

**In the
Supreme Court of Ohio**

MERYL NEIMAN, et al.,
Relators,
v.
SECRETARY OF STATE FRANK LAROSE, et al.,
Respondents.

:
:
: **Case No. 2022-0298**
:
: Original Action Filed Pursuant to
: Ohio Constitution, Article XIX,
: Section 3(A) and Article IV
: Section2(B)(1)(f)
:
:

LEAGUE OF WOMEN VOTERS OF OHIO, et al.,
Petitioners,
v.
SECRETARY OF STATE FRANK LAROSE, et al.,
Respondents.

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: **Case No. 2022-0303**
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: Original Action Pursuant to
: Ohio Const., Art. XIX
:
: Apportionment Case
:

**OHIO SECRETARY OF STATE FRANK LAROSE'S
RESPONSE TO PETITIONERS' MERIT BRIEF**

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Petitioners, : **Case No. 2022-0303**

v. : Original Action Pursuant to

SECRETARY OF STATE FRANK LAROSE, et al., : Ohio Const., Art. XIX

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**RESPONDENT SECRETARY OF STATE FRANK LAROSE’S
RESPONSE TO PETITIONERS’ MERIT BRIEF**

Ohio Secretary of State Frank LaRose adopts and incorporates *Respondents Huffman and Cupp’s Merits Brief* as his response to Petitioners’ Merit Brief.

In addition, on one finer point, this Court should reject the *Neiman* Petitioners’ request for an injunction affecting the 2022 election. *See Neiman Compl., Prayer for Relief*, at 46-47. The Second Plan has been fully implemented by the 88 county boards of elections for the 2022 election. The 2022 Primary Election was held on May 3, 2022, using the Second Plan. Over 1.6 million Ohioans voted for their 2022 congressional primary candidates, and the winners will be certified for the 2022 general election ballot in the very near future. The *Neiman* Petitioners ignore these

election realities and still ask this Court to do what courts have been resoundingly unwilling to do and have cautioned against: change an election procedure to affect the outcome of the election. *See, e.g.,* citing *Purcell v. Gonzalez*, 549 U.S. 1, 4-5 (2006) (*per curiam*) (denying preliminary injunction because, although plaintiffs had established third parties would not be unjustifiably harmed by an injunction, “court orders affecting elections , can themselves result in voter confusion[,] [a]s an election draws closer, that risk increase”); *Thompson v. DeWine*, 959 F.3d 804, 813 (6th Cir. 2020) (citing *Purcell* in staying district court’s preliminary injunction); *Estill v. Cool*, 295 F. App’x 25, 27 (6th Cir. 2008) (upholding denial of preliminary injunction where ballot printing and distribution was scheduled to begin the day after the Sixth Circuit issued its opinion, 19 days after the preliminary injunction motion was denied); *SEIU Local 1 v. Husted*, 698 F.3d 341, 345 (6th Cir. 2012), citing *Purcell*, 549 U.S. at 4-5 (“As a general rule, last-minute injunctions changing election procedures are strongly disfavored.”). “Court orders affecting elections especially conflicting court orders, can themselves result in voter confusion and consequent incentive to remain away from the polls. As an election draws closer, that risk will increase.” *Purcell*, 549 U.S. at 4-5; *see also Thompson*, 959 F.3d at 813.

Citing that risk, in *League of Women Voters v. LaRose*, No. 2:20-cv-1638, 2020 U.S. Dist. LEXIS 91631, at 31 (S.D. Ohio Apr. 3, 2020), the Court rejected the plaintiffs’ request to preliminarily enjoin H.B. 197, the bill passed in response to the disruption to Ohio’s March 2020 primary caused by COVID-19. The court noted that the “public has an interest in a free and fair election [and in] avoiding further voter confusion.” *Id.* Even amidst the COVID-19 outbreak, the court concluded, “because further changes to the election procedure could cause significant additional voter confusion, the court finds that the public interest factor weighs against granting Plaintiffs their requested relief.” *Id.*

The *Neiman* Petitioners’ request to stop the Secretary of State from “calling, holding, supervising, administering, or certifying any elections under the [Second Plan]” while they litigate their claims is, to say the least, extraordinarily ill-advised. *Neiman Comp.*, at 46. Again, the May 3 Primary Election has already happened. All of the voters who have voted for their congressional candidates fully expect the winners to be on the November general election ballot. Changing the districts before the November 2022 General Election would mean that, in November, thousands of Ohio voters would be choosing between Republican or Democratic congressional candidates who were not on their May 3 primary ballot. Issuing an injunction that would prevent the winners from appearing on the general election ballot destroys the status quo and wreaks havoc on election administration. What is more, allowing an election to occur then enjoining the winners from proceeding on to the general election certainly would cause significant voter confusion, it would cripple Ohioans’ trust and confidence in their elections, and it would be astoundingly unfair—not just to Ohio voters, but to the congressional candidates who have spent effort, time, and resources in campaigning for a spot on the primary ticket. It is safe to assume that voters expect their votes to count and to be counted. An injunction that would block the winners and nullify the entire election *after* all of the votes have been cast would wreak havoc on voter confidence for decades to come. This is precisely what the *Neiman* Petitioners demand, and this Court should summarily deny it.

For the reasons stated in Huffman and Cupp’s merits brief and for the foregoing additional reason, Secretary LaRose respectfully requests that this Court sustain the Ohio Redistricting Commission’s Second Plan passed on March 2, 2022, and dismiss these consolidated actions with prejudice.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Ohio Secretary of State Frank Larose's Response to Petitioners' Merit Brief was sent via email this the 25th day of May, 2022 to the following:

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