

IN THE SUPREME COURT OF OHIO

STATE EX REL. MARK H. CURTIS,) Supreme Court Case No. 2015-1426
10472 Woodchuck Ct.)
Twinsburg, OH 44087)
)
Relator,) **ORIGINAL ACTION IN**
) **MANDAMUS – Expedited Election**
v.) **Case Under S.Ct. Prac. R. 12.08**
)
SUMMIT COUNTY BOARD OF)
ELECTIONS,)
470 Grant Street)
Akron, OH 44311)
)
Respondent.

RELATOR MARK H. CURTIS' MERIT BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	ii
INTRODUCTION.....	1
STATEMENT OF FACTS.....	1
ARGUMENT.....	3
I. <u>PROPOSITION OF LAW NO. 1:</u>	3
UNDER THE PLAIN LANGAUGE OF R.C. 3501.11(K) AND R.C. 3501.39, THE BOARD OF ELECTIONS MUST CONSIDER RELATOR’S PART PETITION 1.	
II. <u>PROPOSITION OF LAW NO. 2:</u>	7
A BOARD OF ELECTIONS ABUSES ITS DISCRETION AND ACTS IN A MANNER CLEARLY CONTRARY TO LAW BY IMPOSING A REQUIREMENT FOR A CIRCULATOR’S STATEMENT THAT WOULD FORCE THAT CANDIDATE TO COMMIT ELECTION FALSIFICATION IN ORDER TO HAVE THE PETITION CONSIDERED BY THE BOARD OF ELECTIONS.	
CONCLUSION.....	9
CERTIFICATE OF SERVICE.....	10
APPENDIX	<u>Appx. Page</u>
R.C. § 3501.11.....	1
R.C. § 3501.38.....	4
R.C. § 3501.39.....	7
State ex rel. Schulman v. Stark Cty. Bd. Of Elections.....	9

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page</u>
<i>Rust v. Lucas County Board of Elections</i> , 108 Ohio St.3d 139, 2005-Ohio-5795, 841 N.E.2d 766.....	4, 5, 8
<i>State ex rel. Allen v. Warren Cty. Bd. of Elections</i> , 115 Ohio St.3d 186, 2007-Ohio-4752, 874 N.E.2d 507.....	3, 4
<i>State ex rel. Brown v. Summit Cty. Bd. of Elections</i> , 46 Ohio St.3d 166, 545 N.E.2d 1256 (1989).....	3
<i>State ex rel. Mirlisena v. Hamilton Cty. Bd. of Elections</i> , 67 Ohio St.3d 597, 622 N.E.2d 329 (1993).....	8
<i>State ex rel. Ruehlmann v. Luken</i> , 65 Ohio St.3d 1, 598 N.E.2d 1149 (1992).....	7
<i>State ex rel. Schulman v. Stark County Bd. of Elections</i> , Stark C.P. No. 2015CV1545, 2015 WL 4778351 (July 24, 2015).....	6
<i>State ex rel. Schwarz v. Hamilton County Bd. of Elections</i> , 173 Ohio St. 321, 181 N.E. 2d 888 (1962).....	6, 7
<i>State ex rel. Senn v. Cuyahoga Cty. Bd. of Elections</i> , 51 Ohio St.2d 173, 367 N.E.2d 879 (1977).....	7
<i>Stern v. Cuyahoga Cty. Bd. of Elections</i> , 14 Ohio St.2d 175, 237 N.E.2d 313 (1968)....	7
 <u>Statutes</u>	
R.C. § 3501.11.....	4
R.C. § 3501.38.....	4, 5, 6, 7, 8
R.C. § 3501.39.....	4

INTRODUCTION

The single legal issue herein is whether Respondent Summit County Board of Elections (“Board of Elections”) had a clear legal duty to consider Part Petition 1 of Relator’s Nominating Petition (hereafter “Petition 1”), where the circulator of Petition 1 attested that there were twenty (20) signatures from qualified electors on the Petition and the circulator did not include in that count a twenty-first (21st) signature that had been crossed out by the signer when the signer was informed that he must be a registered voter to sign the petition.

STATEMENT OF FACTS

The material facts of the Expedited Election Case are set forth in the Verified Complaint (“Compl.”), the Verification Affidavit of Mark H. Curtis (“Curtis Aff.”), the nominating petitions attached to the Curtis Aff. (Exh. A-1 through A-12), the Affidavit of Earl Shaffer (“Shaffer Aff.”) and the partial transcript of the August 28, 2015 meeting of the Summit County Board of Elections (“Transcript”), all of which have been separately filed as Relator’s Evidence.

As set forth therein, it is undisputed that Relator Mark H. Curtis (“Curtis”) is a qualified elector residing within the territory of the Twinsburg City School District. (Compl. ¶ 2; Answer ¶ 1). In April 2015, Curtis began circulating nominating petitions for his candidacy for election as a Member of the Twinsburg City School District Board of Education (hereinafter “Twinsburg School Board”). (Compl. ¶ 5). On April 13, 2015, Curtis approached Earl Shaffer, a resident of Twinsburg, to request that Shaffer sign Curtis’ nominating petition. (Compl. ¶ 6, Shaffer Aff. ¶ 2). Shaffer signed his name on line 7 of Petition 1. (Compl. ¶ 7, Exh. A-2). As Shaffer was signing Petition 1, Curtis asked Shaffer if he was a registered voter. (Compl. ¶ 7, Shaffer Aff. ¶ 3). Shaffer responded that he was not a registered voter at his current address and immediately stopped filling out the remainder of line 7, leaving the “City,” “County,” and “Date of Signing”

spaces blank. (Compl. ¶ 7, Exh. A-2). Shaffer then struck through his name with the intent of removing it from consideration on the petition. (Compl. ¶ 7; Shaffer Aff. ¶ 4; Exh. A-2). Another individual later signed within line 7 of Petition 1, below the stricken signature of Shaffer. (Compl. ¶ 7).

