

Whether Counties Could Establish More Than One Absentee-Ballot Drop Box

A. Philip Randolph Institute of Ohio v. LaRose
(*Dan Aaron Polster, N.D. Ohio 1:20-cv-1908*)

Because of social distancing made necessary by a global infectious pandemic, absentee voting was expected to be high. Because of the postal service's recent reputation for poor service, many voters wanted to hand-deliver their absentee ballots. Ohio's secretary of state allowed county election officials to establish one drop box per county, regardless of each county's geographic or population size. A federal district judge issued an injunction allowing county election officials to set up more drop boxes, but the court of appeals stayed the injunction.

Subject: Absentee and early voting. *Topics:* Early voting; absentee ballots; Covid-19; equal protection; matters for state courts; interlocutory appeal; intervention.

A Wednesday, August 26, 2020, federal complaint filed in the Northern District of Ohio challenged a decision by Ohio's secretary of state to allow only one drop box per county for absentee-ballot applications and absentee ballots at a time of widespread absentee voting because of social distancing made necessary by the global Covid-19 infectious pandemic and uncertainty about whether the postal service could handle the volume.¹

Judge Dan Aaron Polster set the case for a telephone conference on Monday.² On the following Friday, the plaintiffs filed a motion for a preliminary injunction³ and a motion to expedite briefing, with the reply brief due on September 15.⁴ Judge Polster set the case for another telephone conference on Tuesday, September 8, the day after Labor Day.⁵

On September 9, Judge Polster set the case for an injunction hearing on September 23, consolidating consideration of a preliminary injunction and a permanent injunction because of the urgency of a final decision and making the reply brief due on September 21.⁶ He held an additional telephone conference in the interim.⁷

1. Complaint, *A. Philip Randolph Inst. of Ohio v. LaRose*, No. 1:20-cv-1908 (N.D. Ohio Aug. 26, 2020), D.E. 1; *A. Philip Randolph Inst. of Ohio v. LaRose*, 493 F. Supp. 3d 596, 600 (N.D. Ohio 2020).

2. Docket Sheet, *A. Philip Randolph Inst. of Ohio*, No. 1:20-cv-1908 (N.D. Ohio Aug. 26, 2020) (notice, Aug. 31, 2020); *see* Transcript, *id.* (Aug. 31, 2020, filed Sept. 4, 2020), D.E. 12.

3. Preliminary-Injunction Motion, *id.* (Sept. 4, 2020), D.E. 13.

4. Motion to Expedite Briefing, *id.* (Sept. 4, 2020), D.E. 14.

5. Docket Sheet, *supra* note 2 (notice, Sept. 8, 2020); *see* Transcript, *A. Philip Randolph Inst. of Ohio*, No. 1:20-cv-1908 (N.D. Ohio Sept. 8, 2020, filed Sept. 15, 2020), D.E. 29.

6. Docket Sheet, *supra* note 2 (minute order, Sept. 9, 2020).

7. Transcript, *A. Philip Randolph Inst. of Ohio*, No. 1:20-cv-1908 (N.D. Ohio Sept. 17, 2020, filed Sept. 21, 2020), D.E. 42; Docket Sheet, *supra* note 2 (minutes, Sept. 21, 2020).

On September 15, he granted a September 10 motion to intervene as defendants by the Republican Party and its presidential nominee.⁸

The hearing lasted from 9:20 a.m. to 9:30 p.m. on September 23 and for two additional hours on September 24.⁹ On the next day, Judge Polster decided to hold a ruling in abeyance pending state-court proceedings.¹⁰

Because the secretary issued a directive on October 5 that appeared to authorize county boards of elections to receive ballots at locations other than board offices, Judge Polster dismissed the action as moot on October 6.¹¹ Persuaded, however, that the secretary had not directed what Judge Polster understood him to have directed, Judge Polster reopened the case and granted the plaintiffs a preliminary injunction two days later.¹² “The Secretary is enjoined from enforcing that portion of [his directive] that prohibits a county board of elections from installing a secure drop box at a location other than the board of elections office”¹³

The court of appeals stayed the injunction on October 9.¹⁴ First, one drop box per county constituted fair uniformity.¹⁵ Second, “Ohio offers many ways to vote. Given all of those options—including on-site drop boxes, casting a vote by mail, and voting in-person weeks before election day—the absence of off-site drop boxes does not impose a material harm.”¹⁶

The parties filed a notice of stipulated dismissal, dissolving the preliminary injunction, on October 23.¹⁷ Appeals also were voluntarily dismissed.¹⁸

8. Opinion, *A. Philip Randolph Inst. of Ohio*, No. 1:20-cv-1908 (N.D. Ohio Sept. 15, 2020), D.E. 27, 2020 WL 5524842; Intervention Motion, *id.* (Sept. 10, 2020), D.E. 18; see John Caniglia, *Trump Campaign Fights Multiple Drop Boxes*, *Cleveland Plain Dealer*, Sept. 17, 2020, at A5.

9. Transcripts, *A. Philip Randolph Inst. of Ohio*, No. 1:20-cv-1908 (N.D. Ohio Sept. 23 and 24, 2020, filed Oct. 1, 2020), D.E. 83, 84; Opinion, *id.* (Sept. 25, 2020), D.E. 77 [hereinafter Sept. 25, 2020, Opinion], 2020 WL 6600102.

10. Sept. 25, 2020, Opinion, *supra* note 9; *A. Philip Randolph Inst. of Ohio v. LaRose*, 493 F. Supp. 3d 596, 600–01 (N.D. Ohio 2020).

11. *A. Philip Randolph Inst. of Ohio*, 493 F. Supp. 3d at 601–02; see Andrew J. Tobias, *Judge Dismisses Drop Box Lawsuit*, *Cleveland Plain Dealer*, Oct. 7, 2020, at A1.

12. *A. Philip Randolph Inst. of Ohio*, 493 F. Supp. 3d at 602–16; see Jessie Balmert, *Ohio Must Allow Multiple Drop Boxes*, *Cincinnati Enquirer*, Oct. 11, 2020, at A8; Andrew J. Tobias, *Judge Strikes Down LaRose’s Drop Box Limit*, *Cleveland Plain Dealer*, Oct. 9, 2020, at A1.

13. *A. Philip Randolph Inst. of Ohio*, 493 F. Supp. 3d at 616.

14. *A. Philip Randolph Inst. of Ohio v. LaRose*, 831 F. App’x 188 (6th Cir. 2020); see Brent Kendall & Alexa Corse, *Voting-Rule Disputes Bring Flurry of Rulings*, *Wall St. J.*, Oct. 12, 2020, at A3.

15. *A. Philip Randolph Inst. of Ohio*, 831 F. App’x at 192.

16. *Id.*

17. Notice, *A. Philip Randolph Inst. of Ohio*, No. 1:20-cv-1908 (N.D. Ohio Oct. 23, 2020), D.E. 96; see John Caniglia, *Voter Groups End Fight for More Drop Boxes*, *Cleveland Plain Dealer*, Oct. 23, 2020, at A13.

18. Order, *A. Philip Randolph Inst. of Ohio v. LaRose*, No. 20-4063 (6th Cir. Oct. 28, 2020), D.E. 36.