFICIAL BALLOT FORMS**

Each board of elections is to provide a separate ballot for each political party listing candidates for nomination or election in a primary election.<sup>4</sup> Accordingly, accompanying this Directive are the following ballot forms:

- Official Democratic Primary Ballot;
- Official Republican Primary Ballot; and
- Official Questions and Issues Ballot.

The names of all candidates, who have not withdrawn pursuant to [R.C. 3513.30](#) (*see* Section VI of this Directive), must be arranged, rotated, and printed upon the ballot in accordance with the provisions of Ohio Revised Code Chapters [3505](#), [3506](#), and [3513](#) and [Chapter 5 of the Election Official Manual](#).

## **III. ORDER OF OFFICES FOR PRIMARY BALLOTS**<sup>5</sup>

A. The order of offices for **Democratic Party** ballots shall be as follows:

- Governor and Lieutenant Governor
- Attorney General
- Auditor of State
- Secretary of State
- Treasurer of State
- Chief Justice of the Supreme Court (Full term commencing 1-1-2023)
- Justice of the Supreme Court (Full term commencing 1-1-2023)
- Justice of the Supreme Court (Full term commencing 1-2-2023)
- United States Senator
- Representative to Congress
- Member of State Central Committee, Man

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<sup>3</sup> Boards must proof and verify the accuracy of all districts including but not limited to Congressional, Ohio House, Ohio Senate, and State Central Committee districts.

<sup>4</sup> [R.C. 3513.13](#).

<sup>5</sup> [R.C. 3513.13](#).

- Member of State Central Committee, Woman
- State Senator
- State Representative
- Judge of the Court of Appeals
- Judge of the Court of Common Pleas
- County Commissioner
- County Auditor
- Member of County Central Committee, if applicable

**B. The order of offices for **Republican Party** ballots shall be as follows:**

- Governor and Lieutenant Governor
- Attorney General
- Auditor of State
- Secretary of State
- Treasurer of State
- Chief Justice of the Supreme Court (Full term commencing 1-1-2023)
- Justice of the Supreme Court (Full term commencing 1-1-2023)
- Justice of the Supreme Court (Full term commencing 1-2-2023)
- United States Senator
- Representative to Congress
- Member of State Central Committee, Man
- Member of State Central Committee, Woman
- State Senator
- State Representative
- Judge of the Court of Appeals
- Judge of the Court of Common Pleas
- County Commissioner
- County Auditor
- Member of County Central Committee, if applicable

Candidates for statewide office appear on the sample ballot layouts provided with this Directive.

**C. Blank Spaces for Write-In Votes<sup>6</sup>**

A write-in space must be provided on the ballot for every office for which the board of elections received a valid declaration of intent to be a write-in candidate.<sup>7</sup>

- **Write-In Candidates for Statewide Office:**

No write-in candidates for statewide office filed for the May 3, 2022 Primary Election.

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<sup>6</sup> [R.C. 3513.041](#); [3513.14](#).

<sup>7</sup> [R.C. 3513.14](#).

- **For State Central Committee:** The board may not accept declarations of intent to be a write-in candidate for state central committee.<sup>8</sup> If no valid declarations of candidacy were filed for the positions, the office does not appear on the ballot.<sup>9</sup>
- **For County Central Committee:** The board may accept valid declarations of intent to be a write-in candidate and provide a write-in space on the ballot for county central committee, even if no declarations of candidacy were filed for the positions.

**D. Full or Unexpired Term**

For judicial offices, the designation of “Full Term Commencing,” followed by the appropriate date, must appear on the ballot. If for an unexpired term, the designation “Unexpired Term Ending,” followed by the term ending date of the office, must appear on the ballot.

The judicial offices for that court should appear in chronological order by the date the terms commence, followed by unexpired terms in descending order based on the ending date of the term.

For all other offices, the designation of term is necessary only when there is an unexpired term to elect (e.g., if a candidate is running for an unexpired term for mayor) and where two or more full terms for the office are to appear on the ballot (e.g., municipal court judge), in which case the offices should appear in chronological order by the date the terms commence. If there is both full and unexpired term for the same office, place the full term first followed by the unexpired term.

