

ORIGINAL

IN THE SUPREME COURT OF OHIO

**STATE EX REL. OHIOANS FOR FAIR
DISTRICTS**

545 East Town Street
Columbus, Ohio 43215,

STATE EX REL. CHRIS REDFERN

2841 N. Bluff Ridge Dr.
Port Clinton, Ohio 43452,

STATE EX REL. NINA TURNER

16204 Sunny Glen Avenue
Cleveland, Ohio 44112,

STATE EX REL. KATHLEEN CLYDE

646 Ada Street
Kent, Ohio 44240,

STATE EX REL. MATTHEW LUNDY

338 Olive Street
Elyria, Ohio 44035,

STATE EX REL. RHINE McLIN

23 North Paul Laurence Dunbar St.
Dayton, Ohio 45402,

Relators,

- v -

**HON. JON HUSTED,
OHIO SECRETARY OF STATE**

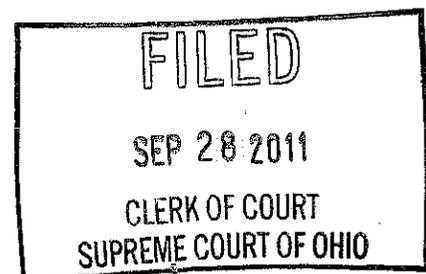
30 East Broad Street, 17th Floor
Columbus, Ohio 43215

Respondent.

11-1646

COMPLAINT IN ORIGINAL ACTION IN
MANDAMUS

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Counsel for Relators

This action is brought in the name of the State of Ohio on the relation of Ohioans for Fair Districts, Chris Redfern, Nina Turner, Kathleen Clyde, and Matthew Lundy, who are petitioning this Court for a Writ of Mandamus against Respondent Ohio Secretary of State Jon Husted. The allegations in the Complaint are supported by the Affidavit of Chris Redfern, *appended hereto*.

INTRODUCTION

1. This Court has many times held that the constitutional right of citizens to referendum is of paramount importance. [See, e.g., *State ex rel. General Assembly v. Brunner*, 115 Ohio St.3d 103, 2007 Ohio 4460.] This power applies to every law passed by the Ohio General Assembly, the few exceptions being set forth in the Ohio Constitution. The right of referendum provides an important check on the actions taken by the government; therefore, no governor or legislature has the power to nullify the right by including an appropriation in legislation or by inserting a section making a bare assertion that such legislation is exempt from referendum. This, however, is precisely what has been attempted in the present case.
2. This Court possess jurisdiction over the subject matter of this action and over Respondent pursuant to Article IV, Sec. 4.02(B) of the Constitution of the State of Ohio and Ohio Rev. Code 2731.02.

PARTIES

3. Relator Ohioans for Fair Districts is a ballot issue committee consisting of five individuals designated to represent the petitioners of a Referendum Petition seeking to ~~refer certain portions of Substitute House Bill 319 (“SHB 319”)~~ of the 129th General Assembly to the voters of Ohio for their approval or rejection (“Referendum Petition”).

4. Relators Chris Redfern, Nina Turner, Kathleen Clyde, Matthew Lundy, and Rhine McLin are residents and electors of the State of Ohio. These Relators are members of Ohioans for Fair Districts and are the designated committee representing the petitioners of the Referendum Petition pursuant to Ohio Rev. Code 3519.02.
5. Respondent Jon Husted is the duly elected Ohio Secretary of State and the chief elections officer of the State of Ohio. Under Article III of the Ohio Constitution, the Secretary is a member of the Executive Department of the State of Ohio. Under Ohio Rev. Code 111.08, the Secretary “shall have the charge of and safely keep the laws and resolutions passed by the General Assembly.”
6. Pursuant to Chapter 149 of the Ohio Revised Code, the Secretary is required by law to ensure the distribution, compilation, and publication of all laws passed by the General Assembly. This Chapter sets forth the duties of the Secretary to distribute, compile, and publish laws that have been filed with the office.
7. The Secretary of State is not vested with any authority to determine the constitutionality of any law. The Secretary’s duties are ministerial.
8. The Secretary of State has the ministerial responsibility of determining the timeframe during which referendum petitions challenging legislation passed by the Ohio General Assembly must be filed with his office under the terms of Section 1c of Article II of the Ohio Constitution. The Secretary of State is responsible for the performance of a number of duties with respect to the referendum process as set forth in Sec. 1g, Art. II, of the Ohio Constitution and Chapter 3519 of the Ohio Revised Code.

