

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

OHIO DEMOCRATIC PARTY,

Plaintiff,

v.

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

Defendant.

Case No. 2:19-cv-3774

Judge \_\_\_\_\_

**COMPLAINT**

Plaintiff Ohio Democratic Party hereby alleges as follows:

**NATURE OF ACTION**

1. This is an action seeking to prevent the denial of Ohio citizens' fundamental right to vote as a result of Defendant's arbitrary and capricious removal (or "purge") of eligible Ohio voters from Ohio's voter registration database (the "Voter File.") Plaintiff Ohio Democratic Party, an Ohio political party, asks this Court to issue declaratory and injunctive relief to prevent Defendant from disenfranchising eligible voters by purging them from the Ohio Voter File. There is insufficient time to determine the total number of eligible voters affected, but so far as many as 30,600 eligible voters have been identified as being wrongly included on Defendant's purge list. Plaintiff respectfully submits that Ohio's provisional ballot scheme is not an adequate solution for identifying or remedying affected voters' injuries and will not prevent Defendant's conduct from wrongly depriving eligible voters of their fundamental right to vote due to Ohio's practice of discarding provisional ballots for such trivial errors as a voter writing their name in

cursive instead of print. Defendant's knowing and intentional reliance on a flawed purge list will deny the fundamental right of eligible Ohio voters, including members of the Democratic Party, to vote in violation of the due process clause of the Fourteenth Amendment and 42 U.S.C. § 1983.

2. Defendant's knowing and intentional reliance on a flawed purge list imposes an undue burden on the voting rights of potentially thousands of Ohioans in violation of the First and Fourteenth Amendments to the U.S. Constitution and 42 U.S.C. § 1983.

3. Defendant's knowing and intentional reliance on a flawed purge list will prevent eligible Ohio voters from participating in an election in violation of Art. V, Section 1 of the Ohio Constitution and 42 U.S.C. § 1983.

4. Defendant's knowing and intentional reliance on a flawed purge list will result in Ohio's Voter File not including the name of each registered voter in the state of Ohio in violation of Ohio Rev. Code § 3503.15(A)(5) and 42 U.S.C. § 1983.

5. Defendant's knowing and intentional reliance on a flawed purge list that includes eligible voters who moved within the county where they are currently registered to vote violates of Ohio Rev. Code § 3503.21 and 42 U.S.C. § 1983.

### **JURISDICTION AND VENUE**

6. This case arises under the Constitution and laws of the United States and the State of Ohio. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1343, and 1367. This Court has jurisdiction to grant declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201 and 2202.

7. Venue is proper in this district pursuant to 28 U.S.C. § 1391, because Defendant's principle place of business is located in this district and a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this district.

### **STATEMENT OF FACTS**

8. Plaintiff OHIO DEMOCRATIC PARTY ("ODP") is a registered political party in the State of Ohio. ODP conducts significant voter protection, registration, and education activities both to its members and to the general public in support of ODP's preferred candidates for public office. ODP also conducts express advocacy and get-out-the-vote efforts encouraging Ohioans to vote for ODP's preferred candidates for office.

9. ODP expends significant resources in these efforts, and, during election years, employs hundreds of staff to contact and communicate with Ohioans about voting for ODP's preferred candidates. These contacts include encouraging and assisting citizens in registering to vote, or updating their voter registration, educating voters on how and where to vote. If Defendant is allowed to proceed, ODP will be forced to divert resources and staff to re-registering already registered and active voters, as well as encouraging eligible voters to ensure they are still registered to vote. As a result of Defendant's actions, ODP will have fewer resources to devote to its other activities such as communicating information about ODP's preferred candidates and ODP's get-out-the-vote efforts.

10. Defendant Frank LaRose is named in his official capacity as the Ohio Secretary of State and the State of Ohio's chief election official.

11. As Secretary of State, Defendant is responsible for maintaining Ohio's Voter File. The Voter File is a computerized database of all registered voters in Ohio. It includes, *inter alia*,

each voter's name, address, voting history, and party affiliation. 52 U.S.C. § 21083 requires each state's chief election officer to maintain such a database.

12. As part of his duty to purge voters who have moved to a location where they are no longer eligible to vote, Defendant purges voters who appear on the U.S. Postal Service's National Change of Address ("NCOA") list as having moved from the county in which they are registered to a different county within the state or to a location outside the state. This list is generated by comparing the Ohio Voter File with the NCOA list. After voters are identified as appearing on the NCOA list, they are sent a confirmation card. Voters who fail to respond to the confirmation card, do not update their registration address, and do not vote in two consecutive federal election cycles after being sent a confirmation card are removed from the Voter File. This is known as the "NCOA Process." Voters who have moved within the same county are not subject to being purged under the NCOA process under the NCOA process contained in Ohio Rev. Code § 3503.21, but there are voters on the current purge list who moved within their county.

