

IN THE SUPREME COURT OF OHIO

STATE EX REL. OHIO DEMOCRATIC PARTY

340 E. Fulton Street
Columbus, Ohio 43215

STATE EX REL. KIARA DIANE SANDERS

2100 Commons N Rd.
Reynoldsburg, Ohio 43068

Relators,

-v-

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

22 North Fourth Street, 16th Floor
Columbus, Ohio 43215

Respondent.

CASE NO.

**ORIGINAL ACTION IN
PROHIBITION**

**ALTERNATIVE AND
PEREMPTORY WRITS
REQUESTED**

**Expedited Election Matter
Under S.Ct.Prac.R. 12.08**

RELATORS' COMPLAINT IN ORIGINAL ACTION FOR WRIT OF PROHIBITION

Donald J. McTigue* (0022849)

**Counsel of Record*

J. Corey Colombo (0072398)

Derek S. Clinger (0092075)

Ben F.C. Wallace (0095911)

McTIGUE & COLOMBO, LLC

545 East Town Street

Columbus, Ohio 43215

Phone: (614) 263-7000

dmctigue@electionlawgroup.com

ccolombo@electionlawgroup.com

dclinger@electionlawgroup.com

bwallace@electionlawgroup.com

N. Zachary West (0087805)

O'Connor, Haseley, & Wilhelm

35 North Fourth Street, Suite 340

Columbus, Ohio 43215

Phone: (614) 208-4375

west@goconnorlaw.com

Counsel for Relators

Dave Yost

OHIO ATTORNEY GENERAL

30 E. Broad Street

Columbus, Ohio 43215

Phone: 614-466-2872

Fax: 614-728-7592

Counsel for Respondents.

This action is brought in the name of the State of Ohio on the relation of the Ohio Democratic Party and Kiara Diane Sanders (“Relators”) who are requesting a writ of prohibition be issued to prevent Respondent Ohio Secretary of State Frank LaRose from setting the date of Ohio’s 2020 presidential primary election. Relators aver as follows:

NATURE OF THE ACTION AND JURISDICTION

1. This is an original action commenced pursuant to this Court’s original jurisdiction under Article IV, Section 2(B)(1)(d) Section 2(B)(1)(f) of the Ohio Constitution.

2. Relators seek an Order, Judgment, and/or Writ from this Court to prevent the action taken by Respondent setting the date of Ohio’s 2020 presidential primary election.

3. Relators seek further relief to assure that registered voters who did not vote by absentee ballot in the March 17, 2020 presidential primary and were eligible to vote in person on March 17, 2020 will be afforded an adequate alternative means of voting given the suspension of voting at the polls ordered by the Director of the Ohio Department of Health, which formed the basis for Respondent’s action in setting a later primary date. A proposed order is attached as Exhibit A.

PARTIES

4. Relator Ohio Democratic Party is one of Ohio’s two legally recognized major political parties, which is nominating candidates for local, state, and federal offices at the 2020 primary election.

5. Relator Kiara Diane Sanders is a registered elector of Franklin County, Ohio who is eligible to vote in Ohio’s 2020 presidential primary election, which was scheduled by the Ohio General Assembly to occur on March 17, 2020. Relator Sanders has not yet voted in Ohio’s 2020 presidential primary election, but she wanted and had intended to vote in-person at her assigned

polling location, which is located next to her home, on Election Day. *See* Affidavit of Kiara Diane Sanders attached to Complaint.

6. Respondent Frank LaRose is the Ohio Secretary of State and Chief Election Officer of Ohio.

FACTUAL ALLEGATIONS IN SUPPORT OF CLAIM

7. On July 17, 2019, the Ohio General Assembly passed Am. Sub. H.B. 166 to, among other provisions, amend R.C. 3501.01(E) to provide that Ohio's presidential primary election "shall be held on the third Tuesday after the first Monday in March." For Ohio's 2020 presidential primary election, this meant that the election would occur on March 17, 2020. The Ohio Governor signed Am. Sub. H.B. 166 into law on July 18, 2019.

8. In a press conference on the afternoon of March 16, 2020, Ohio Governor Mike DeWine and Respondent Secretary stated that they lacked the legal authority to change the date of Ohio's 2020 presidential primary election.

9. On or about 10:11 p.m. on Monday, March 16, 2020, Ohio Governor Mike DeWine announced that the Director of the Ohio Department of Health was closing the polling locations in the State of Ohio on Tuesday, March 17, 2020 due to concerns of exposure to COVID-19. The Director's Order is attached as Exhibit B.

10. On the morning of Tuesday, March 17, 2020, Respondent Secretary issued Directive 2020-06 to Ohio's 88 county boards of election directing that, "in response to Ohio Governor Mike DeWine's and Director of the Ohio Department of Health Dr. Amy Acton's order closing polling places on March 17, 2020," he was "suspending" the March 17, 2020 presidential primary election and "moving the date of the election to June 2, 2020. Directive 2020-06 is attached as Exhibit C and a press release from Respondent Secretary is attached as Exhibit D.

