Supreme Court of Ohio Clerk of Court - Filed November 29, 2021 - Case No. 2021-1428

In The
Ohio Supreme Court

REGINA C. ADAMS, et al.,	:	
	:	
Relators,	:	**Case No. 2021-1428**
	:	
v.	:	**Original Action Pursuant to**
	:	**Ohio Const., Art. XIX, § 3(A)**
GOVERNOR MIKE DEWINE, et al.,	:	
	:	**Redistricting Case**
Respondents.	:	

SECRETARY OF STATE FRANK LAROSE'S RESPONSE TO RELATORS' MOTION FOR SCHEDULING ORDER

Donald J. McTigue* (0022849)
Derek S. Clinger (0092075)
MCTIGUE & COLOMBO LLC
545 East Town Street
Columbus, OH 43215
dmctigue@electionlawgroup.com
dclinger@electionlawgroup.com
Tel: 614-263-7000 | Fax: 614-368-6961

Abha Khanna (Pro Hac Vice Pending)
Ben Stafford (Pro Hac Vice Pending)
ELIAS LAW GROUP
1700 Seventh Ave, Suite 2100
Seattle, WA 98101
Tel: 206-656-0176 | Fax: 206-656-0180
akhanna@elias.law
bstafford@elias.law

Aria C. Branch (Pro Hac Vice Pending)
Jyoti Jasrasaria (Pro Hac Vice Pending)
Spencer W. Klein (Pro Hac Vice Pending)
Harleen K. Gambhir (Pro Hac Vice Pending)
ELIAS LAW GROUP
10 G St NE, Suite 600
Washington, DC 20002
Tel: 202- 968-4490 | Fax: 202-968-4498
abranch@elias.law
jjasrasaria@elias.law
sklein@elias.law
hgambhir@elias.law
Counsel for Relators

DAVE YOST
OHIO ATTORNEY GENERAL

BRIDGET C. COONTZ (0072919)*
MICHAEL A. WALTON (0092201)
*Counsel of Record
JULIE M. PFEIFFER (0069762)
Assistant Attorneys General
Constitutional Offices Section
30 E. Broad Street, 16th Floor
Columbus, Ohio 43215
Tel: 614-466-2872 | Fax: 614-728-7592
Bridget.Coontz@OhioAGO.gov
Julie.Pfeiffer@OhioAGO.gov
Michael.Walton@OhioAGO.gov

Counsel for Respondent
Ohio Secretary of State LaRose

In The
Ohio Supreme Court

REGINA C. ADAMS, et al.,	:	
	:	
Relators,	:	**Case No. 2021-1428**
	:	
v.	:	**Original Action Pursuant to**
	:	**Ohio Const., Art. XIX, § 3(A)**
GOVERNOR MIKE DEWINE, et al.,	:	
	:	**Redistricting Case**
Respondents.	:	

SECRETARY OF STATE FRANK LAROSE'S RESPONSE TO RELATORS' MOTION FOR SCHEDULING ORDER

The Parties agree that time *is* of the essence here. Still, Relators propose a scheduling order that is entirely too long from an election administration perspective and would wreak havoc on the 2022 Primary Election for Ohio's fifteen new congressional districts.

As with any election-related case, the litigation schedule must be determined by starting at the end and working backwards. The 2022 Primary Election is **May 3, 2022**. R.C. 3501.01. While the deadline to file petitions for party nominations for the fifteen U.S. House seats would ordinarily be ninety days before the 2022 Primary Election (February 2, 2022, *see* R.C. 3513.05), this year, a congressional candidate must file his or her petition to run only sixty days before the primary election is held, or **March 4, 2022**. Sub. S.B. 258, §4(A). That is only twenty-four days after the date Relators suggest for oral argument.