13. Defendant also purges voters through the "supplemental process." Under the supplemental process, Defendant identifies voters who vote infrequently and treats that voting behavior as an indication that the voter has moved to a location where the voter is no longer eligible to vote. Boards of elections send confirmation notices to voters who have not voted in two consecutive years and place such voters in "inactive status". If the voter fails to respond to the confirmation notice, does not update his or her voter registration address, and does not vote for four consecutive years after receiving the confirmation notice, the voter is purged from the Voter File.

14. On or about June 26, 2019, Defendant issued a directive ordering that approximately 235,610 voters be purged from Ohio's Voter File under the NCOA and supplemental processes on September 6, 2019.<sup>1</sup>

15. Once a voter is purged from Ohio's Voter File, that voter is no longer able to vote a regular ballot without submitting a new voter registration form. If a purged voter shows up at a polling location to vote without re-registering, they are required to vote a provisional ballot. An individual must register or re-register to vote at least 30 days prior to an election to be eligible to vote a regular ballot in that election.

16. If an individual is not registered to vote, or there is a problem with their registration, they are required to vote a provisional ballot. Voters voting a provisional ballot must fill out an affirmation form for their ballot to be counted, and provide the following information: printed name, birthdate, registration address, social security number or drivers' license number, and signature.

17. Ohio discards provisional ballots for trivial reasons "such as a wrongly entering a mailing address instead of a registration address...or writing a name in cursive instead of print."<sup>2</sup> In some cases, a voter's provisional ballot is rejected because they wrote their birthdate in date/month/year format rather than month/date/year format.<sup>3</sup> Counties are inconsistent in their treatment of identical ballots, with some counties counting ballots with errors that other counties would discard.<sup>4</sup>

18. A number of municipalities in Ohio will hold primary elections on September 10, 2019. All municipalities and townships in Ohio will hold general elections on November 5, 2019. An

---

<sup>1</sup> Directive 2019-29

<sup>2</sup> *NEOCH v. Husted*, Case 2:06-cv-00896, Order at 35, June 7, 2016, ECF No. 691.

<sup>3</sup> *Id.* at 29.

<sup>4</sup> *Id.* at 31-32.

eligible voter who is wrongly purged on September 6 will be unable to cast a regular ballot in the September 10 primary election even if they immediately re-register.

19. Beginning in early July, voting rights groups and other outside organizations requested Defendant to publish the purge list, so that voters could be contacted and encouraged to take action to avoid being removed from Ohio's Voter File.<sup>5</sup>

20. On August 5, it was reported that there were errors with the purge lists from Franklin, Huron, Mercer, and Henry counties. 123 active voters were mistakenly purged in Franklin County in January 2019, and in June, more than 1,100 Franklin County voters were incorrectly sent letters stating that they would be purged in September.<sup>6</sup>

21. On August 15, the Ohio League of Women Voters announced that the League discovered more than 4,000 additional voters on the purge list were listed as being in "Active" status on the Secretary of State's website.<sup>7</sup> In a letter sent to Defendant, the League also stated that they had identified more than 17,500 voters included on the purge list who had voted as recently as November 2018.<sup>8</sup>

22. On or about August 16, Defendant's staff identified over 1,450 additional voters who were wrongly included on the purge list and were in "active" status in the Ohio Voter File, but Defendant does not appear to have publicly disclosed this until on or about August 25..<sup>9</sup>

---

<sup>5</sup> Rick Rouan, *Twenty Groups ask Ohio for its list of voters to be purged*, The Columbus Dispatch (July 23, 2019).

<sup>6</sup> Rick Rouan, *Dozens of Ohio Voters improperly purged in Franklin County*, The Columbus Dispatch (Aug. 5, 2019).

<sup>7</sup> Ohio League of Women Voters, *Voting Rights Advocates urge Ohio Secretary of State to immediately stop voter purges*, available at <https://my.lwv.org/ohio/article/voting-rights-advocates-urge-ohio-secretary-state-immediately-stop-voter-purges> (Accessed August 29, 2019).