On June 26, 2015, Curtis filed with the Board of Elections a Nominating Petition and Statement of Candidacy for Member of the Twinsburg City School District, which consisted of six part petitions, including Petition 1. (Compl. ¶ 8; Exh. A-1 through A-12; Answer ¶ 6). The Board of Elections refused to review the signatures on Petition 1 and declared Petition 1 invalid. (Compl. ¶ 9; Answer ¶ 6). The Board of Elections reviewed the signatures on five additional part petitions submitted by Relator and determined that there were signatures from sixty-six (66) qualified electors. (Compl. ¶ 9; Answer ¶ 6).

On August 17, 2015, the Board of Elections, at its regularly scheduled meeting, refused to certify Curtis' candidacy, determining that Curtis' petitions fell short of the required seventy-five (75) signatures of qualified electors. (Compl. ¶ 10; Answer ¶ 6). On the evening of August 17, 2015 Curtis was notified of the Board of Elections' action. (Compl. ¶ 11; Answer ¶ 6). Curtis was informed that Petition 1 was invalidated in its entirety and none of the signatures affixed thereto were validated. (Compl. ¶ 11; Answer ¶ 6). Curtis was further informed that Petition 1 was invalidated in its entirety because he, as circulator of Petition 1, had written that there were twenty (20) signatures from qualified electors on Petition 1 and the Board of Elections had determined there were twenty-one (21) signatures on Petition 1. (Compl. ¶ 11; Answer ¶ 6).

On August 19, 2015, Curtis submitted a letter to the Board of Elections requesting reconsideration of the Board of Election's decision to refuse to certify Curtis' candidacy.

(Compl. ¶ 12; Exh. B to Curtis Aff.; Answer ¶ 6). In response to Curtis' August 19, 2015 request, Curtis was informed that the Board of Elections would accept argument and consider the matter at the Board of Elections' August 28, 2015 meeting. (Compl. ¶ 13; Answer ¶ 6). On August 28, 2015, Curtis spoke to the Board to describe what had occurred with the Shaffer signature and, through counsel, presented argument and the Shaffer Affidavit to the Board of Elections. However, the Board of Elections declined to reconsider its August 17, 2015 decision to refuse to consider Petition 1 and certify Curtis' candidacy. (Compl. ¶ 14; Shaffer Aff.; Transcript).

ARGUMENT

I. PROPOSITION OF LAW NO. 1: UNDER THE PLAIN LANGAUGE OF R.C. 3501.11(K) AND R.C. 3501.39, THE BOARD OF ELECTIONS MUST CONSIDER RELATOR'S PART PETITION 1.

It is well established that mandamus is the proper remedy to compel a board of elections to accept and certify a nominating petition that satisfies all of the statutory requirements for a particular candidacy. *State ex rel. Allen v. Warren Cty. Bd. of Elections*, 115 Ohio St. 3d 186, 2007-Ohio-4752, 874 N.E.2d 507, ¶ 19-21; *see also State ex rel. Brown v. Summit Cty. Bd. of Elections*, 46 Ohio St.3d 166, 167, 545 N.E.2d 1256 (1989). As this Court held in *Allen*, a writ of mandamus must be granted if the Relator establishes: (1) "a clear legal right to certification" of his candidacy; (2) "a corresponding legal duty on the part of the board of elections" to certify his candidacy; and (3) the "lack of an adequate remedy in the ordinary course of law." *Allen*, 2007-Ohio 4752, at ¶ 8.

Here, given the close proximity of the November 3rd general election, Curtis clearly lacks an adequate remedy at law. *Id.* Thus, as in *Allen*, Curtis is entitled to a Writ of Mandamus if he can establish that his Petition 1 satisfies all of the applicable statutory requirements, and that the

Board of Elections abused its discretion or clearly disregarded applicable law by refusing to consider Petition 1. *Id.* at ¶ 9.

It is the Board of Elections duty to “review, examine, and certify the sufficiency and validity of petitions and nominating papers. . . .” R.C. § 3501.11(K). The Board of Elections shall accept any petition unless “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.” R.C. § 3501.39(A)(3). As such, the Board had a clear legal duty to accept Curtis’ Petition 1 and count the valid signatures on that Petition, unless Petition 1 was in some way completed in a manner that violates Ohio law.

The Board of Elections refused to validate any of the signatures on Curtis’ Petition 1 on the basis that Petition 1 violated R.C. § 3501.38(E)(1), which states:

On each petition paper, the circulator shall indicate the number of signatures contained on it, and *shall sign a statement made under penalty of election falsification that the circulator witnessed the affixing of every signature, that all signers were to the best of the circulator’s knowledge and belief qualified to sign,* and that every signature is to the best of the circulator’s knowledge and belief the signature of the person whose signature it purports to be or of an attorney in fact acting pursuant to section 3501.382 of the Revised Code. On the circulator’s statement for a declaration of candidacy . . . , the circulator shall identify the circulator’s name, the address of the circulator’s permanent residence, and the name and address of the person employing the circulator to circulate the petition.

(Emphasis added).

Specifically, the Board claims that there were twenty-one (21) signatures, including Shaffer’s, on the Petition and that Curtis, as the circulator, stated in the Circulator’s Statement that there were only twenty (20) signatures. The Board then relied on this Court’s decision in *Rust v. Lucas County Board of Elections*, 108 Ohio St.3d 139, 2005-Ohio-5795, 841 N.E.2d 766 to invalidate the entire Petition 1. In *Rust*, the prospective candidate filed part petitions that included more signatures than the number indicated on the circulator’s statement. *Rust*, at ¶ 11.

This Court held that the board of elections properly invalidated the entire part-petition. *Id.* at ¶ 13.

However, *Rust* is inapplicable to this matter and the Board of Elections reliance on that case is *Rust* is contrary to law. Here, the undisputed evidence shows that Curtis did not consider Shaffer's signature when completing the Circulator's Statement because: (1) Shaffer had stricken his name from the petition; (2) Curtis had witnessed Shaffer's striking of his name; and (3) therefore, Curtis knew that Shaffer was not a qualified elector and was ineligible to sign his nominating petition.

