

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, ex rel.
DEBORAH S. REESE,

Relator,

vs.

CUYAHOGA COUNTY BOARD
OF ELECTIONS, et al.,

Respondent.

CASE NO. 07-1509

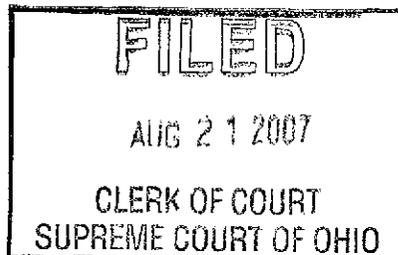
**RESPONDENT'S MOTION TO DISMISS OR MOTION FOR
JUDGEMENT ON THE PLEADINGS**

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DEBORAH S. REESE



IN THE SUPREME COURT OF OHIO

STATE OF OHIO, ex rel.
DEBORAH S. REESE,

Relator,

vs.

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**RESPONDENT'S MOTION TO
DISMISS OR MOTION FOR
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Respondent, Cuyahoga County Board of Elections, et al., asserts that Relator's Complaint in Mandamus and/or prohibition should be dismissed because it does not comply with S. Ct. R. X, Section 4(B), and therefore, the Complaint is not supported by any facts that can be construed in Relator's favor. In the alternatives the Complaint should be dismissed because the Board did not abuse its discretion by denying the protest and correcting the Board's files.

THE COMPLAINT SHOULD BE DISMISSED BECAUSE IT DOES NOT COMPLY WITH S. CT. R. X, SECTION 4(B), AND THEREFORE, THE COMPLAINT DOES NOT STATE ANY FACTS, AND/OR DOES NOT STATE ANY FACTS THAT CAN BE CONSTRUED IN RELATOR'S FAVOR.

S. Ct. R. X, Section 4(B), institution of original action requires in pertinent part:

“(B) All Complaints shall contain a specific statement of facts upon which the claim for relief is based, shall be supported by an affidavit of the Relator or counsel specifying the details of the claim, and may be accompanied by a memorandum in support of the writ. The affidavit required by this division shall be made on personal knowledge, setting forth facts admissible in evidence, and showing affirmatively that the affiant is competent to testify to all matters stated in the affidavit.” (Emphasis added).

Counsel's affidavit is insufficient to specify the details of the claim because it is not made on personal knowledge, setting forth facts admissible in evidence, and showing affirmatively that he is competent to testify to all matters stated in the affidavit because counsel's affidavit merely

states that he has personal knowledge that he is counsel for Relator, and that he has reviewed the allegations set forth by Relator, and to the best of counsel's knowledge and good faith belief, Relator's allegations are true. This is not an affidavit made on personal knowledge of all alleged facts. Moreover, counsel merely states that to the best of his knowledge and good faith belief that the attached exhibits are true and accurate copies, which is not an affidavit made on personal knowledge that the exhibits are true and accurate copies.

Relator's affidavit is insufficient to specify the details of the claim because it merely states that after conversation with her sister, she signed a letter prepared by her sister for protest, which only included a copy of Secretary of State Advisory No. 2007-65, the Morrison opinion, and two newspaper articles, and omits any facts regarding her personal knowledge to Judge Graven's petitions and voting record. Relator previously stated under oath at the Board hearing that she had no independent knowledge of the statements in the letter; her sister brought the matter to her attention; and that she did not look at the exhibits she filed, and did not know what they stated. (Tr. 40-43).

Further, Relator's consultation with her sister and legal counsel does not equate to personal knowledge, and is hearsay. Moreover, Relator's affidavit does not adequately support the Complaint because her affidavit contradicts the transcripts filed herein containing Relator's sworn testimony to the Board. A self-serving affidavit cannot create a contradiction or cure prior defective testimony. Relator has offered no explanation for her contradiction, and therefore, her affidavit should be stricken from the files. See Byrd v. Smith (2006), 110 Ohio St. 3d 24, 2006-Ohio-3455.

Accordingly, this Complaint should be dismissed because it is not supported by any facts.

STANDARD

An election protest hearing is quasi-judicial in nature. State, ex rel. Harbarger v. Cuyahoga County Board of Elections, (1976) 75 Ohio St. 3d 44. Decisions of the Board of Elections are final and only subject to judicial review for abuse of discretion, fraud, corruption, or a clear disregard of statutes or legal provisions. State, ex rel. Shumate v. Portage County Board of Elections (1992) 64 Ohio St. 3d 12, 14.

The fundamental criteria for issuing a writ of mandamus are well-established: In order to be entitled to a writ of mandamus, Relator must show (1) that he has a clear legal right to the relief prayed for, (2) that respondents are under a clear legal duty to perform the acts, and (3) that Relator has no plain and adequate remedy in the ordinary course of the law. State, ex rel. National City Bank v. Board of Education (1977), 52 Ohio St. 2d 81, 369 N.E. 2d 1200; State ex rel. Harris v Rhodes (1978), 54 Ohio St. 2d 41, 42, 374 N.E. 2d 641. Of course, all three of these requirements must be met in order for mandamus to lie. Relator cannot meet her burden that the Board abused its discretion by establishing she has a clear legal right to the relief sought and that Board has a clear duty to act but has failed to do so.

A writ of prohibition restrains the unauthorized exercise of judicial power. State, ex rel. Winnefeld v. Butler, County Court of Common Pleas (1953) 159 Ohio St. 225. Prohibition is distinguished from mandamus in that the former prohibits unauthorized judicial acts, whereas the latter commands performance of ministerial act. Marsh v. Goldthorpe (1930), 123 Ohio St. 103. Prohibition applies only to restrain the prospective unauthorized exercise of judicial power, and is not available to examine the regularity of an act already performed. State, ex rel. Celebrezze v. Butler County Court of Common Pleas (1979), 60 Ohio St. 2d 188.

Accordingly, Relators' writ of prohibition should be dismissed because it is not available to examine the Board's decision. Moreover, the Board did not exercise unauthorized quasi-judicial power.

THE BOARD DID NOT ABUSE ITS DISCRETION BY RECERTIFYING
CANDIDATE GRAVENS AS A NONPARTISAN MUNICIPAL JUDICIAL CANDIDATE.

The Board conducted a hearing regarding this matter. The protester alleged that Judge Gravens is ineligible to be a candidate for judge in the general election because she voted in the democratic primary after she had filed as an independent judicial candidate. Judge Gravens responded that she filed as a non-partisan candidate, and not an independent candidate.

Chapter 1901 of the Ohio Revised Code pertains to Municipal Courts and R.C. §1901.07

"Term of office of judge; nominations" specifically pertains herein, and states in relevant part:

"(B) All candidates for Municipal Court Judge may be nominated [to the general election] either by nominating petition or by primary election *** all candidates for party nomination to the office of Municipal Judge shall file a declaration of candidacy and petition not later than four p.m. of the seventy-fifth day before the day of the primary election*** nonpartisan candidates for the office of Municipal Court Judge shall file nomination petitions not later than four p.m. of the day before the day of the primary election*** The nominating petitions or declaration of candidacy for Municipal Court Judge shall contain a designation of the term for which the candidate seeks election. At the following regular municipal election the candidacies of the judges nominated [by party primary or nonpartisan petition] shall be submitted to the electors of the territory, on a nonpartisan, judicial ballot***". (Emphasis added)

"Nonpartisan candidate" means any candidate whose name is required, pursuant to Section 3505.04 of the Revised Code, to be listed on the nonpartisan ballot, including all candidates for judicial office, for member of any Board of Education, for municipal or township offices in which primary elections are not held for nominating candidates by political parties, and for offices of municipal corporations having charters that provide for separate ballots for elections for these offices. R.C. §3501.01(J)

“Party candidate” means any candidate who claims to be a member of a political party, whose name has been certified on the office-type ballot at a general or special election through the filing of a declaration of candidacy and petition of candidate, and who has won the primary election of the candidate’s party for the public office the candidate seeks or is selected by party committee in accordance with section 3513.31 of the Revised Code. R.C. §3501.01(K)

R.C. §1901.06 and §1901.08 show that the legislative also enacted specific statutes, which govern municipal judges. These respective statutes set forth the qualifications and election dates for judges, and the establishment of two municipal judge positions with Rocky River Municipal Court.

In construing a statute, a court’s paramount concern is the legislative intent in enacting the statute. Under Ohio law, it is a cardinal rule that a court must first look to the language of the statute itself to determine the legislative intent. In interpreting a statute, words and phrases shall be read in context and construed according to the rules of grammar and common usage. Courts do not have authority to ignore the plain and unambiguous language of a statute under the guise of statutory interpretation, but must give effect to the words used. (Citation omitted) State v. Conger (1994), 97 Ohio App. 3d. 91, 96.

The plain reading of R.C. §1901.07 shows that municipal judge candidates can attain nomination to the nonpartisan general election ballot through two different avenues: a party primary or a nonpartisan nominating petition. A primary candidate, who desires to attain nomination to the nonpartisan general election ballot, must first file a declaration of candidacy and petition to gain access to the party primary. Although, a candidate may choose the primary route, R.C. §1901.07(B) does not require party primaries for municipal judge candidates, and

R.C. §1901.07(B), specifically states that no primary shall be held when no one files or only one-person files.

Regardless of whether there are any party primaries, any number of candidates can be nominated to proceed directly to the nonpartisan general election ballot by filing a nonpartisan nominating petition, without being involved in the primary process. R.C. §1901.07(B) refers to these candidates as “nonpartisan”, and does not use the term “independent”. Nor did Judge Gravens become an independent candidate pursuant to R.C. §3501.01(J) because there was a primary election in Rocky River. This section merely requires those candidates who desire to gain access to the general election, through the primary process, to list their political party. All other municipal judicial candidates remain nonpartisan.

Obviously, candidates strategize on which avenue is best for them. However, it is interesting to note that R.C. §1901.07(C) eliminates these judicial candidates strategy decisions for the named court districts therein by requiring those candidates to be nominated to the nonpartisan general elections ballot by petition only, and thereby, eliminates any party primaries in those named districts.

The Board properly determined that Judge Gravens is a proper nonpartisan judicial candidate for the Rocky River Municipal Court, and properly corrected the Board’s minutes to state such. Undersigned will further address Relator’s brief to further clarify this issue.

Relator’s exhibit “A”, affects the crux of protestor’s argument, which cites to alleged “BOE Petition Deadlines, and filing deadlines set forth by the BOE”, and BOE filing rules for independent candidates. Clearly these citations do not refer to any law, and amount only to inaccurate information prepared by Board staff. Election law is clear that any mistaken advice by the Board of Elections or its staff does not stop the Board from applying the law. “To hold

otherwise would permit the advice of representatives of the Board or the Board itself to take precedence over the enacted law of the General Assembly”. State of Ohio, ex rel. Jennifer Martinez v. Cuyahoga County Board of Elections (March 27, 2006), Cuyahoga App. Na 87880, unreported, citing State ex rel. Donegan v. Cuyahoga County Board of Elections (2000), 136 Ohio App. 3d 589, 595. By law, nonpartisan candidates for Rocky River Municipal Court shall file nominating petitions by the end of the day before the primary. R.C. §1901.07(B).

A previous legal opinion issued by this attorney refers only to partisan and nonpartisan candidates. Board staff incorrectly amended the 2007 Board Calendar pages with the term independent as used. This mistake caused the Board to incorrectly certify Judge Gravens to the general election as an independent candidate, which the Board properly corrected, and properly amended its minutes to state that Judge Gravens is a nonpartisan candidate. This mistake may have caused protestors confusion with the terms independent candidate and nonpartisan candidate.

The specific language of R.C. §1901.07 (B) allows Judge Gravens to seek to appear on the ballot as a nonpartisan candidate, and her nominating petition does not make any reference to the term independent. As will be explained, this relates to the inapplicability of Morrison, supra.

Advisory No. 2007-05 addresses the impact of Morrison, supra, on R.C. §3513.257, which is titled “Independent candidate’s petition for nomination at primary election.”

“Independent candidate” means any candidate who claims not to be affiliated with a political party, and whose name has been certified on the office-type ballot at a general or special election through the filing of a statement of candidacy and nominating petition, as prescribed in section 3513.257 of the Revised Code. 3501.01(I). Neither the advisory nor Morrison, supra address any relation to the nonpartisan nomination petition filing requirement, which allows any number of

municipal judicial candidates to proceed directly to a nonpartisan general election nor is the term nonpartisan used anywhere. Moreover, the facts of Morrison, supra, are inapposite to the issue herein as stated in the advisory:

“In December 2005 and January 2006 Charles Morrison circulated petitions seeking election to the Madison County Republican Party Central Committee and to the Ohio Republican Party State Central Committee. Mr. Morrison subsequently filed his petitions and appeared on the ballot in the May 2006 Republican primary ballot for these positions. To appear on the ballot in these races Mr. Morrison affirmed his affiliation with the Republican Party under penalty of election falsification. Additionally, Mr. Morrison advertised his candidacy as a Republican in a newspaper advertisement.

On May 1, 2006, the day before the primary, Mr. Morrison filed as an “independent” candidate in the race for the Ohio 15th U.S. Congressional District. By filing as an independent Mr. Morrison affirmed, under penalty of election falsification, that he had no affiliation with a political party. Mr. Morrison also filed documents with the Federal Election Commission, related to his “independent” candidacy, clearly stating his affiliation with the Republican Party.

On May 2, 2006 Mr. Morrison voted in the Republican primary election in Madison County. By voting in the Republican primary Mr. Morrison again affirmed his affiliation with the Republican Party under penalty of election falsification.

On May 22, 2006, three electors protested Mr. Morrison’s candidacy for the congressional seat in the 15th District, alleging that Mr. Morrison was not independent of political party affiliation under Ohio law. The Franklin County Board of Elections (the most populous county) held a protest hearing, and the Board tied 2-2 on the protest. The Board certified the tie vote to this office, and former Assistant Secretary of State Monty Lobb, presumably acting on behalf of then Secretary of State Blackwell, broke the tie vote in favor of the protest and against certification of Mr. Morrison’s candidacy. Assistant Secretary Lobb based his rationale for not certifying Mr. Morrison’s petition on Mr. Morrison’s failure to disaffiliate himself from the Republican Party and thereby be truly independent of political affiliation:

[T]he relevant law clearly requires a more definitive representation to demonstrate one’s status as an independent candidate for elected office in Ohio R.C. §3501.01 (I) provides that standard, the law and the facts show that Mr. Morrison was never *truly independent* at any point relevant to this matter.

Mr. Morrison filed suit in the U.S. District Court for the Southern District of Ohio

Seeking preliminary and permanent injunctions to preclude the Board from invalidating his candidacy and alleging that R.C. §3513.257 was unconstitutional. The District Court

upheld Assistant Secretary Lobb's decision, and Mr. Morrison appealed", and the Appellate Court upheld the District Court.

The relevant facts herein are as follows: On May 2, 2007, pursuant to R.C. §1901.07(B) Maureen Gravens filed petitions to be a nonpartisan candidate for judge in Rocky River Municipal Court; on May 8, 2007, Maureen Gravens voted in the democratic primary; on May 29, 2007, Maureen Gravens was incorrectly certified as an independent candidate for judge; on June 4, 2007, the Secretary of State issued Advisory No. 2007-05 regarding Independent candidates and Party Affiliations bases on the decision on *Morrison v. Colley* 467 F.3d 503 (6th Cir. 2006); and thereafter the instant protest was filed.

The *Morrison* court concluded that because Mr. Morrison had voted in the past Republican primaries, and most importantly, in the Republican primary held the day after he filed as independent candidate, in which he appeared on the ballot seeking election to the Madison County Republican Party Central Committee and to the Ohio Republican Party State Central Committee and because so voting required him to state under penalty of criminal prosecution for election falsification that he was affiliated with the Republican party, Mr., Morrison could not claim in good faith that he was actually independent of party affiliation on his congressional petition.

In short, *Morrison* could not have it both ways as the specific statutory limitation of §3501.01(I), which governs independent candidates controlled.

Protestor's reliance on this case and the Secretary of State's advisory is totally inapplicable based on the facts and law of this case.

In *Morrison*, the Secretary of State, in breaking the tie vote, applied the clear language of §3501.01(I) which defines an independent as one who claims not to be affiliated with a political

party against a candidate who claimed not to be affiliated (independent petition) while declaring his party affiliation repeatedly!

In contrast, §3501.01(J) has no limiting language, in that a nonpartisan candidate means any candidate whose name is required pursuant to section 3505.04 to be listed on the nonpartisan ballot. A nonpartisan candidate's petition makes no claims of status (independent or not) or any claims to affiliation. Judge Gravens' nonpartisan petition contains only the statement of candidacy which asserts the following: The name, address, assertion of qualification as an elector, a desire to be Judge of the specific office at the general election and finally declares, if elected, that Judge Gravens is qualified for the office. The *Morrison* "declaration of independent," and the Secretary of State's advisory concerning independent candidate petitions has no legal factual application to Judge Gravens' petition.

Courts must liberally construe election laws in favor of persons seeking to hold public office to avoid restricting the right of electors to choose from all qualified candidates. State ex rel. Lynch v. Cuyahoga County Board of Elections (1997), 80 Ohio St. 3d 341, 1997-Ohio-339; See, State, ex rel. Giuliani v. Cuyahoga County Board of Elections (1984), 14 Ohio St. 3d 8. When making protest decisions, there are many occasions where the Board should consider the general test of validity for disputed petitions is substantial compliance with the legal requirements so as to avoid fraud or deception. Absolute compliance with every technicality should not be required in order to constitute substantial compliance, unless such complete and absolute conformance to each technical requirement of the printed form serves a public interest and a public purpose. Ohio favors free competition elections, in which the electorate has the opportunity to make a choice between candidates. State ex rel. King v. Mahoning County Board of Elections 1998 WL 201449, citing Stern v. Board of Elections (1968), 14 Ohio St 2d 175, 180.

The situation herein, involves a petition that is valid on its face. The petition is nonpartisan as specifically authorized by O.R.C §1901.07. The petition does not assert that Judge Gravens is an independent nor does the printed form supplied by the Board make any reference to the term independent. There is no specific prohibition or reference to party affiliation. Instead, the petition, being a nonpartisan nominating petition recites the mandatory statutory elements needed to qualify as a candidate for Judge.

Certification amendments are within the Board's powers. State ex rel. Canales-Flores v. Lucas County Board of Elections (2005), 108 Ohio St. 3d 129; State ex rel. Commt for Referendum of Lorain Ordinance No 77-01 v. Lorain County Board of Elections Ohio, 2002 (2002), 96 Ohio St 3d 308; State ex rel. O'Donnell v. Cuyahoga County Board of Elections (2000), 136 Ohio App. 3d 584. Thus, the Board properly amended its' previous certification of Judge Graven as an independent candidate, to a nonpartisan candidate.

RELATED PENDING CASE

Respondent Board adopts and incorporates herein, the arguments set forth in "Relator's Memorandum in Support of Complaint for Mandamus" and "Relators' Joint Memorandum in Opposition to Respondents' Motion for Judgment on the Pleadings" in the case of State ex rel. Allen, et al. v. Warren County Board of Elections, et al., Case No. 2007-1291, as if fully rewritten herein. (See attached exhibits).

WHEREFORE, Respondent Board moves this Honorable Court to dismiss and deny the Relator's Petition for Writ of Mandamus, and /or Writ of Prohibition.

Respectfully submitted,

WILLIAM D. MASON, Prosecuting Attorney
of Cuyahoga County, Ohio



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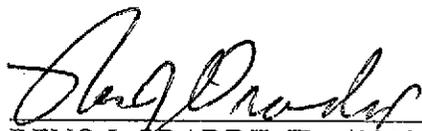
(216) 443-7769

ATTORNEYS FOR RESPONDENT

CUYAHOGA COUNTY BOARD OF ELECTIONS

CERTIFICATE OF SERVICE

A copy of the foregoing Respondent's Attorney for Relator, Daniel P. Carter, Jeffrey W. Ruple, and Buckley King, LPA Attorneys for Relator, 1400 Fifth Third Center, 600 Superior Avenue East, Cleveland, Ohio 44114 this 21st day of August 2007, by regular U.S. Mail.



RENO J. ORADINI, JR. (0039848)
Assistant Prosecuting Attorney

CUYAHOGA COUNTY
BOARD OF ELECTIONS
BOARD MEETING
TRANSCRIPT OF PROCEEDINGS

- - -

Monday, August 6th, 2007
9:00 a.m.

