



ADVISORY 2020-09

October 9, 2020

To: All County Boards of Elections
Board Members, Directors, and Deputy Directors

Re: *A. Philip Randolph Institute of Ohio (“APRI”), et al. v. LaRose*, No. 1:20-CV-01908 (N.D. Ohio Oct. 8, 2020)

BACKGROUND

This Advisory informs the county boards of elections that on October 8, 2020, after business hours, the United States District Court for the Northern District of Ohio issued a decision in *A. Philip Randolph Institute of Ohio, et al. v. LaRose*, No. 1:20-CV-01908 (N.D. Ohio Oct. 8, 2020). Plaintiff’s filed a complaint on August 26, 2020, which challenged the constitutionality of the long-standing legal requirement that voters must personally deliver their absentee ballots to their board of elections. Plaintiffs later filed a motion for preliminary injunction on September 4, 2020.

On October 5, 2020, Secretary LaRose issued [Directive 2020-22](#), which clarified [Directive 2020-16](#). Directive 2020-22 states that boards of elections may vote to have multiple secure receptacles outside the board of elections, provides an overview of the state court litigation surrounding secure receptacles in *Ohio Democratic Party v. LaRose*,¹ and also clarifies that boards of elections may vote to have permanent or temporary board employees that have undergone criminal background checks receive absentee ballots outside the office of the board of elections.

On October 6, 2020, in *APRI v. LaRose*, the federal district court issued an opinion and order dismissing the case without prejudice, stating that “the Court fervently hopes that now that voting has begun, the litigation over drop boxes and off-site ballot collections will come to an end.”² The federal court’s decision, however, was based on a fundamental misunderstanding of Directive 2020-22. The court apparently misinterpreted “outside the board of elections” and “outside the office of the board of elections” to encompass locations miles away from each board, as opposed to meaning right outside the board’s office, which is what Directive 2020-22, consistent with the long-standing legal requirement, clearly intended.

On October 8, 2020, plaintiffs in the *APRI* case filed a motion for reconsideration of the court’s dismissal of the case. Reversing his order issued just two days prior, the judge granted the plaintiff’s motion for reconsideration and issued a preliminary injunction enjoining the Secretary

¹ *Ohio Democratic Party v. LaRose*, Franklin C.P. No. 20CV-5634 (Sept. 16, 2020); *Ohio Democratic Party v. LaRose*, 10th Dist. Franklin No. 20AP-432.

² *A. Philip Randolph Institute of Ohio, et al., v. LaRose*, No. 1:20-CV-01908 (N.D. Ohio Oct. 6, 2020).

of State from enforcing the portion of Directive 2020-16 that prohibits a county board of elections from installing a secure drop box at any location other than the office of the board of elections, and enjoining the Secretary from prohibiting “off-site” absentee ballot delivery at locations in a county other than the office of the board of elections. The Secretary filed a notice of appeal and an emergency motion to stay the federal district court’s decision and injunction with the United States Court of Appeals for the Sixth Circuit. It is possible that the United States Court of Appeals for the Sixth Circuit will issue a stay of the federal district court’s order and injunction in the very near future.

INSTRUCTIONS

Each board of elections must share this Advisory with its legal counsel, the county prosecuting attorney. The Secretary of State’s Office will keep the boards of elections informed of the outcome of the appeal to the United States Court of Appeals for the Sixth Circuit.

Thank you again for all that you have done and are doing to prepare for the November 3, 2020 General Election. If you have any questions concerning this Directive, please contact the Secretary of State’s elections counsel at (614) 728-8789.

Yours in service,



Frank LaRose
Ohio Secretary of State