There was no such evidence in *Rust*. Neither Rust nor the signers of his petition had made any attempt to strike the disputed signatures. To the contrary, this Court held that Rust's petitions would have complied with the requirements of R.C. 3501.38(E)(1) if the signatures of persons he had discovered to be unqualified would have been stricken prior to submitting the petitions to the board of elections. *Rust*, at ¶ 14; R.C. § 3501.38(G) ("The circulator of a petition may, before filing it in a public office, strike from it any signature the circulator does not wish to present as part of the petition.").

In this case, Curtis did exactly as this Court suggested Rust should have done in that matter. It is undisputed that as soon as Curtis informed Shaffer that he must be a registered voter to sign the nominating petition, Shaffer stopped filling out the form. He left the "City", "County" and "Date of Signing" boxes on the form blank and struck through his signature. As such, Curtis' attestation that there were twenty (20) signatures from qualified electors on Petition 1 was absolutely accurate and the Board of Elections abused its discretion and acted contrary to law when they refused to consider any of the signatures on Petition 1.

Further, at its August 28, 2015 Board Meeting, Curtis presented to the Board the uncontested, sworn affidavit of Mr. Shaffer, wherein he testified that his signature was indeed crossed out. (Shaffer Aff. at ¶ 4, Transcript at p. 12, lines 2-17; p. 13, lines 24-25; p. 16, lines 1-11). Therein, Mr. Shaffer testified: “I struck through my name in an effort to remove it for consideration on the petition. Mr. Curtis and I had a mutual understanding that my signature would not be counted on the petition and that I should contract him if my voting status changes.” Shaffer Aff. at ¶ 4).

Importantly, there is nothing in Ohio law that defines how one strictly complies with the procedure of “striking” or “omitting” a signature pursuant to R.C. 3501.38(G). *State ex rel. Schulman v. Stark County Bd. of Elections*, Stark C.P. No. 2015CV1545, 2015 WL 4778351 (July 24, 2015) at *3 (attached at Appx. p. 9). Thus, the fact that Mr. Shaffer’s signature was struck or omitted, is supported by: (1) the line through Mr. Shaffer’s signature, which is supported by the uncontested, sworn affidavit of Mr. Shaffer, wherein he attests that his signature was struck or omitted from the part petition; (2) the undisputed fact that Mr. Shaffer failed to fill in his city of residence, his county of residence, and the date of the signing; (3) the undisputed fact that another elector, Jacqueline Lawson, completed line number 7 under the stricken signature of Mr. Shaffer; and (4) the undisputed fact that Curtis specifically omitted Mr. Shaffer’s signature when he certified that the part petition contained only 20 signatures.

In *State ex rel. Schwarz v. Hamilton County Bd. of Elections*, 173 Ohio St. 321, 181 N.E. 2d 888 (1962), the Supreme Court was faced with nearly identical circumstances. In that case, the board of elections similarly held invalid a part petition where the petition included 28 signatures, but only 27 were noted in the circulator’s attestation. *Id.* at 323. The Board accepted additional evidence at a subsequent proceeding, which included the “uncontradicted, and

plausible explanation under oath [that] was made to respondents.” *Id.* The Supreme found: “we think that the determination made by the board against the validity of the petition was too technical, unreasonable and arbitrary- in short, an abuse of discretion – and that upon the facts which respondent had in its possession it was under the clear legal duty to approve and accept the petition and place relator’s name on the primary ballot as the candidate for nomination to the office he seeks.” *Id.*

Herein, the Board similarly heard argument from Curtis and reviewed the affidavit of Shaffer at the August 28, 2015 meeting. (Transcript). Like the board in *Schwarz*, the Board of Elections herein simply ignored this uncontested account of what transpired and refused to reconsider their decision to deny Curtis’ candidacy. (Transcript at p. 22, lines 15-24).

As this Court stated in *State ex rel. Ruehlmann v. Luken*, 65 Ohio St.3d 1, 3, 598 N.E.2d 1149, 1151 (1992), “[i]n general, election statutes must be strictly complied with, *State ex rel. Senn v. Cuyahoga Cty. Bd. of Elections*, 51 Ohio St.2d 173, 174, 367 N.E.2d 879, 880 (1977). Nevertheless, courts must avoid unduly technical interpretations that impede the public policy favoring free, competitive elections. *Stern v. Cuyahoga Cty. Bd. of Elections*, 14 Ohio St.2d 175, 184, 237 N.E.2d 313, 319 (1968).” With the undisputed evidence set forth above, the Board of Elections refusal to consider Curtis’ Petition 1 was both an abuse of discretion and was contrary to law.

II. PROPOSITION OF LAW NO. 2: A BOARD OF ELECTIONS ABUSES ITS DISCRETION AND ACTS IN A MANNER CLEARLY CONTRARY TO LAW BY IMPOSING A REQUIREMENT FOR A CIRCULATOR’S STATEMENT THAT WOULD FORCE THAT CANDIDATE TO COMMIT ELECTION FALSIFICATION IN ORDER TO HAVE THE PETITION CONSIDERED BY THE BOARD OF ELECTIONS.

Respondent’s position would require Curtis to violate Ohio law and commit election fraud in order for his Petition 1 to be considered. R.C. § 3501.38(F) states that “if a circulator

knowingly permits an unqualified person to sign a petition paper . . . that petition paper is invalid.” If Curtis had counted Shaffer’s signature after learning that Shaffer was not a registered voter and after Shaffer’s signature had been stricken, Curtis would have clearly been in violation of this provision of Ohio law.

Similarly, the Circulator’s Statement required Curtis to “declare under penalty of election falsification” that “all signers were to the best of my knowledge and belief qualified to sign.” (Exh. A-2). This attestation is accompanied, as required by R.C. § 3501.38(J), by a warning in boldface capital letters, reading:

WHOEVER COMMITS ELECTION FALSIFICATION IS GUILTY OF A FELONY OF THE FIFTH DEGREE.

(Exh. A-2).