FACTUAL ALLEGATIONS

Sub.H.B. 319

9. On September 13, 2011, House Bill 319 was introduced in the Ohio House of Representatives.
10. On September 15, 2011, the House State Government & Ethics Committee reported House Bill 319 to the House of Representatives.
11. That same day, September 15, 2011, the Ohio House of Representatives voted 56-36 to pass House Bill 319.
12. On September 20, 2011, House Bill 319 was referred to the Ohio Senate Committee on Government Oversight and Reform.
13. On September 21, 2011, the Ohio Senate Committee on Government Oversight and Reform reported a substitute bill, Sub.H.B. 319, to the Ohio Senate.
14. That same day, September 21, 2011, the Ohio Senate voted 24-7 to pass Sub.H.B. 319.
15. That same day, September 21, 2011, the Ohio House of Representatives voted 60-35 to concur in Sub.H.B. 319 as passed by the Senate.
16. On September 26, 2011, Governor John Kasich signed Sub.H.B. 319 (“SHB 319”) into law.
17. That same day, September 26, 2011, Governor John Kasich filed SHB 319 with Ohio Secretary of State Jon Husted, who inserted the effective date of “09/26/2011” below his signature on the legislation.
18. SHB 319 repeals and replaces Ohio Rev. Code 3521.01, setting forth the apportionment of the State of Ohio into sixteen (16) congressional districts.

19. Further, Section 4 of SHB 319 amends Amended Substitute House Bill 153 of the 129th

General Assembly, the biennial budget bill, to appropriate funds which:

“shall be used in a method prescribed by the Secretary of State and transferred by the Director of Budget and management to implement this act, which includes remapping and reprecincting counties, and reprogramming database systems and voting machines. At the end of fiscal year 2012, an amount equal to the unexpended, unencumbered portion of appropriation item 911404, Mandate Assistance, is hereby reapportioned in fiscal year 2013 for the same purpose.”

20. SHB 319 was not passed as an emergency, which would have required the support of two-thirds of the members elected to each branch of the General Assembly [Sec.1d, Art.

II, Ohio Constitution.] However, Section 6 of SHB 319 provides:

“It is the intent of the General Assembly that the Congressional districts established by Sections 1 and 2 of this act take immediate effect, to enable the boards of elections to complete their required remapping and reprinting of this state so that candidates may file their candidacy petitions in the new districts, the boards may properly verify those petitions, the boards may notify electors of their new districts and, if applicable, voting locations, and elections may be conducted in those districts for the 2012 primary election.”

21. Section 7 of SHB 319 provides:

“The sections and items of law contained in this act are not subject to the referendum under the Ohio Constitution, Article II, Section 1d and section 1.471 of the Revised Code and therefore go into immediate effect when this act becomes law”

Relators' Referendum Effort

22. Relators Redfern, Turner, Clyde, Lundy, and McLin desire to exercise their constitutional right of referendum on the amendments to Ohio's permanent law, Ohio Rev. Code 3521.01, reapportioning Ohio's congressional districts and to submit such amendments to the voters of Ohio for their approval or rejection.

23. In furtherance of that end, Relators have formed a ballot issue committee, Ohioans for Fair Districts, to collect signatures for the Referendum Petition, as well as to raise and

spend funds for the referendum effort. Relators have started the process of collecting signatures on a statutorily-imposed “summary” petition, which must be submitted to and approved by the Secretary of State and Attorney General before Relators may begin collecting signatures for the Referendum Petition. [See, Ohio Rev. Code 3519.01(B).]

CLAIM FOR WRIT OF MANDAMUS

24. Relators restate the allegations contained in paragraphs 1 through 23.
25. Section 1c, Article II, of the Ohio Constitution reserves the right of referendum to the people of the State of Ohio. It provides:

“[t]he second aforesated power reserved by the people is designated the referendum, and the signatures of six per centum of the electors shall be required upon a petition to order the submission to the electors of the state for their approval or rejection, of any law, section of any law or any item in any law appropriating money passed by the general assembly. No law passed by the general assembly shall go into effect until ninety days after it shall have been filed by the governor in the office of the secretary of state, except as herein provided. When a petition, signed by six per centum of the electors of the state and verified as herein provided, shall have been filed with the secretary of state within ninety days after any law shall have been filed by the governor in the office of the secretary of state, ordering that such law, section of such law or any item in such law appropriating money be submitted to the electors of the state for their approval or rejection, the secretary of state shall submit to the electors of the state for their approval or rejection such law, section or item, in the manner herein provided, at the next succeeding regular or general election in any year occurring subsequent to one hundred twenty-five days after the filing of such petition, and no such law, section or item shall go into effect until and unless approved by a majority of those voting upon the same. If, however, a referendum petition is filed against any such section or item, the remainder of the law shall not thereby be prevented or delayed from going into effect.”