11. Directive 2020-06 includes the following instructions to the county boards of elections:

- a. “The March 17, 2020 Presidential Primary Election is suspended until June 2, 2020.”
- b. “The boards of elections are prohibited from processing any new voter registrations for the June 2, 2020 presidential primary election. The February 18, 2020 voter registration deadline remains the voter registration deadline.”
- c. “Boards of elections must remain open on March 17, 2020 to receive any absentee ballots at the boards of elections through 7:30 p.m. Boards of elections are required to process any UOCAVA ballots. Boards of elections are required to process any-non UOCAVA absentee ballot post-marked by Monday, March 16, 2020 and received by the boards of elections through March 27, 2020. Boards of elections are prohibited from tabulating and reporting any results until the close of polls on Tuesday, June 2, 2020.”
- d. “The boards of elections are required to process absentee ballot applications received at the board of elections postmarked by Tuesday, May 26, 2020. Absentee ballots must be postmarked by June 1, 2020 and must be received by the boards of elections no later than Friday, June 12, 2020. UOCAVA absentee ballots must be submitted for mailing not later than 12:01 a.m. at the place where the voter completes the ballot, on Tuesday, June 2, 2020.”
- e. “On Tuesday, June 2, 2020, boards of elections must conduct in-person voting at polling locations in their county. The polls will open at 6:30 a.m. and close at 7:30 p.m. on Tuesday, June 2, 2020. Boards of elections should work with their county prosecutors to review any contracts with polling locations to ensure that in-person voting can take place at those polling locations on Tuesday, June 2, 2020.”

See Exhibit C.

CLAIM FOR RELIEF

Respondent Ohio Secretary of State lacks jurisdiction and legal authority to set the date of Ohio’s 2020 presidential primary election.

12. Each and every allegation contained above is incorporated as if fully rewritten herein.

13. Respondent Secretary is patently and unambiguously without jurisdiction and legal authority to suspend, move, or set the date of Ohio’s 2020 presidential primary election.

14. Nothing in Ohio law provides that Respondent Secretary has the power to set the date of Ohio's 2020 presidential primary election.

15. Instead, the legal authority to set the date of Ohio's 2020 presidential primary election rests with the Ohio General Assembly. Pursuant to R.C. 3501.01(E)(2), the Ohio General Assembly set the date for Ohio's presidential primary election to occur "on the third Tuesday after the first Monday in March," which, for 2020, was March 17, 2020.

16. Despite a patent and unambiguous lack of jurisdiction and legal authority to set the date of an election, Respondent Secretary asserted jurisdiction and legal authority in Directive 2020-06 to set the date of Ohio's 2020 presidential primary for June 2, 2020.

17. Respondent Secretary's reliance upon factual findings and declarations of the Ohio Governor and the Director of the Ohio Department of Health to assert jurisdiction to move the date of Ohio's 2020 presidential primary election from March 17, 2020 to June 2, 2020 was a quasi-judicial act unauthorized by law.

18. Relators have no adequate remedy at law apart from a writ of prohibition.

19. Relators affirmatively allege that they have acted with utmost diligence in bringing the instant action, that there has been no unreasonably delay or lapse of time in asserting their rights sought herein, and, further, there is no prejudice to Respondent.

PRAYER FOR RELIEF

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

- A. Issue an Order, Judgment, Peremptory Writ of Prohibition, or Writ of Prohibition prohibiting Respondent Secretary from setting the date of Ohio's 2020 presidential primary election.
- B. Issue an Order, Judgment, Peremptory Writ of Prohibition, or Writ of Prohibition requiring the following:
 1. Ordering Respondent to rescind Directive 2020-06.

2. Ordering Respondent to direct Ohio's Boards of Elections to accept and process absentee ballot applications for voting by mail until 12:00 p.m. on April 25, 2020.
3. Ordering Respondent to direct Ohio's Boards of Elections to accept and count all valid absentee ballots postmarked on or before April 28, 2020, and received at the board on or before May 8, 2020.
4. Ordering Respondent to send, or to direct Ohio's Boards of Elections to accept and count all valid absentee ballots postmarked on or before April 28, 2020, and received at the board on or before May 8, 2020, or received by personal delivery by the voter or a family member on or before April 28, 2020.
5. Ordering Respondent to arrange for prepaid postage for the return of absentee ballot requests and absentee ballot envelopes by voters.
6. Ordering Respondent to direct Ohio's Boards of Elections to provide a secure receptacle outside the location of each Board of Elections' office or early voting center for voters to return their absentee ballots or absentee ballot requests. This receptacle shall be accessible 24 hours per day.
7. Ordering Respondent to direct Boards of Elections to provide assistance to voters with disabilities who are unable to complete an absentee ballot application or vote an absentee ballot and who request assistance.
8. Ordering Respondent to direct Boards of Elections to provide assistance to voters whose illiteracy prevents them from completing an absentee ballot application or from voting a paper ballot and who request assistance.
9. Ordering Respondent to direct the Ohio Boards of Elections to conduct the canvassing of the ballots in accordance with the timelines otherwise provided under Ohio law.

C. Issue an alternative writ setting an expedited briefing schedule.

D. Assess the costs of this action against Respondent;

E. Award Relators' their attorneys' fees and expenses; and

F. Award such other relief as may be appropriate.

Respectfully submitted,

/s/ Donald J. McTigue

Donald J. McTigue* (0022849)

**Counsel of Record*

J. Corey Colombo (0072398)

Derek Clinger (0092075)

Ben F.C. Wallace (0095911)

MCTIGUE & COLOMBO LLC

545 East Town Street

Columbus, Ohio 43215

Phone: (614) 263-7000

dmctigue@electionlawgroup.com

ccolombo@electionlawgroup.com

dclinger@electionlawgroup.com

bwallace@electionlawgroup.com

N. Zachary West (0087805)

O'Connor, Haseley, & Wilhelm

35 North Fourth Street, Suite 340

Columbus, Ohio 43215

Phone: (614) 208-4375

west@goconnorlaw.com

Counsel for Relators