- - -

Cuyahoga County Board of Elections
2925 Euclid Avenue
Cleveland, Ohio

- - -

APPEARANCES:

Jeff Hastings, Chairman.
Robert S. Frost, Board Member.
Eben Sandy McNair, Board Member.
Inajo Davis Chappell, Board Member.
Jane Platten, Director.
Pat McDonald, Deputy Director.
Reno Oradini, Assistant Prosecuting Attorney.
Toni LaMarca, Secretary.



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1 * * * * *

2 PROCEEDINGS

3 THE CHAIRMAN: Okay. We're all set.
4 Good morning everybody. It is Monday,
5 August 6th, and we are going to begin our
6 meeting this morning. But let's first do
7 the Pledge of Allegiance. Everybody rise.

8 - - -

9 (Pledge of Allegiance recited.)

10 - - -

11 THE CHAIRMAN: Thank you. And if you
12 would call the roll here for us, Miss
13 LaMarca.

14 MS. LAMARCA: Mr. Frost.

15 MR. FROST: Here.

16 MS. LAMARCA: Mr. McNair.

17 MR. MCNAIR: Here.

18 MS. LAMARCA: Mr. Hastings.

19 THE CHAIRMAN: Here.

20 MS. LAMARCA: Miss Chappell.

21 MS. CHAPPELL: Present.

22 THE CHAIRMAN: We have Miss Platten
23 and Mr. McDonald here along with Mr.
24 Oradini joining us today.

25 And why don't we call the first item

DIRECT EXAMINATION OF DEBORAH REESE

1
2 BY MR. CARTER:

3 Q. Would you please state your name for the members of
4 the Board?

5 A. Deborah Reese.

6 Q. What is your address?

7 A. 4277 West 214th in Fairview Park.

8 Q. Are you a registered voter in Fairview Park?

9 A. I am.

10 Q. Have you participated in elections in Fairview Park?

11 A. Yes, I have.

12 Q. Are you eligible to participate in upcoming
13 elections in Fairview Park?

14 A. I am.

15 Q. How did you come to know about the subject matter of
16 this petition to challenge to Judge Gravens?

17 A. My sister brought it to my attention.

18 Q. And what did she tell you?

19 A. That Miss Gravens had filed as an Independent, and
20 then voted in the Democratic primary, and there were
21 discussions that that was not allowed.

22 MR. BUTLER: Objection as to the
23 categorization of the sections.

24 THE CHAIRMAN: Thank you. And
25 overruled.

1 MR. CARTER: Hearsay. That's what she
2 was told.

3 Q. (BY MR. CARTER) And as a result of that, what did
4 you do?

5 A. My sister presented me with a letter that was --

6 Q. Did you read that letter?

7 A. I did.

8 Q. And what did that letter contain?

9 A. Basically what I said, that there were -- that she
10 was offered as an Independent, she submitted her
11 application, she voted in the primary, then she was
12 approved as an Independent, and there was
13 attachments to it to support that case.

14 Q. And then did you send that to the Board of Elections
15 as a protest?

16 A. Yes. Each member of the Board got a copy.

17 MR. CARTER: That's all I have.

18 MR. MCNAIR: So you have no
19 independent knowledge that, in fact, Judge
20 Gravens filed as an Independent? It was
21 only based upon what your sister told you?

22 THE WITNESS: I did after discussion.

23 MR. MCNAIR: I'm sorry?

24 THE WITNESS: After my sister and I
25 were discussing it, we looked into it

1 further, but it was brought to my
2 attention.

3 MR. MCNAIR: Well, I'm asking what
4 competent evidence you have that Judge
5 Gravens as an Independent.

6 THE WITNESS: The attachments that
7 were on the letter as far as her
8 application I believe was on that.

9 MR. MCNAIR: And that's it?

10 THE WITNESS: Yes, sir.

11 MR. MCNAIR: Okay. So you looked at
12 the documents, you made a conclusion she
13 filed as an Independent, and that was your
14 basis for filing your letter with us?

15 THE WITNESS: Yes, sir.

16 MR. MCNAIR: Okay. Thank you.

17 THE CHAIRMAN: Okay.

18 MS. CHAPPELL: Are we sure that the
19 witness can be heard? Is the microphone
20 being able to pick up her testimony? I
21 think there's a little bit of unreadiness
22 on that.

23 MS. PLATTEN: It should be good now.

24 THE CHAIRMAN: Mr. Butler on cross.

25 MR. BUTLER: Hi, Ms. Reese. I'm

1 Michael Butler. I'm the attorney for
2 Maureen Adler Gravens. I'm going to ask
3 you a couple questions. I'll be brief.

4 THE WITNESS: Okay.

5 - - -

6 CROSS-EXAMINATION OF DEBORAH REESE

7 BY MR. BUTLER:

8 Q. Miss Reese, just for clarification, who's your
9 sister?

10 A. Christine Baldwin.

11 Q. And is your sister Mr. Hagan's secretary?

12 A. Yes, sir, she is.

13 Q. Okay. All right. Now, when you were getting ready
14 to file this protest, what documents did you review?

15 A. I don't remember specifically. They were attached
16 to the letter.

17 Q. Well, one of the documents that's not attached to
18 the letter is the petition that was filed by Maureen
19 Adler Gravens.

20 At any time have you looked at the petition
21 that was filed with this Board of Elections that is
22 the subject of this? Have you studied that?

23 A. No, sir.

24 Q. Okay. So you don't know what Judge Gravens said on
25 her petition, do you?

1 A. Not specifically, no, sir.

2 MR. BUTLER: Okay. No further
3 questions.

4 THE CHAIRMAN: Anything on redirect,
5 Mr. Carter?

6 MR. CARTER: No, sir.

7 THE CHAIRMAN: All right. Miss Reese,
8 thank you for your time and efforts today.
9 You may step down.

10 Mr. Carter, do you have another
11 witness?

12 MR. CARTER: No, I do not, sir.

13 THE CHAIRMAN: Okay. How about any
14 other documentary evidence that you'd like
15 to address?

16 MR. CARTER: Well, I'm not quite sure
17 how you want me to do this. We have all of
18 the matters that were attached to our
19 brief. Most of those are public record
20 with the exception of the newspaper
21 articles, of course.

22 What I'm talking about for the
23 evidentiary matters are listed --

24 THE CHAIRMAN: Mr. Carter, I guess at
25 this point, if we were having a regular

CASE No. 07-1291

IN THE SUPREME COURT
OF THE STATE OF OHIO

STATE OF OHIO *EX RELATIONE*
MITCHELL W. ALLEN,

Relator,

v.

WARREN COUNTY BOARD OF ELECTIONS, ET AL.,

Respondents.

ORIGINAL ACTION FOR MANDAMUS

ELECTION-RELATED MATTER

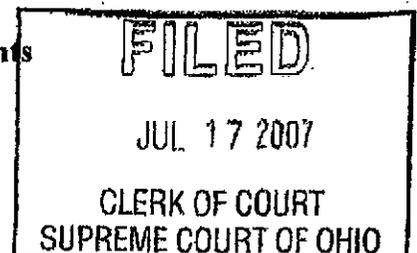
RELATOR'S MEMORANDUM IN SUPPORT OF COMPLAINT FOR MANDAMUS

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Counsel for Respondents



SUPREME COURT OF THE STATE OF OHIO

**STATE OF OHIO *EX RELATIONE*
MITCHELL W. ALLEN,**

Relator,

v.

**WARREN COUNTY BOARD OF ELECTIONS,
et al.,**

Respondent.

: Case No. _____

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**RELATOR'S MEMORANDUM
IN SUPPORT OF COMPLAINT
FOR MANDAMUS**

Relator, Mitchell Allen, on relation to the State of Ohio, tenders this memorandum in support of the Verified Complaint for Writ of Mandamus.

A. Statement of Facts

Relator, seeking to be a candidate for judge on the Mason Municipal Court, filed a nominating petition with the Warren County Board of Elections. Despite the petition being valid in all respects and containing a sufficient number of valid signatures of qualified electors, Respondents, at one of its regular meetings, voted not to certify the validity of the nomination petitions and, accordingly, are refusing to place Relator's name on the general election ballot in November 2007 as a candidate for judge of the Mason Municipal Court. The sole basis put forth on behalf of Respondents for their refusal to accept and certify Relator's nominating petition and to place his name on the ballot is Advisory No. 2007-05 issued by the Ohio Secretary of State and the opinions cited therein.

B. Argument

PROPOSITION OF LAW No. 1:

This Court Has Original Jurisdiction to Issue a Writ of Mandamus to Compel a Board of Elections To Accept the Candidacy, *i.e.*, To Certify the Candidacy, of a Qualified Individual Who Has Filed a Valid Nominating Petition

“Original jurisdiction is conferred on this court in mandamus actions by Section 2(B)(1)(b) of Article IV of the Constitution of Ohio.” State ex rel. National City Bank v. Board of Education of the Cleveland City School Dist. (1977), 52 Ohio St.2d 81, 86; accord State ex rel. Wilke v. Hamilton Cty. Bd. of Comm’rs (2000), 90 Ohio St.3d 55, 59 (“[u]nder Section 2(B)(1)(b), Article IV of the Ohio Constitution, the Supreme Court of Ohio has original jurisdiction in mandamus actions”). And when a board of elections refuses or fails to certify a candidate’s nominating petition, this Court and inferior courts have recognized that mandamus is the proper remedy. State ex rel. Brown v. Summit Cty. Bd. of Elections (1989), 46 Ohio St.3d 166, 167; State ex rel. Moss v. Franklin Cty. Bd. of Elections (1980), 69 Ohio App.2d 115 (mandamus action to challenge action of county board of elections in refusing to place petitioner’s name on ballot); see also State ex rel. O’Donnell v. Cuyahoga Cty. Bd. of Elections (2000), 136 Ohio App.3d 584, 587 (mandamus was the appropriate remedy to address decision of county’s board of elections to invalidate and decertify candidate’s declaration and petition for candidacy for judicial office in common pleas court). And in an action reviewing the refusal of a board of elections to certify a candidate’s petition and to place the candidate’s name on the ballot, relief in mandamus is appropriate upon the demonstration of fraud, corruption, abuse of discretion, or clear disregard of applicable law. State ex rel. Chance v. Mahoning Cty. Bd. of Elections (1996), 75 Ohio St.3d 42, 43; State ex rel. Reading v. Cuyahoga Cty. Bd. of Elections (2001), 147 Ohio App.3d 172,

PROPOSITION OF LAW No. 2:

A Board of Elections Engages in an Abuse of Discretion and a Clear Disregard of Applicable Law When It Rejects the Nominating Petitions for a Nonpartisan Candidate When Such Petitions Are Valid In All Respects and Contained a Sufficient Number of Valid Signatures

Pursuant to R.C. 3501.11(K), Respondents, constituting the Warren County Board of Elections, have the legal duty to “[r]eview, examine, and certify the sufficiency and validity of petitions and nomination papers” And, in doing so, the Respondents are also obligated to follow the mandate of R.C. 3501.39 which compels the board of elections to accept petitions, *i.e.*, to certify a candidate’s names to the ballot, unless one of the specifically statutory-enumerated grounds exists by which a board of election may reject the candidacy.¹ For R.C. 3501.39(A) provides, in part, that:

a board of elections shall accept any petition described in section 3501.38 of the Revised Code, unless one of the following occurs:

- (1) A written protest against the petition or candidacy, naming specific objections, is filed, a hearing is held, and a determination is made by the election officials with whom the protest is filed that the petition is invalid, in accordance with any section of

¹ It is clear that the term “accept” in R.C. 3501.39 is not the same as the act of accepting petitions for filing. Throughout Chapter 35, the General Assembly has repeatedly utilized the phrase “accept for filing” when referring to the act of tendering or delivering petitions to the appropriate office and the petitions are “accepted for filing” by the board of elections or the office of the secretary of state. See, e.g., R.C. 3513.04; R.C. 3513.041; R.C. 3513.05; R.C. 3519.14. In such a situation, the “accepted for filing” simply places the petitions in the possession, custody or control of the board of elections or the secretary of state, and a review and examination subsequently takes place. In contradistinction, the context of term “accept” in R.C. 3501.39 indicates that it means more than simply placing into one’s possession, custody or control; it is the act of accepting the validity of the petitions so that the person’s name is placed on the ballot, *i.e.*, accepting or rejecting petitions or declarations of candidacy. See State ex rel. Schwarz v. Hamilton County Bd. Of Elections (1962), 173 Ohio St. 321, 323 (finding board of elections was “was under the clear legal duty to *approve and accept* the petition and place relator’s name on the primary ballot as a candidate for nomination to the office he seeks” (emphasis added).)

the Revised Code providing a protest procedure.

(2) A written protest against the petition or candidacy, naming specific objections, is filed, a hearing is held, and a determination is made by the election officials with whom the protest is filed that the petition violates any requirement established by law.

(3) The candidate's candidacy or the petition violates the requirements of this chapter, Chapter 3513. of the Revised Code, or any other requirements established by law.

Pursuant to R.C. 1901.06, the qualifications for a municipal court judge (including the judge for the Mason Municipal Court) is that the judge "shall be a qualified elector and a resident of the territory of the court to which he is elected or appointed. A municipal judge shall have been admitted to the practice of law in this state and shall have been, for a total of at least six years preceding his appointment or the commencement of his term, engaged in the practice of law in this state or served as a judge of a court of record in any jurisdiction in the United States, or both." No other requirements to qualify for municipal court judge is set forth by the Revised Code. Relator has undisputedly met the statutory qualifications to be a municipal court judge.

With regard to Relator's nominating petition or candidacy, the director of the Warren County Board of Elections confirmed that Relator's petitions were valid and contained a sufficient number of signatures; instead, the director indicated that, due to the Relator having allegedly voted in the Republican primary on May 8, 2007, the board of elections concluded that Relator was ineligible to be a candidate to the nonpartisan office of municipal court judge, indicating that Respondents were simply following the information contained in Advisory 2007-05 issued by the Ohio Secretary of State.² As developed below, Relator's candidacy or nominating petitions did

² It is important to note that the Secretary of State issued an advisory, not a directive to the boards of elections.

not violated any provision of the election laws and, as such, the Respondents, in their capacity as members of the board of election, are under a legal duty to accept the petitions as being valid and to place or certify Relator's name on the ballot as a candidate for judge of the Mason Municipal Court.

In considering the conclusion of Respondents that the Relator failed to meet the statutory requirements to run as a candidate for municipal court judge (and, thus, refusing to place his name on the ballot), it is important to appreciate the admonition that this Court pronounced in State ex rel. Leslie v. Duffy (1955), 164 Ohio St. 178:

Where there is mandatory language in an election statute requiring a proposed candidate to do certain things before his name can be placed upon a ballot, those things must be done in accordance with the statute before such proposed candidate is eligible to have his name placed on the ballot. On the other hand, where a proposed candidate strictly follows all the requirements stated in the statute governing his candidacy, he is not required to do things required by another statute concerned with a different class of candidates.

Id. at 183-84. And despite this clear pronouncement, the Respondents have ignored the language and requirements of the election laws, in general, and the nominating process for nonpartisan judicial candidates, in particular; instead, Respondents have attempted to imposed requirements outside of the Revised Code.

Even though the Relator's nominating petition was valid in all respects, the apparent premise or basis upon which the Respondents refused to accept Relator's petition and to place his name on the ballot was the issuance of Advisory No. 2007-05 by Jennifer Brunner, the Secretary of State . This advisory addressed a decision last year by the United States Court of Appeals for the Sixth Circuit in the case of Morrison v. Colley (6th Cir. 2006), 467 F.3d 503. The Respondents (and the Secretary of State through Advisory No. 2007-05) misconstrue the legal posture, aspects

and holding in *Morrison*. In the Advisory, the Secretary of State declared that:

Longstanding practice in Ohio and the interpretations of R.C. 3513.257 made by former Ohio Secretaries of State required only that the *candidacy* of an independent candidate be independent of political party affiliation, but not that the *individual* himself or herself be entirely unaffiliated. The *Morrison* case now requires that independent candidates actually be unaffiliated and that when an unaffiliation is claimed, it must be claimed in good faith.

Contrary to this statement, the *Morrison* opinion does not “require[] that independent candidates actually be unaffiliated and that when an unaffiliation is claimed, it must be claimed in good faith.”

Morrison was a fact-specific case that challenged, *inter alia* and in an as-applied challenge, the vagueness within the statutes concerning what constitutes an independent candidate and what one must do to be an independent candidate. Because it was not a facial challenge, the Sixth Circuit simply determined that, based upon the facts of the case, Mr. Morrison, personally and only for himself, could not claim or establish to truly be an independent candidate.³

Additionally, it must be noted and recognized that the Secretary and the Respondents (through their reliance upon the Morrison opinion as be absolutely determinative of Ohio law) fail to appreciate the role of federal courts when it comes to making an authoritative pronouncement on an issue of state law. For “[i]t is not . . . within the federal court's authority to construe and narrow a state statute challenged on federal constitutional grounds.” American Motor Sales Corp. v. Runke (6th Cir. 1983), 708 F.2d 202, 208 n.12. For authoritative decisions on state

³ It is interesting to note that, in Advisory 2007-05, the Secretary of State claims that “[l]ongstanding practice in Ohio . . . required only that the *candidacy* of an independent candidate be independent of political party affiliation, but not that the *individual* himself or herself be entirely unaffiliated.” Yet, in *Morrison*'s case, the Secretary of State, in breaking a tie vote from the Franklin County Board of Elections, concluded that, because Mr. Morrison could not establish that he personally was not unaffiliated with a political party, he could not be an independent candidate.

statutes comes from the pronouncements of a state's highest court, not a federal court. Johnson v. Fankell (1997), 520 U.S. 911, 917 (1997) (“[n]either this Court nor any other federal tribunal has any authority to place a construction on a state statute different from the one rendered by the highest court of the state”); see also United States v. Thirty-Seven (37) Photographs (1971), 402 U.S. 363, 370 (“[t]he obstacle in Freedman and Teitel was that the statutes were enacted pursuant to state rather than federal authority; while Freedman recognized that a statute failing to specify time limits could be saved by judicial construction, it held that such construction had to be ‘authoritative,’ and we lack jurisdiction authoritatively to construe state legislation” (internal citation omitted)); Ring v. Arizona (2002), 536 U.S. 584, 603 (“we recogniz[e] that the Arizona court’s construction of the State’s own law is authoritative”); Nicholson v. Scoppetta (2nd Cir. 2003), 344 F.3d 154, 170 (“[a]ny of our determinations of state law based upon prediction, rather than authoritative construction by the State’s highest court, carries risk, especially if we turn a party out of court on a theory later repudiated by the State”). Stated otherwise, state courts are the ultimate expositors of state law and federal courts are bound by their constructions of state law except in extreme circumstances. Mullaney v. Wilbur (1975), 421 U.S. 684, 691.

Yet, the situation in Morrison is so far removed from the situation of the Relator. Respondent lacked a complete appreciation that, unlike the candidate in Morrison, Relator is not seeking to be an “independent candidate”; instead, Relator is seeking to be a “nonpartisan candidate”. For under Ohio election laws, there are three mutually exclusive categories candidates: (1) a party candidate; (2) an independent candidate; and (3) a nonpartisan candidate. By definition, an “independent candidate” means “any candidate who claims not to be affiliated with a political party, and whose name has been certified on the office-type ballot at a general or

special election through the filing of a statement of candidacy and nominating petition as prescribed in section 3513.257 of the Revised Code.” And, by definition, an “nonpartisan candidate” means simply “any candidate whose name is required, pursuant to section 3505.04 of the Revised Code, to be listed on the nonpartisan ballot, including *all candidates for judicial office, . . .*” R.C. 3101.01(J)(emphasis added); see also R.C. 1901.07(A) (“[a]ll municipal court judges shall be elected on the nonpartisan ballot”).

