IN THE SUPREME COURT OF OHIO

STATE OF OHIO EX REL. **DAVID B. DUCLOS** 5153 Orchard Ridge Ct. Cincinnati, Ohio 45239 Relator v. **HAMILTON COUNTY BOARD OF ELECTIONS** 824 Broadway Street Cincinnati, Ohio 45202 **TIMOTHY M. BURKE, Chairperson** 824 Broadway Street Cincinnati, Ohio 45202 **ALEX M. TRIANTAFILOU, Member** 824 Broadway Street Cincinnati, Ohio 45202 **CALEB FAUX, Member** 824 Broadway Street Cincinnati, Ohio 45202 **CHARLES H. GERHARDT III, Member** 824 Broadway Street Cincinnati, Ohio 45202 Respondents.	)	Case No.:_____ Original Action or Petition for Mandamus Expedited Election Matter Under S. Ct. Prac. R. 12.08 Peremptory Writ Requested

RELATOR'S COMPLAINT IN ORIGINAL ACTION OR PETITION FOR WRIT OF MANDAMUS

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Counsel for Relator

HAMILTON COUNTY BOARD OF ELECTIONS
824 Broadway Street
Cincinnati, Ohio 45202

TIMOTHY M. BURKE, Chairperson
824 Broadway Street
Cincinnati, Ohio 45202

ALEX M. TRIANTAFILOU, Member
824 Broadway Street
Cincinnati, Ohio 45202

CALEB FAUX, Member
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CHARLES H. GERHARDT III, Member
824 Broadway Street
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Respondents

David Stevenson
230 East Ninth Street
Suite 400
Cincinnati, Ohio 45202

Counsel for Respondents

PETITION FOR WRIT OF PROHIBITION

Now comes Relator, David B. Duclos, and states his Petition for Writ of Mandamus as follows:

PARTIES, JURISDICTION, AND VENUE

1. Relator David B. Duclos is a citizen of the United States, and a qualified elector and registered Republican in the County of Hamilton.
2. Respondents, Timothy M Burke, Alex M. Triantafilou, Caleb Faux and Charles H. Gerhardt III are the duly serving members of Respondent Hamilton County Board of Elections (collectively "Respondents") and are responsible for the conduct of elections, including the certification of candidacies, in Hamilton County, Ohio.
3. The Court possesses jurisdiction over the subject matter of the action and over the Respondents pursuant to Article IV Section 2 (B)(1)(b) of the Constitution of the State of Ohio and Ohio Revised Code Section 2731.02.
4. This is an election proceeding governed by the provisions of the Supreme Court Practice Rule 12.02 and Expedited Election Cases Supreme Court Practice Rule 12.08.

FACTS

5. R. C. 3505 provides for filing of a protest in a partisan primary in Ohio.
6. David B. Duclos is a registered Republican in Hamilton County, Ohio, and is eligible to file a protest to the Republican Candidacy of Gary W. Lee for County Sheriff per R.C. 3513.05.

7. Gary W. Lee filed his petition and declaration of candidacy for March 15, 2016, primary on December 1, 2015, at the Board of Elections headquarters located at 824 Broadway Street Cincinnati, Ohio 45202 for the office of County Sheriff.

8. R.C. 311 provides for the election and qualifications of candidates for the office of county sheriff.

9. R.C. 311.01 requires candidates seeking the position of sheriff fulfill certain requirements and qualifications in addition to those seeking a political office.

10. When filing at the Hamilton County Board of Elections on December 1, 2015, Gary W. Lee supplemented his petition and declaration of candidacy with the additional requirements under R.C. 311.01 (B) (1),(2), (3),(4), (5), (8) and (9).

11. Gary W. Lee also submitted on that date the six year history of his residence and employment pursuant to R.C. 311.01 (B)(7).

12. Gary W. Lee finally submitted December 1, 2015, a result sheet for a fingerprint criminal records check from Hamilton County and BCI, a state records check which is required under R.C. 311.01.

13. R.C. 311.01 (B)(6) requires the person seeking candidacy for sheriff at the direction of the administrative judge be a subject of local, state, and national fingerprint files to disclose any criminal record.

14. R. C. 311.01 (B)(7) requires the administrative judge forward the findings of those three agencies to the Board of Elections.

15. When Gary W. Lee filed his paperwork, as mentioned in Counts 10 through 12, he failed to assure that a national (FBI) fingerprint records result sheet was also included in his packet.

16. Although Gary W. Lee substantially complied with R.C. 311.01 (B) (6) and (7) by ensuring the local and state (BCI) records result sheets were filed, the national (FBI) records result sheet was not present.

17. R. C. 311.01 (B) places the duty on the candidate running for the position of county sheriff to ensure that they meet all the requirements listed in the statute.

18. R.C. 311.01 (B) (7) requires that the local, state and national records check be forwarded to the Board of Elections by the statutory qualification date which in this election cycle was 12/16/15 1600 hours.

19. The required FBI national records check result sheet was not filed with the Hamilton County Board of Elections by Gary W. Lee by 12/16/15 1600 hours.

20. R.C. 311.01 (F)(2) states that each board of elections shall certify whether or not a candidate meets the requirements specified in 311.01 (B) not an administrative judge.

21. After the December 16, 2015 Relator examined the filed paperwork of all the candidates, Gary W. Lee, Sheriff James Neil and Rich Vande Ryt and discovered that Gary W. Lee was the only candidate missing a national (FBI) fingerprint records result sheet. Both Sheriff Neil and Rich Vande

Ryt had a local, state (BCI) and a national (FBI) records result sheet properly filed with the Board of Elections.

