

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

OHIO DEMOCRATIC PARTY, et al.

Plaintiffs,

-v-

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

Defendant,

and

OHIO REPUBLICAN PARTY.

Intervenor-Defendant.

CASE NO. 20CV005634

JUDGE RICHARD FRYE

**PLAINTIFFS' MOTION FOR ORDER DIRECTED TO INTERVENOR-DEFENDANT
OHIO REPULICAN PARTY TO SHOW CAUSE**

MOTION

Plaintiffs Ohio Democratic Party (ODP) and Lewis Goldfarb respectfully move this Court for an order directed at Intervenor-Defendant Ohio Republican Party (ORP) to show cause why ORP should not be found in contempt for its abhorrent statements directed at the Court and ODP in response to this Court's September 15, 2020 Opinion. The grounds for this motion are set forth in the following Memorandum in Support.

MEMORANDUM IN SUPPORT

Plaintiffs move for an order directed to ORP to show cause because, in response to this Court's September 15, 2020 Opinion, ORP falsely accused this Court and ODP of a variety of ethical misconduct.

FACTS

Shortly after the Court issued its Opinion in this matter on the morning of September 15, 2020, ORP issued the following statement, a copy of which is attached hereto as Exhibit A, in which they falsely accuse this Court and the Chair of ODP of ethical misconduct:

Good Afternoon,

After the corruption and deceit we have seen from Ohio Democrats, it comes as no surprise to discover they have colluded with a Democrat Common Pleas Court judge regarding a ruling on ballot drop boxes.

ODP Chairman David Pepper took to Twitter to declare the ruling “breaking news” despite the fact that it hadn’t yet been released to the public. Rather than get to work for the people of Ohio, Pepper spends all of his free time on Twitter, and now, colluding with partisan judges. He just can’t help himself.

The role of a judge is to be impartial, yet the judge in question parroted his party’s talking points in his ruling. The law was clear in stating the legality of having **one** ballot drop box per county. The judge’s interpretation of this law due to his partisan affiliation is a blatant obstruction of his judicial responsibility.

The Democrats have publicly called for ballot harvesting in the past and will stop at nothing to weaken election security in Ohio. Now, they do it with the approval of the judicial branch. The rhetoric surrounding election security is incompatible with free and fair elections. Their only goal is to elect radical liberals to fulfill their agenda, including judge with unmistakable partisan interests.

With less than 50 days until the election, we cannot allow the Ohio Democrat [*sic*] Party to obstruct our elections. We must hold them accountable for these unacceptable actions.

(Bold emphasis original.)

ORP share this statement on its official Twitter Page along with the text “Ohio Democrats Collude with Common Pleas Judge.” *See* ORP (@ohiogop), Twitter (Sept. 15, 2020, 1:15 PM), <https://twitter.com/ohiogop/status/1305918288187273217>.

In a subsequent Tweet, ORP also accused ODP’s Chair “and the Dem judge” of having “colluded from the beginning.” *See* ORP (@ohiogop), Twitter (Sept. 15, 2020, 3:07 PM), <https://twitter.com/ohiogop/status/1305946474476437504>.

LEGAL STANDARD FOR CONTEMPT

Contempt is “generally ‘conduct which brings the administration of justice into disrespect, or which tends to embarrass, impede or obstruct a court in the performance of its functions.’” *State v. Anderson*, 10th Dist. Franklin No. 12AP-516, 2013-Ohio-2454, ¶ 10 quoting *Denovchek v. Bd. of Trumbull Cty. Commrs.*, 36 Ohio St.3d 14, 15, 520 N.E.2d 1362 (1988). The purpose of contempt proceedings “is to secure the dignity of the courts and the uninterrupted and unimpeded administration of justice.” *Hill v. Hill*, 10th Dist. No. 15AP-891, 2017-Ohio-2625, ¶ 20 quoting *Windham Bank v. Tomaszczyk*, 27 Ohio St.2d 55, 271 N.E.2d 815 (1971).

There are two kinds of contempt, direct or indirect. *Anderson, supra*, citing *Sansom v. Sansom*, 10th Dist. No. 05AP-645, 2006-Ohio-3909, ¶ 23. Direct contempt “occurs in the presence of the court and obstructs the administration of justice.” *Id.* Indirect contempt “involves behavior which occurs outside the presence of the court and demonstrates a lack of respect for the court or its lawful orders.” *Id.* Courts may further classify contempt as civil or criminal, depending on the character and purpose of the contempt sanctions. *Id.*

ANALYSIS

ORP’s numerous false allegations of corruption and misconduct directed at the Court and ODP in response to the Court’s Opinion constitute indirect contempt. The statements are tremendously disrespectful, and the false allegations tend to embarrass, impede, or obstruct the Court in the performance of its function.

To recap, ORP, in response to the Court's September 15, 2020 Opinion falsely accuse the Court of (1) acting without impartiality, (2) "parrot[ing] his party's talking points," (3) basing its decision upon "his party affiliation," (4) acting in a "blatant obstruction of his judicial responsibility," and (5) acting with "unmistakable partisan interests."

Further, ORP invoked themes of "corruption and deceit" to falsely accuse the Court and ODP of "colluding" on the Court's opinion. It appears that the entire premise of this particular accusation is that ODP's Chair allegedly received the Court's Opinion before it was issued to the public. This, of course, is patently false. The Court's Opinion is time-stamped as having been issued on September 15, 2020 at 10:41 AM. Counsel for all parties in the case, including both ODP and ORP, then received a notification of the opinion a few minutes later. ODP's Chair then began Tweeting about the decision on September 15, 2020 at 11:07 AM. *See* David Pepper (@DavidPepper), Twitter (Sept. 15, 2020, 11:07 AM), <https://twitter.com/DavidPepper/status/1305886005241810945> ("Big news on voting rights in Ohio. Stay tuned....") There appears to be a delay in between the parties' counsel receiving the Opinion and the Opinion being published on the Clerk of Court's website. But the reality is that ODP and ORP received notice of the Opinion at the same time.

CONCLUSION

For the reasons above, Plaintiffs respectfully move this Court for an order directed at ORP to show cause why ORP should not be found in contempt for its abhorrent statements.

Respectfully submitted,

/s/ Derek S. Clinger

Derek S. Clinger* (0092075)

*Trial Attorney

Donald J. McTigue (0022849)

J. Corey Colombo (0072398)

McTigue & Colombo, LLC

545 East Town Street

Columbus, OH 43215

(614) 263-7000

dclinger@electionlawgroup.com

dmctigue@electionlawgroup.com

ccolombo@electionlawgroup.com

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on September 16, 2020, I electronically filed the foregoing with the Clerk of the Court by using the e-Filing system which will send a notice of electronic filing to the following:

Bridget Coontz for Defendant LaRose

Halli Brownfield Watson for Defendant LaRose

Edward M. Carter for Intervenor Defendant Ohio Republican Party.

M. Ryan Harmanis for Intervenor Defendant Ohio Republican Party.

/s/ Derek S. Clinger

Derek S. Clinger (0092075)