Requiring a candidate to commit election falsification in order to have a petition considered is, of course, an absurd result. “It is the duty of any court, when construing a statute, to give effect to all of the pronouncements of the statute and to render the statute compatible (to harmonize) with other and related enactments whenever and wherever possible.” *State ex rel. Mirlisena v. Hamilton Cty. Bd. of Elections*, 67 Ohio St. 3d 597, 599, 622 N.E.2d 329, 330 (1993).

This Court’s instruction at ¶ 14 of *Rust*, allowing for signatures that are stricken to be omitted from the circulator’s count, harmonizes the penalties for knowingly permitting an unqualified person to sign a nominating petition as set out in R.C. §§ 3501.38(F) and (J) with the requirement of accuracy in the number of declared signatures in R.C. § 3501.38(E). Here, Curtis honestly attested to the number of non-crossed out signatures. The Board of Elections reliance on *Rust*, under the facts of this case, is clearly contrary to law.

CONCLUSION

For all of the foregoing reasons, Relator Mark H. Curtis respectfully requests that this Court grant a Writ of Mandamus to compel the Summit County Board of Elections to consider his Petition 1 and, upon their finding of a total of seventy-five (75) valid signatures on all petitions, to place Curtis' name on the November 3, 2015 general election ballot as a candidate for the Office of Member of the Twinsburg City School District Board of Education.

Respectfully submitted,

/s David T. Andrews

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COUNSEL FOR RELATOR

CERTIFICATE OF SERVICE

A copy of Relator Mark. H. Curtis' Merit Brief has been served by operation of this Court's electronic filing system and by electronic mail to counsel for Respondent at simsc@prosecutor.summitoh.net on this 10th day of September, 2015.

/s David T. Andrews _____
Counsel for Relator

APPENDIX

Baldwin's Ohio Revised Code Annotated Title XXXV. Elections (Refs & Annos) Chapter 3501. Election Procedure; Election Officials (Refs & Annos) Board of Elections
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R.C. § 3501.11

3501.11 Duties of board

Effective: February 25, 2014

Currentness

Each board of elections shall exercise by a majority vote all powers granted to the board by Title XXXV of the Revised Code, shall perform all the duties imposed by law, and shall do all of the following:

- (A) Establish, define, provide, rearrange, and combine election precincts;
- (B) Fix and provide the places for registration and for holding primaries and elections;
- (C) Provide for the purchase, preservation, and maintenance of booths, ballot boxes, books, maps, flags, blanks, cards of instructions, and other forms, papers, and equipment used in registration, nominations, and elections;
- (D) Appoint and remove its director, deputy director, and employees and all registrars, precinct election officials, and other officers of elections, fill vacancies, and designate the ward or district and precinct in which each shall serve;
- (E) Make and issue rules and instructions, not inconsistent with law or the rules, directives, or advisories issued by the secretary of state, as it considers necessary for the guidance of election officers and voters;
- (F) Advertise and contract for the printing of all ballots and other supplies used in registrations and elections;
- (G) Provide for the issuance of all notices, advertisements, and publications concerning elections, except as otherwise provided in division (G) of section 3501.17 and divisions (F) and (G) of section 3505.062 of the Revised Code;
- (H) Provide for the delivery of ballots, pollbooks, and other required papers and material to the polling places;
- (I) Cause the polling places to be suitably provided with voting machines, marking devices, automatic tabulating equipment, stalls, and other required supplies. In fulfilling this duty, each board of a county that uses voting machines, marking devices, or automatic tabulating equipment shall conduct a full vote of the board during a public session of the board on the allocation and distribution of voting machines, marking devices, and automatic tabulating equipment for each precinct in the county.

- (J) Investigate irregularities, nonperformance of duties, or violations of Title XXXV of the Revised Code by election officers and other persons; administer oaths, issue subpoenas, summon witnesses, and compel the production of books, papers, records, and other evidence in connection with any such investigation; and report the facts to the prosecuting attorney or the secretary of state;
- (K) Review, examine, and certify the sufficiency and validity of petitions and nomination papers, and, after certification, return to the secretary of state all petitions and nomination papers that the secretary of state forwarded to the board;
- (L) Receive the returns of elections, canvass the returns, make abstracts of them, and transmit those abstracts to the proper authorities;
- (M) Issue certificates of election on forms to be prescribed by the secretary of state;
- (N) Make an annual report to the secretary of state, on the form prescribed by the secretary of state, containing a statement of the number of voters registered, elections held, votes cast, appropriations received, expenditures made, and other data required by the secretary of state;
- (O) Prepare and submit to the proper appropriating officer a budget estimating the cost of elections for the ensuing fiscal year;
- (P) Perform other duties as prescribed by law or the rules, directives, or advisories of the secretary of state;
- (Q) Investigate and determine the residence qualifications of electors;
- (R) Administer oaths in matters pertaining to the administration of the election laws;
- (S) Prepare and submit to the secretary of state, whenever the secretary of state requires, a report containing the names and residence addresses of all incumbent county, municipal, township, and board of education officials serving in their respective counties;
- (T) Establish and maintain a voter registration database of all qualified electors in the county who offer to register;
- (U) Maintain voter registration records, make reports concerning voter registration as required by the secretary of state, and remove ineligible electors from voter registration lists in accordance with law and directives of the secretary of state;
- (V) Give approval to ballot language for any local question or issue and transmit the language to the secretary of state for the secretary of state's final approval;
- (W) Prepare and cause the following notice to be displayed in a prominent location in every polling place:

“NOTICE

Ohio law prohibits any person from voting or attempting to vote more than once at the same election.

Violators are guilty of a felony of the fourth degree and shall be imprisoned and additionally may be fined in accordance with law.”

(X) In all cases of a tie vote or a disagreement in the board, if no decision can be arrived at, the director or chairperson shall submit the matter in controversy, not later than fourteen days after the tie vote or the disagreement, to the secretary of state, who shall summarily decide the question, and the secretary of state's decision shall be final.

