



February 28, 2023

The Honorable Frank LaRose
Ohio Secretary of State
22 North Fourth Street, 16th Floor
Columbus, Ohio 43215

Dear Secretary LaRose:

We write to express our concerns regarding Directive 2023-03 and the implementation of House Bill 458 (“HB 458”) for the May 2, 2023 Primary and Special Election. As an initial matter, we agree with you that the conflict between the effective date of H.B. 458 (April 7, 2023) and the start dates of uniformed and overseas voting (March 17, 2023) and early voting (April 4, 2023) creates the potential for voter confusion. However, we believe that some of the measures you and your office have taken, through Directive 2023-03, to address voter confusion may be unlawful and could undermine voter confidence in Ohio’s election officials and the integrity of its election system.

In the spirit of reducing voter confusion and upholding the rule of law, we wanted to reach out to your office first to raise these outstanding issues. The Legislature’s enactment of HB 458 has already caused chaos and confusion for voters and administrators by failing to take account of the 2023 election calendar. And now, having been forced by HB 458 to provide voters and administrators with guidance, your office has issued a directive that simultaneously violates *both* the federal and Ohio constitutions.

To the end of clarifying the law here and potentially curing some of the legal violations, we request that your office communicate, in writing, whether you will take the following steps:

- Confirm that any person 17 and over who applies for and receives a state ID card or replacement state ID card from the Bureau of Motor Vehicles will receive it for free starting April 4, 2023.
- Confirm that Directive 2023-03 does not apply to voter registration leading up to the May Primary and Special Election.
- Explain what steps your office and the Boards of Elections (“BOE”) officials will take to notify and educate Ohio voters about the changes in law made under HB 458 and to notify and educate Ohio voters on HB 458’s effect on the May Primary and Special Election under Directive 2023-03.

First, we believe Directive 2023-03 violates the constitutional ban on poll taxes. U.S. CONST. amend. XXIV; *Harper v. Virginia State Bd. Of Elections*, 383 U.S. 663, 86 S. Ct. 1079 (1966). Directive 2023-03 implements HB 458’s voter ID requirements in time for early voting on April 4, 2023. This is three days before Ohioans, ages 17 and over, can apply for and receive a state ID card or replacement state ID card from the

Bureau of Motor Vehicles for free. This is because Ohio's free state ID statute does not go into effect until April 7, 2023—the effective date of HB 458. Consequently, from April 4 through April 6, Ohio voters who lack proper state ID have their vote conditioned on paying the state fee required to obtain an ID. This creates an unconstitutional poll tax in violation of the Equal Protection Clause. To withstand constitutional scrutiny, the state must provide voters with the ability to obtain free state IDs at the time it imposes state voter ID requirements. *See Common Cause v. Billups*, 554 F.3d 1340 (11th Cir. 2009); *see also Harper v. Virginia State Bd. Of Elections*, 383 U.S. 663, 666, 86 S. Ct. 1079, 1081, 16 L. Ed. 2d 169 (1966). Therefore, we ask that your office confirm that starting April 4, 2023, Ohio voters can apply for and will receive a state ID card or replacement state ID card from the Bureau of Motor Vehicles upon signing an affidavit stating they need it for voting purposes. Without this or an equivalent rule, we think that it is incumbent upon your office to ask the Governor's Office and the BMV to ensure free state IDs will be available on or before April 4, 2023.

Second, it is plain that Directive 2023-03 runs afoul of Article II, Section 1c of the Ohio Constitution. HB 458 becomes effective on April 7, 2023, per the Ohio Constitution, which holds that an act will not go into effect until the 90th day following the governor's filing of the act with the office of the secretary of state. Ohio Const. Article II, Section 1c. However, Directive 2023-03 implements provisions of HB 458 three days early, on April 4, 2023, overwriting existing statutes that remain in effect until April 7. This measure appears to circumvent Ohio's constitutional requirements. Therefore, we ask that your office cite the legal authority supporting your directive to implement provisions of HB 458 on April 4.

Third, we seek confirmation that Directive 2023-03 does not apply to voter registration leading up to the May Primary and Special Election. In order to prevent potential confusion for first-time mail-in registrants, we would like confirmation as to which forms of ID will be accepted for voter registration in the May Primary and Special Election. Specifically, we would like to confirm that until the April 3, 2023 registration deadline, voters will still be able to register using a utility bill, bank statement, government check, paycheck, or other government document with current address.


Fourth and finally, please explain the exact steps your office and BOE officials will take to educate Ohio voters about the changes in law made under HB 458 and to educate Ohio voters on Directive 2023-03's implementation of HB 458 during the May Primary and Special Election. Please, highlight the steps your office will take to provide this information in languages other than English and to make the information accessible to voters with a visual or hearing impairment. Further, as noted in Directive 2023-03, "Litigation is pending in federal court regarding the voter ID, absentee, provisional voting changes, elimination of Monday in-person voting prior to Election Day, and ballot drop box requirements in H.B. 458." Please explain any and all steps your office will take to mitigate voter confusion and to promptly notify and inform BOE officials and voters of any court order relevant to Directive 2023-03 and HB 458.

We hope to resolve the issues cited above. While this office has said Directive 2023-03's intent was to reduce voter confusion, HB 458 has already caused confusion on the

ground in Ohio. Additionally, we are concerned that your office's decision to unilaterally move HB 458's implementation date to April 4 will establish harmful precedent and undermine public faith in Ohio's elections. Finally, the implementation of Directive 2023-03 poses an undue risk of subjecting voters to a poll tax violation. We hope to receive your responses on the above issues by no later than Friday March 3, 2023, and are available to speak by phone, if that is preferable or more convenient.

We look forward to your timely response. Please direct your response to my email at bpatterson@fairelectionscenter.org. Thank you for your time and attention to these issues.

Sincerely,



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