And the distinction between “independent candidate” and “nonpartisan candidate” is carried over into the type or kinds of ballots on which their names appear. See R.C. 3505.08 (“[t]he ballots provided for by this section shall be comprised of four kinds of ballots designated as follows: office type ballot; nonpartisan ballot; questions and issues ballot; and presidential ballot”). And, in turn, the office type ballot is addressed in R.C. 3505.03; the nonpartisan ballot, in R.C. 3505.04; the questions and issues ballot, in R.C. 3505.06; and the presidential ballot, in R.C. 3505.10. Not only does R.C. 1901.07(A) direct that municipal court judges are elected on the nonpartisan ballot, but R.C. 3505.04 directs that “[o]n the nonpartisan ballot shall be printed the names of all nonpartisan candidates for election to judicial office . . .” Independent candidates, by definition, do not appear on the nonpartisan ballot, but, instead, are on the office-type ballot; nonpartisan candidates (including all judicial candidates) appear on the nonpartisan ballot.

As the foregoing definitions demonstrate, independent candidates must “claim[] not to be affiliated with a political party”; but there is no declaration, claim or other indication of political party affiliation for nonpartisan candidates. Stated otherwise, there is no statutory mandate that nonpartisan candidates be unaffiliated with a political party. Yet, by rejecting the nominating petitions of Relator, a nonpartisan candidate, apparently because the Relator purportedly voted in

the most recent Republican primary, the Respondents have sought to impose a standard upon nonpartisan candidates, *i.e.*, that they have no affiliation with a political party, that is not required whatsoever under the Revised Code.

It is also important to understand and fully appreciate the actual electoral process by which individuals' names appear on the ballot. A candidate's name does not automatically appear on the ballot through his or her fiat. Instead, the candidate must be nominated. With respect to municipal court judgeships, R.C. 1901.07(B) dictates that "[a]ll candidates for municipal court judge may be nominated either by nominating petition or by primary election" But see R.C. 1901.07(C)(listing specific municipal courts by where the candidate for judge "shall be nominated by petition only"). Thus, the nomination occurs via one of two ways: (1) by a primary election; or (2) by nominating petition. To seek the nomination of a party (via a primary election), a prospective candidate utilizes a declaration of candidacy, with a certain number of electors' signatures who, by their signature, certify that the candidate belongs to a certain political party and that they believe he is qualified to perform the duties of the office he seeks." R.C. 3513.07;⁴

⁴ Interestingly, the those circulating or signing in support a declaration of candidacy must be members of the same political party as the candidate. See R.C. 3513.05 ("[e]ach separate petition paper shall be circulated by one person only, who shall be the candidate . . . or a member of the same political party as the candidate"); R.C. 3513.07 ("[t]he petition provided for in this section shall be circulated only by a member of the same political party as the candidate").

While this would appear to suggest that only registered Republicans can sign and circulate the declaration of one seeking the nomination of the Republican Party at a primary elections (and similarly with respect to the Democrat Party), such is not the case. True independents, *i.e.*, those who claim and desire not to be affiliated with any political party, are still able to sign or circulate declarations of candidacy for Republican or Democratic candidates, for such true independents would not have voted in any other party's primary election. See R.C. 3513.05 ("[f]or purposes of signing or circulating a petition of candidacy for party nomination or election, an elector is considered to be a member of a political party if the elector voted in that party's primary election within the preceding two calendar years, or *if the elector did not vote in any other party's primary election within the preceding two calendar years*" (emphasis added)).

see State ex rel. Leslie v. Duffy (1955), 164 Ohio St. 178 (“[i]n the case of the party candidate he makes a declaration of candidacy and those electors signing his petition certify that he belongs to a certain party and that they believe he is qualified to perform the duties of the office he seeks”); State ex rel. Moss v. Franklin Cty. Bd. of Elections (1980), 69 Ohio App. 2d 115 (“a primary election is conducted for two purposes: (1) nominating persons to be candidates of political parties in the ensuing general election; and (2) electing members of the controlling committees of political parties”). On the other hand, both independent candidates and nonpartisan candidates utilize a nominating petition to effectuate the placement of their name on the ballot. Via the nominating petition, the candidate makes a statement of candidacy (as opposed to the declaration of candidacy), with a certain number of electors’ signatures who, by their signature, actually nominate the candidate for the office and certify that, in their opinion, the candidate is well qualified to perform the duties of the office or position to which the person desires to be elected. R.C. 3513.261.

In making the statement of candidacy, the nonpartisan candidate does not make any statement or declaration regarding his party affiliation *vel non*. Instead, it is simply a statement by the nonpartisan candidate of his or her residence and other personal information, his or her desire to be a candidate for a particular office, and that he or she is an elector qualified to vote for the office he or she is seeking. R.C. 3501.261.

In rejecting the Relator’s nominating petitions, the Respondents merged the concepts of “nonpartisan candidates” and “independent candidates” (at least as the latter was developed by Respondent Brunner in Advisory 2007-05); but the Respondents failed to differentiate or appreciate the clear statutory distinctions between such candidates and, in so doing, have imposed

additional requirements upon nonpartisan candidates that have no foundation in the law.

Furthermore, if Relator, as a nonpartisan candidate, is ineligible to be such a candidate because he voted in the most recent primary of a political party, then would not all nonpartisan candidates who voted in the recent primary also be ineligible. For, by definition, all judicial candidates are nonpartisan candidates, even those judicial candidates who were nominated via a primary election (as opposed via a nominating petition).⁵ The Revised Code does not create or establish two different categories of nonpartisan candidates.⁶

As the foregoing demonstrates, the Warren County Board of Elections clearly abused its discretion and disregarded applicable law when it imposed upon nonpartisan candidates the requirement that such candidates be completely unaffiliated with any political party. Because the Relator submitted an otherwise valid petition with a sufficient number of valid signatures, Relator is entitled to a writ of mandamus directing the Respondents to accept and certify Relator's

⁵ It is important to note that, as all judicial candidates are nonpartisan candidates, in those counties where there was no primary election, certain judicial candidates may very easily still be and claim to be affiliated with a political party. See Code of Judicial Conduct, Canon 7(B)(3)(b)("[a]fter the day of the primary election, a judicial candidate shall not identify himself or herself in advertising as a member of or affiliated with a political party"), *operation suspended by Miscellaneous Order, 01/28/2005 Case Announcements, 2005-Ohio-286*. But under the reasoning and logic of the Respondents in rejecting Relator's petition, certain judicial candidates, such a Relator, are not allowed to be or claim to be affiliated with a political party. Thus, it appears that the action of the Respondents not only constitutes an abuse of discretion and a clear disregard of applicable state law, but also may constitute a violation of the free speech rights of the Relator, as well as denying him equal protection of the law, which are protected and guaranteed by the United States Constitution.

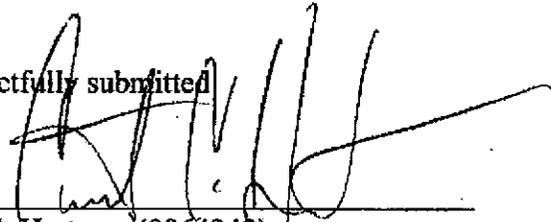
⁶ It is also noteworthy that candidates for the city council of Mason utilize nominating petitions exclusively and are nonpartisan candidates (just like the Relator); there is no nomination via a primary. If one cannot be a nonpartisan candidate because one voted in the most recent primary, then, under the precedent of the Warren County Board of Elections in this case, the any candidate for city council who voted in the most recent primary would be ineligible to be a candidate for city council.

nominating petition for judge of the Mason Municipal Court and to place Relator's name on the ballot for the November election.

CONCLUSION

Relator has meet all the requirements to be a candidate for judge of the Mason Municipal Court and the failure of the Respondents to certify the Relator's nominating petition and to place Relator's name on the ballot constitutes an abuse of discretion and a clear disregard of applicable law. As such, Relator is entitled to the requested writ of mandmaus.

Respectfully submitted

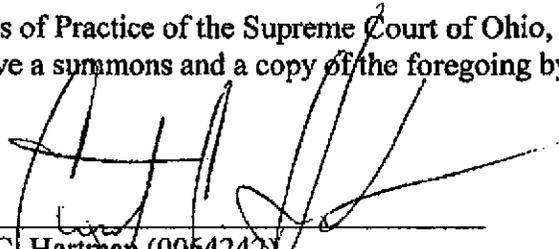


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CERTIFICATE OF SERVICE

Pursuant to Rule X, Section 4(A), of the Rules of Practice of the Supreme Court of Ohio, the Clerk of the Supreme Court is requested to serve a summons and a copy of the foregoing by certified mail to the following:



Curt C. Hartman (0064242)

CASE No. 2007-1291

IN THE SUPREME COURT
OF THE STATE OF OHIO

STATE OF OHIO *EX RELATIONE*
MITCHELL W. ALLEN, ET AL.

Relators,

v.

WARREN COUNTY BOARD OF ELECTIONS, ET AL.,,

Respondents.

ORIGINAL ACTION FOR MANDAMUS

RELATORS' JOINT MEMORANDUM IN OPPOSITION TO RESPONDENTS'
MOTION FOR JUDGMENT ON THE PLEADINGS

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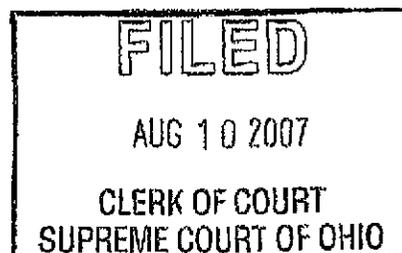
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Pro se Representation



SUPREME COURT OF THE STATE OF OHIO

STATE OF OHIO <i>EX RELATIONE</i>	:	Case No. 2007-1291
MITCHELL W. ALLEN, et al.,	:	
	:	
Relators,	:	
	:	
v.	:	
	:	
WARREN COUNTY BOARD OF ELECTIONS, et al.,	:	RELATORS' JOINT MEMORANDUM IN OPPOSITION TO RESPONDENTS' MOTION FOR JUDGMENT ON THE PLEADINGS
	:	
Respondents.	:	
	:	

Relators -- Mitchell W. Allen, James A. Whitaker, Jr., and George M. Parker -- on relation to the State of Ohio, tender the following Joint Memorandum in Opposition to Respondents' Motion for Judgment on the Pleadings. Relators further request and pray for the immediate issuance of a peremptory writ of mandamus.

STANDARD OF REVIEW ON MOTION FOR JUDGMENT ON THE PLEADINGS

A motion for judgment on the pleadings is the same as a motion to dismiss filed after the pleadings are closed and raises only questions of law; the pleadings must be construed liberally and in a light most favorable to the party against whom the motion is made, and every reasonable inference in favor of the party against whom the motion is made should be indulged. Peterson v. Teodosio (1973), 34 Ohio St.2d 161, 165-66, 297 N.E.2d 113. Thus, with respect to this original mandamus action, this Court is guided by its decision in State ex rel. DeBrosse v. Cool (1999), 87 Ohio St.3d 1, 3, 716 N.E.2d 1114, 1116-17, 1999-Ohio-239 (citations omitted), and the application of the following standard:

Under S. Ct. Prac. R. X(5), dismissal is appropriate if it appears beyond

doubt, after presuming the truth of all material factual allegations and making all reasonable inferences in favor of relator, that relator is not entitled to the requested extraordinary relief. If, on the other hand, the complaint may have merit, an alternative writ should issue. Finally, if it appears beyond doubt that relator is entitled to the requested extraordinary relief, a peremptory writ should issue.

Accord State ex rel. Findlay Publishing Co. v. Hancock Cty. Bd. of Commrs. (1997), 80 Ohio St.3d 134, 138, 684 N.E.2d 1222 (in considering a motion for judgment on the pleadings, “purported facts are not properly considered in determining [a respondent’s] Civ.R. 12(C) motion for judgment on the pleadings because relator is entitled to have all material allegations in its complaint, with all reasonable inferences to be drawn therefrom, construed in its favor as true”). Furthermore, this Court has “previously noted that Civ.R. 12(C) motions are also generally improper in mandamus cases because they ‘call for a decision on the merits of th[e] controversy.’” State ex rel. Pirman v. Money (1994), 69 Ohio St.3d 591, 592, 635 N.E.2d 26 (quoting State ex rel. Yiamouyiannis v. Taft (1992), 65 Ohio St.3d 205, 206, 602 N.E.2d 644, 645).

But even so, as it readily apparent that Respondents lacked a legal basis to refuse to accept and to certify the Relators’ nominating petitions to be candidates for judge of the Mason Municipal Court, Relators are entitled to the requested peremptory writ.

ARGUMENT

Relators believe that the Memorandum in Support of Complaint for Mandamus (filed with this Court on July 17, 2007) sets forth adequately and clearly the legal basis for the Relators’ entitlement to the requested writ of mandamus and, accordingly, Relators adopted and incorporate said Memorandum by reference as if restated fully herein. The following is

supplemental to the Memorandum to address certain arguments or issues raised and addressed by the Respondents in support of their Motion (or clearly ignored by the Respondents).

Respondents Mischaracterize and Improperly Rely Upon Advisory No. 2007-05

Respondents place significant reliance for their challenged action upon Advisory No. 2007-05, claiming that the advisory “indicates that a candidate who files a petition for candidacy the day before a primary, as a nonpartisan or independent candidate[], is not doing so in good faith when that person subsequently votes a partisan ballot at a primary held the following day.” (Motion for Judgment on Pleadings, at 3-4.) But the advisory does not do or indicate that which Respondents claim it does; the advisory makes no mention whatsoever regarding nonpartisan candidates. Applying the advisory to nonpartisan candidates was inserted solely by Respondents in an attempt to justify their actions. Furthermore, the advisory is just that – advice; it is not a directive by which the Secretary directs specific action be undertaken by the local board of elections. See In re Election Contest of Democratic Primary Held May 4, 1999 for Clerk, Youngstown Mun. Court (2000), 88 Ohio St.3d 258, 266, 2000-Ohio-325 (recognizing a difference between an advisory and a directive issued by the Secretary of State, noting that “the advisory merely provided guidance and was not mandatory”).

The Revised Code is Paramount in the Determination of the Validity of One’s Candidacy

Furthermore, even if the Respondents were somehow under an obligation to apply the advisory to nonpartisan candidates, this Court has “stated that the orders of the Secretary of State, which are to be obeyed by boards of elections, must be lawful orders supported by the

Revised Code.” State ex rel. Donegan v. Cuyahoga Cty. Bd. of Elections (2000), 136 Ohio App.3d 589, 596; accord State ex rel Sagebiel v. Montgomery Cty. Bd. of Elections (1944), 144 Ohio St. 162, 166 (“[i]t needs no citation of authority to demonstrate that the orders of the Secretary of State which are to be obeyed must be lawful orders finding their support in some section or sections of the General Code”); see State ex rel. White v. Franklin Cty. Bd. of Elections (1992), 65 Ohio St.3d 5, 8; see also State ex rel. McCord v. Delaware Cty. Bd. of Elections, 106 Ohio St.3d 346, 351 n.2, 2005-Ohio-4758 ¶30 n.2 (“we need accord no deference to a board of elections' interpretation of state election law”). In this instance, the Secretary of State simply advised the boards of elections of the Morrison case; she did not direct or dictate specific action. And even if she did the latter, it is contrary to a plain reading of the Revised Code.

Yet, neither the Respondents nor the advisory set forth any legal analysis or position with respect to nonpartisan candidates, let alone one that has any basis in the Revised Code. Respondents ignore completely the clear distinction between the definitions for “independent candidates” and “nonpartisan candidates” contained with R.C. 3501.01, and the associated difference between an “office-type ballot” and a “nonpartisan ballot” contained within R.C. 3505.03 and 3505.04. (See Memo. in Support of Complaint, at 7-9.) Regardless of the correctness of Morrison in espousing state law regarding independent candidates, Respondents have improperly merged the mutually exclusive concepts of independent candidate and nonpartisan candidate so as to impose a requirement upon the Relators' candidacy that has no

basis in state law.¹

***Respondents Seek to Impose, By Implication,
Additional Requirements Not Found in the Revised Code***

Respondents claim that because R.C. 1901.07(B) requires that the nominating petitions of candidates for municipal court judge conform to the requirements of R.C. 3513.257 (which addresses petitions for independent candidates), then, somehow, all requirements imposed upon independent candidates must be imposed upon nonpartisan candidates. (Motion for Judgment on Pleadings, at 4-5.) In making this argument, Respondents ignore the admonition of this Court in State ex rel. Leslie v. Duffy (1955), 164 Ohio St. 178:

Where there is mandatory language in an election statute requiring a proposed candidate to do certain things before his name can be placed upon a ballot, those things must be done in accordance with the statute before such proposed candidate is eligible to have his name placed on the ballot. On the other hand, where a proposed candidate strictly follows all the requirements stated in the statute governing his candidacy, he is not required to do things required by another statute concerned with a different class of candidates.

Id. at 183-84. Despite the fact that the Relators have followed the requirements and mandates of the Revised Code to be nonpartisan candidates for judicial office, Respondents have sought to imposed additional requirements upon them that are concerned with a different class of candidates, *i.e.*, independent candidates. Respondents attempt to do so because R.C. 1901.07(B),

¹ Respondents claim that “[n]either the Sixth Circuit case nor the Secretary of State advisory opinion differentiates between a judicial nonpartisan candidate and any other independent candidate.” (Motion for Judgment on Pleadings, at 5.) More accurately, neither of the two even mention or discuss nonpartisan candidates and, thus, that is why the advisory does not differentiate – it doesn’t even talk about the a nonpartisan candidate.

Furthermore, Respondents’ use of the term “judicial nonpartisan candidate” appears to suggest that Respondents are seeking to differentiate between some type of nonpartisan candidates – judicial candidates – versus other type of nonpartisan candidates – local school board or township officials. A further distinction that has no basis in the Revised Code.

after establishing the filing deadline for filing petitions for municipal court judgment provides that, for those filing a nominating petition, “[t]he petition shall conform to the requirements provided for those petitions of candidacy contained in section 3513.257 of the Revised Code, except that the petition shall be signed by at least fifty electors of the territory of the court.” R.C. 1901.07(B).² But such language does not provide any legal basis to reject the Relators’ petitions or candidacy.

Firstly, it must be noted that the requirements imposed by R.C. 1901.07 and, by reference R.C. 3513.257, go to the petitions requirements, not the candidate’s candidacy – which are two separate and distinct concepts under the election laws. See, e.g., 3501.39(A)(3)(indicating that a board of elections must accept, *i.e.*, certify, a petition unless “[t]he candidate’s candidacy or the petition” violates the requirements of Chapter 3501, Chapter 3513 or any other requirements established by law). In this case, there is no claim that there is a problem or error with the Relators’ nominating petitions; the challenge is to the Relators’ candidacy. But Relators have undisputedly met all the statutory requirements and qualifications to be a municipal court judge, and have submitted valid nominating petitions. Respondents seek simply to impose more requirements upon them that have no basis in the Revised Code. Additionally, nowhere in either R.C. 1901.07 or 3513.257 (or anywhere in the Revised Code) is there a requirement that a nonpartisan candidate must claim and demonstrate to not be affiliated with a political party; that concept (and only the claim, not the demonstrate, aspect) is found solely in the definition of

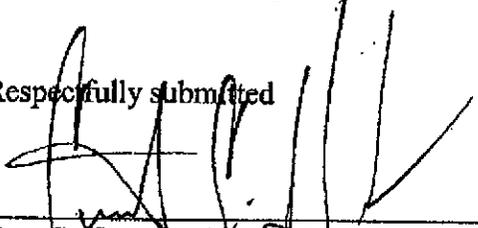
² The deadline for filing petitions for municipal court judge is established by R.C. 1901.07, not R.C. 3513.257 as Respondents imply.

“independent candidate”. See R.C. 3501.01(I).³ And there is nothing contained within the nomination petition for a judicial office by which the candidates declares a lack of affiliation with a political party.

CONCLUSION

As developed above and in the Memorandum in Support of Complaint for Mandamus (filed with this Court on July 17), Relators have meet all the requirements to be candidates for judge of the Mason Municipal Court and the failure of the Respondents to certify the Relators’ nominating petition and to place Relators’ names on the ballot constitutes an abuse of discretion and a clear disregard of applicable law. As such, Relators are entitled to the requested writ of mandamus.

Respectfully submitted



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and

³ Respondents, in attempting to rationalize the filing deadline for nonpartisan candidates for judicial office as being the day before the primary, fail to appreciate that the filing deadline for most nominating petitions for judicial offices is that day, even in counties and jurisdictions where there is no party primary for judicial office. See 1901.07(C)(6)(listing 13 county municipal court where the judges are nominated only by petition (and, thus, no nomination via a primary), yet the filing deadline is still the day before the primary election); see also 1901.07(C)(1)-(5)(listing municipal courts where the filing deadline is established by a local city charter provision).