<sup>8</sup> *Id.*

<sup>9</sup> Doug Caruso, *Vendor's errors lead to hundreds of voters targeted to purge in Ohio*, The Columbus Dispatch (Aug. 25, 2019)

23. On August 19, the Ohio House Democratic Caucus sent a letter to Defendant raising concerns about the large number of errors with the purge list. The House Democratic Caucus also identified an additional 6,509 eligible voters who should not be included on the purge list.<sup>10</sup>

24. On information and belief, the vast majority of the eligible voters identified in the Caucus's letter had moved within the county they were currently registered in, but were wrongly scheduled to be purged under the NCOA process.

25. If there is no overlap in the various errors discovered by outside groups, more than 30,600 eligible voters, or more than 10% of the list, have been identified as being at risk of wrongful purging. There is no way of knowing how many additional eligible voters have not yet been identified. Over 100 eligible voters have already been wrongly purged beginning in January of this year.

26. Defendant is well aware of these problems, but rather than use the resources of his office to address them, Defendant has shifted the burden onto outside groups. On August 20, Defendant gave an interview in which Defendant stated that these errors show that the system is working.<sup>11</sup>

### **COUNT ONE**

#### **Violation of the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution and 42 U.S.C. § 1983**

27. Plaintiff repeats the allegations in the foregoing paragraphs and inserts them as though fully set forth herein.

28. The Fourteenth Amendment protects an individual from being deprived of their right to vote without due process of law.

---

<sup>10</sup> Ohio House Democratic Caucus, *Letter to Ohio Secretary of State Frank LaRose*, Aug. 19, 2019

<sup>11</sup> Andrew J. Tobias, *Rebutting activist's 'purge' concerns, Ohio Secretary of State Frank LaRose says outreach to inactive voters is working*, Cleveland Plain Dealer (Aug. 20, 2019).

29. Plaintiff's members and supporters have a liberty interest in the right to vote that is protected by the Due Process Clause of the Fourteenth Amendment.

30. In the circumstances alleged here, Defendant's arbitrary and capricious purging of voters without implementing adequate safeguards immediately prior to an election have exposed eligible voters to the potential of being wrongly purged. The increased risk to voters, coupled with Ohio's practice of discarding provisional ballots for such trivial errors as writing a name in cursive instead of print, threaten to deny Plaintiff's members and supporters of their right to vote in violation of the due process clause of the Fourteenth Amendment.

31. Defendant, and his agents and employees, have materially increased the risk that eligible voters have been, and will be, unlawfully removed from the Ohio Voter File in a manner that prevents them from casting a regular ballot, by knowingly and intentionally relying on inaccurate purge list and then exacerbating the risk by scheduling the purge to take place immediately prior to an election.

32. As a result of Defendant's actions, active voters, including members of the Democratic Party, who have taken the required steps to register and maintain their registrations may—through no fault of their own—arrive at the polls on Election Day and not be permitted to cast a regular ballot.

33. Ohio's provisional ballot scheme fails to provide an adequate remedy. A purged voter's provisional ballot will not be counted unless the voter perfectly filled out the provisional ballot affirmation form, and the information on the form exactly matches what is contained in the Ohio Voter File. The Ohio Voter File may not be accurate at the time the provisional ballots are counted, as a result of Defendant's failure to properly maintain of the Ohio Voter File. Even in cases where the voter's information matches, the voter's provisional ballot may still be discarded

due to trivial errors such as the voter writing their name in cursive, or using a different date format.

34. Defendant's actions have created a situation that is fundamentally unfair to eligible voters whose registrations are purged. Those voters reasonably relied on the procedures and systems established by Defendant and the State and should not be deprived of their votes in violation of the Due Process Clause.

35. Defendant's planned purge should therefore be permanently enjoined and Plaintiff should be awarded declaratory relief and costs and reasonable attorneys' fees.

## **COUNT II**

### **Undue Burden on Plaintiff's Speech and Association Rights in Violation of the First and Fourteenth Amendments of the U.S. Constitution and 42 U.S.C. § 1983**

36. Plaintiff repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

37. The Fourteenth Amendment protects individuals' right to vote from unreasonable burdens imposed by the State. See generally *Burdick v. Takushi*, 504 U.S. 428, 434 (1992); *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983).

38. The First and Fourteenth Amendments prohibit the imposition of severe burdens on the right to vote unless they are narrowly drawn to advance a state interest of compelling importance.

39. Even where burdens on the right to vote are not severe, the First and Fourteenth Amendments prohibits them if they are not justified by relevant and legitimate state interests that are sufficiently weighty to justify the limitations.

40. Defendant, and his agents and employees, have materially increased the risk that eligible voters have been and will be unlawfully removed from the Ohio Voter File or in a manner that

prevents them from casting a regular ballot, by knowingly and intentionally relying on an inaccurate purge list and then exacerbating the risk by scheduling the purge less than a week before an election.