A 2-point rule must separate the title of the office from the names of the candidates for that office.<sup>10</sup>

**IV. CERTIFICATION OF CANDIDATE PETITIONS FOR U.S. HOUSE, OHIO SENATE, OHIO HOUSE, AND STATE CENTRAL COMMITTEE**

Candidates for U.S. House, Ohio House, Ohio Senate, and State Central Committee must be certified to the appropriate board(s) of elections by the most-populous county board of elections of the district **no later than March 14, 2022**.<sup>11</sup> Boards cannot verify or certify candidate petitions until the reprogramming of the voter registration system based on Directives [2022-26](#) and [2022-27](#) is complete. If a less-populous county board of elections of a district has not received a list of candidates from the most-populous county board of elections, the less-populous county board of elections must contact the most-populous county before programming ballots.

**V. OFFICIAL QUESTIONS AND ISSUES BALLOT<sup>12</sup>**

Offices for which candidates may be nominated or elected are presented on the ballot first, followed by the questions and issues. The Official Questions and Issues Ballot must be used for all voting systems. The ballot form also contains examples of some of the local questions and issues that may appear on the ballot in your county. Not every category or type of question/issue will appear on every ballot in every county, so please apply as much of the form as is appropriate to the ballots in your county.

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<sup>8</sup> See [1970 Ohio Atty.Gen.Ops. No. 70-011](#).

<sup>9</sup> [R.C. 3513.14](#).

<sup>10</sup> [R.C. 3505.08\(A\)](#).

<sup>11</sup> See [Directives 2022-26](#) and [2022-27](#).

<sup>12</sup> [R.C. 3505.06](#).

Additional instructions on headings, ballot language, and percentage of votes can be found in [Chapter 5 of the Election Official Manual](#).

Questions and issues must be grouped together in the following political subdivision order for elections held in 2022:

- School and Other Districts
- County
- Municipal
- Township

Each board of elections may determine the specific order in which the questions/issues within each group are placed on the ballot in that county, however, a board should adopt a method for doing so (i.e., ordered alphabetically or by date filed, etc.). Absentee ballots must contain identical ordering of issues within groups to regular ballots.

Please review the appropriate sections of the Ohio Revised Code, local charter (if applicable), and the [Questions and Issues Handbook](#) for ballot language and formats that are not on the attached Official Questions and Issues Ballot.

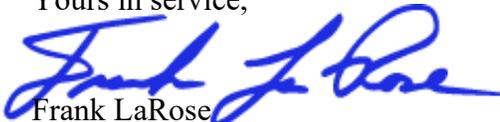
## **VI. CANDIDATE WITHDRAWALS**

Pursuant to Ohio law, when a person withdraws their candidacy after the seventieth day before Election Day, a board of elections must not remove the name of the withdrawn candidate from the ballots.<sup>13</sup> However, H.B. 93 authorizes the Secretary of State to adjust certain deadlines pertaining to the May 3, 2022 primary election.<sup>14</sup> Directives [2022-26](#) and [2022-27](#) adjusted the certification and protest deadlines for U.S. House, Ohio House, Ohio Senate, and State Central Committee. This Directive adjusts the withdrawal deadline for those offices. If a candidate for any of those offices withdraws prior to the certification deadline of **March 14, 2022**, the candidate's name **must not** appear on the ballot.

If a candidate for U.S. House, Ohio House, Ohio Senate, or State Central Committee withdraws on or after **March 14, 2022**, the board of elections must post a notice at each polling place on Election Day, and enclose a notice with each absentee ballot that states that votes for the withdrawn candidate will be void and will not be counted. If the name is not removed from all ballots before Election Day, the votes for the withdrawn candidate are void and must not be counted.<sup>15</sup>

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

Yours in service,



Frank LaRose  
Ohio Secretary of State

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<sup>13</sup> [R.C. 3513.30\(E\)](#).

<sup>14</sup> Section 4(G) of [H.B. 93](#).

<sup>15</sup> [R.C. 3513.30\(E\)](#).