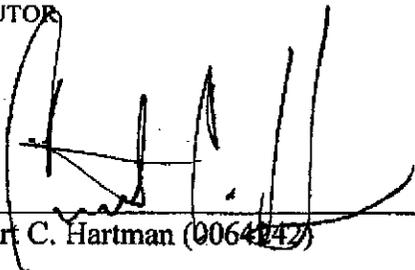
*George Parker per telephone with sign. - CPJ
8/9/07*
George Parker
P.O. Box 432
Mason, Ohio 45040
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Pro se representation

CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of the foregoing was served upon the following via regular mail, postage prepaid on the 9th day of August 2007.

Keith Anderson
OFFICE OF THE WARREN COUNTY PROSECUTOR
500 Justice Drive
Lebanon, OH 45036


Curt C. Hartman (0064242)

JUDGE SEAN C. GALLAGHER:

Relator Jennifer Martinez filed a declaration of candidacy and petition as a candidate in the democratic party's May 2, 2006 primary election for the office of judge of the juvenile court, full term commencing January 3, 2007. Henry J. Hilow filed a protest to Martinez' candidacy.

Respondent the Cuyahoga County Board of Elections ("Board") held a hearing on March 6, 2006, determined that the filing of the protest was timely and granted Martinez' request for a continuance of the Board's hearing on the merits of the protest. The Board reconvened on March 13, 2006 and upheld the protest on the ground that the name "Jennifer Martinez" on Martinez' declaration of candidacy was not her actual name of "Jennifer Atzberger."

On March 13, 2006, Martinez filed this action in mandamus and filed an amended complaint on March 14, 2006. Martinez requests that this court issue a writ of mandamus compelling the Board to place her name on the May 2, 2006 democratic primary ballot. This court ordered Martinez to file transcripts of the Board's hearings by March 20, 2006 and granted respondent's motion for extension of time to respond to the complaint. On March 23, 2006, respondent filed an answer to the complaint as well as a brief in opposition to relator's brief in support for writ of mandamus and motion for summary judgment. On March 24, 2006, relator filed a supplemental motion in support of petition for writ of mandamus, which we will

treat as relator's motion for summary judgment.

The fundamental criteria for issuing a writ of mandamus are well-established:

"In order to be entitled to a writ of mandamus, relator must show (1) that he has a clear legal right to the relief prayed for, (2) that respondents are under a clear legal duty to perform the acts, and (3) that relator has no plain and adequate remedy in the ordinary course of the law. *State, ex rel. National City Bank v. Bd. of Education* (1977), 52 Ohio St. 2d 81, 369 N.E.2d 1200."

State ex rel. Harris v. Rhodes (1978), 54 Ohio St. 2d 41, 42, 374 N.E.2d 641. Of course, all three of these requirements must be met in order for mandamus to lie.

"It must also be noted that a decision of a board of elections must be scrutinized "by this court only to ascertain whether it is tainted with fraud or corruption or resulted from an abuse of discretion or a clear disregard of the applicable law." *State ex rel. Morrison v. Bd. of Elections* (1980), 63 Ohio St.2d 336, 339, 410 N.E.2d 764, citing *Sullivan v. State* (1932), 125 Ohio St. 387, 181 N.E. 805."

McLaughlin v. Cuyahoga Cty. Bd. of Elections, 156 Ohio App.3d 98, 2004-Ohio-492, at ¶4, 804 N.E.2d 1004.

Initially, Martinez challenges the Board's determination that the protest was filed timely. R.C. 3513.05 provides, in part: "The protest shall be in writing, and shall be filed not later than four p.m. of the sixty-fourth day before the day of the primary election ***." (Emphasis added.) It is undisputed that the protest was time and date-stamped at 4:33 p.m. on February 27, 2006, the sixty-fourth day before the day of the primary election. The transcript of the March 6 hearing before the Board reflects the following

colloquy between the Board chair and a Board employee, Shantiel Hawkins, after Ms. Hawkins was sworn in as a witness.

MS. HAWKINS: I received a phone call from Paul Oles down at the front desk at approximately 3:45 on Monday [February 27] afternoon stating that there was mail to be picked up from the front desk. I did not go down until the end of the day at 4:30 to pick it up. I was unaware it was a protest.

MR. CHAIRMAN: But that is -- Let me ask you this, Shantiel, did you, in fact pick it up and that was the protest --

MS HAWKINS: Yes, I did.

THE CHAIRMAN: -- of Mr. Hilow?

MS. HAWKINS: I opened it up, and I noticed it was a protest, an I time stamped it in, and I walked it up at 4:33, and I immediately put a note on it saying Paul called at 3:45, he said you had mail, but I couldn't leave the desk at that time. We did not go down and pick up the mail at that point. I was unaware of it.

THE CHAIRMAN: Was that the only piece of mail that you picked up?

MS. HAWKINS: Yes.

THE CHAIRMAN: That day?

MS. HAWKINS: Yes, it was.

In *State ex rel. Harbarger v. Cuyahoga Cty. Bd. of Elections*, 75 Ohio St.3d 44, 1996-Ohio-254, 661 N.E.2d 699, the protestor filed the protest on February 8 when the deadline was January 30. Prior to the Board's hearing, candidates whose candidacies were the subject of the protest filed an action in prohibition against the Board to prevent the Board from holding a hearing on the protest. Because the protest filing was late, the Supreme Court held that the Board lacked the authority to hear the protest and issued a writ of prohibition to prevent the Board from holding a hearing on the protest.

Clearly, the Board lacks the authority to uphold an untimely protest. As a result, we must first consider whether the protest of Martinez' candidacy was filed timely.

Regrettably, first the Board and now this court must confront the issue of "what constitutes filing?" The record reflects that the protestor submitted the protest by mail which was received on the last day for filing a protest. Experienced counsel would have to be aware that delivery by mail so close to a deadline could prevent any consideration of the merits. Additionally, the testimony before the Board does not reflect well on the Board's procedures. Although we acknowledge that, ultimately, a party seeking relief has the duty to present a request for relief in a timely manner, Board staff could easily have processed this correspondence prior to the deadline for filing. Prompt action would have eliminated any need for the Board and this court to address the issue of "what constitutes filing?"

Unfortunately, neither the parties nor this court has been able to identify any controlling authority which answers this question in the context of a filing at a board of elections. Compare Sup.R. 26.02(B)(2) (" Upon the filing of any paper or electronic entry permitted by the court of appeals, a stamp or entry shall be placed on the paper or electronic entry to indicate the day, month, and year of filing."). In the context of considering what constitutes "filing" for purposes of considering

an appeal from a conviction for making false allegations of a peace officer's misconduct in violation of R.C. 2921.15, the Ninth District Court of Appeals observed: "Webster's Revised Unabridged Dictionary (1913) 559, defines 'file' as: 'To bring before a court or legislative body by presenting proper papers in a regular way[.]'" *Akron v. Davenport*, Summit App. No. 21552, 2004-Ohio-435, at ¶17.

Certainly, imprinting a formal date stamp is the "regular way" of filing for courts and most administrative bodies. Yet, as respondent observes, some authority suggests that circumstances can supersede the date stamp.

"[T]he Ohio Revised Code requires the clerk to endorse the date of filing on each document filed in a case, and the file-stamped date is presumed to reflect the actual date of filing. *Ins. Co. of N. Am. [v. Reese Refrig. (1993)]*, 89 Ohio App. 3d at 790-791, 627 N.E.2d 637. However, that presumption can be refuted by evidence showing that the clerk received the document on a different date. *Kloos v. Ohio Dept. of Rehab. & Corr.*, 1988 Ohio App. LEXIS 1744 (May 3, 1988), Franklin App. No. 87AP-1215, unreported."

Rhoades v. Harris (1999), 135 Ohio App.3d 555, 557, 735 N.E.2d 6 [First Dist.]. Compare *Capital Mgt. Ltd. v. Cleveland*, Cuyahoga App. No. 81980, 2003-Ohio-4055, and *Berea Music v. City of Berea*, Cuyahoga App. No. 80897, 2002 Ohio 6639 ("filed" means "actual delivery" of notice of appeal to administrative agency under R.C. 2505.04).

In this original action in mandamus, Martinez has the burden of demonstrating that she has a clear legal right to relief and

that respondent has a clear legal duty to provide that relief. (Respondent has correctly admitted that Martinez does not have an adequate remedy in the ordinary course of the law.) In order to be entitled to relief, she must demonstrate that the Board's decision was "tainted with fraud or corruption or resulted from an abuse of discretion or a clear disregard of the applicable law." *McLaughlin*, supra. We cannot conclude that the Board clearly disregarded applicable law because Martinez has not demonstrated any controlling legal authority which required the Board to conclude that the filing of the protest was untimely. Additionally, we specifically reject Martinez' argument that the Board -- by considering testimony from one of its employees -- tainted the process with fraud or corruption and abused its discretion. The witness, Shantiel Hawkins, was sworn and testified factually. Furthermore, the record does not reflect any effort to cross-examine this witness.

As a consequence, we must reluctantly conclude that Martinez may not maintain her claim that she is entitled to relief in mandamus because the protest was filed untimely. We do not, however, intend to suggest that we approve of either the protestor's use of the mail to tender the protest on the last day protests could be filed or the Board staff's failure to affix a date-and-time stamp on the protest prior to 4:00 p.m. on February 27, 2006. Our holding with regard to the timeliness of the protest

is limited to the peculiar and lamentable facts presented in this case.

Martinez also asserts that the Board incorrectly concluded that she improperly completed her Declaration of Candidacy by using the name "Jennifer Martinez." Specifically, the protest asserts that her name should have included "Atzberger," which is her married name. The evidence of her use of her name includes:

1. A deed and mortgage Jennifer Atzberger
2. Attorney registration Jennifer Nicole Atzberger
3. Attorney registration Jennifer Nicole Martinez Atzberger
4. County payroll Jennifer M. Atzberger
5. Bd. of Elections Change of Name (1/31/06) from Jennifer M. Atzberger to Jennifer Martinez
6. Birth Certificate Jennifer Nicole Martinez
7. Social Security Card Jennifer N. Martinez
8. Cleveland State University I.D. card Jennifer N. Martinez
9. Cleveland State University transcript Jennifer Nicole Martinez

- | | |
|--|---------------------------------------|
| 10. Marriage License | Jennifer N.
Martinez |
| 11. Supreme Court of Ohio Attorney I.D. | Jennifer Nicole
Martinez Atzberger |
| 12. Vehicle Registration | Jennifer N.
Martinez |
| 13. Court Filing | Jennifer Martinez
Atzberger |
| 14. Credit Card and statement | Jennifer Martinez |
| 15. U.S. Passport | Jennifer Nicole
Martinez |
| 16. Correspondence | Jennifer N.
Martinez |
| 17. Driver's license | Jennifer M.
Atzberger |
| 18. Business Card | Jennifer Martinez
Atzberger |
| 19. Part petitions for the 1/3/2007 term | Jennifer Martinez |

As was the case in *McLaughlin*, supra, "[t]he issue before this court is whether the Board abused its discretion in finding that [relator] improperly completed the Declaration of Candidacy by employing only her maiden name." Similarly, R.C. 3513.06 is controlling in this case as it was in *McLaughlin*.

"If any person desiring to become a candidate for public office has had a change of name within five years immediately preceding the filing of the person's declaration of candidacy, the

person's declaration of candidacy and petition shall contain, immediately following the person's present name, the person's former name. * * * This section does not apply to a change of name by reason of marriage * * *."

We also note as the *McLaughlin* court did that the marriage exemption does not apply in this case. Rather, had Martinez completed her Declaration of Candidacy using her married name she would not have been required to use her maiden name.

What is dispositive in this action, however, is that Martinez circulated the part petitions using the name "Jennifer Martinez" on various dates from January 9, 2006 through at least January 28, 2006. Martinez did not, however, submit her change of name form to the Board until January 31, 2006. That is, in the Declaration of Candidacy she declares that she, "Jennifer Martinez," is a qualified elector. Yet, at that very time, her name as an elector was "Jennifer M. Atzberger."

Although Martinez argues that she was given inaccurate information by Board staff regarding the timing and significance of her submitting the change of name form, any mistaken advice by the board of elections or its staff does not estop the Board from applying the law. "To hold otherwise would permit the advice of representatives of the Board or the Board itself to take precedence over the enacted law of the General Assembly." *State ex rel. Donegan v. Cuyahoga Cty. Bd. of Elections* (2000), 136 Ohio App.3d 589, 595, 737 N.E.2d 545. See also *State ex rel. Cooker Restaurant Corp. v. Montgomery Cty. Bd. of Elections* (1997), 80 Ohio St. 3d

302, 307, 1997-Ohio-315, 686 N.E.2d 238.

During the March 13 hearing, Martinez stated to the Board: "I've gone by Jennifer Martinez my whole life." The evidence presented to the Board and through the parties' motions to this court suggests a much less clear use of her name. Once again, it is Martinez' burden to demonstrate that she has a clear legal right to relief and that the Board has a clear legal duty to permit her name to remain on the May 2, 2006 ballot. The record in this case, however, is -- at most -- less than clear that Martinez has solely used her maiden name of "Jennifer Martinez." Rather, as was the case in *McLaughlin*, supra, the evidence is very clear "that she has abandoned sole use of her maiden name upon marriage ***." Id. at ¶7.

Accordingly, we grant respondent's motion for summary judgment and deny relator's converted motion for summary judgment. Relator to pay costs. The clerk is directed to serve upon the parties notice of this judgment and its date of entry upon the journal. Civ.R. 58(B).

Writ denied.



SEAN C. GALLAGHER
PRESIDING JUDGE

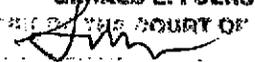
MARY EILEEN KILBANE, J., CONCURS

PATRICIA A. BLACKMON, J., CONCURS

FILED AND JOURNALIZED
PER APP. R. 22(B)

MAR 27 2006

GERALD E. FUERST
CLERK OF THE COURT OF APPEALS



NOTICE MAILED TO COUNSEL
FOR ALL PARTIES-COSTS TAXED

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 77575

S/O EX REL. ANN MARIE DONEGAN	:	
	:	PETITION FOR WRIT
Relator	:	
	:	OF MANDAMUS
vs.	:	
	:	
CUYAHOGA COUNTY BOARD OF	:	MOTION NOS. 14504,
ELECTIONS	:	14422
	:	
Respondent	:	

DATE OF JOURNALIZATION:

FEBRUARY 10, 2000

JUDGMENT:

WRIT DENIED.

APPEARANCES:

For Relator:

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For Respondent:

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Cuyahoga County Prosecutor
RENO J. ORADINI, ESQ.
Assistant County Prosecutor
8th Floor Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

PATRICIA ANN BLACKMON, J.:

On February 2, 2000, Ann Marie Donegan, relator, filed a petition for a writ of mandamus to compel respondent, the Cuyahoga County Board of Elections (hereinafter the "Board"), to remove her name from the ballot in the upcoming March 7 primary election. This court granted relator's application for an alternative writ on February 3, thereby prohibiting the dissemination of absentee ballots, and ordered an abbreviated briefing schedule pursuant to Loc.App.R. 45(B)(6). On February 7 the Board filed a motion for summary judgment, and on February 8 relator filed a brief in opposition to respondent's motion and a cross motion for summary judgment. For the reasons that follow, we grant respondent's motion for summary judgment and deny relator's cross motion for summary judgment.

On January 7, 2000, relator filed a declaration of candidacy and petition for the Democratic seat of State Senate District 24. On January 13 or 14 relator verbally notified Tom George, an Administrative Assistant of the Board, that she was considering withdrawing as a candidate and sought advice as to when and how. Mr. George conveyed that she had until January 21, 2000, prior to the meeting of the Board, to submit a formal written request to withdraw. On the evening of January 20, relator sent a written request to withdraw via facsimile copy to William Wilkins, the Director of the Board of Elections. The next day relator was

notified that her request to withdraw was denied as untimely filed pursuant to R.C. 3513.30, which required a withdrawal on or before January 18, 2000.

On January 21, 2000, respondent approved the absentee ballot pages. On January 29 and 30, Dayton Legal Blank, Inc. printed and assembled the ballots, and on February 3, 2000, Dayton delivered the ballots to respondent. On January 31, 2000, the Democratic ballot pages for voting devices were printed.

Relator immediately requested an appeal of the rejection of her withdrawal and, on February 1, 2000, the Board heard relator's appeal and voted three to one to reject relator's withdrawal as untimely regardless of the fact that relator verbally notified respondent of her consideration to withdraw on January 18, 2000. The next day, on February 2, relator filed her petition for a writ of mandamus to compel the Board of Elections to remove her name from the ballot.

Mandamus is defined as "a writ, issued in the name of the state to an inferior tribunal, a corporation, board, or person, commanding the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station." R.C. 2731.01. A court cannot create the legal duty sought to be compelled through a mandamus proceeding; the creation of such a duty is the distinct function of the legislative branch of the government. *State ex rel. Hodges v. Taft* (1992), 64 Ohio St.3d 1,

591 N.E.2d 1186; *Davis v. State ex rel. Pecsok* (1936), 130 Ohio St. 411, 200 N.E. 181, paragraph one of the syllabus.

In order to grant relator a writ of mandamus, this court must find that the relator has a clear legal right to the relief requested, that the respondent is under a clear legal duty to perform the requested act, and that the relator has no plain and adequate remedy at law. *State ex rel. Rogers v. Taft* (1992), 64 Ohio St.3d 193, 594 N.E.2d 576; *State ex rel. Hodges*, 64 Ohio St.3d at 3; *State ex rel. Klein v. Cuyahoga Cty. Bd. Of Elections* (1995), 102 Ohio App.3d 124, 656 N.E.2d 1031. The writ is to be issued with great caution and only when the way is clear. *State ex rel. Taylor v. Glasser* (1977), 50 Ohio St.2d 165, 364 N.E.2d 1. The writ may not be issued to compel the observance of laws in general, but only to command the performance of a specific act specially enjoined by law to be performed. *State ex rel. Stanley v. Cook* (1946), 146 Ohio St. 348, 66 N.E.2d 207, paragraph seven of the syllabus. Mandamus also may not be used to compel the performance of a permissive act. *State ex rel. Hodges*, 64 Ohio St.3d at 4.

When adjudicating an extraordinary writ action in an election matter involving the review of a decision of a board of elections, the writ of mandamus may be issued if it is determined that the board engaged in fraud, corruption, abuse of discretion, or a clear disregard of statutes or applicable legal provisions. *State ex rel. Kelly v. Cuyahoga Cty. Bd. Of Elections* (1994), 70 Ohio St.3d

413, 639 N.E.2d 78; *State ex rel. White v. Franklin Cty. Bd. Of Elections* (1992), 65 Ohio St.3d 5, 598 N.E.2d 1152; *State ex rel. O'Donnell v. Cuyahoga Cty. Bd. Of Elections* (Feb. 2, 2000), Cuyahoga App. No. 77536, unreported. An abuse of discretion connotes an attitude that is unreasonable, arbitrary or unconscionable. *State ex rel. Cooker Restaurant Corp. v. Montgomery Cty. Bd. Of Elections* (1997), 80 Ohio St.3d 302, 686 N.E.2d 238.

Relator contends the Board abused its discretion when it decided not to remove her name from the primary ballot because (1) she made it clear to the Board prior to the fiftieth day before the primary that she wanted to withdraw; (2) she followed the directions of a representative of the Board so that the Board should be estopped from denying her withdrawal; and (3) the Board ignored Secretary of State directives regarding untimely withdrawals.

The withdrawal of a candidate prior to a primary election is governed by R.C. 3513.30, which provides, in relevant part, as follows:

(B) Any person filing a declaration of candidacy may withdraw as such candidate at any time prior to the primary election, or, if the primary election is a presidential primary election, at any time prior to the fiftieth day before the presidential primary election. The withdrawal shall be effected and the statement of withdrawal shall be filed in accordance with the procedures prescribed in division (D) of this section for the

withdrawal of persons nominated in a primary election or by nominating petition.

* * *

(D) Any person nominated in a primary election or by nominating petition as a candidate for election at the next general election may withdraw as such candidate at any time prior to the general election. Such withdrawal may be effected by the filing of a written statement by such candidate announcing the candidate's withdrawal and requesting that the candidate's name not be printed on the ballots. If such candidate's declaration of candidacy or nominating petition was filed with the secretary of state, the candidate's statement of withdrawal shall be addressed to and filed with the secretary of state. If such candidate's declaration of candidacy or nominating petition was filed with a board of elections, the candidate's statement of withdrawal shall be addressed to, and filed with such board.