(Y) Assist each designated agency, deputy registrar of motor vehicles, public high school and vocational school, public library, and office of a county treasurer in the implementation of a program for registering voters at all voter registration locations as prescribed by the secretary of state. Under this program, each board of elections shall direct to the appropriate board of elections any voter registration applications for persons residing outside the county where the board is located within five days after receiving the applications.

(Z) On any day on which an elector may vote in person at the office of the board or at another site designated by the board, consider the board or other designated site a polling place for that day. All requirements or prohibitions of law that apply to a polling place shall apply to the office of the board or other designated site on that day.

(AA) Perform any duties with respect to voter registration and voting by uniformed services and overseas voters that are delegated to the board by law or by the rules, directives, or advisories of the secretary of state.

CREDIT(S)

(2013 S 109, eff. 2-25-14; 2012 S 295, eff. 8-15-12; 2010 H 48, eff. 7-2-10; 2007 H 119, eff. 9-29-07; 2006 H 3, eff. 5-2-06; 2001 H 5, eff. 8-28-01; 1997 H 215, eff. 6-30-97; 1995 H 99, eff. 8-22-95; 1994 S 300, eff. 1-1-95; 1986 H 555, eff. 2-26-86; 1980 H 1062; 1977 S 125; 132 v H 1; 131 v S 257; 125 v 713; 1953 H 1; GC 4785-13)

Notes of Decisions (119)

R.C. § 3501.11, OH ST § 3501.11

Current through 2015 Files 1 to 10, and 12 to 24 of the 131st GA (2015-2016).

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Baldwin's Ohio Revised Code Annotated
Title XXXV. Elections (Refs & Annos)
Chapter 3501. Election Procedure; Election Officials (Refs & Annos)
Candidacy

R.C. § 3501.38

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

Effective: June 21, 2013

Currentness

All declarations of candidacy, nominating petitions, or other petitions presented to or filed with the secretary of state or a board of elections or with any other public office for the purpose of becoming a candidate for any nomination or office or for the holding of an election on any issue shall, in addition to meeting the other specific requirements prescribed in the sections of the Revised Code relating to them, be governed by the following rules:

(A) Only electors qualified to vote on the candidacy or issue which is the subject of the petition shall sign a petition. Each signer shall be a registered elector pursuant to section 3503.01 of the Revised Code. The facts of qualification shall be determined as of the date when the petition is filed.

(B) Signatures shall be affixed in ink. Each signer may also print the signer's name, so as to clearly identify the signer's signature.

(C) Each signer shall place on the petition after the signer's name the date of signing and the location of the signer's voting residence, including the street and number if in a municipal corporation or the rural route number, post office address, or township if outside a municipal corporation. The voting address given on the petition shall be the address appearing in the registration records at the board of elections.

(D) Except as otherwise provided in section 3501.382 of the Revised Code, no person shall write any name other than the person's own on any petition. Except as otherwise provided in section 3501.382 of the Revised Code, no person may authorize another to sign for the person. If a petition contains the signature of an elector two or more times, only the first signature shall be counted.

(E)(1) On each petition paper, the circulator shall indicate the number of signatures contained on it, and shall sign a statement made under penalty of election falsification that the circulator witnessed the affixing of every signature, that all signers were to the best of the circulator's knowledge and belief qualified to sign, and that every signature is to the best of the circulator's knowledge and belief the signature of the person whose signature it purports to be or of an attorney in fact acting pursuant to section 3501.382 of the Revised Code. On the circulator's statement for a declaration of candidacy or nominating petition for a person seeking to become a statewide candidate or for a statewide initiative or a statewide referendum petition, the circulator shall identify the circulator's name, the address of the circulator's permanent residence, and the name and address of the person employing the circulator to circulate the petition, if any.

(2) As used in division (E) of this section, "statewide candidate" means the joint candidates for the offices of governor and lieutenant governor or a candidate for the office of secretary of state, auditor of state, treasurer of state, or attorney general.

(F) Except as otherwise provided in section 3501.382 of the Revised Code, if a circulator knowingly permits an unqualified person to sign a petition paper or permits a person to write a name other than the person's own on a petition paper, that petition paper is invalid; otherwise, the signature of a person not qualified to sign shall be rejected but shall not invalidate the other valid signatures on the paper.

(G) The circulator of a petition may, before filing it in a public office, strike from it any signature the circulator does not wish to present as a part of the petition.

(H) Any signer of a petition or an attorney in fact acting pursuant to section 3501.382 of the Revised Code on behalf of a signer may remove the signer's signature from that petition at any time before the petition is filed in a public office by striking the signer's name from the petition; no signature may be removed after the petition is filed in any public office.

(I)(1) No alterations, corrections, or additions may be made to a petition after it is filed in a public office.

(2)(a) No declaration of candidacy, nominating petition, or other petition for the purpose of becoming a candidate may be withdrawn after it is filed in a public office. Nothing in this division prohibits a person from withdrawing as a candidate as otherwise provided by law.

(b) No petition presented to or filed with the secretary of state, a board of elections, or any other public office for the purpose of the holding of an election on any question or issue may be resubmitted after it is withdrawn from a public office or rejected as containing insufficient signatures. Nothing in this division prevents a question or issue petition from being withdrawn by the filing of a written notice of the withdrawal by a majority of the members of the petitioning committee with the same public office with which the petition was filed prior to the sixtieth day before the election at which the question or issue is scheduled to appear on the ballot.

(J) All declarations of candidacy, nominating petitions, or other petitions under this section shall be accompanied by the following statement in boldface capital letters: **WHOEVER COMMITS ELECTION FALSIFICATION IS GUILTY OF A FELONY OF THE FIFTH DEGREE.**

(K) All separate petition papers shall be filed at the same time, as one instrument.

(L) If a board of elections distributes for use a petition form for a declaration of candidacy, nominating petition, or any type of question or issue petition that does not satisfy the requirements of law as of the date of that distribution, the board shall not invalidate the petition on the basis that the petition form does not satisfy the requirements of law, if the petition otherwise is valid. Division (L) of this section applies only if the candidate received the petition from the board within ninety days of when the petition is required to be filed.