22. Relator, David B. Duclos filed a valid protest to Gary W. Lee candidacy on January 4, 2016.

23. In that filed protest Relator assert Gary W. Lee candidacy should be rejected by the Board for failing to comply with 311.01 (B)(6) and (7).

24. On January 11, 2016 at 0815, the Respondents held a hearing on the protest filed by Relator.

25. Despite the plain language of R.C. 311.02 (F)(2) and 311.01 (B)(6) and (7) and the Supreme Court cases presented by Relator's attorney Ms. Rabanus the Respondents voted 4-0 in favor of keeping Gary W. Lee on the March 15, 2016 primary ballot.

26. In the protest hearing on January 11, 2016, the Respondents used Judge Winkler's letter dated December 1, 2015, that Gary W. Lee was qualified candidate as their reason to deny Relator's protest to remove Gary W. Lee from the ballot.

27. At the protest hearing there was evidence introduced that a FBI national background result sheet was not filed with the Hamilton county Board of Elections by the qualification date.

28. At the protest hearing when questioned by a Board member to whether the Respondents had complied with Ohio law, Attorney Stevenson advised the Board that only a letter from the administrative judge stating a candidate was qualified was necessary to find compliance with 311.01 (B).

29. At the protest hearing the Board's attorney David Stevenson stated the law didn't require Gary W. Lee or the administrative judge to submit any of the fingerprint results sheets to be presented to the Board of Elections.

30. At the protest hearing Brian Lee, candidate Gary W. Lee's son and campaign manger stated that prior to getting a copy of the FBI background from Judge Winkler on January 4, 2016, his campaign was never in possession of the result sheet.

31. At the protest hearing it was determined that Gary W. Lee personally filed candidacy paperwork on December 1, 2015, which included all the requirements under 311.01 (B)(6) and (7) other than the national FBI background records result sheet.

32. Gary W. Lee's file at the Board of Elections at the end of the qualification day contained only a local and state records check.

33. Despite the fact the Respondents were required to review Gary W Lee's qualifications and requirements which include the three required background checks, the first time they saw a FBI results sheet was on January 11, 2016, 25 days after the qualification date.

34. Gary W. Lee requested a national FBI records check but failed to ensure that it was submitted to the Board of Elections by the qualification date December 16, 2015.

35. At the protest hearing it was shown that the other two candidates running for Hamilton County Sheriff did in fact submit three separate fingerprint

background result sheets. All the local, BCI and FBI result sheets appear in Sheriff James Neil and Rich Vande Ryt's files at the Board of Election.

36. At the protest hearing Counsel for Gary W. Lee., Charles Miller asserted that the Relator's protest that 311.01 (B) was not strictly complied with was a minor thing.

37. The Respondents used only Judge Winkler's letter dated December 1, 2015, in determining the qualifications of Gary W. Lee not a review of his December 1st, 2015, filed documents.

38. Relator submits this Complaint in a timely manner on an expedited calendar for its consideration on January 14, 2016.

39. A copy of the original Official Protest is attached to this Complaint.

CLAIM FOR RELIEF: ISSUANCE OF A WRIT OF MANDAMUS

40. Relator incorporates by reference each and every allegation set forth above.

41. Respondents have a clear legal duty pursuant to R.C. 311.02 (F)(2) to certify that Gary W. Lee meet the qualifications specified in R.C. 311.01 (B), not a county administrative judge. This certification is done by review of the paperwork filed by each candidate prior to December 16, 2015 1600 hours.

42. Respondents have a clear legal duty to comply with R.C. 3501.39 and reject or disqualify any candidate not complying with Ohio law specifically 311.10 (B).

43. Respondents have a clear legal duty not to abuse their discretion by following the precedent laid out on this issue by this honorable Court which they failed to accomplish denying Relator's protest.

44. Relator has a clear legal right to demand the Respondents deny candidate Gary W. Lee's application based upon failing to comply with Ohio law under 3513.05.

45. Relator has no plain or adequate remedy at law in the absence of the issuance of a writ of mandamus.

46. Respondents abused their discretion and clearly disregarded applicable legal provisions and case law by permitting Gary W. Lee to remain on the primary ballot despite the fact he failed to strictly comply with Ohio R.C. 311.01 (B).

47. This Honorable Court has repeatedly held that election laws require strict compliance in the absence that substantial compliance is permitted under the statute.

48. Both section R.C 3501.39 and R.C.311.01 do not mention substantial compliance as being permitted so the Court's high standard of strict compliance must be enforced.

49. Respondents abused their discretion and this Court's prior holding in *The State , ex rel. Shumante v. Portage County Board of Elections 64 Ohio St. 3d 12 (Ohio 1992).* Iin the protest hearing, Respondents held that Judge Robert Winkler's, letter stating that Gary W. Lee was qualified to run for sheriff was good enough despite the fact the FBI Records result sheet was not properly filed timely with the Board of Elections.

50. Respondents abused their discretion and their clear legal duty in a valid protest hearing to only review the material submitted by Gary W. Lee prior to December 16, 2015, 1600 which did not include a FBI records result sheet.

PRAYER FOR RELIEF

WHEREFORE, Relator respectfully prays the Court to grant the following relief:

A. Issue a Peremptory Writ of Mandamus ordering the Respondents to verify and approve as valid the Relator's protest in regarding the to the disqualification of Gary W. Lee from the March 15, 2016, Republican primary ballot for Hamilton County Sheriff for failing to strictly comply with R.C.311.01.

B. Issue a Writ of Mandamus ordering Respondents:

   a. To remove Gary W. Lee from the March 15, 2016, Republican primary ballot for the position of Hamilton County Sheriff.