According to the plain language of R.C. 3513.30(B) and (D),¹ in order to withdraw prior to the primary election, relator was required to prepare a statement of withdrawal, address it to the board of elections, and file it with the Board prior to the fiftieth day before the primary, since the primary this year is a presidential primary. The fiftieth day before the March 7 primary was January 17, 2000, but because January 17 was a legal holiday, relator had until January 18 to file her withdrawal with the Board. See R.C. 1.14. Relator admits that she did not send, via facsimile copy, a written request to withdraw to the Board until January 20.

1

Relator makes no argument concerning any ambiguity in any of the pertinent statutes; nor do we find any ambiguity in any of the language of the statutes relating to the circumstances of relator.

Consequently, relator's attempt to withdraw was not in compliance with the statute governing withdrawals prior to primary elections. The fact that the Board abided by the withdrawal deadline set forth in R.C. 3513.30, rather than disregarding it, does not amount to an abuse of discretion by the Board in rejecting relator's statement of withdrawal as untimely. See *State ex rel. Clinard v. Greene Cty. Bd. Of Elections* (1990), 51 Ohio St.3d 87, 554 N.E.2d 895. What is ironic is that relator is attempting to invoke the issuance of the extraordinary writ of mandamus against a board of elections which abided by a statute when relator herself did not. The slippery slope of "substantial compliance" proposed by relator is not the standard for the issuance of a writ of mandamus. Relator must demonstrate a clear legal right to the relief requested. *State ex rel. Rogers v. Taft* (1992), 64 Ohio St.3d 193, 594 N.E.2d 576.

Relator contends, irregardless of the requirements of the statute, that she timely expressed her intent or desire to withdraw verbally. The plain language of the statute, however, requires a written communication. The Board cannot be expected to remove a name from a ballot based upon a verbal communication, nor could the Board be expected to stay the procession of the ballots to the printer based upon a verbal expression of considering, wishing or intending to withdraw. If the General Assembly intended to permit oral communications of withdrawal in relator's circumstance, the

General Assembly would not have required the statement of withdrawal to be "filed" with the board.

Relator also contends the Board should be estopped from denying her withdrawal because she followed the advice of Mr. George, a representative of the Board, who told her that she had until January 21 to file her withdrawal. Mr. George admits he gave misinformation, albeit unbeknownst to him at the time he dispensed it. Notwithstanding the filing instructions of Mr. George, which were contrary to the statute governing withdrawals, the responsibility was that of the relator to learn and know the laws governing the election process. Any reliance upon mistaken advice cannot now be used to reward a candidate's lack of knowledge of election laws. *State ex rel. Chevalier v. Brown* (1985), 17 Ohio St.3d 61, 477 N.E.2d 623. Such reliance on misinformation from the Board or one of its representatives will not estop the Board from rejecting a withdrawal submitted contrary to the requirements of the withdrawal statute. See *State ex rel. Cooker Restaurant v. Montgomery Cty. Bd. of Elections* (1997), 80 Ohio St.3d 302, 686 N.E.2d 238; *State ex rel. McMillan v. Ashtabula Cty. Bd. of Elections* (1992), 65 Ohio St.3d 186, 602 N.E.2d 631. The Supreme Court of Ohio stated that it is "the long established policy that Ohio's election statutes are mandatory and must be strictly complied with by candidates as well as election officials." *State*

ex rel. Chevalier, 17 Ohio St.3d at 63.² To hold otherwise would permit the advice of representatives of the Board or the Board itself to take precedence over the enacted law of the General Assembly.

Last, relator contends the Board abused its discretion by not following the directives of the Secretary of State.³ The Secretary of State has the duty to advise boards of election as to the proper methods of conducting elections, to prepare rules and instructions for the conduct of elections, and to compel the observance by election officials of the requirements of the election laws. R.C. 3501.05(B), (C), (M). The Board of Elections "is the supervisor of elections under the direction of the Secretary of State." *State ex rel. Donnelly v. Green* (1958), 106 Ohio App. 61, 63, 148 N.E.2d 519. The Board has the duty to perform all duties imposed by law, R.C. 3501.11, and such other duties prescribed by law or the rules of the Secretary of State, R.C. 3501.11(P). The Attorney General has advised that the rules, regulations and instructions of the Secretary of State relating to the conduct of elections, so long as in force and effect and not superseded by higher authority, are

2

Any precedential value of *Bailey v. Cuyahoga Cty. Bd. Of Elections* (App. 1959), 81 Ohio Law Abs. 579, 161 N.E.2d 243, cited by relator is dubious in light of the more recent Supreme Court of Ohio cases cited above.

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The Secretary of State has not filed a motion to be made a party to this action as permitted by R.C. 3501.05(U).

binding upon subordinates in that violations may constitute grounds for removal, and that it is within the authority of the Secretary of State to adopt such rules, regulations and instructions, so long as the laws of the General Assembly were not thereby amplified. 1930 Ohio Atty.Gen.Ops. No. 1423. The Supreme Court of Ohio has stated that the orders of the Secretary of State, which are to be obeyed by boards of elections, must be lawful orders supported by the Code. *State ex rel. Sagebiel v. Montgomery Cty. Bd. of Elections* (1944), 144 Ohio St. 162, 57 N.E.2d 661; see *State ex rel. White v. Franklin Cty. Bd. Of Elections* (1992), 65 Ohio St.3d 5, 8, 598 N.E.2d 1152.

In the petition, relator relies on Secretary of State's Directive No. 92-14 dated March 30, 1992, which provides, in relevant part:

A candidate may withdraw his/her name from the primary election ballot after the withdrawal date specified in O.R.C. 3513.30, as long as the ballots have not been printed. Any withdrawal past the time the ballots have been printed should be accepted and votes for the withdrawn candidate should not be counted. The purpose of the withdrawal statute is to allow sufficient time to remove a candidate's name from the ballot. The statute is therefore directive in nature and not mandatory.

At the time the Secretary of State issued this directive, R.C. 3513.30 provided, in relevant part, as follows:

Any person filing a declaration of candidacy may withdraw as such candidate at any time prior to four p.m. of the sixty-fifth day

before the primary election. If such candidate's declaration of candidacy was filed with the secretary of state, his statement of withdrawal shall be addressed to and filed with the secretary of state. If such candidate's declaration of candidacy was filed with a board of elections, his statement of withdrawal shall be addressed to and filed with such board.

Since 1992, the General Assembly amended the statute and specifically included a "fiftieth day" deadline for withdrawals in presidential primary years, even though omitting a deadline for nonpresidential primary years. See R.C. 3513.30(B).

The 1992 directive of the Secretary of State, as applied to the current version of the withdrawal statute for purposes of the case *sub judice*, clearly "amplifies" the language of the statute, and in fact, extends the time period for a candidate's withdrawal in direct contravention of the statute. Relator has cited no authority which permits the Secretary of State, a part of the executive branch of the government, to extend the filing deadline for the withdrawal of a candidate prior to a presidential primary election as designated by the General Assembly, the legislative branch of the government. Neither party has submitted or is relying upon any more recent directive of the Secretary of State that interprets R.C. 3513.30 as amended.

In the relator's brief in opposition and cross motion for summary judgment, relator relies on Secretary of State Advisory No. 96-02, dated February 1, 1996. Advisory 96-02 provides procedures

relating to absentee ballots⁴ that are to be followed, pursuant to R.C. 3513.30(E) by boards of elections if a certified candidate withdraws in accordance with the withdrawal statute. R.C. 3513.30(E) provides as follows:

(E) When a person withdraws under division (B) or (D) of this section, the board of elections shall remove the name of the withdrawn candidate from the ballots to the extent practicable in the time remaining before the election and according to the directions of the secretary of state. If the name is not removed from all ballots before the day of election, the votes for the withdrawn candidate are void and shall not be counted.

Pursuant to this section of the withdrawal statute, had relator filed her statement of withdrawal prior to the fiftieth day before the presidential primary as provided in sections (B) and (D) of R.C. 3513.30, the Board would have had the duty to remove relator's name from the ballot to the extent practicable in the time remaining before the election and according to the procedures in Advisory 96-02, if not otherwise superseded. Because relator did not comply with the requirements of the withdrawal statute, the Board had no duty enforceable in mandamus pursuant to R.C. 3513.30(E) to remove relator's name from the ballot.

What is interesting intellectually and what neither party has briefed is whether an "advisory" or "directive" of the Secretary of

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R.C. 3509.01 provides in part that absentee ballots "shall be printed and ready for use on the twenty-fifth day before the day of a presidential primary election."

State is tantamount to a "rule" of the Secretary of State, or merely an instruction or other pronouncement. The General Assembly has delegated authority to the Secretary of State to prepare "rules and instructions" for the conduct of elections, R.C. 3501.05(C), but has required the boards of elections to perform "such other duties as are prescribed by law or the rules of the secretary of state" without mention of the instructions of the secretary of state, R.C. 3501.11(P). Assuming the Board in fact violated something other than a "rule" of the Secretary of State, it is unclear whether relief in mandamus through the judiciary would be appropriate or whether some sort of disciplinary procedure through the Secretary of State's office, as alluded to by the Attorney General's office in 1930 Ohio Atty.Gen.Ops. No. 1423, would be the sole recourse. In any event, even if we were to conclude that the Board contravened Secretary of State Directive No. 92-14 and/or Secretary of State Advisory No. 96-02, it is unclear whether such violation(s) would warrant relief in mandamus. Mandamus is a remedy that is to be exercised with great caution and only when the way is clear. *State ex rel. Taylor v. Glasser* (1977), 50 Ohio St.2d 165, 364 N.E.2d 1.

Upon careful review it appears from the material submitted by the parties⁵ that in reaching its decision, the Board considered,

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In the exigency of an election writ action and in the absence of any objection by respondent, this court has reviewed and considered all material supplied by the relator, including

among other items, the withdrawal statute, the legal opinion of counsel in favor of withdrawal, conversations with the Secretary of State's office on January 27, 2000, wherein the Board was advised that the fifty day deadline cannot be waived, and Secretary of State Blackwell's Ohio Elections Update dated December 1999 wherein it is reported:

Withdrawal Deadlines

Ohio law imposes withdrawal deadlines for primary candidates in presidential years. In 2000, the deadline for candidates, other than partisan presidential candidates, to withdraw from the March 7 primary is 4 p.m. on January 18 (R.C. 3513.30(B)). The deadline for presidential candidates to [sic] withdraw from the primary is 4 p.m. on February 7 (R.C. 3513.30(C)).

Any withdrawal must be made in writing and be addressed to, and filed with, the board of elections or, if appropriate, the Secretary of State's office. (R.C. 3513.30(D)).

The Board had conflicting opinions concerning the withdrawal statute and chose to rely on the language of the statute and the most recent information from the current Secretary of State. There is no indication under these circumstances that the Board acted unreasonably, arbitrarily or unconscionably in rendering its decision.

documents not strictly complying with evidentiary rules.

A writ of mandamus may not be issued to compel the performance of a "practical thing to do," but only when there is a clear duty specially enjoined by law to perform a specific act. Relator has cited to no statutory duty of respondent that clearly requires respondent to remove a candidate's name from a presidential primary ballot when the candidate withdraws beyond the fifty day deadline specified in R.C. 3513.30(B). Relator has thus failed to demonstrate the requisites for the issuance of a writ of mandamus.

Accordingly, the motion for summary judgment of respondent is granted and the cross motion for summary judgment of relator is denied. The alternative writ issued on February 3, 2000, is hereby dissolved.

Writ denied. Costs to relator.

TIMOTHY E. McMONAGLE, P. J., and
LEO M. SPELLACY, J., CONCUR.

FILED AND JOURNALIZED
PER APP. R. 22(E)

FEB 10 2000

GERALD E. FUERST
CLERK OF THE COURT OF APPEALS
BY MM DEP.


PATRICIA ANN BLACKMON
JUDGE



R.C. § 1901.06



Baldwin's Ohio Revised Code Annotated Currentness
 Title XIX. Courts--Municipal--Mayor's--County
 Chapter 1901. Municipal Court (Refs & Annos)
 Judges

→ 1901.06 Qualifications and election of judge

A municipal judge during his term of office shall be a qualified elector and a resident of the territory of the court to which he is elected or appointed. A municipal judge shall have been admitted to the practice of law in this state and shall have been, for a total of at least six years preceding his appointment or the commencement of his term, engaged in the practice of law in this state or served as a judge of a court of record in any jurisdiction in the United States, or both.

Except as provided in section 1901.08 of the Revised Code, the first election of any newly created office of a municipal judge shall be held at the next regular municipal election occurring not less than one hundred days after the creation of the office. The institution of a new municipal court shall take place on the first day of January next after the first election for the court.

(1986 H 159, eff. 3-19-87; 1971 H 18; 1953 H 1; GC 1586)

HISTORICAL AND STATUTORY NOTES

Pre-1953 H 1 Amendments: 124 v S 14; 114 v 475

CROSS REFERENCES

Election, term, and compensation of judges; assignment of retired judges, O Const Art IV §6

Idiots or insane persons shall not be electors, O Const Art V §6

Judge may not perform duties until commissioned by governor, 107.05

Qualifications and registration of electors, 3503.01 to 3503.07

Qualifications of electors, O Const Art V §1

Time for holding elections, 3501.02

Time for holding elections for state and local officers; terms of office, O Const Art XVII §1

LIBRARY REFERENCES

Judges ↪3, 4, 5.
 Westlaw Topic No. 227.

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R.C. § 1901.07

C

Baldwin's Ohio Revised Code Annotated Currentness

Title XIX. Courts--Municipal--Mayor's--County

▣ Chapter 1901. Municipal Court (Refs & Annos)

▣ Judges

→ 1901.07 Term of office of judge; nominations

(A) All municipal court judges shall be elected on the nonpartisan ballot for terms of six years. In a municipal court in which only one judge is to be elected in any one year, that judge's term commences on the first day of January after the election. In a municipal court in which two or more judges are to be elected in any one year, their terms commence on successive days beginning the first day of January, following the election, unless otherwise provided by section 1901.08 of the Revised Code.

(B) All candidates for municipal court judge may be nominated either by nominating petition or by primary election, except that if the jurisdiction of a municipal court extends only to the corporate limits of the municipal corporation in which the court is located and that municipal corporation operates under a charter, all candidates shall be nominated in the same manner provided in the charter for the office of municipal court judge or, if no specific provisions are made in the charter for the office of municipal court judge, in the same manner as the charter prescribes for the nomination and election of the legislative authority of the municipal corporation.

If the jurisdiction of a municipal court extends beyond the corporate limits of the municipal corporation in which it is located or if the jurisdiction of the court does not extend beyond the corporate limits of the municipal corporation in which it is located and no charter provisions apply, all candidates for party nomination to the office of municipal court judge shall file a declaration of candidacy and petition not later than four p.m. of the seventy-fifth day before the day of the primary election, or if the primary election is a presidential primary election, not later than four p.m. of the sixtieth day before the day of the presidential primary election, in the form prescribed by section 3513.07 of the Revised Code. The petition shall conform to the requirements provided for those petitions of candidacy contained in section 3513.05 of the Revised Code, except that the petition shall be signed by at least fifty electors of the territory of the court. If no valid declaration of candidacy is filed for nomination as a candidate of a political party for election to the office of municipal court judge, or if the number of persons filing the declarations of candidacy for nominations as candidates of one political party for election to the office does not exceed the number of candidates that that party is entitled to nominate as its candidates for election to the office, no primary election shall be held for the purpose of nominating candidates of that party for election to the office, and the candidates shall be issued certificates of nomination in the manner set forth in section 3513.02 of the Revised Code.

If the jurisdiction of a municipal court extends beyond the corporate limits of the municipal corporation in which it is located or if the jurisdiction of the court does not extend beyond the corporate limits of the municipal corporation in which it is located and no charter provisions apply, nonpartisan candidates for the office of municipal court judge shall file nominating petitions not later than four p.m. of the day before the day of the primary election in the form prescribed by section 3513.261 of the Revised Code. The petition shall conform to the requirements provided for those petitions of candidacy contained in section 3513.257 of the Revised Code, except that the petition shall be signed by at least fifty electors of the territory of the court.

The nominating petition or declaration of candidacy for a municipal court judge shall contain a designation of the

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R.C. § 1901.07

term for which the candidate seeks election. At the following regular municipal election, the candidacies of the judges nominated shall be submitted to the electors of the territory on a nonpartisan, judicial ballot in the same manner as provided for judges of the court of common pleas, except that, in a municipal corporation operating under a charter, all candidates for municipal court judge shall be elected in conformity with the charter if provisions are made in the charter for the election of municipal court judges.

(C) Notwithstanding divisions (A) and (B) of this section, in the following municipal courts, the judges shall be nominated and elected as follows:

(1) In the Cleveland municipal court, the judges shall be nominated only by petition. The petition shall be signed by at least fifty electors of the territory of the court. It shall be in the statutory form and shall be filed in the manner and within the time prescribed by the charter of the city of Cleveland for filing petitions of candidates for municipal offices. Each elector shall have the right to sign petitions for as many candidates as are to be elected, but no more. The judges shall be elected by the electors of the territory of the court in the manner provided by law for the election of judges of the court of common pleas.

(2) In the Toledo municipal court, the judges shall be nominated only by petition. The petition shall be signed by at least fifty electors of the territory of the court. It shall be in the statutory form and shall be filed in the manner and within the time prescribed by the charter of the city of Toledo for filing nominating petitions for city council. Each elector shall have the right to sign petitions for as many candidates as are to be elected, but no more. The judges shall be elected by the electors of the territory of the court in the manner provided by law for the election of judges of the court of common pleas.

(3) In the Akron municipal court, the judges shall be nominated only by petition. The petition shall be signed by at least fifty electors of the territory of the court. It shall be in statutory form and shall be filed in the manner and within the time prescribed by the charter of the city of Akron for filing nominating petitions of candidates for municipal offices. Each elector shall have the right to sign petitions for as many candidates as are to be elected, but no more. The judges shall be elected by the electors of the territory of the court in the manner provided by law for the election of judges of the court of common pleas.

(4) In the Hamilton county municipal court, the judges shall be nominated only by petition. The petition shall be signed by at least fifty electors of the territory of the court, which petitions shall be signed, verified, and filed in the manner and within the time required by law for nominating petitions for members of council of the city of Cincinnati. The judges shall be elected by the electors of the territory of the court at the regular municipal election and in the manner provided by law for the election of judges of the court of common pleas.

(5) In the Franklin county municipal court, the judges shall be nominated only by petition. The petition shall be signed by at least fifty electors of the territory of the court. The petition shall be in the statutory form and shall be filed in the manner and within the time prescribed by the charter of the city of Columbus for filing petitions of candidates for municipal offices. The judges shall be elected by the electors of the territory of the court in the manner provided by law for the election of judges of the court of common pleas.

(6) In the Auglaize, Brown, Carroll, Clermont, Crawford, Hocking, Jackson, Lawrence, Madison, Miami, Morrow, Portage, and Wayne county municipal courts, the judges shall be nominated only by petition. The petitions shall be signed by at least fifty electors of the territory of the court and shall conform to the provisions of this section.

(D) As used in this section, as to an election for either a full or an unexpired term, "the territory within the jurisdiction of the court" means that territory as it will be on the first day of January after the election.

(2006 S 171, eff. 1-2-07; 2006 H 3, eff. 5-2-06; 2004 H 38, eff. 6-17-04; 1993 S 150, eff. 12-29-93; 1991 H 200; 1988 H 708; 1986 H 159, H 524; 1985 S 65; 1983 S 213; 1981 H 1; 1980 H 1062, H 961; 1977 H 312;

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1975 H 205; 1974 H 662; 1973 H 8; 1971 S 460, H 629; 1969 H 844; 132 v H 255, H 361, H 354; 131 v H 667; 130 v H 266; 128 v 389; 127 v 636; 126 v 853; 125 v 496; 1953 H 1; GC 1587)

UNCODIFIED LAW

2005 H 66, § 509.03, eff. 6-30-05, reads:

(A)(1) The Clerk of the Medina Municipal Court shall be elected by the qualified electors of the territory of the court in the manner that is provided for the election of the judge of that court in section 1901.07 of the Revised Code at the first general election that occurs not less than six months after the effective date of this section.