Relators' proposed schedule leaves no time for this Court to issue a ruling and still give candidates enough time to prepare their petitions and gather the required signatures before the March 4, 2022 deadline. A petition to run in a primary for the United States Congress must be signed by fifty qualified electors. R.C. 3513.05. Thus, candidates need clarity on the boundaries

of the district they will be running to represent in order to obtain valid signatures from persons who live within each district. Ohio's eighty-eight county boards of election also need time to verify the signatures on the petitions, certify candidate petitions, and consider protests to candidate petitions. *Id.* Even if this Court would *very* quickly uphold the 2021 Congressional Plan after Relators' suggested oral argument date, congressional candidates would still only have mere days to complete these required tasks.

If this Court would invalidate some or all of the Plan, then the General Assembly and, if necessary, then the Ohio Redistricting Commission, are each constitutionally permitted to take up to thirty days to remedy any defects identified by this Court. Ohio Const. Art. XIX, Sec. 3. Whether either will need all thirty days remains to be seen. But voters enshrined those sixty total days in the Ohio Constitution and they cannot be reduced. If this Court were to accept Relators' proposed schedule, it would be impossible to re-tool the 2021 Congressional Plan before the March 4, 2022 deadline. So, Relators' proposed schedule is unworkable for congressional candidate hopefuls in virtually every possible scenario.

Relators' proposed schedule also gives no time for county boards of elections to hear and decide candidate petition protests before the statutory deadline for each board of elections to finalize its Uniform and Overseas Citizens Absentee Voting Act ("UOCAVA") ballots, which this year is **March 18, 2022**. R.C. 3511.04. Although the General Assembly gave the Secretary of State the authority to adjust any candidate petition verification and protest deadlines (thus overriding R.C. 3513.05), county boards of elections *still* must have sufficient time to both hear and decide the candidate petition protests and develop accurate UOCAVA ballots by the March 18, 2022 deadline. *See* Sub. S.B. 258, § 4(A). Moreover, no matter which dates the Secretary ultimately chooses for the compressed congressional candidate schedule, it is clear that Ohio

boards of elections will not have four weeks to certify petitions and resolve protests. Now, they must complete all of these mandatory tasks in *at most* fourteen days (from March 4, 2022 to March 18, 2022).

Certifying petitions and resolving protests are not the boards' only duties that must be completed by March 18, 2022. The eighty-eight county boards of election must also re-program their electronic voter registration systems and voting machines to reflect the fifteen new congressional districts. This is not a quick and easy task. See Affidavit of Amanda Grandjean. These systems must correctly re-assign each one of Ohio's nearly eight million registered voters to each one of the fifteen new congressional districts to ensure that every Ohio voter gets the correct ballot. *Id.* There are only four vendors who do this for all of Ohio's eighty-eight boards of elections voting systems. *Id.* As it is, Boards—and their vendors—will be left working around the clock to successfully administer Ohio's May 3, 2022 Primary Election as it pertains to the fifteen Congressional primaries in such a short period of time. Relators' schedule does not take this reality into account.

Relators' proposed schedule fails to consider the complicated logistics of holding elections and the real dangers of failing to meet critical statutory deadlines. At bottom, their proposed schedule is extremely problematic for *successfully* holding primary elections for fifteen new congressional districts on May 3, 2022. On the other hand, all of the litigants in this case are well-versed in expedited election cases scheduled pursuant to Sup. Ct. Pr. R. 12.08. Those cases are decisional in roughly ten days. *Id.* The Secretary is not suggesting that this case must be litigated quite that quickly, but it should be litigated on a schedule which reflects that time is, in fact, of the essence. The Secretary suggests the following schedule:

Responses to Complaint:	**5 days after service**
Expert Discovery Cut-Off:	**December 13, 2021**
Simultaneous Merits Briefing:	**December 15, 2021**
Simultaneous Reply Briefs:	**December 23, 2021**

This case can and should be streamlined and expedited. Little time is needed for fact discovery because it is unnecessary to resolve the legal issues in this case. The 2021 Congressional Plan was passed via a bill. It is well-established that the General Assembly speaks through its vote: "'The intention of the legislature is to be collected from the words they employ. When there is no room for ambiguity, there is no reason for construction.'" *State ex rel. Clay v. Cuy. Cty. Med. Exam'rs Ofc.,* 152 Ohio St.3d 163, 166, 94 N.E.3d 498, 2017-Ohio-8714, quoting *United States v. Wiltberger,* 18 U.S. 76, 95-96, 5 L.Ed. 37 (1820).