41. The State of Ohio has not asserted, and cannot assert, any interest (much less an interest of compelling importance) that justifies imposing and/or makes it necessary to impose these severe burdens upon the fundamental right of eligible Ohio voters to vote. There is no legitimate state interest in disenfranchising eligible voters, and in fact such disenfranchisement is explicitly forbidden by state and federal statute and the Ohio constitution.

42. As a result of Defendant's actions, active voters, including members of the Democratic Party, who have taken the required steps to register and maintain their registrations may—through no fault of their own—arrive at the polls on Election Day and not be permitted to cast a regular ballot.

43. Ohio's provisional ballot scheme fails to provide an adequate remedy. A purged voter's provisional ballot will not be counted unless the voter perfectly filled out the provisional ballot affirmation form, and the information on the form exactly matches what is contained in the Ohio Voter File. The Ohio Voter File may not be accurate at the time the provisional ballots are counted, as a result of Defendant's failure to properly maintain the Ohio Voter File. Even in cases where the voter's information matches, the voter's provisional ballot may still be discarded due to trivial errors such as the voter writing their name in cursive, or using a different date format.

44. By removing eligible voters from the rolls, and potentially forcing them to cast a provisional ballot, Defendant has imposed an undue burden on Ohio voters' rights of speech and

association, including the right to associate and support candidates of their choosing, in violation of the First and Fourteenth Amendments to the U.S. Constitution.

45. Defendant's planned purge should therefore be permanently enjoined and Plaintiff should be awarded declaratory relief and costs and reasonable attorneys' fees.

### **COUNT III**

#### **Violation of the Help America Vote Act, 52 U.S.C. § 21083 and 42 U.S.C. § 1983**

46. Plaintiff repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

47. The Help America Vote Act (HAVA) requires the State to implement "[s]afeguards to ensure that eligible voters are not removed in error from the official list of eligible voters." See 52 U.S.C. 21083(a)(4)(B).

48. More than 30,600 eligible voters could be wrongly included in Defendant's purge. Over 120 eligible voters were wrongly purged in January 2019.

49. Defendant has violated HAVA by implementing inadequate safeguards that do not protect eligible voters from being purged.

50. Defendant's planned purge should therefore be permanently enjoined and Plaintiff should be awarded declaratory relief and costs and reasonable attorneys' fees.

### **COUNT IV**

#### **Violation of Article V, Sec. 1 of the Ohio Constitution and 42 U.S.C. § 1983**

51. Plaintiff repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

52. Article V, Section 1 of the Ohio Constitution provides that "Every citizen of the United States, of the age of eighteen years, who has been a resident of the state, county, township, or

ward, such time as may be provided by law, and has been registered to vote for thirty days, has the qualifications of an elector, and is entitled to vote at all elections.”

53. As a result of Defendant’s reliance on an inaccurate purge list, and his decision to schedule a purge less than one week prior to an election, Ohioans who have duly registered and maintained eligible voter status and complied with the procedures put forth by the legislature and constitutional provisions approved by the voters of this state may be wrongly deprived of their fundamental right to vote.

54. Ohio’s provisional ballot scheme fails to provide an adequate remedy. A purged voter’s provisional ballot will not be counted unless the voter perfectly filled out the provisional ballot affirmation form, and the information on the form exactly matches what is contained in the Ohio Voter File. The Ohio Voter File may not be accurate at the time the provisional ballots are counted, as a result of Defendant’s failure to properly maintain of the Ohio Voter File. Even in cases where the voter’s information matches, the voter’s provisional ballot may still be discarded due to trivial errors such as the voter writing their name in cursive, or using a different date format.

55. Defendant’s actions violate the Ohio Constitution.

56. Defendant’s planned purge should therefore be permanently enjoined and Plaintiff should be awarded declaratory relief and costs and reasonable attorneys’ fees.

#### **COUNT V**

#### **Violation of Ohio Rev. Code § 3503.15(A)(5) and 42 U.S.C § 1983**

57. Plaintiff repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

58. The Ohio Revised Code requires Defendant ensure that boards of elections “maintain the database in a manner that ensures that the name of each registered elector appears in the database

[and] that only individuals who are not registered or eligible to vote are removed from the database...” in Ohio Rev. Code § 3505.15(A)(5)(a).

59. Defendant has violated Ohio Rev. Code § 3505.15(A)(5)(a) by allowing the removal of over 120 eligible voters in January 2019.