(2) Notwithstanding division (A)(1)(a) of section 1901.31 of the Revised Code, the term of the Clerk of the Medina Municipal Court elected under division (A)(1) of this section shall commence on the first day of January following the clerk's election and continue until the clerk's successor is elected and qualified. The clerk's successor shall be elected pursuant to the schedule for the election of the judge of that court in sections 1901.07 and 1901.08 of the Revised Code.

(B) The Clerk of the Medina Municipal Court shall continue in office until the clerk elected pursuant to division (A) of this section takes office. If the office of Clerk of the Medina Municipal Court becomes vacant prior to the date that the clerk elected pursuant to division (A) of this section takes office, the judges of the court shall appoint a clerk to serve until the clerk elected pursuant to division (A) of this section takes office.

1999 H 105, § 3: See Uncodified Law under 1901.01.

HISTORICAL AND STATUTORY NOTES

Pre-1953 H 1 Amendments: 124 v S 14; 114 v 475

Amendment Note: 2006 S 171 inserted "Carroll," between "Brown" and "Clermont" in division (C)(6).

Amendment Note: 2006 H 3 rewrote this section. See *Baldwin's Ohio Legislative Service Annotated*, 2006, page 1/L-21, or the OH-LEGIS or OH-LEGIS-OLD database on WESTLAW, for prior version of this section.

Amendment Note: 2004 H 38 substituted "that judge's" for "his" in division (A); and inserted "Brown," and "Morrow," in division (C)(6).

CROSS REFERENCES

Declaration of candidacy for judge; candidate for any unexpired term, 3513.08, 3513.28

Nonpartisan ballots, 3505.04

Time for holding elections for state and local officers; terms of office, O Const Art XVII §1

LIBRARY REFERENCES

Judges ↻3, 7.

Westlaw Topic No. 227.

C.J.S. Judges §§ 12 to 13, 21 to 24, 27 to 29.

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R.C. § 1901.08

C

Baldwin's Ohio Revised Code Annotated Currentness

Title XIX. Courts--Municipal--Mayor's--County

Chapter 1901. Municipal Court (Refs & Annos)

Judges

→ 1901.08 Election of judges

The number of, and the time for election of, judges of the following municipal courts and the beginning of their terms shall be as follows:

In the Akron municipal court, two full-time judges shall be elected in 1951, two full-time judges shall be elected in 1953, one full-time judge shall be elected in 1967, and one full-time judge shall be elected in 1975.

In the Alliance municipal court, one full-time judge shall be elected in 1953.

In the Ashland municipal court, one full-time judge shall be elected in 1951.

In the Ashtabula municipal court, one full-time judge shall be elected in 1953.

In the Athens county municipal court, one full-time judge shall be elected in 1967.

In the Auglaize county municipal court, one full-time judge shall be elected in 1975.

In the Avon Lake municipal court, one part-time judge shall be elected in 1957.

In the Barberton municipal court, one full-time judge shall be elected in 1969, and one full-time judge shall be elected in 1971.

In the Bedford municipal court, one full-time judge shall be elected in 1975, and one full-time judge shall be elected in 1979.

In the Bellefontaine municipal court, one full-time judge shall be elected in 1993.

In the Bellevue municipal court, one part-time judge shall be elected in 1951.

In the Berea municipal court, one full-time judge shall be elected in 2005.

In the Bowling Green municipal court, one full-time judge shall be elected in 1983.

In the Brown county municipal court, one full-time judge shall be elected in 2005. Beginning February 9, 2003, the part-time judge of the Brown county county court that existed prior to that date whose term commenced on January 2, 2001, shall serve as the full-time judge of the Brown county municipal court until December 31, 2005.

In the Bryan municipal court, one full-time judge shall be elected in 1965.

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R.C. § 1901.08

In the Cambridge municipal court, one full-time judge shall be elected in 1951.

In the Campbell municipal court, one part-time judge shall be elected in 1963.

In the Canton municipal court, one full-time judge shall be elected in 1951, one full-time judge shall be elected in 1969, and two full-time judges shall be elected in 1977.

In the Carroll county municipal court, one full-time judge shall be elected in 2009. Beginning January 1, 2007, the judge elected in 2006 to the part-time judgeship of the Carroll county county court that existed prior to that date shall serve as the full-time judge of the Carroll county municipal court until December 31, 2009.

In the Celina municipal court, one full-time judge shall be elected in 1957.

In the Champaign county municipal court, one full-time judge shall be elected in 2001.

In the Chardon municipal court, one part-time judge shall be elected in 1963.

In the Chillicothe municipal court, one full-time judge shall be elected in 1951, and one full-time judge shall be elected in 1977.

In the Circleville municipal court, one full-time judge shall be elected in 1953.

In the Clark county municipal court, one full-time judge shall be elected in 1989, and two full-time judges shall be elected in 1991. The full-time judges of the Springfield municipal court who were elected in 1983 and 1985 shall serve as the judges of the Clark county municipal court from January 1, 1988, until the end of their respective terms.

In the Clermont county municipal court, two full-time judges shall be elected in 1991, and one full-time judge shall be elected in 1999.

In the Cleveland municipal court, six full-time judges shall be elected in 1975, three full-time judges shall be elected in 1953, and four full-time judges shall be elected in 1955.

In the Cleveland Heights municipal court, one full-time judge shall be elected in 1957.

In the Clinton county municipal court, one full-time judge shall be elected in 1997. The full-time judge of the Wilmington municipal court who was elected in 1991 shall serve as the judge of the Clinton county municipal court from July 1, 1992, until the end of that judge's term on December 31, 1997.

In the Columbiana county municipal court, two full-time judges shall be elected in 2001.

In the Conneaut municipal court, one full-time judge shall be elected in 1953.

In the Coshocton municipal court, one full-time judge shall be elected in 1951.

In the Crawford county municipal court, one full-time judge shall be elected in 1977.

In the Cuyahoga Falls municipal court, one full-time judge shall be elected in 1953, and one full-time judge shall be elected in 1967. Effective December 31, 2008, the Cuyahoga Falls municipal court shall cease to exist; however, the judges of the Cuyahoga Falls municipal court who were elected pursuant to this section in 2003 and 2007 for terms beginning on January 1, 2004, and January 1, 2008, respectively, shall serve as full-time judges of

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the Stow municipal court until December 31, 2009, and December 31, 2013, respectively.

In the Darke county municipal court, one full-time judge shall be elected in 2005. Beginning January 1, 2005, the part-time judge of the Darke county county court that existed prior to that date whose term began on January 1, 2001, shall serve as the full-time judge of the Darke county municipal court until December 31, 2005.

In the Dayton municipal court, three full-time judges shall be elected in 1987, their terms to commence on successive days beginning on the first day of January next after their election, and two full-time judges shall be elected in 1955, their terms to commence on successive days beginning on the second day of January next after their election.

In the Defiance municipal court, one full-time judge shall be elected in 1957.

In the Delaware municipal court, one full-time judge shall be elected in 1953, and one full-time judge shall be elected in 2007.

In the East Cleveland municipal court, one full-time judge shall be elected in 1957.

In the East Liverpool municipal court, one full-time judge shall be elected in 1953.

In the Eaton municipal court, one full-time judge shall be elected in 1973.

In the Elyria municipal court, one full-time judge shall be elected in 1955, and one full-time judge shall be elected in 1973.

In the Erie county municipal court, one full-time judge shall be elected in 2007.

In the Euclid municipal court, one full-time judge shall be elected in 1951.

In the Fairborn municipal court, one full-time judge shall be elected in 1977.

In the Fairfield county municipal court, one full-time judge shall be elected in 2003, and one full-time judge shall be elected in 2005.

In the Fairfield municipal court, one full-time judge shall be elected in 1989.

In the Findlay municipal court, one full-time judge shall be elected in 1955, and one full-time judge shall be elected in 1993.

In the Fostoria municipal court, one full-time judge shall be elected in 1975.

In the Franklin municipal court, one part-time judge shall be elected in 1951.

In the Franklin county municipal court, two full-time judges shall be elected in 1969, three full-time judges shall be elected in 1971, seven full-time judges shall be elected in 1967, one full-time judge shall be elected in 1975, one full-time judge shall be elected in 1991, and one full-time judge shall be elected in 1997.

In the Fremont municipal court, one full-time judge shall be elected in 1975.

In the Gallipolis municipal court, one full-time judge shall be elected in 1981.

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In the Garfield Heights municipal court, one full-time judge shall be elected in 1951, and one full-time judge shall be elected in 1981.

In the Girard municipal court, one full-time judge shall be elected in 1963.

In the Hamilton municipal court, one full-time judge shall be elected in 1953.

In the Hamilton county municipal court, five full-time judges shall be elected in 1967, five full-time judges shall be elected in 1971, two full-time judges shall be elected in 1981, and two full-time judges shall be elected in 1983. All terms of judges of the Hamilton county municipal court shall commence on the first day of January next after their election, except that the terms of the additional judges to be elected in 1981 shall commence on January 2, 1982, and January 3, 1982, and that the terms of the additional judges to be elected in 1983 shall commence on January 4, 1984, and January 5, 1984.

In the Hardin county municipal court, one part-time judge shall be elected in 1989.

In the Hillsboro municipal court, one part-time judge shall be elected in 1957.

In the Hocking county municipal court, one full-time judge shall be elected in 1977.

In the Holmes county municipal court, one full-time judge shall be elected in 2007. Beginning January 1, 2007, the part-time judge of the Holmes county county court that existed prior to that date whose term commenced on January 1, 2007, shall serve as the full-time judge of the Holmes county municipal court until December 31, 2007.

In the Huron municipal court, one part-time judge shall be elected in 1967.

In the Ironton municipal court, one full-time judge shall be elected in 1951.

In the Jackson county municipal court, one full-time judge shall be elected in 2001. On and after March 31, 1997, the part-time judge of the Jackson county municipal court who was elected in 1995 shall serve as a full-time judge of the court until the end of that judge's term on December 31, 2001.

In the Kettering municipal court, one full-time judge shall be elected in 1971, and one full-time judge shall be elected in 1975.

In the Lakewood municipal court, one full-time judge shall be elected in 1955.

In the Lancaster municipal court, one full-time judge shall be elected in 1951, and one full-time judge shall be elected in 1979. Beginning January 2, 2000, the full-time judges of the Lancaster municipal court who were elected in 1997 and 1999 shall serve as judges of the Fairfield county municipal court until the end of those judges' terms.

In the Lawrence county municipal court, one part-time judge shall be elected in 1981.

In the Lebanon municipal court, one part-time judge shall be elected in 1955.

In the Licking county municipal court, one full-time judge shall be elected in 1951, and one full-time judge shall be elected in 1971.

In the Lima municipal court, one full-time judge shall be elected in 1951, and one full-time judge shall be elected in 1967.

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In the Lorain municipal court, one full-time judge shall be elected in 1953, and one full-time judge shall be elected in 1973.

In the Lyndhurst municipal court, one part-time judge shall be elected in 1957.

In the Madison county municipal court, one full-time judge shall be elected in 1981.

In the Mansfield municipal court, one full-time judge shall be elected in 1951, and one full-time judge shall be elected in 1969.

In the Marietta municipal court, one full-time judge shall be elected in 1957.

In the Marion municipal court, one full-time judge shall be elected in 1951.

In the Marysville municipal court, one full-time judge shall be elected in 2011. On and after January 18, 2007, the part-time judge of the Marysville municipal court who was elected in 2005 shall serve as a full-time judge of the court until the end of that judge's term on December 31, 2011.

In the Mason municipal court, one part-time judge shall be elected in 1965.

In the Massillon municipal court, one full-time judge shall be elected in 1953, and one full-time judge shall be elected in 1971.

In the Maumee municipal court, one full-time judge shall be elected in 1963.

In the Medina municipal court, one full-time judge shall be elected in 1957.

In the Mentor municipal court, one full-time judge shall be elected in 1971.

In the Miami county municipal court, one full-time judge shall be elected in 1975, and one full-time judge shall be elected in 1979.

In the Miamisburg municipal court, one part-time judge shall be elected in 1951.

In the Middletown municipal court, one full-time judge shall be elected in 1953.

In the Morrow county municipal court, one full-time judge shall be elected in 2005. Beginning January 1, 2003, the part-time judge of the Morrow county court that existed prior to that date shall serve as the full-time judge of the Morrow county municipal court until December 31, 2005.

In the Mount Vernon municipal court, one full-time judge shall be elected in 1951.

In the Napoleon municipal court, one full-time judge shall be elected in 2005.

In the New Philadelphia municipal court, one full-time judge shall be elected in 1975.

In the Newton Falls municipal court, one full-time judge shall be elected in 1963.

In the Niles municipal court, one full-time judge shall be elected in 1951.

In the Norwalk municipal court, one full-time judge shall be elected in 1975.

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In the Oakwood municipal court, one part-time judge shall be elected in 1953.

In the Oberlin municipal court, one full-time judge shall be elected in 1989.

In the Oregon municipal court, one full-time judge shall be elected in 1963.

In the Ottawa county municipal court, one full-time judge shall be elected in 1995, and the full-time judge of the Port Clinton municipal court who is elected in 1989 shall serve as the judge of the Ottawa county municipal court from February 4, 1994, until the end of that judge's term.

In the Painesville municipal court, one full-time judge shall be elected in 1951.

In the Parma municipal court, one full-time judge shall be elected in 1951, one full-time judge shall be elected in 1967, and one full-time judge shall be elected in 1971.

In the Perrysburg municipal court, one full-time judge shall be elected in 1977.

In the Portage county municipal court, two full-time judges shall be elected in 1979, and one full-time judge shall be elected in 1971.

In the Port Clinton municipal court, one full-time judge shall be elected in 1953. The full-time judge of the Port Clinton municipal court who is elected in 1989 shall serve as the judge of the Ottawa county municipal court from February 4, 1994, until the end of that judge's term.

In the Portsmouth municipal court, one full-time judge shall be elected in 1951, and one full-time judge shall be elected in 1985.

In the Rocky River municipal court, one full-time judge shall be elected in 1957, and one full-time judge shall be elected in 1971.

In the Sandusky municipal court, one full-time judge shall be elected in 1953.

In the Shaker Heights municipal court, one full-time judge shall be elected in 1957.

In the Shelby municipal court, one part-time judge shall be elected in 1957.

In the Sidney municipal court, one full-time judge shall be elected in 1995.

In the South Euclid municipal court, one full-time judge shall be elected in 1999. The part-time judge elected in 1993, whose term commenced on January 1, 1994, shall serve until December 31, 1999, and the office of that judge is abolished on January 1, 2000.

In the Springfield municipal court, two full-time judges shall be elected in 1985, and one full-time judge shall be elected in 1983, all of whom shall serve as the judges of the Springfield municipal court through December 31, 1987, and as the judges of the Clark county municipal court from January 1, 1988, until the end of their respective terms.

In the Steubenville municipal court, one full-time judge shall be elected in 1953.

In the Stow municipal court, one full-time judge shall be elected in 2009, and one full-time judge shall be elected in 2013. Beginning January 1, 2009, the judge of the Cuyahoga Falls municipal court that existed prior to that date

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whose term commenced on January 1, 2008, shall serve as a full-time judge of the Stow municipal court until December 31, 2013. Beginning January 1, 2009, the judge of the Cuyahoga Falls municipal court that existed prior to that date whose term commenced on January 1, 2004, shall serve as a full-time judge of the Stow municipal court until December 31, 2009.

In the Struthers municipal court, one part-time judge shall be elected in 1963.

In the Sylvania municipal court, one full-time judge shall be elected in 1963.

In the Tiffin municipal court, one full-time judge shall be elected in 1953.

In the Toledo municipal court, two full-time judges shall be elected in 1971, four full-time judges shall be elected in 1975, and one full-time judge shall be elected in 1973.

In the Upper Sandusky municipal court, one part-time judge shall be elected in 1957.

In the Vandalia municipal court, one full-time judge shall be elected in 1959.

In the Van Wert municipal court, one full-time judge shall be elected in 1957.

In the Vermilion municipal court, one part-time judge shall be elected in 1965.

In the Wadsworth municipal court, one full-time judge shall be elected in 1981.

In the Warren municipal court, one full-time judge shall be elected in 1951, and one full-time judge shall be elected in 1971.

In the Washington Court House municipal court, one full-time judge shall be elected in 1999. The part-time judge elected in 1993, whose term commenced on January 1, 1994, shall serve until December 31, 1999, and the office of that judge is abolished on January 1, 2000.

In the Wayne county municipal court, one full-time judge shall be elected in 1975, and one full-time judge shall be elected in 1979.

In the Willoughby municipal court, one full-time judge shall be elected in 1951.

In the Wilmington municipal court, one full-time judge shall be elected in 1991, who shall serve as the judge of the Wilmington municipal court through June 30, 1992, and as the judge of the Clinton county municipal court from July 1, 1992, until the end of that judge's term on December 31, 1997.

In the Xenia municipal court, one full-time judge shall be elected in 1977.

In the Youngstown municipal court, one full-time judge shall be elected in 1951, and two full-time judges shall be elected in 1953.

In the Zanesville municipal court, one full-time judge shall be elected in 1953.

(2006 S 171, § 3, eff. 1-18-07; 2006 S 171, § 1, eff. 1-2-07; 2006 H 336, eff. 1-18-07; 2004 S 71, eff. 5-18-05; 2004 H 38, eff. 6-17-04; 2002 H 530, eff. 12-18-02; 2000 H 599, eff. 9-21-00; 1999 S 89, eff. 8-3-99; 1999 H 105, eff. 7-29-99; 1998 H 507, eff. 3-22-99; 1997 H 463, eff. 8-4-97; 1997 H 27, eff. 3-31-97; 1994 H 637, eff. 10-6-94; 1994 H 21, eff. 2-4-94; 1992 S 371, eff. 1-17-93; 1992 S 273; 1991 H 200; 1988 H 739; 1987 S 171;

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1986 H 159; 1984 H 113; 1981 S 51, H 296; 1980 H 961; 1978 H 422, H 720; 1977 H 312, H 138; 1975 H 205; 1973 S 393, H 8; 1972 H 1067; 1971 H 629, H 352; 1970 H 639, H 1151; 1969 H 844; 132 v S 451, H 255, H 529, H 361, H 354; 131 v H 667; 130 v H 266; 128 v 389; 127 v 636; 126 v 853; 125 v 496; 1953 H 1; GC 1588)

UNCODIFIED LAW

2006 H 336, § 3: See Uncodified Law under RC 1901.01.

2006 H 336, § 4, eff. 1-18-07, reads:

On and after the effective date of this act, the full-time judge of the Marysville Municipal Court, who prior to the effective date of this act was the part-time judge of that court, shall perform the duties of a full-time judge of a municipal court, shall receive the salary specified in law for a full-time judge of a municipal court, and shall be subject to any restriction specified in law for a full-time judge of a municipal court.

2004 S 71, § 3, eff. 5-18-05, reads:

The part-time judge of the Berea Municipal Court who was elected in 1999 shall remain the part-time judge of the Berea Municipal Court until the end of the judge's term. The full-time judge of the Berea Municipal Court who is elected in 2005 shall be the successor to the part-time judge of that court who was elected in 1999.

2004 H 38, § 3, eff. 6-17-04, reads:

The part-time judge of the Napoleon Municipal Court who was elected in 1999 shall remain the part-time judge of the Napoleon Municipal Court until the end of the judge's term. The full-time judge of the Napoleon Municipal Court who is elected in 2005 shall be the successor to the part-time judge of that court who was elected in 1999.

1997 H 27, § 3, eff. 3-31-97, reads: On and after the effective date of this act, the full-time judge of the Jackson County Municipal Court, who prior to the effective date of this act was the part-time judge of that court, shall perform the duties of the full-time judge of a municipal court, shall receive the salary specified in law for the full-time judge of a municipal court, and shall be subject to any restriction specified in law for the full-time judge of a municipal court.

1994 H 637, § 3, eff. 10-6-94, reads: The part-time judge of the Sidney Municipal Court who was elected in 1989 shall serve until the expiration of his term on December 31, 1995. The part-time judgeship of the Sidney Municipal Court is abolished effective December 31, 1995.

1992 S 371, § 3, eff. 1-17-93, reads: The part-time judge of the Bellefontaine Municipal Court who was elected in 1987 shall serve until the expiration of his term on December 31, 1993. The part-time judgeship of the Bellefontaine Municipal Court is abolished effective December 31, 1993.