The 2021 Congressional Plan in Sub. S.B. 258 speaks for itself. Whether it complies with Article XIX, Section 1(C)(3)(a) and (b) can be found on its face, aided by expert testimony that the Parties may wish to offer. Relators' request for an excessive amount of time to conduct discovery on who said what and earlier "proposed plans" that the General Assembly and Ohio Redistricting Commission did *not* pass should be rejected. Irrelevant fact discovery will not aid in the Court's resolution of this case but will delay timely resolution of this matter. It will also cause this Court to wade through irrelevant and voluminous "evidence." This case comes down to expert discovery and legal arguments. An efficient litigation schedule will allow it to be litigated such that those issues are appropriately framed for this Court. The Secretary's proposed schedule does just that.

Rather than recognize the need for a more expedited schedule, Relators wrongly suggest that this Court could simply move election deadlines, or the entire 2022 Primary Election. Motion

for Scheduling Order at 4, 8 (citation is to PDF pagination, as document does not have page numbers); Compl., *Prayer for Relief,* ¶ D. They are grossly over-simplifying the downstream consequences of moving the 2022 Primary Election or any of its dates. Moving just the candidate filing deadline would likely require either moving the deadline for all UOCAVA ballots (which already require significant lead time to be timely) or coming up with a judicially-created completely separate UOCAVA balloting procedure *just for* the primary election for congressional candidates. Even if that was lawful, it would be a logistical nightmare for the eighty-eight county boards of election. Once again, this would require boards to re-program their voting machines twice and with the limited number of vendors, might not be possible.

Moving just the congressional primary date would require Ohio to hold two primary elections, one for Congress and one for all other races on the ballot. The end result would be double the work for Ohio's eighty-eight boards of elections. Given the current struggle to find poll workers for just one election, it will be a substantial hardship for the boards to staff two primary elections. And, this says nothing of the significant cost associated with holding two elections. Nor does it account for the voter confusion that would be created by holding two primary elections (presumably) close together. Finally, as evidenced by the special congressional primary elections for the current 11th and 15th Congressional Districts (held- August 2021) voter turnout for a congressional-only primary *after* the May 3, 2022 Primary Election would be incredibly low, much lower than a congressional primary held with all the other offices and issues on that ballot.

Taking the drastic step of moving and coming up with judicially-created election deadlines is entirely unnecessary. Relators must efficiently litigate only the relevant issues presented. In order for Ohio's county eighty-eight boards of election to effectively and efficiently administer the

2022 Primary Election including for congressional candidates, Secretary LaRose respectfully requests that this Court adopt his proposed schedule.

Respectfully submitted,

DAVE YOST
OHIO ATTORNEY GENERAL

/s/ Bridget C. Coontz
BRIDGET C. COONTZ (0072919)*
MICHAEL A. WALTON (0092201)
**Counsel of Record*
JULIE M. PFEIFFER (0069762)
Assistant Attorneys General
Constitutional Offices Section
30 E. Broad Street, 16th Floor
Columbus, Ohio 43215
Tel: 614-466-2872 | Fax: 614-728-7592
Bridget.Coontz@OhioAGO.gov
Julie.Pfeiffer@OhioAGO.gov
Michael.Walton@OhioAGO.gov

Counsel for Respondent
Ohio Secretary of State LaRose

CERTIFICATE OF SERVICE

I hereby certify that on November 29, 2021, the foregoing *Secretary Of State Frank LaRose's Response To Relators' Motion For Scheduling Order* was filed electronically. I further certify that a copy of the foregoing has been served via the electronic mail upon the following counsel for Relators.