60. Defendant is required to “[e]stablish safeguards to ensure that eligible electors are not removed in error from the database” under ORC § 3505.15(A)(5)(c).

61. Defendant has failed to establish safeguards to protect against erroneously purging eligible voters, as seen by Defendant placing thousands of eligible voters at risk of being removed from the database.

62. Defendant’s planned purge should therefore be permanently enjoined and Plaintiff should be awarded declaratory relief and costs and reasonable attorneys’ fees.

**COUNT VI**  
**Violation of Ohio Rev. Code § 3503.21 and 42 U.S.C § 1983**

63. Plaintiff repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

64. The Ohio House Democratic Caucus has identified over 6,509 eligible voters who were wrongly scheduled to be purged under the NCOA process. On information and belief, the vast majority of these voters had moved within the same county as where they were registered to vote.

65. Ohio Rev. Code § 3503.21(A)(6) states in pertinent part that “[t]he registration of a registered elector shall be canceled upon the change of residence of the registered elector to a location outside the county of registration in accordance with division (B) of this section.”

66. Ohio Rev. Code § 3503.21(B)(1) requires secretary of state to “prescribe procedures to identify and cancel the registration in a prior county of residence of any registrant who changes the registrant's voting residence to a location outside the registrant's current county of registration.”

67. Ohio Rev. Code § 3503.21(C) states in pertinent part “[t]he registration of a registered elector shall not be canceled except as provided in this section...”

68. Ohio Rev. Code § 3503.21 does not permit the cancellation of an otherwise eligible voter’s registration solely on the basis that the voter moved within the same county as where they are currently registered.

69. Defendant’s inclusion of these 6,509 voters violates R.C. 3503.21(C).

70. Defendant’s planned purge should therefore be permanently enjoined and Plaintiff should be awarded declaratory relief and costs and reasonable attorneys’ fees.

### **PRAYER FOR RELIEF**

Wherefore, Plaintiff respectfully requests that this Court:

- (i) Declare that the Defendant’s plan to purge potentially thousands of eligible voters from the Ohio Voter File violates the Due Process Clause and imposes a severe burden on the right to vote in violation of the Fourteenth Amendment;
- (ii) Declare that the Defendant’s failure to implement safeguards to prevent eligible voters from being wrongly purged violates HAVA;
- (iii) Declare that the Defendant’s creation of an inaccurate purge list that erroneously includes thousands of qualified electors, coupled with his plan to remove these qualified electors from the voter file less than a week before an election violates the Ohio Constitution and the Ohio Revised Code

- (iv) Issue a temporary restraining order, preliminary injunction, and permanent injunction, enjoining Defendant from purging eligible voters from the Ohio Voter file.

Specifically, Plaintiff asks the Court to order that:

- a. Defendant, or Defendant's agents, conduct a manual review of the voting history of each voter at risk of being purged under the NCOA or supplemental processes, and remove from that list any individual who has voted in any election or signed a petition since 2013 for voters subject to the supplemental process and 2015 for voters subject to the NCOA process. If, after such review, any names remain on the purge list, Defendant shall inform Plaintiff's designated representative and provide an opportunity to examine the voting history of any such individuals remaining on the list prior to any purge.
  - b. Defendant, or Defendant's agents, conduct a manual review of the residency history of each voter at risk of being purged under the NCOA process and remove from the purge list any voter who has moved within the same county as where they are registered to vote.
  - c. Defendant not schedule any future purge to occur within 60 days before a regularly scheduled election, so that any wrongly purged individual be afforded sufficient opportunity to re-register and cast a regular ballot at the next election.
  - d. The Court shall retain continuing jurisdiction over any future disputes over voter eligibility arising after Defendant's manual review.
- (v) Award Plaintiff the costs of this proceeding, including reasonable attorneys' fees and other litigation costs reasonably incurred in this action, pursuant to 42 U.S.C. § 1988; and,

(vi) Grant such additional relief as this Court deems just and proper.

Respectfully submitted,

/s/N. Zachary West

N. Zachary West (0087805)  
O'CONNOR, HASELEY, & WILHELM, LLC  
35 North Fourth Street, Ste. 340  
Columbus, OH 43215  
Telephone: (614)208-4375  
west@goconnorlaw.com

### **CERTIFICATE OF SERVICE**

I certify that on August 30, 2019, I filed the foregoing document using the Court's online-filing system, which will send a copy of the foregoing to all counsel of record, and caused courtesy copies to be served by electronic mail on counsel for Defendant who have not yet appeared in this matter.

*/s/N. Zachary West*

\_\_\_\_\_  
*N. Zachary West, Attorney for Plaintiff*