1991 H 200, § 6, eff. 7-8-91, reads:

The judges of the county courts listed in section 1907.11 of the Revised Code, as amended by this act, are the same judges of the county courts authorized in the version of section 1907.11 of the Revised Code that was in effect immediately prior to the effective date of this act.

HISTORICAL AND STATUTORY NOTES

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Baldwin's Ohio Revised Code Annotated Currentness

Title XXXV. Elections

▣ Chapter 3501. Election Procedure; Election Officials (Refs & Annos)

▣ General Provisions

→ 3501.01 Definitions

<Note: See also following version of this section with later effective date.>

As used in the sections of the Revised Code relating to elections and political communications:

(A) "General election" means the election held on the first Tuesday after the first Monday in each November.

(B) "Regular municipal election" means the election held on the first Tuesday after the first Monday in November in each odd-numbered year.

(C) "Regular state election" means the election held on the first Tuesday after the first Monday in November in each even-numbered year.

(D) "Special election" means any election other than those elections defined in other divisions of this section. A special election may be held only on the first Tuesday after the first Monday in February, May, August, or November, or on the day authorized by a particular municipal or county charter for the holding of a primary election, except that in any year in which a presidential primary election is held, no special election shall be held in February or May, except as authorized by a municipal or county charter, but may be held on the first Tuesday after the first Monday in March.

(E)(1) "Primary" or "primary election" means an election held for the purpose of nominating persons as candidates of political parties for election to offices, and for the purpose of electing persons as members of the controlling committees of political parties and as delegates and alternates to the conventions of political parties. Primary elections shall be held on the first Tuesday after the first Monday in May of each year except in years in which a presidential primary election is held.

(2) "Presidential primary election" means a primary election as defined by division (E)(1) of this section at which an election is held for the purpose of choosing delegates and alternates to the national conventions of the major political parties pursuant to section 3513.12 of the Revised Code. Unless otherwise specified, presidential primary elections are included in references to primary elections. In years in which a presidential primary election is held, all primary elections shall be held on the first Tuesday after the first Monday in March except as otherwise authorized by a municipal or county charter.

(F) "Political party" means any group of voters meeting the requirements set forth in section 3517.01 of the Revised Code for the formation and existence of a political party.

(1) "Major political party" means any political party organized under the laws of this state whose candidate for governor or nominees for presidential electors received no less than twenty per cent of the total vote cast for such office at the most recent regular state election.

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(2) "Intermediate political party" means any political party organized under the laws of this state whose candidate for governor or nominees for presidential electors received less than twenty per cent but not less than ten per cent of the total vote cast for such office at the most recent regular state election.

(3) "Minor political party" means any political party organized under the laws of this state whose candidate for governor or nominees for presidential electors received less than ten per cent but not less than five per cent of the total vote cast for such office at the most recent regular state election or which has filed with the secretary of state, subsequent to any election in which it received less than five per cent of such vote, a petition signed by qualified electors equal in number to at least one per cent of the total vote cast for such office in the last preceding regular state election, except that a newly formed political party shall be known as a minor political party until the time of the first election for governor or president which occurs not less than twelve months subsequent to the formation of such party, after which election the status of such party shall be determined by the vote for the office of governor or president.

(G) "Dominant party in a precinct" or "dominant political party in a precinct" means that political party whose candidate for election to the office of governor at the most recent regular state election at which a governor was elected received more votes than any other person received for election to that office in such precinct at such election.

(H) "Candidate" means any qualified person certified in accordance with the provisions of the Revised Code for placement on the official ballot of a primary, general, or special election to be held in this state, or any qualified person who claims to be a write-in candidate, or who knowingly assents to being represented as a write-in candidate by another at either a primary, general, or special election to be held in this state.

(I) "Independent candidate" means any candidate who claims not to be affiliated with a political party, and whose name has been certified on the office-type ballot at a general or special election through the filing of a statement of candidacy and nominating petition, as prescribed in section 3513.257 of the Revised Code.

(J) "Nonpartisan candidate" means any candidate whose name is required, pursuant to section 3505.04 of the Revised Code, to be listed on the nonpartisan ballot, including all candidates for judicial office, for member of any board of education, for municipal or township offices in which primary elections are not held for nominating candidates by political parties, and for offices of municipal corporations having charters that provide for separate ballots for elections for these offices.

(K) "Party candidate" means any candidate who claims to be a member of a political party, whose name has been certified on the office-type ballot at a general or special election through the filing of a declaration of candidacy and petition of candidate, and who has won the primary election of the candidate's party for the public office the candidate seeks or is selected by party committee in accordance with section 3513.31 of the Revised Code.

(L) "Officer of a political party" includes, but is not limited to, any member, elected or appointed, of a controlling committee, whether representing the territory of the state, a district therein, a county, township, a city, a ward, a precinct, or other territory, of a major, intermediate, or minor political party.

(M) "Question or issue" means any question or issue certified in accordance with the Revised Code for placement on an official ballot at a general or special election to be held in this state.

(N) "Elector" or "qualified elector" means a person having the qualifications provided by law to be entitled to vote.

(O) "Voter" means an elector who votes at an election.

(P) "Voting residence" means that place of residence of an elector which shall determine the precinct in which the

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elector may vote.

(Q) "Precinct" means a district within a county established by the board of elections of such county within which all qualified electors having a voting residence therein may vote at the same polling place.

(R) "Polling place" means that place provided for each precinct at which the electors having a voting residence in such precinct may vote.

(S) "Board" or "board of elections" means the board of elections appointed in a county pursuant to section 3501.06 of the Revised Code.

(T) "Political subdivision" means a county, township, city, village, or school district.

(U) "Election officer" or "election official" means any of the following:

(1) Secretary of state;

(2) Employees of the secretary of state serving the division of elections in the capacity of attorney, administrative officer, administrative assistant, elections administrator, office manager, or clerical supervisor;

(3) Director of a board of elections;

(4) Deputy director of a board of elections;

(5) Member of a board of elections;

(6) Employees of a board of elections;

(7) Precinct polling place judges and clerks;

(8) Employees appointed by the boards of elections on a temporary or part-time basis.

(V) "Acknowledgment notice" means a notice sent by a board of elections, on a form prescribed by the secretary of state, informing a voter registration applicant or an applicant who wishes to change the applicant's residence or name of the status of the application; the information necessary to complete or update the application, if any; and if the application is complete, the precinct in which the applicant is to vote.

(W) "Confirmation notice" means a notice sent by a board of elections, on a form prescribed by the secretary of state, to a registered elector to confirm the registered elector's current address.

(X) "Designated agency" means an office or agency in the state that provides public assistance or that provides state-funded programs primarily engaged in providing services to persons with disabilities and that is required by the National Voter Registration Act of 1993 to implement a program designed and administered by the secretary of state for registering voters, or any other public or government office or agency that implements a program designed and administered by the secretary of state for registering voters, including the department of job and family services, the program administered under section 3701.132 of the Revised Code by the department of health, the department of mental health, the department of mental retardation and developmental disabilities, the rehabilitation services commission, and any other agency the secretary of state designates. "Designated agency" does not include public high schools and vocational schools, public libraries, or the office of a county treasurer.

(Y) "National Voter Registration Act of 1993" means the "National Voter Registration Act of 1993," 107 Stat. 77,

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42 U.S.C.A. 1973gg.

(Z) "Voting Rights Act of 1965" means the "Voting Rights Act of 1965," 79 Stat. 437, 42 U.S.C.A. 1973, as amended.

(AA) "Photo identification" means a document that meets each of the following requirements:

(1) It shows the name of the individual to whom it was issued, which shall conform to the name in the poll list or signature pollbook.

(2) It shows the current address of the individual to whom it was issued, which shall conform to the address in the poll list or signature pollbook, except for a driver's license or a state identification card issued under section 4507.50 of the Revised Code, which may show either the current or former address of the individual to whom it was issued, regardless of whether that address conforms to the address in the poll list or signature pollbook.

(3) It shows a photograph of the individual to whom it was issued.

(4) It includes an expiration date that has not passed.

(5) It was issued by the government of the United States or this state.

(2006 H 3, eff. 5-2-06 (See Historical and Statutory Notes); 2002 H 445, eff. 12-23-02; 1999 H 471, eff. 7-1-00; 1999 H 157, eff. 9-20-99; 1995 H 99, eff. 8-22-95; 1994 S 300, eff. 1-1-95; 1994 H 8, eff. 6-8-94; 1993 S 150, eff. 12-29-93; 1987 H 231; 1986 S 185; 1983 S 213; 1981 H 235; 1980 H 1062; 1974 H 662; 1971 S 460; 1969 S 35; 1953 H 1; GC 4785-3)

<Note: See also following version of this section with later effective date.>

R.C. § 3501.01, OH ST § 3501.01

Current through 2007 Files 1 to 24 of the 127th GA (2007-2008), apv. by 8/19/07, and filed with the Secretary of State by 8/19/07.

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R.C. § 3505.04

C

Baldwin's Ohio Revised Code Annotated Currentness

Title XXXV. Elections

▣ Chapter 3505. General and Special Elections--Ballots; Voting (Refs & Annos)

▣ Ballots

→ 3505.04 Nonpartisan ballots

On the nonpartisan ballot shall be printed the names of all nonpartisan candidates for election to judicial office, office of member of the state board of education, office of member of a board of education, municipal or township offices for municipal corporations and townships in which primary elections are not held for nomination of candidates by political parties, and municipal offices of municipal corporations having charters which provide for separate ballots for elections for such municipal offices.

Such ballots shall have printed across the top, and below the stubs, "Official Nonpartisan Ballot."

The order in which the offices are listed on the ballot shall be prescribed by, and certified to each board of elections by, the secretary of state; provided that the office of member of the state board of education shall be listed first on the ballot, then state, district, and county judicial offices shall be listed on the ballot in such order, followed by municipal and township offices, and by offices of member of a board of education, in the order stated.

Within the rectangular space within which the title of each judicial office is printed on the ballot and immediately below such title shall be printed the date of the commencement of the term of the office, if a full term, as follows: "Full term commencing _____ (Date) _____," or the date of the end of the term of the office, if an unexpired term, as follows: "Unexpired term ending _____ (Date) _____"

The secretary of state shall prescribe the information and directions to the voter to be printed on the ballot within the rectangular space in which the title of office of member of the state board of education appears.

Within the rectangular space within which the title of each office for member of a board of education is printed on the ballot shall be printed "For Member of Board of Education," and the number to be elected, directions to the voter as to voting for one, two, or more, and, if the office to be voted for is member of a board of education of a city school district, words shall be printed in said space on the ballot to indicate whether candidates are to be elected from subdistricts or at large.

The names of all nonpartisan candidates for an office shall be arranged in a group under the title of that office, and shall be rotated and printed on the ballot as provided in section 3505.03 of the Revised Code.

No name or designation of any political party nor any words, designations, or emblems descriptive of a candidate or his political affiliation, or indicative of the method by which such candidate was nominated or certified, shall be printed under or after any nonpartisan candidate's name which is printed on the ballot.

(1980 H 1062, eff. 3-23-81; 1976 S 457, H 1165; 1969 S 17; 126 v 655; 125 v 713; 1953 H 1; GC 4785-101)

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R.C. § 3513.257

C

Baldwin's Ohio Revised Code Annotated Currentness

Title XXXV. Elections

▣ Chapter 3513. Primaries; Nominations (Refs & Annos)

▣ Nomination and Independent Candidates

→3513.257 Independent candidate's petition for nomination at primary elections; treatment of joint candidates

Each person desiring to become an independent candidate for an office for which candidates may be nominated at a primary election, except persons desiring to become independent joint candidates for the offices of governor and lieutenant governor and for the offices of president and vice-president of the United States, shall file no later than four p.m. of the day before the day of the primary election immediately preceding the general election at which such candidacy is to be voted for by the voters, a statement of candidacy and nominating petition as provided in section 3513.261 of the Revised Code. Persons desiring to become independent joint candidates for the offices of governor and lieutenant governor shall file, not later than four p.m. of the day before the day of the primary election, one statement of candidacy and one nominating petition for the two of them. Persons desiring to become independent joint candidates for the offices of president and vice-president of the United States shall file, not later than four p.m. of the seventy-fifth day before the day of the general election at which the president and vice-president are to be elected, one statement of candidacy and one nominating petition for the two of them. The prospective independent joint candidates' statement of candidacy shall be filed with the nominating petition as one instrument.

The statement of candidacy and separate petition papers of each candidate or pair of joint candidates shall be filed at the same time as one instrument.

The nominating petition shall contain signatures of qualified electors of the district, political subdivision, or portion of a political subdivision in which the candidacy is to be voted on in an amount to be determined as follows:

(A) If the candidacy is to be voted on by electors throughout the entire state, the nominating petition, including the nominating petition of independent joint candidates for the offices of governor and lieutenant governor, shall be signed by no less than five thousand qualified electors, provided that no petition shall be accepted for filing if it purports to contain more than fifteen thousand signatures.

(B) If the candidacy is to be voted on by electors in any district, political subdivision, or part thereof in which less than five thousand electors voted for the office of governor at the most recent election for that office, the nominating petition shall contain signatures of not less than twenty-five qualified electors of the district, political subdivision, or part thereof, or a number of qualified signatures equal to at least five per cent of that vote, if this number is less than twenty-five.

(C) If the candidacy is to be voted on by electors in any district, political subdivision, or part thereof in which five thousand or more electors voted for the office of governor at the most recent election for that office, the nominating petition shall contain a number of signatures equal to at least one per cent of those electors.

All nominating petitions of candidates for offices to be voted on by electors throughout the entire state shall be filed in the office of the secretary of state. No nominating petition for the offices of president and vice-president of

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the United States shall be accepted for filing unless there is submitted to the secretary of state, at the time of filing the petition, a slate of presidential electors sufficient in number to satisfy the requirement of the United States Constitution. The secretary of state shall not accept for filing the statement of candidacy of a person who desires to be an independent candidate for the office of governor unless it also shows the joint candidacy of a person who desires to be an independent candidate for the office of lieutenant governor, shall not accept for filing the statement of candidacy of a person who desires to be an independent candidate for the office of lieutenant governor unless it also shows the joint candidacy of a person who desires to be an independent candidate for the office of governor, and shall not accept for filing the statement of candidacy of a person who desires to be an independent candidate to the office of governor or lieutenant governor who, for the same election, has already filed a declaration of candidacy, a declaration of intent to be a write-in candidate, or a statement of candidacy, or has become a candidate by the filling of a vacancy under section 3513.30 of the Revised Code for any other state office or any federal or county office.

Nominating petitions of candidates for offices to be voted on by electors within a district or political subdivision comprised of more than one county but less than all counties of the state shall be filed with the boards of elections of that county or part of a county within the district or political subdivision which had a population greater than that of any other county or part of a county within the district or political subdivision according to the last federal decennial census.

Nominating petitions for offices to be voted on by electors within a county or district smaller than a county shall be filed with the board of elections for such county.

No petition other than the petition of a candidate whose candidacy is to be considered by electors throughout the entire state shall be accepted for filing if it appears on its face to contain more than three times the minimum required number of signatures. A board of elections shall not accept for filing a nominating petition of a person seeking to become a candidate if that person, for the same election, has already filed a declaration of candidacy, a declaration of intent to be a write-in candidate, or a nominating petition, or has become a candidate by the filling of a vacancy under section 3513.30 of the Revised Code for any federal, state, or county office, if the nominating petition is for a state or county office, or for any municipal or township office, for member of a city, local, or exempted village board of education, or for member of a governing board of an educational service center, if the nominating petition is for a municipal or township office, or for member of a city, local, or exempted village board of education, or for member of a governing board of an educational service center. When a petition of a candidate has been accepted for filing by a board of elections, the petition shall not be deemed invalid if, upon verification of signatures contained in the petition, the board of elections finds the number of signatures accepted exceeds three times the minimum number of signatures required. A board of elections may discontinue verifying signatures when the number of verified signatures on a petition equals the minimum required number of qualified signatures.

Any nonjudicial candidate who files a nominating petition may request, at the time of filing, that the candidate be designated on the ballot as a nonparty candidate or as an other-party candidate, or may request that the candidate's name be placed on the ballot without any designation. Any such candidate who fails to request a designation either as a nonparty candidate or as an other-party candidate shall have the candidate's name placed on the ballot without any designation.

The purpose of establishing a filing deadline for independent candidates prior to the primary election immediately preceding the general election at which the candidacy is to be voted on by the voters is to recognize that the state has a substantial and compelling interest in protecting its electoral process by encouraging political stability, ensuring that the winner of the election will represent a majority of the community, providing the electorate with an understandable ballot, and enhancing voter education, thus fostering informed and educated expressions of the popular will in a general election. The filing deadline for independent candidates required in this section prevents splintered parties and unrestrained factionalism, avoids political fragmentation, and maintains the integrity of the ballot. The deadline, one day prior to the primary election, is the least drastic or restrictive means of protecting

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these state interests. The general assembly finds that the filing deadline for independent candidates in primary elections required in this section is reasonably related to the state's purpose of ensuring fair and honest elections while leaving unimpaired the political, voting, and associational rights secured by the first and fourteenth amendments to the United States Constitution.

(2006 H 3, eff. 5-2-06; 2005 H 66, eff. 9-29-05; 2002 H 445, eff. 12-23-02; 1995 H 99, eff. 8-22-95; 1986 H 555, eff. 2-26-86; 1986 S 45; 1984 H 406; 1980 H 1062; 1977 S 115; 1974 H 662; 1971 S 460)

UNCODIFIED LAW

2004 H 38, § 6: See Uncodified Law under 3513.08.

HISTORICAL AND STATUTORY NOTES

Ed. Note: Former 3513.257 repealed by 1971 S 460, eff. 3-23-72; 1969 S 19; 132 v H 653; 127 v 45; 126 v 205; 125 v 713

CROSS REFERENCES

Barberton, Cuyahoga Falls, and Toledo municipal court clerks, nomination of candidates, 1901.31

Citizens may alter, reform, or abolish their government, O Const Art I §2

Days counted to ascertain time, 1.14

Declaration of candidacy, nominating petition, and other petition requirements, election falsification, 3501.38

Elections, independent candidate defined, 3501.01

False signature forbidden, 3599.28

Governor and lieutenant governor to be elected jointly, O Const Art III §1a

Offenses as to petitions, 3599.14, 3599.15

Presidential ballot, 3505.10

Standard time in Ohio, 1.04

Unqualified person signing petition, penalty; threats as to petitions punished, 3599.13

LIBRARY REFERENCES

Elections ↪126(1).
Westlaw Topic No. 144.
C.J.S. Elections § 111 et seq.

RESEARCH REFERENCES

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C

Baldwin's Ohio Revised Code Annotated Currentness

Title XXXV. Elections

- ▣ Chapter 3513. Primaries; Nominations (Refs & Annos)

- ▣ Withdrawal of Candidate

→3513.31 Vacancy by withdrawal or death of nominee; selection of candidate for unexpired term; independent candidates

(A) If a person nominated in a primary election as a candidate for election at the next general election, whose candidacy is to be submitted to the electors of the entire state, withdraws as that candidate or is disqualified as that candidate under section 3513.052 of the Revised Code, the vacancy in the party nomination so created may be filled by the state central committee of the major political party that made the nomination at the primary election, if the committee's chairperson and secretary certify the name of the person selected to fill the vacancy by the time specified in this division, at a meeting called for that purpose. The meeting shall be called by the chairperson of that committee, who shall give each member of the committee at least two days' notice of the time, place, and purpose of the meeting. If a majority of the members of the committee are present at the meeting, a majority of those present may select a person to fill the vacancy. The chairperson and secretary of the meeting shall certify in writing and under oath to the secretary of state, not later than the seventy-sixth day before the day of the general election, the name of the person selected to fill the vacancy. The certification must be accompanied by the written acceptance of the nomination by the person whose name is certified. A vacancy that may be filled by an intermediate or minor political party shall be filled in accordance with the party's rules by authorized officials of the party. Certification must be made as in the manner provided for a major political party.