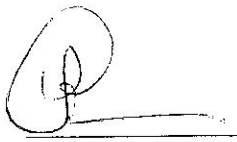
   b. If it is past the deadline to remove Gary W. Lee from the ballot, order the Board of Elections consider any votes for him void and shall not be counted.

C. Assess the costs of this action against Respondents:

D. Award Relator attorney fees and expenses; and

E. Award such other relief as may be appropriate.

Respectfully submitted,



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IN THE SUPREME COURT OF OHIO

STATE OF OHIO EX REL. DAVID B. DUCLOS	)	
	)	Case No.:_____
Relator,	)	
	)	Original Action or Petition for Mandamus
V.	)	
	)	Expedited Election Matter
	)	Under S. Ct. Prac. R. 12.08
	)	
HAMILTON COUNTY BOARD OF ELECTIONS, ET AL.	)	
	)	Peremptory Writ Requested
	)	
Respondents.	)	

AFFIDAVIT OF RELATOR DAVID B. DUCLOS

Hamilton County

/ss

State of Ohio

I, David B. Duclos having been duly sworn and cautioned according to the law, hereby state I am over the age of eighteen years and am competent to testify to the facts set forth below based on my personal knowledge and having personally examined all records herein referenced herein, and further state as follows:

1. I am the Relator in this action and a qualified elector and resident of Hamilton County, Ohio.

2. Lisa Rabanus (69252) is my attorney representing me in this matter against the Respondents.

3. I am a registered Republican in Hamilton County and am qualified to file a protest in the partisan primary in Hamilton County which is scheduled for March 15, 2016.
4. I am submitting this Original Action/Petition for a Writ of Mandamus with this Honorable Court on an expedited election matter, because the primary in question is less than 70 days away from this filing.
5. After reviewing O.R.C. 311.01, the statute governing the election and qualifications of sheriff, and then filed paperwork by Sheriff James Neil, Richard Vande Ryt and Gary W. Lee with the Hamilton County Board of Elections, I believe that Gary W. Lee failed to comply with 311.01 (B)(6) and (7) by not ensuring that the required FBI national records result sheet was filed with the Board of Elections by the qualification date which was 12/16/15 1600 hours.
6. A local and BCI Records check result sheet was filed by Gary W. Lee but the required FBI national records check result sheet was missing.
7. After discussing the matter with Counsel and reviewing Supreme Court precedent, I filed a protest pursuant to R.C. 3513.05 on January 4th, 2016. This filing was made within the statutory period pursuant to R.C. 3513.05
8. On January 11, 2016 the Respondents conducted a hearing where they ultimately denied my protest to the candidacy of Gary. W. Lee.
9. After the reviewing the evidence, statute and case law, and discussing the matter with Counsel, I am convinced the Respondents failed in their duty and grossly abused their discretion by not removing Gary W. Lee from the ballot

pursuant to 3501.39 for failing to ensure that all the required fingerprint criminal background checks were filed by the qualification date pursuant to 311.01(B)(6) and (7).

10. I am firmly convinced the Respondents abused their discretion and failed in their duty when they ruled that Gary W. Lee had complied with 311.01 (B)(6) and (7) by using a letter from Judge Robert Winkler's, acting administrative judge, dated December 1, 2015 as determinative as to his qualifications instead of only reviewing all the items submitted by the qualification date. The FBI background result sheet was not contained in the filing.
11. I believe according to the law the Respondents are required to review only the items contained in Gary W. Lee's December 1, 2015 filing as to whether he meets the requirement pursuant to 311.01(F)(2).
12. I believe that the Board of Elections according to 311.01(F)(2) not Judge Winkler, acting administrative judge, makes the determination whether a candidate meets all the requirements under 311.01(B)(6) and (7).
13. Despite it appears that Gary W. Lee may have completed a FBI fingerprint background check, he did not ensure that those result results were directed and filed with the Respondent, Board of Election by December 16, 2015 at 1600.
14. This omission even if by mere accident or mistake bars him from being placed on the ballot in the March 15, 2016 for failing to strictly comply with 311.01.
15. I am requesting this Honorable Court to review this matter, the evidence, the Court's prior holding, and the Statute, and issue a Writ of Mandamus granting

my protest and order the Respondents to remove Gary W. Lee from the ballot for the March 15, 2016 Republican primary for the position of Hamilton County Sheriff.

16. Lastly, I have read the Complaint filed in this action or petition and state that the matters as alleged therein are true.

FURTHER AFFIANT SAYETH NAUGHT

David B. Duclos

Sworn to and subscribed before me this 13th day of January, 2016

Notary Public

RICHARD CARL VANDE RYT
Attorney at Law
Notary Public, State of Ohio
My Commission Has No Expiration
Section 147.03 R.C.

Mr. David B. Duclos
5315 Orchard Ridge Court
Cincinnati, Ohio 45239

January 2, 2016

Hamilton County Board of Elections
824 Broadway Street
Cincinnati, Ohio 45202-1345

Re: Official Protest to Candidacy of Gary W. Lee for County Sheriff

Dear Board:

I am a registered republican of Hamilton County, Ohio and this letter is to serve the Board of Elections that pursuant to O.R.C. 3513.05 I wish to protest the candidacy of Gary W. Lee for Hamilton County. This protest is being made for his failure to comply with the statutory requirements of **O.R.C. 311.01 Election and qualifications of sheriff.** I am submitting this letter with the attached documents for the Board's review. I further advise the Board that I am represented by Lisa Rabanus, Attorney at Law whose law office is located at 114 East Eighth Street Cincinnati, Ohio 45202. Her contact number is 513-617-3962.