Donald J. McTigue* (0022849)
*Counsel of Record
Derek S. Clinger (0092075)
MCTIGUE & COLOMBO LLC
dmctigue@electionlawgroup.com
dclinger@electionlawgroup.com

Abha Khanna (Pro Hac Vice Pending)
Ben Stafford (Pro Hac Vice Pending)
ELIAS LAW GROUP
akhanna@elias.law
bstafford@elias.law

Aria C. Branch (Pro Hac Vice Pending)
Jyoti Jasrasaria (Pro Hac Vice Pending)
Spencer W. Klein (Pro Hac Vice Pending)
Harleen K. Gambhir (Pro Hac Vice Pending)
ELIAS LAW GROUP
abranch@elias.law
jjasrasaria@elias.law
sklein@elias.law
hgambhir@elias.law

/s/ Bridget C. Coontz
BRIDGET C. COONTZ (0072919)*
Assistant Attorney General

Exhibit A

AFFIDAVIT OF AMANDA M. GRANDJEAN

docVerify

Grandjean Affidavit.pdf

DocVerify ID:	6FD595D2-5A63-430B-83EC-2A5270530F99
Created:	November 28, 2021 15:53:30 -8:00
Pages:	3
Remote Notary:	Yes / State: OH

This document is a DocVerify VeriVaulted protected version of the document named above. It was created by a notary or on the behalf of a notary, and it is also a DocVerify E-Sign document, which means this document was created for the purposes of Electronic Signatures and/or Electronic Notary. Tampered or altered documents can be easily verified and validated with the DocVerify veriCheck system. This remote online notarization involved the use of communication technology.

Go to www.docverify.com at any time to verify or validate the authenticity and integrity of this or any other DocVerify VeriVaulted document.

E-Signature Summary

E-Signature 1: Amanda M. Grandjean (AMG)
November 28, 2021 15:58:16 -8:00 [C4AA8415671A] [75.187.54.228]
agrandjean@ohiosos.gov (Principal) (Personally Known)

E-Signature Notary: MacKenzie S. Clayton (msc)
November 28, 2021 15:58:16 -8:00 [5437D2CEF396] [98.102.110.129]
MacKenzie.Clayton@OhioAGO.gov
I, MacKenzie S. Clayton, did witness the participants named above electronically sign this document.

DocVerify documents cannot be altered or tampered with in any way once they are protected by the DocVerify VeriVault System. Best viewed with Adobe Reader or Adobe Acrobat.
All visible electronic signatures contained in this document are symbolic representations of the persons signature, and not intended to be an accurate depiction of the persons actual signature as defined by various Acts and/or Laws.

In The

Ohio Supreme Court

REGINA C. ADAMS, et al.,	:	
	:	
Relators,	:	**Case No. 2021-1428**
	:	
v.	:	**Original Action Pursuant to**
	:	**Ohio Const., Art. XIX, § 3(A)**
GOVERNOR MIKE DEWINE, et al.,	:	
	:	**Redistricting Case**
Respondents.	:	

AFFIDAVIT OF AMANDA M. GRANDJEAN

I, Amanda M. Grandjean, having been duly sworn and cautioned, hereby state that I am over the age of eighteen years and am competent to testify to the following on the basis of personal, firsthand knowledge:

1. From September 2016 to January 2019, I was an associate attorney with the law firm of Bricker and Eckler, LLP, and focused my practice of law on the areas of government relations, election law, campaign finance, and litigation.

2. In January 2019, I was appointed by Secretary of State Frank LaRose to the position of Deputy Assistant Secretary of State and State Elections Director in the Elections Division of the Ohio Secretary of State's Office, where I am responsible for developing and implementing policies, procedures, and guidelines for the administration of federal, state, and local elections to assist county boards of elections in the fulfillment of their statutory duties, as well as having oversight of the statewide voter registration database ("SWVRD"), the receipt, review, and distribution of statewide candidate issue petition filings, and campaign finance regulations and related filings.