(B) If a person nominated in a primary election as a party candidate for election at the next general election, whose candidacy is to be submitted to the electors of a district comprised of more than one county but less than all of the counties of the state, withdraws as that candidate or is disqualified as that candidate under section 3513.052 of the Revised Code, the vacancy in the party nomination so created may be filled by a district committee of the major political party that made the nomination at the primary election, if the committee's chairperson and secretary certify the name of the person selected to fill the vacancy by the time specified in this division, at a meeting called for that purpose. The district committee shall consist of the chairperson and secretary of the county central committee of such political party in each county in the district. The district committee shall be called by the chairperson of the county central committee of such political party of the most populous county in the district, who shall give each member of the district committee at least two days' notice of the time, place, and purpose of the meeting. If a majority of the members of the district committee are present at the district committee meeting, a majority of those present may select a person to fill the vacancy. The chairperson and secretary of the meeting shall certify in writing and under oath to the board of elections of the most populous county in the district, not later than four p.m. of the seventy-sixth day before the day of the general election, the name of the person selected to fill the vacancy. The certification must be accompanied by the written acceptance of the nomination by the person whose name is certified. A vacancy that may be filled by an intermediate or minor political party shall be filled in accordance with the party's rules by authorized officials of the party. Certification must be made as in the manner provided for a major political party.

(C) If a person nominated in a primary election as a party candidate for election at the next general election, whose candidacy is to be submitted to the electors of a county, withdraws as that candidate or is disqualified as that candidate under section 3513.052 of the Revised Code, the vacancy in the party nomination so created may be

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filled by the county central committee of the major political party that made the nomination at the primary election, or by the county executive committee if so authorized, if the committee's chairperson and secretary certify the name of the person selected to fill the vacancy by the time specified in this division, at a meeting called for that purpose. The meeting shall be called by the chairperson of that committee, who shall give each member of the committee at least two days' notice of the time, place, and purpose of the meeting. If a majority of the members of the committee are present at the meeting, a majority of those present may select a person to fill the vacancy. The chairperson and secretary of the meeting shall certify in writing and under oath to the board of that county, not later than four p.m. of the seventy-sixth day before the day of the general election, the name of the person selected to fill the vacancy. The certification must be accompanied by the written acceptance of the nomination by the person whose name is certified. A vacancy that may be filled by an intermediate or minor political party shall be filled in accordance with the party's rules by authorized officials of the party. Certification must be made as in the manner provided for a major political party.

(D) If a person nominated in a primary election as a party candidate for election at the next general election, whose candidacy is to be submitted to the electors of a district within a county, withdraws as that candidate or is disqualified as that candidate under section 3513.052 of the Revised Code, the vacancy in the party nomination so created may be filled by a district committee consisting of those members of the county central committee or, if so authorized, those members of the county executive committee in that county of the major political party that made the nomination at the primary election who represent the precincts or the wards and townships within the district, if the committee's chairperson and secretary certify the name of the person selected to fill the vacancy by the time specified in this division, at a meeting called for that purpose. The district committee meeting shall be called by the chairperson of the county central committee or executive committee, as appropriate, who shall give each member of the district committee at least two days' notice of the time, place, and purpose of the meeting. If a majority of the members of the district committee are present at the district committee meeting, a majority of those present may select a person to fill the vacancy. The chairperson and secretary of the district committee meeting shall certify in writing and under oath to the board of the county, not later than four p.m. of the seventy-sixth day before the day of the general election, the name of the person selected to fill the vacancy. The certification must be accompanied by the written acceptance of the nomination by the person whose name is certified. A vacancy that may be filled by an intermediate or minor political party shall be filled in accordance with the party's rules by authorized officials of the party. Certification must be made as in the manner provided for a major political party.

(E) If a person nominated in a primary election as a party candidate for election at the next general election, whose candidacy is to be submitted to the electors of a subdivision within a county, withdraws as that candidate or is disqualified as that candidate under section 3513.052 of the Revised Code, the vacancy in the party nomination so created may be filled by a subdivision committee consisting of those members of the county central committee or, if so authorized, those members of the county executive committee in that county of the major political party that made the nomination at that primary election who represent the precincts or the wards and townships within that subdivision, if the committee's chairperson and secretary certify the name of the person selected to fill the vacancy by the time specified in this division, at a meeting called for that purpose.

The subdivision committee meeting shall be called by the chairperson of the county central committee or executive committee, as appropriate, who shall give each member of the subdivision committee at least two days' notice of the time, place, and purpose of the meeting. If a majority of the members of the subdivision committee are present at the subdivision committee meeting, a majority of those present may select a person to fill the vacancy. The chairperson and secretary of the subdivision committee meeting shall certify in writing and under oath to the board of the county, not later than four p.m. of the seventy-sixth day before the day of the general election, the name of the person selected to fill the vacancy. The certification must be accompanied by the written acceptance of the nomination by the person whose name is certified. A vacancy that may be filled by an intermediate or minor political party shall be filled in accordance with the party's rules by authorized officials of the party. Certification must be made in the manner provided for a major political party.

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(F) If a person nominated by petition as an independent or nonpartisan candidate for election at the next general election withdraws as that candidate or is disqualified as that candidate under section 3513.052 of the Revised Code, the vacancy so created may be filled by a majority of the committee of five, as designated on the candidate's nominating petition, if a member of that committee certifies in writing and under oath to the election officials with whom the candidate filed the candidate's nominating petition, not later than the seventy-sixth day before the day of the general election, the name of the person selected to fill the vacancy. The certification shall be accompanied by the written acceptance of the nomination by the person whose name is certified and shall be made in the manner provided for a major political party.

(G) If a person nominated in a primary election as a party candidate for election at the next general election dies, the vacancy so created may be filled by the same committee in the same manner as provided in this section for the filling of similar vacancies created by withdrawals or disqualifications under section 3513.052 of the Revised Code, except that the certification, when filling a vacancy created by death, may not be filed with the secretary of state, or with a board of the most populous county of a district, or with the board of a county in which the major portion of the population of a subdivision is located, later than four p.m. of the tenth day before the day of such general election, or with any other board later than four p.m. of the fifth day before the day of such general election.

(H) If a person nominated by petition as an independent or nonpartisan candidate for election at the next general election dies prior to the tenth day before the day of that general election, the vacancy so created may be filled by a majority of the committee of five designated in the nominating petition to represent the candidate named in it. To fill the vacancy a member of the committee shall, not later than four p.m. of the fifth day before the day of the general election, file with the election officials with whom the petition nominating the person was filed, a certificate signed and sworn to under oath by a majority of the members, designating the person they select to fill the vacancy. The certification must be accompanied by the written acceptance of the nomination by the person whose name is so certified.

(I) If a person holding an elective office dies or resigns subsequent to the one-hundredth day before the day of a primary election and prior to the seventy-sixth day before the day of the next general election, and if, under the laws of this state, a person may be elected at that general election to fill the unexpired term of the person who has died or resigned, the appropriate committee of each political party, acting as in the case of a vacancy in a party nomination, as provided in divisions (A) to (D) of this section, may select a person as the party candidate for election for such unexpired term at that general election, and certify the person's name to the appropriate election official not later than four p.m. on the seventy-sixth day before the day of that general election, or on the tenth day following the day on which the vacancy occurs, whichever is later. When the vacancy occurs on or subsequent to the seventy-sixth day and six or more days prior to the fortieth day before the general election, the appropriate committee may select a person as the party candidate and certify the person's name, as provided in the preceding sentence, not later than four p.m. on the tenth day following the day on which the vacancy occurs. When the vacancy occurs fewer than six days before the fortieth day before the general election, the deadline for filing shall be four p.m. on the thirty-sixth day before the general election. Thereupon the name shall be printed as the party candidate under proper titles and in the proper place on the proper ballots for use at the election. If a person has been nominated in a primary election, the authorized committee of that political party shall not select and certify a person as the party candidate.

(J) Each person desiring to become an independent candidate to fill the unexpired term shall file a statement of candidacy and nominating petition, as provided in section 3513.261 of the Revised Code, with the appropriate election official not later than four p.m. on the tenth day following the day on which the vacancy occurs, provided that when the vacancy occurs fewer than six days before the fortieth day before the general election, the deadline for filing shall be four p.m. on the thirty-sixth day before the general election. The nominating petition shall contain at least seven hundred fifty signatures and no more than one thousand five hundred signatures of qualified electors of the district, political subdivision, or portion of a political subdivision in which the office is to be voted upon, or the amount provided for in section 3513.257 of the Revised Code, whichever is less.

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(K) When a person nominated as a candidate by a political party in a primary election or by nominating petition for an elective office for which candidates are nominated at a party primary election withdraws, dies, or is disqualified under section 3513.052 of the Revised Code prior to the general election, the appropriate committee of any other major political party or committee of five that has not nominated a candidate for that office, or whose nominee as a candidate for that office has withdrawn, died, or been disqualified without the vacancy so created having been filled, may, acting as in the case of a vacancy in a party nomination or nomination by petition as provided in divisions (A) to (F) of this section, whichever is appropriate, select a person as a candidate of that party or of that committee of five for election to the office.

(2002 H 445, eff. 12-23-02; 1996 S 261, eff. 11-20-96; 1995 H 99, eff. 8-22-95; 1983 H 397, eff. 3-19-84; 1982 H 428; 1980 H 1062; 1971 S 460; 129 v 1223; 126 v 205; 125 v 713; 1953 H 1; GC 4785-94)

HISTORICAL AND STATUTORY NOTES

Pre-1953 H 1 Amendments: 124 v S 269; 122 v S 109

CROSS REFERENCES

Days counted to ascertain time, 1.14

Election, appointment, and filling vacancies, O Const Art II §27

Elections, definitions, 3501.01

Filling vacancies in house and senate, O Const Art II §11

Office type ballot, 3505.03

Prohibited activities, 3517.13

Vacancies in certain state offices to be filled by governor, O Const Art III §18

Vacancies in state board of education, 3301.06

Vacancy in office of both governor and lieutenant governor; election, O Const Art III §17

Vacancy in office of governor; line of succession, O Const Art III §15

Voting machine labels, grouping of names, rotation, political parties, 3506.11

LIBRARY REFERENCES

Elections ↪147.

Westlaw Topic No. 144.

C.J.S. Elections §§ 93, 136.

RESEARCH REFERENCES

Encyclopedias

OH Jur. 3d Cvl. Servants & Pub. Officers & Employ. § 73, Withdrawal or Death of Candidates or Incumbents.

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2. Remedies

Mandamus will not lie to compel a board of elections to issue a certificate of nomination to a candidate who has withdrawn himself from contention for the office of county recorder after the date for selection of a replacement nominee has passed as one cannot be compelled to be a candidate for office against his will. State ex rel. White v. Franklin Cty. Bd. of Elections (Ohio 1992) 65 Ohio St.3d 45, 600 N.E.2d 656.

Prohibition will not lie to prevent certification of a candidate for county auditor who has previously withdrawn himself from contention as a candidate for county recorder, an incompatible office, notwithstanding the fact that the board is compelled to count and certify the candidate's votes in the recorder's race as his withdrawal was beyond the date for selection of a replacement candidate. State ex rel. White v. Franklin Cty. Bd. of Elections (Ohio 1992) 65 Ohio St.3d 45, 600 N.E.2d 656.

Where a registered Democrat filed as a candidate for a new seat on the court and then withdrew her candidacy as a Democrat to file as an independent for such seat, the common pleas court improperly restrained the secretary of state from including the candidate's name on the ballot. State ex rel. Smart v. McKinley (Ohio 1980) 64 Ohio St.2d 5, 412 N.E.2d 393, 18 O.O.3d 128.

The right and title to the office of chairman of the state central committee of a political party may not be questioned by an individual claimant in quo warranto. State ex rel. Cain v. Kay (Ohio 1974) 38 Ohio St.2d 15, 309 N.E.2d 860, 67 O.O.2d 33.

Where a relator files an action in prohibition challenging the qualifications of a candidate for common pleas judge after the date on which the candidate could voluntarily withdraw and after the time during which the vacancy could have been filled, his unexplained dilatoriness will deprive him of the relief sought. State ex rel. Peirce v. Board of Elections of Stark County (Ohio 1958) 168 Ohio St. 249, 153 N.E.2d 393, 6 O.O.2d 339.

3. Nominee death or withdrawal

Where a candidate in an uncontested primary election dies on election day, all absentee votes cast before the death of the candidate may be counted and recorded and the deceased will be considered a nominee and a substitute candidate for the general election may be selected pursuant to RC 3513.31, because the prohibition against counting and recording votes cast for a deceased candidate found in RC 3513.17 applies only to votes cast after a candidate dies. State ex rel. Ashbrook v. Brown (Ohio 1988) 39 Ohio St.3d 115, 529 N.E.2d 896.

Where a candidate for a county judicial office is nominated at a primary election and later withdraws from the general election, the county central committee of the party which made the nomination may fill the vacancy so created pursuant to the provisions of RC 3513.31 pertaining to party candidates, notwithstanding the definitions of party candidates and nonpartisan candidates in RC 3501.01(J) and 3501.01(K). State ex rel. Giuliani v. Cuyahoga County Bd. of Elections (Ohio 1984) 14 Ohio St.3d 8, 471 N.E.2d 148, 14 O.B.R. 314.

Where it is not claimed in the pleadings that the facts relied upon to support a claim of ineligibility of a candidate for a particular office were not known or were not reasonably discoverable for more than three months prior to the last day provided by statute for the withdrawal of such candidate, an action challenging such candidacy commenced after the last day for withdrawal will be dismissed for lack of diligence. State ex rel. Fisher v. Brown (Ohio 1972) 32 Ohio St.2d 23, 289 N.E.2d 349, 61 O.O.2d 190.

Where vacancy occurs in party nomination under conditions prescribed by RC 3513.31, appropriate committee of political party which made nomination, as designated by that statute, may fill vacancy by selecting a person without regard to his voting record or participation in any previous party primary election. State ex rel. Young v. Gasser (Ohio 1970) 21 Ohio St.2d 253, 257 N.E.2d 389, 50 O.O.2d 484.

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Where a declared candidate for public office is found to be ineligible there is, in effect, an involuntary withdrawal, a withdrawal by operation of law, and, under 3513.31, another candidate may be appointed by a county district central committee to take his place. State ex rel. Flex v. Gwin (Ohio 1969) 20 Ohio St.2d 29, 252 N.E.2d 289, 49 O.O.2d 185.

A person selected as a party candidate for an office in a primary election who withdraws his candidacy for that office is eligible for selection as a party candidate by the party committee to fill a vacancy in the nomination for another office created by the withdrawal of the candidate originally nominated. State ex rel. Gottlieb v. Sulligan (Ohio 1963) 175 Ohio St. 238, 193 N.E.2d 270, 24 O.O.2d 383. Elections ⇌ 147

Vacancy on the ballot caused by death of a duly nominated candidate for the office of county engineer may be filled by the selection of a person who is a registered professional engineer and a registered surveyor licensed to practice in this state, and who is a resident and elector of this state, but it is not necessary for him to be a resident and elector of the county in which he is selected. State ex rel. Jeffers v. Sowers (Ohio 1960) 171 Ohio St. 295, 170 N.E.2d 428, 13 O.O.2d 372.

Upon the death of one who had been nominated at a primary election as a candidate for mayor, and in the absence of any charter or statutory provision, there was no authority to fill the vacancy. State ex rel. Jones v. O'Dwyer (Ohio 1917) 97 Ohio St. 22, 119 N.E. 732. Elections ⇌ 147

The secretary of state, having rightly performed the duty to send to the deputy supervisors the form of ballot to be used, properly refuses to instruct the deputy supervisors to omit from the ticket the name of a candidate who subsequently withdraws, there being no nomination to fill the vacancy. State ex rel. Fitzsimmons v. Taylor (Ohio 1896) 55 Ohio St. 385, 37 W.L.B. 45, 45 N.E. 715. Elections ⇌ 174

Statute allowing major political party of county to replace nominated candidate who withdraws from race and permitting executive committee to act on behalf of central committee "if so authorized" limited county board of elections to review of whether party constitution, or some other resolution of central committee, empowered executive committee to act on its behalf in selecting replacement candidate for judge, not whether executive committee was legally constituted. State ex rel. Durkin v. Mahoning County Bd. of Elections (Ohio App. 7 Dist., 11-06-1996) 115 Ohio App.3d 180, 684 N.E.2d 1289, stay dissolved 77 Ohio St.3d 1508, 673 N.E.2d 927, cause dismissed 77 Ohio St.3d 1529, 674 N.E.2d 704. Judges ⇌ 3

Although RC 3513.261 requires that a candidate for office name a committee to represent him on his nominating petitions, it does not require that a committee of five be named on the petitions, and so it should be interpreted, consistent with the principle favoring choices in elections, as permitting a committee of three acting unanimously to constitute "a majority of a committee of five" who are entitled to fill a vacancy created by the death of a candidate. State ex rel. Taylor v. Franklin County Bd. of Elections (Franklin 1979) 66 Ohio App.2d 102, 421 N.E.2d 162, 20 O.O.3d 225.

Where candidate placing second in Cleveland mayoralty primary withdrew after said primary but before the general election, members of his committee may name a replacement candidate, and if they fail to do so, ballot should be submitted with only name of leading candidate on it. Gilbert v Cleveland, 37 Misc 45 (CP, Cuyahoga 1973).

A vacancy created in a party nomination for the office of United States representative when a party nominee withdraws his candidacy after the eightieth day before the general election may be filled by appointment in accordance with RC 3513.31(B). OAG 06-035.

RC 3513.04 does not preclude a person who was unsuccessful in seeking a party nomination for a statewide office at the primary election in May 2006 from being appointed pursuant to RC 3513.31(B) to fill a vacancy in a party

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nomination for the office of United States representative. OAG 06-035.

There is no authority by which vacancies caused either by withdrawal or by the death of a person nominated by a nominating petition may be filled. 1953 OAG 2382.

A board of elections is without authority in law to remove or cause to be removed from the ballot to be voted at a primary election name of a deceased person whose death occurred after the filing of his declaration of candidacy and before date of such primary election. 1948 OAG 3100.

4. Elective office holder death or resignation

A political party may lawfully nominate a candidate for office, under RC 3513.31, on the date the incumbent announces her resignation which necessitates a general election; the nomination is valid as being not later than ten days after the resignation even though it was made before the resignation took effect, and notice of a general nominating meeting delivered one week prior to the nomination satisfies the notice requirement of RC 3513.31 even though the specific office was not mentioned. State ex rel. Barth v. Hamilton Cty. Bd. of Elections (Ohio 1992) 65 Ohio St.3d 219, 602 N.E.2d 1130.

RC 3513.31 provides the only method for selection of a candidate for the unexpired term of an incumbent judge of the court of appeals who dies after the primary election but more than forty days before the day of the next general election. State ex rel. Lynch v. Chesney (Mahoning 1960) 113 Ohio App. 55, 177 N.E.2d 300, 17 O.O.2d 51.

A person who seeks a party nomination for an office or position at a primary election by declaration of candidacy is not eligible to be certified as the candidate of a political party at the following general election to fill the unexpired term of a person who holds an elective office and who dies subsequently to the one hundredth day before the day of a primary election and prior to the fortieth day before the day of the next general election. 1960 OAG 1787.

If an incumbent judge holding an unexpired term dies subsequent to the one hundredth day prior to the primary election and prior to the fortieth day before the election at which his successor could be elected, election must be held to fill such vacancy and the appropriate committee of each political party may select such party's candidate in the next general election. 1959 OAG 691.

Discussion of procedure for nominating and electing probate judge where incumbent resigns subsequent to the one hundredth day before the primary election and prior to the fortieth day before the general election. 1958 OAG 2276.

Where a county commissioner dies prior to the time for filing declarations of candidacy and where no declaration of candidacy is filed for the unexpired term for such office and no person is nominated for such unexpired term at the primary election by receiving the required number of write-in votes there is no provision of law by which any person may be nominated for such office, and the election for such office should be had at the November general election by providing a blank space on the ballot. 1954 OAG 4012.

If a person holding an elective office dies on the sixty-sixth day before the day of a primary election and the unexpired term is required by law to be filled at the next general election, the title of said office and the length of the unexpired term shall be printed on the primary election ballot. Such primary election ballot shall provide a blank space in which a voter may write the name of a person for whose nomination he desires to vote for said unexpired term. If the voters of a party fail to nominate a person to fill said unexpired term at the primary election, the appropriate committee of said party, acting pursuant to the provisions of GC 4785-94 (RC 3513.31), may select a candidate for election for said unexpired term at the general election. 1952 OAG 1241.

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