I look forward to addressing this matter with the Board if necessary in the near future.

Respectfully Submitted,

David B. Duclos

Official Protest

As a registered republican, who currently resides at 5315 Orchard Ridge Ct Hamilton County, Ohio 45239, I am eligible to file a protest in a partisan primary under R.C. 3513.05. This official protest is based upon Mr. Lee's failure to comply with **O.R.C. 311.01 Election and qualification of sheriff**. This is the statute that provides all the qualifications and the required items to be submitted to the Board of Elections by the qualification date in order for a person to become an official candidate for a County Sheriff Office.

After reviewing all of the paperwork submitted by three of the current unofficial candidates running for Hamilton County Sheriff, it appears that Mr. Lee failed to comply with section of R.C. 311.01(B)(6) and (7). These sections provide that a candidate must subject himself to the "search of local, state and national files to disclose any criminal record".

The results of these three background checks are to be forwarded to the Board of Elections for review by the Hamilton County Administrative Judge. This is in order to comply with R.C. 311.01 (F)(2) which provides that it's the Board of Elections that shall certify whether or not a candidate for the office of sheriff who has filed has complied with Section (B) and (C) of this statute.

Upon review of the candidates paperwork filed with Board of Elections and the paperwork which each candidate filed with the Hamilton County Clerk of Court, it appears that Mr. Lee is missing the required FBI National Background check. Both Sheriff Jim Neil and Candidate Rich Vande Ryts' files contain three distinct and separate pages showing what appeared when each of the fingerprint background checks were conducted. Mr. Lee's has submitted results from a local and state BCI records check but is missing the results of the FBI National Records check which is required under 311.01 (B)(6) and (7).

As the Board is aware, each candidate is required to ensure that they have submitted all paperwork and met all of the requirements by the mandatory deadline which in this election cycle was December 16, 2015 at 1600. Any forms or materials collected or filed after this date and time do not comply with the statutory time limit to complete all the filing requirements.

The Supreme Court in *State ex rel. Dittmars v. McSweeney* 94 Ohio St. 3d 472 at 476 and reaffirmed in *State ex rel, Grounds v. Hocking County Board of Elections* 117 Ohio St. 3d 116 (Ohio 2008) at 120 stated that it is "settled rule that election laws are mandatory and require strict compliance and that substantial compliance is acceptable only when an election provision expressly provides that it is." In this case, R.C. 311.01 requires strict compliance because it does not express, grant, or mention substantial compliance. It does seem Mr. Lee substantially complied with the statute, but he did not strictly comply with it because the required national fingerprint results for the Board of Elections to review pursuant to (F)(2) is not present.

In the aforementioned case, *State ex rel, Grounds v. Hocking County Board of Elections,* the Supreme Court refused to add a candidate to the election ballot when it was demonstrated that he failed to mention one job that he had for one day on his application for sheriff. The Court

found that he failed to complete R.C. 311.01(B)(7) for failing to list that one job. Failing to provide the Board of Elections and the public the confirmed results of a required FBI background check is more egregious.

I contacted the Hamilton County Sheriff's Office and confirmed with that agency that a BCI Records check is not a national records check. The sheriff's office reports that a BCI Records check will only search the Ohio database for criminal records not the nation. A sheriff's representation stated that in order to complete a national records check to be done, a person would have to request a search of that database (FBI Records) and would receive a separate sheet showing those results. In the packet Mr. Lee filed with the Clerk of Courts and with the Board of Elections, he is missing the required FBI results sheet which does appear in Sheriff Neil and Candidate Rich Vande Ryt's filed paperwork.

I have included with this letter a copy of the statute and all of the cases I cited. This protest is not upon the character of any of the candidates running for Hamilton County Sheriff, but upon compliance with Ohio Law. When running for office, a candidate must ensure that he obeys the law from the beginning. It appears that the required FBI search results are clearly missing from Mr. Lee's packet, and even if it was by mere oversight it unfortunately bars his eligibility to be a candidate in 2016 under R.C. 311.01.

Sincerely

David B. Duclos
Included: R.C. 311.01
State ex rel Grounds v. Hocking County Board of Elections
State ex rel. Ditmas v. McSweeney

311.01 Election and qualifications of sheriff.

(A) A sheriff shall be elected quadrennially in each county. A sheriff shall hold office for a term of four years, beginning on the first Monday of January next after the sheriff's election.

(B) Except as otherwise provided in this section, no person is eligible to be a candidate for sheriff, and no person shall be elected or appointed to the office of sheriff, unless that person meets all of the following requirements:

(1) The person is a citizen of the United States.

(2) The person has been a resident of the county in which the person is a candidate for or is appointed to the office of sheriff for at least one year immediately prior to the qualification date.

(3) The person has the qualifications of an elector as specified in section 3503.01 of the Revised Code and has complied with all applicable election laws.

(4) The person has been awarded a high school diploma or a certificate of high school equivalence issued for achievement of specified minimum scores on the general educational development test of the American council on education.

(5) The person has not been convicted of or pleaded guilty to a felony or any offense involving moral turpitude under the laws of this or any other state or the United States, and has not been convicted of or pleaded guilty to an offense that is a misdemeanor of the first degree under the laws of this state or an offense under the laws of any other state or the United States that carries a penalty that is substantially equivalent to the penalty for a misdemeanor of the first degree under the laws of this state.

(6) The person has been fingerprinted and has been the subject of a search of local, state, and national fingerprint files to disclose any criminal record. Such fingerprints shall be taken under the direction of the administrative judge of the court of common pleas who, prior to the applicable qualification date, shall notify the board of elections, board of county commissioners, or county central committee of the proper political party, as applicable, of the judge's findings.

