

In the Supreme Court of Ohio

STATE <i>ex rel.</i> CITY OF YOUNGSTOWN,	:	Case No. 2015-1422
	:	
Relator,	:	
	:	
v.	:	Expedited Election Case Pursuant to
	:	S.Ct.Prac.R. 12.08
MAHONING COUNTY BOARD OF	:	
ELECTIONS, <i>et al.</i> ,	:	
	:	
Respondents.	:	
	:	

MOTION TO CORRECT THE RECORD

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Attorneys for Amici Curiae, The Ohio Oil and Gas Association, The Ohio Gas Association, and Local Unions

NOW COMES Amici Curiae the Ohio Oil and Gas Association, the Ohio Gas Association, and Local Unions (collectively the “Amici Curiae”) and move this Court to correct a clerical error in a case citation in Amici Curiae’s brief.

1. Amici Curiae Did Not Provide A Full Citation to *State ex rel. Flynn v. Bd. of Elections of Cuyahoga Cty.*

Amici Curiae cited *State ex rel. Flynn v. Bd. of Elections of Cuyahoga Cty.*, 164 Ohio St. 193, 129 N.E.2d 623 (1955), for the proposition that “the board of election’s statutory authority to determine the validity or invalidity of a candidate’s nominating petition necessarily included ‘the authority to determine the facts which will disclose whether the candidate may lawfully be elected to the office he seeks.’” *See Brief of Amici Curiae*, at p. 13 (quoting *Flynn*, at 200). Amici Curiae request that the record be corrected to reflect the full citation to *Flynn* that should read:

State ex rel. Flynn v. Bd. of Elections of Cuyahoga Cty., 164 Ohio St. 193, 200, 129 N.E.2d 623 (1955), *rev’d on other grounds Schenck v. Shattuck*, 1 Ohio St.3d 272, 439 N.E.2d 891 (1982).

2. Amici Curiae’s Reliance on *Flynn* Was Not Misplaced.

Relators’ Reply Brief, filed with this Court on September 13, 2015, correctly identifies that the case of *State ex rel. Schenck v. Shattuck*, 1 Ohio St.3d 272, 439 N.E.2d 891 (1982), overruled *Flynn* in part. However, *Schenck* only overruled *Flynn* to the extent that *Flynn* stands for the proposition that employment as a referee does not constitute the practice of law. *Schenck*, at 274 (“Adopting this rationale, we hold that employment of a lawyer as a referee constitutes the practice of law for purposes of R.C. 2301.01 and overrule *Flynn* insofar as it is inconsistent with today’s decision.”).

Nearly ten years after *Schenck*, this Court revisited *Flynn* in *State ex rel. Shumate v. Portage Cty. Bd. of Elections*, 64 Ohio St.3d 12, 591 N.E.2d 1194 (1992), also cited by Amici Curiae. In *Shumate*, this Court confirmed that *Schenck* did not overrule that part of *Flynn* on which

Amici Curiae rely. In *Shumate*, the Court recognized that the “authority to determine the ‘validity or invalidity’ of the petition of a candidate confers upon the board of elections authority to determine the facts which will disclose whether the candidate may lawfully be elected to the office he seeks.” See *Shumate*, at 16 (quoting *Flynn*, at 200).

For the foregoing reasons, Amici Curiae request that this Court grant its motion to correct the record to reflect the complete citation for *Flynn*. Amici Curiae ask that the Court recognize its precedential value to the facts of this case.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via email upon the following this 15th day of September, 2015:

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