CREDIT(S)

(2013 S 47, eff. 6-21-13; 2012 S 295, eff. 8-15-12; 2006 H 312, eff. 8-22-06; 2006 H 3, eff. 5-2-06 (Implemented eff. 6-1-06); 2004 H 1 SS, eff. 3-31-05; 2003 H 86, eff. 11-13-03; 2002 H 445, eff. 12-23-02; 2001 H 5, eff. 8-28-01; 1989 H 7, eff. 9-15-89; 1986 H 524, H 555; 1980 H 1062; 1977 S 125; 1974 H 662; 130 v H 370)

Notes of Decisions (138)

R.C. § 3501.38, OH ST § 3501.38

Current through 2015 Files 1 to 10, and 12 to 24 of the 131st GA (2015-2016).

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Baldwin's Ohio Revised Code Annotated
Title XXXV. Elections (Refs & Annos)
Chapter 3501. Election Procedure; Election Officials (Refs & Annos)
Candidacy

R.C. § 3501.39

3501.39 Unacceptable petitions

Effective: July 2, 2010

Currentness

(A) The secretary of state or 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 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.

(B) Except as otherwise provided in division (C) of this section or section 3513.052 of the Revised Code, a board of elections shall not invalidate any declaration of candidacy or nominating petition under division (A)(3) of this section after the sixtieth day prior to the election at which the candidate seeks nomination to office, if the candidate filed a declaration of candidacy, or election to office, if the candidate filed a nominating petition.

(C)(1) If a petition is filed for the nomination or election of a candidate in a charter municipal corporation with a filing deadline that occurs after the ninetieth day before the day of the election, a board of elections may invalidate the petition within fifteen days after the date of that filing deadline.

(2) If a petition for the nomination or election of a candidate is invalidated under division (C)(1) of this section, that person's name shall not appear on the ballots for any office for which the person's petition has been invalidated. If the ballots have already been prepared, the board of elections shall remove the name of that person from the ballots to the extent practicable in the time remaining before the election. If the name is not removed from the ballots before the day of the election, the votes for that person are void and shall not be counted.

CREDIT(S)

(2010 H 48, eff. 7-2-10; 2006 H 3, eff. 5-2-06; 2002 H 445, eff. 12-23-02; 1995 H 99, eff. 8-22-95; 1990 H 405, eff. 4-11-91; 1986 H 555)

Notes of Decisions (68)

R.C. § 3501.39, OH ST § 3501.39

Current through 2015 Files 1 to 10, and 12 to 24 of the 131st GA (2015-2016).

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2015 WL 4778351 (Ohio Com.Pl.) (Trial Order)
Court of Common Pleas of Ohio.
Stark County

STATE of Ohio, Ex. Rel., Allen Schulman Jr., et al, Realtors,
v.
STARK COUNTY BOARD OF ELECTIONS, et al, Respondent.

No. 2015CV1545.
July 24, 2015.

Judgment Entry

Edmond J. Mack, Esq.

Allen Schulman Jr., Esq.

Sarah Pierce, Esq.

Deborah A. Dawson, Esq.

Frank G. Forchione, Judge.

*1 Now comes the Court in consideration of a Verified Original Action for Mandamus (Expedited Election Matter) filed on July 24, 2015. The realtors, Canton City Council Members, and members of Canton Charter Government Ballot Initiative Committee "Committee" have requested this Court to issue:

1) A Preemptory Writ of Mandamus, ordering Respondent Board of Elections (hereinafter referred to as Board) to submit the tie-vote reached by Respondent Board on July 13, 2015 to the Ohio Secretary of State for resolution pursuant to R.C. 3501.11(X) by the July 27, 2015 deadline or otherwise, or in the alternative;

2) An alternate Writ of Mandamus, ordering Board to certify the validity of the Petition previously invalidated by Board on July 2, 2015 and subject to Board's tie-vote of July 13, 2015 so as to allow the Canton Charter Government Initiative to proceed to the ballot in the November election.

Since the Mandamus was filed on July 24, 2015 and not forwarded to the Court until July 27, 2015, this Court finds it would be a lack of due process to grant a preemptory Writ of Mandamus without giving all parties named in the Writ the opportunity to respond and provide any law or argument to the Court. As a result, the Court will only consider the granting of the alternate Writ of Mandamus. The Court held a telephone conference with all parties on July 28, 2015. The parties agreed to a briefing schedule, waiving any oral arguments or evidentiary hearing.

History

The Committee has taken measures to allow the voters of the City of Canton the opportunity to consider whether to adopt a charter form of government for the first time in over 52 years. On July 14, 2014, a vote by Canton City Council to place the issue of the charter government before the voters of Canton failed by a 5 - 7 vote. Therefore, the Committee began the process of circulating initiative petitions and collecting necessary signatures. Based upon the total votes cast at the last preceding general municipal election in Canton, the required number of signatures was 761. By letter dated July 2, 2015, the Board confirmed

the verification of 750 valid signatures on the Canton Charter Petitions. This is 11 signatures less than the amount required by the Ohio Constitution. As a result, the Board determined that the Canton Charter Government ballot initiative fell short by 11 signatures.

The major point of contention, and the real substance behind the Mandamus action, was the Board's July 2, 2015, 4-to-0 vote to invalidate one of the petitions circulated by Carol Krider Vaughn. Apparently when Ms. Vaughn turned in the Petition as the circulator, she attempted to remove two signatures that she realized were not eligible voters. In doing so, she wrote the words "omit-Plain" next to the two names. (Presumably, she discovered they were residents of Plain Township and not the City of Canton). In addition, Ms. Vaughn noted at the bottom of the page under "circulator statement" that there were 26 signatures, when in fact there were actually 28 individuals who signed the Petition; Ms. Vaughn did not include in her total count the two signatures she attempted to "omit" when she realized they could not sign her Petition. The Board concluded that Ms. Vaughn did not properly "strike the two signatures next to the notation 'omit plain' ". Although under Ohio Election Law, a petition circulator is permitted to remove signatures from their petition at any time and for any reason, under R.C. 3501.38(G) the Board ruled that Ms. Vaughn's actions were not sufficient. The Board reasoned that the two signatures should have been included in the total reflected in the circulator statement. They also stated that the total number of signatures reflected on the Vaughn Petition should have been 28 and therefore were undercounted. The Board further held that a circulator must physically cross out the signatures at issue.