(7) The person has prepared a complete history of the person's places of residence for a period of six years immediately preceding the qualification date and a complete history of the person's places of employment for a period of six years immediately preceding the qualification date, indicating the name and address of each employer and the period of time employed by that employer. The residence and employment histories shall be filed with the administrative judge of the court of common pleas of the county, who shall forward them with the findings under division (B)(6) of this section to the appropriate board of elections, board of county commissioners, or county central committee of the proper political party prior to the applicable qualification date.

(8) The person meets at least one of the following conditions:

(a) Holds a current valid peace officer certificate of training issued by the Ohio peace officer training commission or has been issued a certificate of training pursuant to section 5503.05 of the Revised Code;

(b) Has been employed full-time by a law enforcement agency performing duties related to the enforcement of statutes, ordinances, or codes for a minimum of thirteen consecutive pay periods

within the four-year period prior to the qualification date. As used in this division, "full-time" means a minimum of eighty hours of work in a fourteen-day period.

(9) The person meets at least one of the following conditions:

(a) Has at least two consecutive years of supervisory experience as a peace officer at the rank of sergeant or above;

(b) Has completed a bachelor's degree in any field or has an associate degree in law enforcement or criminal justice from a college or university authorized to confer degrees by the Ohio board of regents or the comparable agency of another state in which the college or university is located .

(C) Persons who meet the requirements of division (B) of this section, except the requirement of division (B)(2) of this section, may take all actions otherwise necessary to comply with division (B) of this section. If, on the applicable qualification date, no person has met all the requirements of division (B) of this section, then persons who have complied with and meet the requirements of division (B) of this section, except the requirement of division (B)(2) of this section, shall be considered qualified candidates under division (B) of this section.

(D) Newly elected sheriffs shall attend a basic training course conducted by the Ohio peace officer training commission pursuant to division (A) of section 109.80 of the Revised Code. A newly elected sheriff shall complete not less than two weeks of this course before the first Monday in January next after the sheriff's election. While attending the basic training course, a newly elected sheriff may, with the approval of the board of county commissioners, receive compensation, paid for from funds established by the sheriff's county for this purpose, in the same manner and amounts as if carrying out the powers and duties of the office of sheriff.

Appointed sheriffs shall attend the first basic training course conducted by the Ohio peace officer training commission pursuant to division (A) of section 109.80 of the Revised Code within six months following the date of appointment or election to the office of sheriff. While attending the basic training course, appointed sheriffs shall receive regular compensation in the same manner and amounts as if carrying out their regular powers and duties.

Five days of instruction at the basic training course shall be considered equal to one week of work. The costs of conducting the basic training course and the costs of meals, lodging, and travel of appointed and newly elected sheriffs attending the course shall be paid from state funds appropriated to the commission for this purpose.

(E) In each calendar year, each sheriff shall attend and successfully complete at least sixteen hours of continuing education approved under division (B) of section 109.80 of the Revised Code. A sheriff who receives a waiver of the continuing education requirement from the commission under division (C) of section 109.80 of the Revised Code because of medical disability or for other good cause shall complete the requirement at the earliest time after the disability or cause terminates.

(F)

(1) Each person who is a candidate for election to or who is under consideration for appointment to the office of sheriff shall swear before the administrative judge of the court of common pleas as to the truth of any information the person provides to verify the person's qualifications for the office. A person who violates this requirement is guilty of falsification under section 2921.13 of the Revised Code.

(2) Each board of elections shall certify whether or not a candidate for the office of sheriff who has filed a declaration of candidacy, a statement of candidacy, or a declaration of intent to be a write-in candidate meets the qualifications specified in divisions (B) and (C) of this section.

(G) The office of a sheriff who is required to comply with division (D) or (E) of this section and who fails to successfully complete the courses pursuant to those divisions is hereby deemed to be vacant.

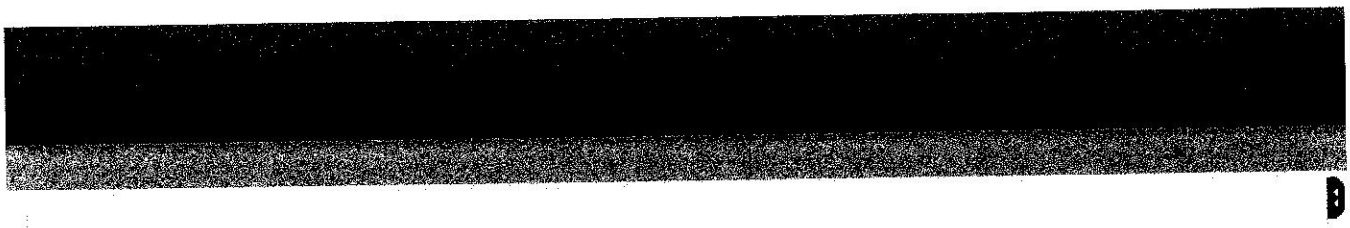
(H) As used in this section:

(1) "Qualification date" means the last day on which a candidate for the office of sheriff can file a declaration of candidacy, a statement of candidacy, or a declaration of intent to be a write-in candidate, as applicable, in the case of a primary election for the office of sheriff; the last day on which a person may be appointed to fill a vacancy in a party nomination for the office of sheriff under Chapter 3513. of the Revised Code, in the case of a vacancy in the office of sheriff; or a date thirty days after the day on which a vacancy in the office of sheriff occurs, in the case of an appointment to such a vacancy under section 305.02 of the Revised Code.

(2) "Newly elected sheriff" means a person who did not hold the office of sheriff of a county on the date the person was elected sheriff of that county.

