



**Via Electronic Mail**

February 25, 2021

Sherry Poland, Director  
Sally Krisel, Deputy Director  
Hamilton County Board of Elections  
4700 Smith Road  
Cincinnati, Ohio 45212

Re: Tie Vote from January 19, 2021 Board Meeting

Dear Director Poland and Deputy Director Krisel,

On January 19, 2021, the Hamilton County Board of Elections voted and tied on a motion to *study* the cost and feasibility of installing additional secure receptacles, also known as drop boxes. On February 2, 2021, the Board submitted the tie vote for resolution pursuant to [Ohio Revised Code 3501.11\(X\)](#).

Since that time, two relevant events have occurred.

First, my Office issued [Directive 2021-10](#) to provide clear guidance for the ongoing use of secure receptacles outside the boards of elections as an alternative means to return absentee ballots. Recall that the United States Court of Appeals for the Sixth Circuit, who has actually “studied” this issue, noted Ohio law is “generous when it comes to absentee voting”<sup>1</sup> and offers voters at least four different ways to cast a ballot.<sup>2</sup> Moreover, the Court stated that the continued use of secure receptacles located only outside the boards of elections promotes uniformity among the 88 counties, which in turn “promotes the fair administration of elections”<sup>3</sup> and also “the security of the election.”<sup>4</sup> Interestingly, “experts” testified that there would be “50,000 people...coming to the Cuyahoga County Board of Elections on November 3<sup>rd</sup> to deliver their ballots”<sup>5</sup> and that there would be a line that would take voters 53 hours to place their ballots in the drop box.<sup>6</sup> When in reality, there was not a single voter in line outside the Cuyahoga County Board of Elections’ drop box around 7:30 p.m. on November 3, 2020.<sup>7</sup> Ohio also saw a 94 percent return rate of absentee

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<sup>1</sup> *A. Philip Randolph Inst. of Ohio v. LaRose*, 6th Cir. No. 20-4063, 2020 U.S. App. LEXIS 32173 (Oct. 9, 2020), at 5 (citing *Mays v. LaRose*, 951 F.3d 775, 779, 792 (6th Cir. 2020)).

<sup>2</sup> *Id.* at 6.

<sup>3</sup> *Id.* at 7.

<sup>4</sup> *Id.*

<sup>5</sup> *A. Philip Randolph Inst. of Ohio v. LaRose*, Case No. 1:20-cv-01908 (N.D. Sept. 2020) (Transcript September 23, 2020, at pg. 287: 8-11).

<sup>6</sup> *Id.* (Decl. of Dr. Daniel G. Chatman, paragraph 69).

<sup>7</sup> Tweet from @MerleMadrid from November 3, 2020 posted at 7:42 p.m. (<https://twitter.com/merlemadrid/status/1323787738781413377>).

ballots for the November 3, 2020 General Election, which surpassed the return rate of every other previous election. Of course, the truth is always supported by actual tangible evidence.

Second, following months of rhetoric to the contrary, two Democratic state legislators have finally come around to agree with me that any adjustments to the methods by which Ohio voters shall return their absentee ballots is a matter for the legislature to address. As I have repeatedly said, actions taken by an executive office holder, myself included, through executive fiat risk creating a whipsaw effect when either a court or the legislature acts to amend, rescind, or otherwise alter that executive action. That would only serve to confuse voters and corrode voter confidence – two things we all agree must be avoided. The issue has never been about secure receptacles themselves. I have said time and again that when properly secured, controlled and set forth under a thoughtful legal framework, they are a laudable new convenience for voters. This conversation is instead about the process by which changes to election practices should be made. It will serve you, all boards of elections, and most importantly Ohio’s voters to have a level of clarity on the issue that can only come from legislative deliberation and action.

As stated in the Directive, “boards of elections must maintain the secure receptacles outside the county board of elections that were utilized throughout the November 3, 2020 General Election. By a majority vote, boards of elections may install additional secure receptacles outside the board of elections. Boards of elections are prohibited from installing and implementing a secure receptacle at a location other than the board of elections.” The Directive also permits bipartisan teams of election officials to collect personally delivered absentee ballots outside the office of the board of elections.

Ultimately, decisions on whether to study the cost and feasibility of installing additional drop boxes are matters of internal operations of the Board and do not involve issues of substantive election law. As such, a tie vote is not properly before me.<sup>8</sup> Like my predecessors, I will not intervene in deciding these questions of internal operations.

Yours in service,



Frank LaRose  
Ohio Secretary of State

cc: Gwen L. McFarlin, Chairman  
Alex M. Triantafilou, Member  
Caleb A. Faux, Member  
Charles H. Gerhardt, III, Member

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<sup>8</sup> See [Chapter 2 of the Election Official Manual](#), page 26.