*2 Upon being notified of the Board's actions, on July 8, 2015, the Realtors filed a "Request for Immediate Reconsideration and/or Protest" of the Board's invalidation of the Vaughn Petition. The Board considered the Reconsideration/Protest filing at its July 13, 2015 special meeting. After reviewing the law, exhibits, and hearing testimony, the following motion was made: "To place the issue of charter government before the voters of the City of Canton pursuant to Ohio Constitution Article XVIII, Section 8." The Board voted on this motion. It appeared deadlocked 2-to-2. The Board's chairman then declared a tie-vote, and as required by R.C. 3501.11(X) stated:

"So then, just for the audience, it's a tie vote, so that will go down to the Secretary of State to break this particular tie-vote either in favor or not in favor."

However, on July 21, 2015, the Board shifted gears. Despite their pronouncement during the July 13, 2015 meeting, they disclosed that the Board would not, in fact, submit the tie vote for resolution by the Secretary of State. Instead, the Board stated that it would only do so if "notified by the Ohio Secretary of State or a court."

Analysis

This Court finds it ironic that several proponents of the Charter Committee have puffed up their chests during their botched attempt to have this initiative set on the ballot, only to have the Board of Elections let the air out when they failed to fulfill the rudimentary requirement of obtaining enough signatures; they only have themselves to blame.

While the case law regarding this issue is limited, the Court draws guidance from *State ex rel. Pace v. Montgomery Cty. Bd. of Elections*, 2nd Dist. Montgomery No. 25685, 2013-Ohio-1376. In order for the Realtors to be granted a Writ of Mandamus, the Realtors must establish: 1) a clear legal right to the relief requested; 2) a clear legal duty on the part of the Board to do such act; and, 3) the lack of a plain and adequate remedy in ordinary course of law. It is obvious that the Realtors have a clear legal right for the Court to consider the relief that they are requesting and lack a plain and adequate remedy in ordinary course of law. The Board's refusal to validate the Vaughn Petition torpedoes any chance that the Charter issue will be on the November ballot. The need for the Writ is compounded by the September 4, 2015 deadlines imposed by Canton City Council. This timeframe is necessary since individuals who desire to appear on the ballot as candidates for the Charter Commission will also have to circulate their own required petitions. Therefore, Realtors' application to the Court for the consideration of a Writ of Mandamus appears to be their only alternative. In order to establish the clear legal right and legal duty on the part of the Board to do such

act, the Realtors must prove “that the Board engaged in fraud, corruption, abuse of discretion, or a clear disregard of statutes or other pertinent law.” *Rust v. Lucas Cty. Bd. of Elections*, 108 Ohio St.3d 139, 2005-Ohio-5795, 841 N.E.2d 766. There has been no allegation of fraud or corruption, so the dispositive issue is whether the Respondent Board abused their discretion or clearly disregarded the applicable law when refusing to certify the Vaughn Petition because of the manner in which Ms. Vaughn attempted to “omit” the two signatures.

Under similar circumstances to the case before us, the Supreme Court of Ohio affirmed the Court of Appeals in Summit County in its denial of a Writ of Mandamus. *See State ex rel. Raines v. Tobin*, 138 Ohio St. 468, 35 N.E. 2d 779 (1941). In *Raines*, the candidate failed to sign the declaration of candidacy and the blank space at the end of declaration, but did sign his name when subscribing to and acknowledging the declaration before a notary public. *Id* at 468-69. The basis of the denial of the Writ by the Appellate Court was that the “defect in the declaration was not merely technical.” *Id* at 469. The Supreme Court of Ohio agreed, stating that:

*3 “No duty being specifically enjoined by law upon the Board of Elections to place a name of appellant upon the ballot in the absence of a proper declaration of candidacy, the judgement of the Court of Appeals, denying Writ of Mandamus, is affirmed.” *Id.*

In cases following *Raines*, the Supreme Court has leaned towards applying a test of “substantial compliance” to avoid situations where participation in the election process is thwarted by a rigid application of technical requirements.

“The public policy which favors free competitive elections, in which the electorate has the opportunity to make a choice between candidates, outweighs the arguments for absolute compliance with each technical requirement in the petition form, where the statute requires only substantial compliance, where, in fact, the only omission contained cannot possibly mislead any petition signer or elector, where there is no claim of fraud or deception, and where there is sufficient substantial compliance to permit the Board of Elections, based on the prima facie evidence appearing on the face of the jurat, which is a part of the petition paper, to determine the petition to be valid.” *State ex rel. Pace*, supra at ¶ 15, citing *Steam v. Bd. Of Elections of Cuyahoga County*, 14 Ohio St.2d 175, 184, 237 N.E.2d 313 (1968).

As a result, it is within the province of this Court to determine whether Ms. Vaughn's manner of “omitting” the signatures was a merely “technical” violation of any statute and whether she has “substantially complied” with the requirement of circulators. Whether there has been “substantial compliance” with a statutory requirement should be judged in relation to the purpose of the requirement. The purpose of the circulator's statement is so there is an honest attestation by the circulator that the signatures set forth above in the petition are registered Canton City voters. Furthermore, the requirement of listing the number of signatures is so that the Board of Elections' official can cross check and calculate the appropriate number of signatures on the Petition; the Board will then add that number to other proposed Petitions, and determine whether the required number of signatures have been offered. This Court notes that for many political candidates, the process of offering these Petitions to the Board of Elections resembles that of standing outside the Pearly Gates, knees knocking and holding their breath, praying that the circulators have followed every appropriate rule. Most circulators are voters with no legal or election law experience. Even more daunting, as they try to follow the rules, is the section of the petition where the circulator is required to provide their signature and permanent resident address. It states in bold type and boxed:

Whoever commits election falsification is guilty of a Felony of the 5th degree.