Amended by 130th General Assembly File No. TBD, SB 42, §1, eff. 3/23/2015.

Effective Date: 12-09-2003



94 Ohio St.3d 472 (Ohio 2002)

764 N.E.2d 971, 2002-Ohio-997

The STATE ex rel. DITMARS

v.

McSWEENEY, Clerk, et al.

No. 02-297.

Supreme Court of Ohio

March 8, 2002.

Submitted March 5, 2002.

[764 N.E.2d 972] Phillip L. Harmon, Worthington, for relator.

Janet E. Jackson, Columbus City Attorney, Daniel W. Drake and Susan E. Ashbrook, Assistant City Attorneys, for respondent Timothy McSweeney, Columbus City Clerk.

Vorys, Sater, Seymour & Pease L.L.P., Bruce L. Ingram and Matthew R. Wilson; Crabbe, Brown, Jones, Potts & Schmidt and Larry H. James, Columbus, for intervening respondents.

[764 N.E.2d 973] PER CURIAM.

Relator, David Ditmars, is a resident of the city of Columbus, Ohio, and is a member of a petitioning committee that was formed to circulate an initiative petition. The initiative petition contains a proposed ordinance entitled "Ordinance to Protect and Preserve the Big Darby Watershed." [1] The proposed ordinance provides that for five years after the ordinance becomes effective, Columbus may not permit within the Big Darby watershed (1) any extension of an existing, or construction of any new, public drinking-water delivery system or public sewer system; (2) any extension of an existing, or construction of any new, private sewage system; and (3) any material modification of the natural surface water drainage topography.

On March 26, 2001, Ditmars filed a certified precirculation copy of the initiative petition with the office of respondent Timothy McSweeney, the City Clerk of Columbus. On October 3, 2001, Ditmars and others filed the initiative petition, which consisted of 888 part-petitions containing 12,221 signatures, with the city clerk's office. On each of the part-petitions, the circulator signed the preprinted circulator statement, which had the following declaration:

"I, _____ (printed name of circulator), declare under penalty of election falsification that I am a qualified elector of the State of Ohio and reside at the address appearing below my signature hereto; that I am the circulator of the foregoing petition paper containing _____ (number) signatures; that I witnessed the affixing of every signature, that all signers were to the best of my knowledge and belief qualified to sign, and that every signature is to the best of my knowledge and belief the signature of the person whose signature it purports to be." See R.C. 3501.38(E).

None of the circulator statements on the part-petitions was notarized or otherwise sworn to by the circulator under oath.

McSweeney sent the petition to the Franklin County Board of Elections to verify the number of valid signatures of registered Columbus electors. On October 11, 2001, the board returned the petition to McSweeney with its report that the petition contained more than the required number of valid signatures.

On October 15, 2001, McSweeney certified the petition and submitted the proposed ordinance to the Columbus City Council. On October 22, the city council unanimously voted not to enact the proposed ordinance. The city council then immediately adopted Ordinance No. 1760-01, which was emergency legislation to submit the proposed ordinance concerning the Big Darby watershed to the "electors of the City of Columbus, Ohio pursuant to Section 44 of the City Charter for their approval or rejection at an election to be held May 7, 2002." The ordinance further provided that the "Clerk of this Council shall forthwith serve a certified copy of this Ordinance on the Franklin County, Ohio Board of Elections." Ordinance No. 1760-01 also acknowledged that "pursuant to Columbus City Charter Section 44 Council is required forthwith to order and provide for the submission of such proposed ordinance which has been rejected to a vote of the electors of the City at the next ensuing election to be held not less than sixty (60) nor more than one hundred twenty (120) days thereafter; or, if no such election will be held, at the next **[764 N.E.2d 974]** ensuing election." On October 23, Columbus Mayor Michael Coleman signed Ordinance No. 1760-01.

McSweeney did not, as required by Ordinance No. 1760-01, serve a certified copy of that ordinance on the board of elections. Instead, by letter dated February 13, 2002, almost four months after the city council ordered him to serve the certified copy of the ordinance, McSweeney notified members of the petitioning committee, including Ditmars, that he would not certify the initiative to the board of elections because the petition was insufficient and invalid. McSweeney stated that the Columbus City Attorney had reviewed the petition and concluded that it was defective because it lacked the circulators' affidavits required by Columbus Charter Section 42.

On February 15, 2002, Ditmars instituted this expedited election case. Ditmars requested a writ of mandamus to compel McSweeney and the board of elections to "fulfill all of the legal duties imposed upon [them] under Columbus City Council Ordinance No. 1760-01" and "to specifically compel the Board to place the Proposed Ordinance on the City of Columbus May 7, 2002 ballot." We granted the motion of Rocky Lee Blauser and Blauser Family Partnership [2] to intervene as respondents, and the parties filed a joint application to dismiss the board of elections from the case because the action was premature as to the board, which had not had the initiative petition certified to or filed with it. On March 5, we granted the joint application and dismissed the board of elections from this case. McSweeney and the intervening respondents filed motions to dismiss, and the parties filed evidence and briefs pursuant to the expedited election schedule in S.Ct.Prac.R. X(9).

This cause is now before the court for a consideration of the merits.

Ditmars requests a writ of mandamus to compel McSweeney to fulfill his legal duties under Columbus Ordinance No. 1760-01, *i.e.*, to "forthwith serve a certified copy of [the] Ordinance on the Franklin County, Ohio Board of Elections." In order to be entitled to the requested extraordinary relief in mandamus, Ditmars must establish a clear legal right to have McSweeney comply with Ordinance No. 1760-01, a corresponding clear legal duty on the part of McSweeney to so comply, and the lack of an adequate legal remedy in the ordinary course of the law. *State ex rel. N. Olmsted v. Cuyahoga Cty. Bd. of Elections* (2001), 93 Ohio St.3d 529, 532, 757 N.E.2d 314. Ditmars has established that he lacks an adequate remedy in the ordinary course of the law, so the dispositive issue is whether he has established his right to the requested relief and McSweeney's duty to provide it.