3. I am an elected executive committee member of the National Association of State Election Directors ("NASED") and the executive board member of the Electronic Registration Information Center ("ERIC"), the elected Vice Chair of the United States Election Assistance Commission Standards Board Executive Committee, and a member of the National Association of Secretaries of State, the Bipartisan Policy Center Task Force, and the Massachusetts Institute of Technology Election Data Science Lab

4. All candidates for a U.S. House seat must file their petitions by **March 4, 2022**.

6FD595D2-5A63-430B-83EC-2A5270530F99 — 2021/11/28 15:53:30 -8:00 — Remote Notary

5. Ohio's eighty-eight boards of election use an electronic voter registration database. Once a Congressional Map is finalized, a directive from the Secretary is issued directing the boards to update their voter registration systems so that the new district information is applied to the database and every voter is properly assigned to the correct state House, state Senate and Congressional districts. This ensures that candidates know who their constituents will be and that each voter gets the correct ballot.

6. Additionally, after the boards update their voter registration systems, they will need to update their voting system's central tabulating system to reflect the new districts as well.

7. The boards must also confirm that the updates they made to the county voter registration system are reflected in the statewide voter registration database. This must occur so that voters can accurately look up their voting districts.

8. Ohio's congressional map will change before the May 3, 2022 Primary Election because Ohio lost one seat in the United States House of Representatives due to the 2020 Federal Decennial Census. As such, every board will have to re-program its voter registration system. There are four vendors who assist the boards in programming their voter registration systems. These four vendors are responsible for programming all of the voter registration systems in the State. In a typical year, this work can take at least two to three weeks.

9. Boards will also work with their voting system vendors to update their voting system's central tabulating system following the update of the voter registration systems.

10. Uniformed and Overseas Citizen Absentee Voting Act ("UOCAVA") ballots must be sent out forty-six days before the primary election. This year, UOCAVA ballots must be mailed by **March 18, 2022**.

11. Because UOCAVA ballots must be mailed by March 18, 2022, all eighty-eight county boards of elections must complete all updates to their voter registration systems and central tabulating systems *no later than* March 18, 2022.

12. With the congressional candidate petition deadline on March 4, 2022, all eighty-eight county boards of elections have only approximately two weeks to complete all updates to their voter registration systems and central tabulating systems. If Ohio's 2021 Congressional Plan is delayed past the March 2, 2022 congressional candidate petition deadline, it could negatively impact the boards' ability to comply with the UOCAVA ballot deadline of March 18, 2022.

13. A delay of these March dates will likely have a negative impact on critical election tasks in time for the May 3, 2022 Primary Election which include but are not limited to:

    a. Certifying the validity and sufficiency of partisan candidates' petitions
    b. Protests against partisan candidates' petitions
    c. Write-in candidates filing declarations of intent

6FD595D2-5A63-430B-83EC-2A5270530F99 --- 2021/11/28 15:53:30 -8:00 --- Remote Notary

d. The Secretary's certification of the form of the official ballot to the boards
e. Boards of the most populous county in a multi-county subdivision certifying names of all candidates to other boards of elections
f. Protests against write-in candidates
g. Scheduling training for precinct election officials
h. Sending UOCAVA absentee ballots

14. Eighty-four of the eighty-eight boards of elections utilize electronic pollbooks. The boards will also have to update their electronic pollbooks to accurately reflect the updates. These electronic pollbooks, like the voting equipment are required pass logic and accuracy testing to verify the accuracy of the system and data.

15. Additionally, other critical tasks established pursuant to permanent directives for the most secure and accurate election administration could be negatively impacted if boards are denied sufficient time to update their voter registration systems and central tabulation systems.

Further Affiant Sayeth Naught.

Amanda M. Grandjean
Signed on 2021/11/28 15:58:16 -8:00

AMANDA M. GRANDJEAN

Sworn to before me and signed in my presence, a Notary Public in and for said State of Ohio on this 28th day of November, 2021.

NOTARY PUBLIC STATE OF OHIO
MacKenzie Storm Clayton
Commission # 2018-RE-707238
Electronic Notary Public
State of Ohio
My Comm Exp. Feb 22, 2023
Notary Stamp 2021/11 28 16:58 16 PST
5 37D2CEF396

MacKenzie S. Clayton
Signed on 2021/11 28 15:58:16 -8:00

Notary Public

6FD595D2-5A63-430B-83EC-2A5270530F99 --- 2021/11/28 15:53:30 -8:00 --- Remote Notary