From this Court's view, it is obvious that Carol Krider Vaughn tried to get it right. She realized that there were two signatures that would be invalid, and she wrote beside them, “omit Plain.” She was honest, forthright, and transparent. In doing so, she properly calculated the number of valid signatures which she believed she had obtained, which was 26. There is nothing in Ohio law that defines how one strictly complies with the procedure of “striking” or “omitting” a signature pursuant to R.C. 3501.38(G). If anything, Ms. Vaughn's violation was simply technical. The Board Chairman called it “hyper technical.” Based on all the evidence and testimony, it is abundantly clear that she has “substantially complied” with the requirement.

*4 This Court recognizes that a Writ of Mandamus is an extraordinary remedy that only applies in a limited set of circumstances. *In re State ex rel. Watkins*, 2nd Dist. Green No. 07-CA-80, 2008-Ohio-3877. But the Realtor's request is extraordinary considering the alternative. The Court could easily tell the Realtors that they're out: But where does that put them? For another year the voters of Canton will continue to debate the merits of charter government, frustrated citizens will continue to circulate petitions to place it on the ballot next year, or perhaps this will inspire another drawn-out election lawsuit, which Canton City voters are beginning to deplore as much as potholes.

In considering whether the Board has abused its discretion, this Court is even more confounded by the Board's own actions. After the July 13, 2015 vote, it announced to the public that there was a 2-to-2 deadlocked vote. The Chairman promised that the issue of a Charter Government Petition would go to the Secretary of State to break the tie. Then, instead of submitting the tie vote for resolution, the Board reversed their decision on July 21, 2015, claiming "the tie vote resulted in no change to the original decision (on July 2, 2015)." Yet, the motion that the Board deadlocked on did not appear to actually be a motion for reconsideration. According to the transcript of the meeting, it represented more than a procedure informality, but resembled more of a "mulligan."

Even the Secretary of State appears puzzled. In a letter to the Board dated July 28, 2015, he asks:

*"...it is unclear if and how the Board intended to resolve the request for reconsideration. Was the tie vote on the motion regarding whether to reconsider or whether to place the charter initiative on the ballot?***Local procedural decisions that do not involve substantive questions of election law or administration generally do not rise to the level of a "matter of controversy" requiring my involvement. Finally, my office received a copy of a letter that Chairman Ferruccio sent to Edmond Mack on behalf of the Board of Elections. The letter appears to contradict the will of the Board as reflected in the transcript of the meeting, which adds confusion surrounding the tie and intent of the motion"**** At the urging of the Secretary of State, the Board again addressed the issue on July 29, 2015. This

time the Board voted 3-to-1 not to accept the charter petition due to the inaccuracies.¹

The Board has tangled with this exact same issue before; in 2008 the Board voted unanimously against placing a question on the ballot asking to approve alcohol sales at Fieldcrest Estates in North Canton because Petitioners lacked enough valid signatures. Upon reconsideration the Board remained deadlocked over one signature - a signature that if validated would have put the petition over the top. The Board then submitted the tie vote to the Secretary of State to decide. It is unclear why the Board is treating this vote differently.

After examining the Board transcripts, evidentiary materials, and Secretary of State's July 28, 2015 letter, it is apparent to the Court that all of this would leave even the Founding Fathers scratching their heads.

For the citizens of Canton, the time is now. Canton City Council has ordered a yearlong, \$350,000 study that offers a bold \$250,000,000 comprehensive plan to target redevelopment for neighborhoods, promote business and real estate. The Canton City Chamber of Commerce and Canton Pro Football Hall of Fame are proposing to alter the city landscape with a proposed \$467,000,000 Hall of Fame Village, with the assistance of prominent local businesses. As a result, Canton should now have the opportunity to decide whether it wants to change its form of government. Common sense would say, let's get rid of the legal barricades and let the public decide for themselves. It's time for the citizens of Canton to have their own voice and be the ones to decide what form of government that they want. To be very clear, this Court is rendering no opinion on whether charter government is positive or negative for Canton. This is up to the voters to decide.

*5 This Court took a similar approach as Administrative Judge when faced with an issue in November of 2013 when it was asked to consider whether to accept applications from prospective candidates for Stark County Sheriff even though attorneys for the active Sheriff requested that the Democratic Central Committee pick from the only qualified candidates who had sought the

appointment the previous February. To avoid any potential slant, the Court consulted with ALL of the Stark County Common Pleas Court before permitting all new applications to file, stating, "If I'm going to err, I'm going to err on the side of Democracy." There is no need to deviate from this wisdom granted to us by our forefathers.

"Let us never forget that government is ourselves and not an alien power over us. The ultimate rulers of our democracy are not presidents and senators and congressman and government officials, but the voters of this country." Franklin D. Roosevelt

The Court notes that Respondent Ohio Secretary of State ("the Secretary") has filed a Motion to Dismiss; the Secretary argues that because Relators seek no relief from the Secretary of State and because Respondent's request, to order the Stark County Board of Elections to submit its tie vote to the Secretary, is no longer justiciable, that the Court should dismiss Relator's first request for mandamus and dismiss the Secretary as a party to this lawsuit. Relator concedes that this action is the appropriate one and therefor the Court GRANTS the Secretary of State's Motion to Dismiss. The Secretary is no longer a party to this lawsuit.

The Court hereby finds that the Board abused its discretion and GRANTS the Alternate Writ of Mandamus and orders the Board to certify the validity of the Vaughn Petition previously invalidated by the Board on July 2, 2015 and subject to the Board's tie vote of July 13, 2015 and 3-1 vote on July 30, 2015, so as allow the Canton Charter Government Initiative to proceed to the ballot in the November election.

IT IS SO ORDERED.

<<signature>>

JUDGE FRANK G. FORCHIONE

cc: Edmond J. Mack, Esq.

Allen Schulman Jr., Esq.

Sarah Pierce, Esq.

Deborah A. Dawson, Esq.

Footnotes

1 The Board Chairman who previously represented to the public the issue would go to the Secretary of State now switched his vote.