Sufficiency and Validity of Initiative Petition: Affidavit Requirement of Columbus Charter

Ditmars first asserts that McSweeney lacked authority to refuse to certify the initiative to the board of elections because his stated reason for so refusing is erroneous. McSweeney refused to certify the initiative to the board of elections because the petition lacked the circulators' affidavits required by the charter. Section 42 of the Columbus Charter specifies that affidavits of circulators must be attached to each initiative petition paper:

"The signatures to any such petition need not all be appended to one paper, but *to each such paper there shall be attached an affidavit by the circulator thereof stating*

[764 N.E.2d 975]

the number of signers to such part of the petition and that such signatures were appended thereto in the presence of affiant. " (Emphasis added.)

Ditmars contends that although the circulator statements in the initiative petition were unsworn and not declared in the presence of an officer authorized to administer oaths, they complied with applicable legal provisions because Section 42 of the Columbus Charter does not use the terms "notary" and "notarization," Section 42 does not conflict with R.C. 3501.38(E), [3] and the circulator statements

contained in the initiative petition fully complied with R.C. 3501.38(E). These contentions are meritless.

The word "affidavit" is not defined in the Columbus Charter. Undefined language used in a municipal charter must be construed according to its ordinary and common usage. *State ex rel. DeBrosse v. Cool* (1999), 87 Ohio St.3d 1, 5, 716 N.E.2d 1114. Applying the ordinary and common meaning of the word here, an "affidavit" is a "voluntary declaration of facts written down and sworn to by the declarant before an officer authorized to administer oaths." Black's Law Dictionary (7 Ed.1999) 58; see, also, Webster's Third New International Dictionary (1986) 35, defining "affidavit" as "a sworn statement in writing made esp. under oath or on affirmation before an authorized magistrate or officer." Therefore, the mere fact that Section 42 of the Columbus Charter does not include terms like "notary" or "notarization" in addition to "affidavit" does not obviate the requirement that circulators of initiative petitions must declare under oath before an officer authorized to administer oaths the number of signers on the part petitions and that those signatures were made in their presence.

Further, Section 42 of the Columbus Charter *does conflict* with R.C. 3501.38(E) insofar as the charter provision requires circulator affidavits and the statute does not. Because the charter provision conflicts with the statute on the affidavit requirement, the charter provision prevails. " 'In matters of local self-government, if a portion of a municipal charter expressly conflicts with parallel state law, the charter provisions will prevail.' " *State ex rel. Fenley v. Kyger* (1995), 72 Ohio St.3d 164, 165, 648 N.E.2d 493, quoting *State ex rel. Lightfield v. Indian Hill* (1994), 69 Ohio St.3d 441, 442, 633 N.E.2d 524; Sections 3 and 7, Article XVIII, Ohio Constitution.

Based on the foregoing, McSweeney correctly concluded that the initiative petition was insufficient and invalid because it did not comply with the affidavit requirement of Columbus Charter Section 42. This conclusion is consistent with precedent. See *State ex rel. Van de Kerkhoff v. Dowling* (1991), 61 Ohio St.3d 55, 572 N.E.2d 653 (referendum petition properly held to be insufficient because it failed to comply with city charter requirement of circulator affidavits); *State ex rel. Humble v. Brown* (1977), 52 Ohio St.2d 9, 6 O.O.3d 77, 368 N.E.2d 294 (local option election petition containing statement of circulator did not satisfy statutory requirement of a circulator affidavit); *State ex rel. Evergreen Co. v. Franklin Cty. Bd. of Elections* (1976), 48 Ohio St.2d 29, 2 O.O.3d 126, 356 N.E.2d 716

[764 N.E.2d 976] (lack of statement that notaries placed referendum petition circulators under oath established failure to comply with statutory affidavit requirement).

Sufficiency and Validity of Initiative Petition: Liberal Construction of Municipal Initiative Provisions

Ditmars contends that liberal construction of the Columbus Charter requirements for initiative petitions supports his claim that the petition met all applicable legal requirements. It is true that provisions for municipal initiative or referendum are liberally construed so as to permit rather than preclude the exercise of this power. *State ex rel. Rose v. Lorain Cty. Bd. of Elections* (2000), 90 Ohio St.3d 229, 230, 736 N.E.2d 886.

Nevertheless, the settled rule is that election laws are mandatory and require strict compliance and that substantial compliance is acceptable only when an election provision expressly states that it is. See *State ex rel. Phillips v. Lorain Cty. Bd. of Elections* (2001), 93 Ohio St.3d 535, 539, 757 N.E.2d 319. Section 42 of the Columbus Charter does not expressly state that mere substantial compliance with its circulator-affidavit requirement is acceptable, and even if it did, the initiative petition filed by Ditmars and other petitioners did not substantially comply with that requirement. See *Van de Kerkhoff*, 61 Ohio St.3d at 59-60, 572 N.E.2d 653 (an unsworn circulator statement in a referendum petition does not comply, either strictly or substantially, with municipal charter requirement of a circulator affidavit).

Therefore, Ditmars's reliance on the general rule of liberal construction of municipal initiative provisions does not modify the conclusion that the petition is invalid because it failed to comply with the unequivocal circulator-affidavit requirement of Section 42 of the Columbus Charter. See *State ex rel. Wolfe v. Delaware Cty. Bd. of Elections* (2000), 88 Ohio St.3d 182, 186, 724 N.E.2d 771 (no need to liberally construe a statute whose meaning is unequivocal and definite).

