

IN THE SUPREME COURT OF OHIO

CHARLES E. WILSON, et al.,	:	
	:	Case No. 2012-0019
Relators,	:	
	:	
v.	:	Original Action
	:	
GOVERNOR JOHN KASICH, et al.,	:	
	:	
Respondents.	:	

**SECRETARY OF STATE JON HUSTED'S
MEMORANDUM IN OPPOSITION TO THE RELATORS'
MOTION FOR AN ORDER PROTECTING THE COURT'S
JURISDICTION**

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Relators have unreasonably delayed filing this lawsuit and now seek an order from this Court to put the March 6, 2012 primary election on hold. Realtors question why the Secretary of State issued Directive 2012-03 after this lawsuit was filed. Relators fail to recognize that the Secretary has issued several directives related to the March 6, 2012 primary election, consistent with Ohio and federal law in order to ensure that ballots are accurate and ready to be mailed to military voters by January 21, 2012 and available for all voters starting January 30, 2012. It is Relators’ delay, not the Secretary of State’s directive, that prohibits resolution of this case on the merits. By unreasonably delaying the filing of this lawsuit and then filing a motion to prohibit the Secretary of State from executing his statutory duties necessary to prepare for the primary election, it is clear that Realtors’ intent is to cause electoral chaos.

I. Required Steps To Prepare For The March 6, 2012 Primary Election

In preparation for the March 6, 2012 primary election, the Secretary of State, county boards of elections, and candidates have complied with many statutory requirements and deadlines. Relators’ allegation fails to acknowledge the fact that the Secretary of State, county

boards of elections, and candidates have been preparing, and continue to prepare for the March 6, 2012 primary election as required by law.

The Ohio Apportionment Board finalized the State's new House and Senate districts on September 30, 2011. Between September 30 and December 7, 2011, candidates for the new House and Senate districts circulated their declarations of candidacies and petitions to secure the required number of valid signatures and qualify for the March 6, 2012 primary election ballot. Consistent with Ohio law, partisan candidates for Ohio House and Senate filed their declarations of candidacies and petitions with their local county boards of elections on or before December 7, 2012. *Damschroder Aff.* at ¶8.

While candidates were collecting signatures, the county boards of elections were programming the new district boundaries into their computer systems in order to have the process completed by December 7, 2011, the deadline established through Secretary of State Directive 2011-32. *Id.* at ¶7. The county boards of elections needed to complete the remapping of the House and Senate Districts in order to be able to verify that the electors who signed the candidates' petitions actually resided within the boundaries of the House or Senate district. After Directive 2011-32 was issued on October 13, 2011, it was published on the Secretary of State's website as required by law. R.C. 3501.05(X). Programming new districts is a time consuming process. First, county boards of elections receive the legal descriptions, maps, and possibly geographic information systems ("GIS") files for the new districts. *Damschroder Aff.* at ¶7a. Then the county boards of elections must analyze the impact of those changes, reprogram their central tabulator of their voting system, and reprogram their voter registration database/election management system. *Id.* at ¶7b.

After the December 7, 2011 filing deadline, county boards of elections examined the declarations of candidacies and petition signatures for individual candidates in order to determine whether the board should certify that candidate to the ballot. *Id.* at ¶9. County boards of elections were required determine the validity of candidate petitions by December 19, 2011. *Id.* and R.C. 3513.05, ¶12. As provided in R.C. 3513.05, the deadline to file a protest with the county board of elections against a partisan candidate was December 23, 2011 at 4 p.m. *Id.* at ¶11.

Secretary Husted has issued several directives during 2011 and early January 2012 to ensure that county boards of elections are prepared to complete the work necessary to hold the March 6, 2012 primary election, not in order to make it “more difficult for this Court to fully resolve this matter” as Relators allege. (Relators’ Motion Protect Juris., p. 2). Directive 2011-32 was issued October 13, 2011 and included information on many topics, including the implementation of the new Ohio House and Senate Districts. On December 27, 2011, Directive 2011-45 was issued certifying the form of the ballot to boards of elections as required by R.C. 3513.13 and 3513.05. Directive 2012-03 (which Relators cite in their motion) was issued on January 11, 2012 to certify the names of candidates as required by R.C. 3513.05 and Directive 2011-41. See *Damschroder affidavit*, ¶12.

County boards of elections then had just nine days to finalize, proof, and send the final ballot layout to printers who then must to print, perforate, pad, package, and ship ballots back to the county boards of elections before the January 21, 2012 deadline for ballots being ready to mail to military voters. *Id.* at ¶¶13-15. Every action taken by the Secretary of State was in furtherance of preparing for the primary election, not to hinder Relators’ claims.

II. Relators' unnecessary delay, not the Secretary of State's directives, threatens this Court's ability to adjudicate this case based on the merits and risks causing irreversible harm to Ohio voters.

Relators waited more than three months to file this lawsuit. Indeed, ballots for the March 6, 2012 election must be prepared for military voters less than 48 hours after this memorandum is filed and for all other voters 10 days later. As articulated in the Respondents' Motion for Judgment on the Pleadings, this case should not be adjudicated on the merits, but rather should be dismissed based on laches. The burden to prove that laches is inapplicable in certain elections cases falls upon the Relators. *State ex rel. Fishman v. Lucas County Board of Elections* (2007), 116 Ohio St.3d 19, 21, 2007 Ohio 5583 ¶10. Because of the problems inherent in expedited elections matters, this Court has held that a delay of as little as nine days is sufficient to trigger laches and bar this Court from hearing the case. *State ex rel. Landis v. Morrow County Bd. of Elections* (2000), 88 Ohio St. 3d 187, 189 (citing *Paschal v. Cuyahoga Cty. Bd. of Elections* (1995), 74 Ohio St. 3d 141).

As noted above and throughout Respondents' Motion for Judgment on the Pleadings, the Ohio Apportionment Board adopted new legislative districts for the Ohio House and the Ohio Senate on September 30, 2011. Those districts were published on the Secretary of State's website and in newspapers across the State. The Relators knew the boundaries of those districts, yet waited more than three months to file this action. Instead of trying to promptly challenge these districts, the Relators sat on their hands while the Secretary of State issued directives necessary to help county boards of elections prepare for the March 6, 2012 primary election and the county boards of elections diligently updated their voting systems, accepted candidate declarations of candidacies and petitions, reviewed and certified these declarations of candidacies, and prepared the list of candidates to appear on the primary ballot.

Relators could have challenged the Apportionment Board plan as soon as it was adopted on September 30, 2011, or shortly thereafter. Had they challenged the plan earlier, the Court would have had a meaningful opportunity to review their challenge and the Respondents would have had a meaningful opportunity to defend against their challenge. If this Court were to issue the relief sought by the Relators it would prevent the Secretary of State and county boards of elections from continuing to prepare for and ultimately holding the 2012 primary election. This Court should reject the Relators' motion and allow the Secretary and county boards of election to continue preparation for the upcoming election and ensure that Ohio voters can cast their ballots for the March 6, 2012 primary election.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing *Respondent Husted's Memo Contra* was served on this 19th day of January 2012, by electronic mail and U.S. mail, postage prepaid, to:

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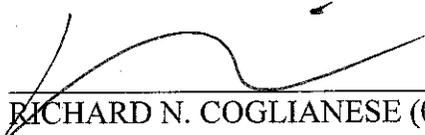
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