26. Section 1d, Article II, of the Ohio Constitution excludes from the referendum power

“laws providing for tax levies, appropriations for the current expenses of the state government and state institutions, and emergency laws necessary for the immediate preservation of the public peace, health, or safety.” According to this section, these laws go into immediate effect.

27. Under Sections 1c and 1d of Article II, of the Ohio Constitution, any section of a law which changes the permanent law of the state, unless passed as an emergency, is subject to referendum, even if that law also contains a section providing for a tax levy or an appropriation for the current expenses of state government and state institutions.
28. Sections 1 and 2 of SHB 319 change the permanent law of the state, Ohio Rev. Code 3521.01, and may not legally take effect until ninety (90) days after SHB 319 is filed with the Secretary of State.
29. Accordingly, and contrary to Section 7 of SHB 319, Relators have a clear legal right to submit Sections 1 and 2 of SHB 319 to Ohio voters for their approval or rejection.
30. Respondent has a clear legal duty to treat Sections 1 and 2 of SHB 319 as subject to referendum, and thus to refrain from implementing those sections for at least ninety (90) days.
31. Relators have no adequate remedy at law and relief cannot otherwise be obtained except through this Complaint for a Writ of Mandamus. [See *State ex rel. LetOhioVote.org v. Brunner*, 123 Ohio St.3d 322, 2009 Ohio 4900, ¶¶15-17 (finding that neither a declaratory judgment, nor prohibitory injunction, would be adequate to compel the Secretary of State to comply with Section 1c, Art. II, of the Ohio Constitution Ohio Rev. Code 3519.01 to treat legislative provisions as being subject to referendum and, also, that a common pleas action would not be sufficiently speedy).]

WHEREFORE, Relators request judgment in their favor and respectfully request that the

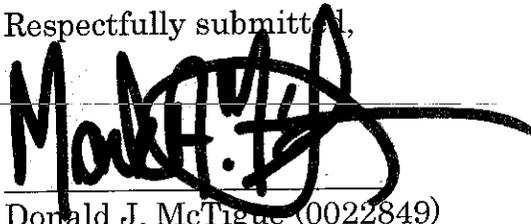
Court:

1. Issue a preemptory writ of mandamus and/or a writ of mandamus ordering Respondent Secretary of State to treat Sections 1 and 2 of Substitute House Bill

319 as subject to the constitutional right of referendum by: (i) setting forth in both the paper and electronic journals kept by the Secretary of State that sections 1 and 2 of Substitute House Bill 319 shall not be effective for ninety (90) days of the filing of Substitute House Bill 319 with the Secretary of State by the Governor, and (ii) fulfilling each of the Secretary of State's duties and obligations imposed by Chapter 149 of the Revised Code with respect to Sections 1 and 2 of Substitute House Bill 319;

2. If the Court requires further evidence or briefing, issue an alternative writ with an expedited schedule for the presentation of evidence and briefs;
3. If the Court issues the requested writ of mandamus, grant an extension of the ninety (90) day period in which to submit the referendum petition on Sections 1 and 2 of Substitute House Bill 319 to the Secretary of State from the date of the decision of this Court in order to allow Relators a meaningful opportunity to circulate a referendum petition [See, *State ex rel. LetOhioVote.org v. Brunner*, 123 Ohio St.3d 322, 2009 Ohio 4900, ¶ 54];
4. Award Relators their litigation expenses, including reasonable attorney fees and costs, incurred in bringing this action; and
5. Award Relators such further relief, at law or in equity, to which they are or may be entitled.

Respectfully submitted,

A large, stylized handwritten signature in black ink, appearing to read 'Mark A. McGinnis', is written over a horizontal line.

Donald J. McTigue (0022849)
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