

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, ex rel. TIMOTHY
A. SWANSON, et al.,

Relators,

vs.

STARK COUNTY DEMOCRATIC
CENTRAL COMMITTEE, et al.,

Respondents.

CASE NO. 2013-1822

ORIGINAL ACTION IN
MANDAMUS

RESPONSE IN OPPOSITION TO MOTION TO STRIKE
RELATORS' MOTION TO EXPEDITE WRIT OF MANDAMUS

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RESPONSE IN OPPOSITION TO MOTION TO STRIKE

This case addresses the enforcement of statutory appointment authority impressed upon the Respondents by R.C. 305.02. Because the context involves a vacancy in the office of county sheriff, the specific statutory requirements for one to receive such appointment, set forth in R.C. 311.01, are also essential to the determination of this case.

The procedures for appointment to public office complement Ohio election law in many respects. Thus, the crux of the Relators' Motion to Expedite Writ of Mandamus in this case is the suggestion to the Court that this case should be treated and scheduled as an expedited election case would be handled. As reflected in the Complaint, the Memorandum in Support of Writ, as well as the other filings to date by the parties, there appear to be no material factual disputes. Rather, clearly-defined, legal questions control.

Relators Swanson and Darrow maintain that the only vacancy which remains to be filled by appointment is that created when officer-elect, Michael A. McDonald, announced that he was unable to assume office in January of 2013. The vacancy occurred January 7, 2013 and the applicable qualification date for appointment to that vacancy was February 6, 2013. "Here, McDonald indicated before the beginning of his term that he was unable to assume office, so the vacancy occurred on January 7, the first day of McDonald's term. And 30 days after that date is the 'qualification date' February 6, 2013." *State ex rel. Swanson v. Maier*, ___ Ohio St. 3d ___, 2013-Ohio-4767, ¶28.

Respondents on the other hand claim that there was a "vacancy caused by the removal of Maier" which resulted from the judicial ouster of Maier by this Court. Based upon that premise, the Respondents then further contend that this "new vacancy" allowed for an "updated 30 day

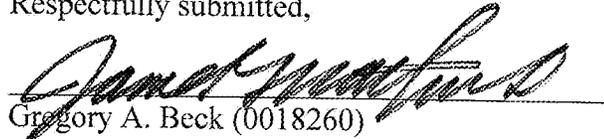
qualification date” extending from the Court’s decision in *Maier*. The Respondents have refused to recognize that the appointment authority they possess is confined to consideration of qualified candidates who satisfied the applicable qualification date of February 6, 2013 for the McDonald vacancy; instead, Respondents proceeded with consideration of applications meeting the so-called “updated” qualification date they created, for what the Respondents deem as the “Maier vacancy.” The legal issues implicated in this case are squarely presented and, for that additional reason, the Relators proposed expediting this case.

The Relators patterned their motion after the process very recently endorsed by the Court in the case of *State ex rel. Cleveland Right to Life, Inc., et al. v. State of Ohio Controlling Board, et al.*, Case No. 2013-1668. In *Cleveland Right to Life*, the relators have commenced an action in mandamus and prohibition challenging whether the executive branch of the state can adopt the expansion of Medicaid spending. The complaint therein was filed on October 22, 2013, and on October 24, 2013, the relators filed a motion to expedite, relying upon former S.Ct.Prac.R. XIV, Section 4(c). Relators requested that, given the subject matter of the case, the Court place the case on a calendar substantially identical to that used in election matters. The Court sustained the motion to expedite by Entry filed on October 31, 2013. Here, Relators request nothing more.

While the Respondents have already proceeded with their meeting on December 11, 2013, and have already reappointed George T. Maier as Stark County Sheriff, that does not dispense with the need to proceed to the legal issues and claims alleged in this case. Relators maintain that this is still an appropriate case to place under an expedited calendar. The motion to expedite concerns only a schedule for the orderly advancement and determination of this case, and it does not seek any form of other, ancillary or injunctive relief.

WHEREFORE, Relators, Timothy A. Swanson and Lou Darrow, respectfully request that the Respondents' motion to strike be overruled.

Respectfully submitted,



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PROOF OF SERVICE

Copies of the foregoing response in opposition to motion to strike were served by regular U.S. mail and e-mail transmittal this 19~~th~~ day of December, 2013, to:

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