Sufficiency and Validity of Initiative Petition: Estoppel

Ditmars asserts that McSweeney, who could have discerned the lack of circulator affidavits in the petition earlier, "waited until the last moment to kill the election."

McSweeney, however, is not estopped from raising the insufficiency and invalidity of a petition merely because he waited over four months from the date the signed petition was filed with him to raise the Section 42 defect. Estoppel does not apply against election officials in the exercise of governmental functions. See *State ex rel. Cooker Restaurant Corp. v. Montgomery Cty. Bd. of Elections* (1997), 80 Ohio St.3d 302, 307, 686 N.E.2d 238. In other words, the petitioners' duty to comply with the affidavit requirement of the charter is not conditioned upon receiving notice from the city clerk that the duty exists. See *State ex rel. Jedlicka v. Cuyahoga Cty. Bd. of Elections* (1969), 20 Ohio St.2d 13, 15, 49 O.O.2d 108, 251 N.E.2d 862 (R.C. 3517.10 "imposes a duty on every candidate to file a

statement of receipts and expenses. That duty is explicit. It is not conditioned upon receiving the notice from the board that the duty exists. Therefore, the failure of the board to notify relator does not excuse him from his requirement to file his statement of receipts and expenses").

Authority of City Clerk to Determine Sufficiency and Validity of Initiative Petition Following Enactment of Ordinance Ordering Certification of Initiative

Ditmars next contends that even if McSweeney correctly concluded that the **[764 N.E.2d 977]** initiative petition was invalid because it failed to comply with Section 42 of the Columbus Charter, McSweeney no longer had any authority to so conclude after the city council had enacted an ordinance ordering him to certify the ordinance to the board of elections. McSweeney counters that under R.C. 731.28 and Section 42 of the Columbus Charter, McSweeney retained the authority to refuse to certify the initiative to the board of elections.

The statutory procedure governing municipal initiative and referendum in R.C. 731.28 through 731.41 applies to municipalities where the charter incorporates general law by reference, except where the statutory procedure conflicts with other charter provisions. *Christy v. Summit Cty. Bd. of Elections* (1996), 77 Ohio St.3d 35, 38, 671 N.E.2d 1. Municipal charters must be construed to give effect to all separate provisions and to harmonize them with statutory provisions whenever possible. *State ex rel. Fattlar v. Boyle* (1998), 83 Ohio St.3d 123, 127, 698 N.E.2d 987.

R.C. 731.28 provides the following procedure for municipal initiative petitions: (1) when a petition for an initiated ordinance or other measure is signed by the required number of electors, the city auditor or village clerk has a mandatory, ministerial duty, after ten days from the date the petition was filed, to transmit the petition and a certified copy of the text of the proposed ordinance or other measure to the board of elections; (2) within ten days of receiving the petition, the board of elections is required to determine the number of electors of the municipal corporation who signed the petition and return the petition to the auditor or clerk together with a statement attesting to the number; (3) the auditor or clerk then exercises limited, discretionary authority to determine the sufficiency and validity of the petition; and (4) if the auditor or clerk certifies the sufficiency and validity of the initiative petition to the board of elections, the board must submit the proposed ordinance or other measure at the next succeeding general election

occurring after seventy-five days from the certification to the board of elections, but only if the board determines under R.C. 3501.11(K) and 3501.39 that the petition is sufficient and valid. See *State ex rel. Sinay v. Sodders* (1997), 80 Ohio St.3d 224, 230-231, 685 N.E.2d 754.

The Columbus Charter initiative procedure, which specifies in Section 43 that initiative petitions are filed with the city clerk rather than the city auditor, differs from the foregoing statutory procedure in several significant respects: (1) within ten days after the filing of the initiative petition, the city clerk certifies the number of signatures and submits the proposed ordinance to the city council at its next regular meeting (Section 43); (2) if the petition contains the required number of signatures, the city council refers the proposed ordinance to a committee to report at the next regular council meeting (Section 44); (3) if the council then either fails to take action or rejects the proposed ordinance in whole or in part, it must order the submission of the proposed ordinance to the electorate at the next election to be held not less than sixty nor more than one hundred and twenty days thereafter (Section 44); and (4) the ordinance submitting the proposed ordinance to a vote of the electorate shall be certified by the city clerk to the proper election officials immediately upon passage by council (Section 200). In addition, Section 42 of the charter provides, "The petition and signatures thereto appended, so verified, shall be presumed to be in all respects sufficient, unless not later than forty days before the election, it shall be otherwise proven."

After construing these provisions *in pari materia* and giving effect to all of the **[764 N.E.2d 978]** applicable provisions, it is evident that although the charter does not completely negate the statutory procedure, it nonetheless alters that procedure. R.C. 731.28 provides that city auditors and village clerks must exercise their limited, discretionary authority to determine the sufficiency and validity of initiative petitions when they receive the petitions back from the board of elections. Here, the city clerk received the petition back from the board of elections before it had a duty under the charter to certify the number of signatures and submit the proposed ordinance to the city council. Columbus Charter, Section 43. McSweeney should have then reviewed the petition and exercised his limited, discretionary authority to determine the petition's sufficiency and validity. Instead, he waited until after council passed an ordinance ordering him to serve a certified copy of the proposed ordinance to the board of elections.

Adopting respondents' contrary interpretation, which would permit the city clerk to, in effect, trump the city council's enactment of an ordinance and the mayor's approval thereof, would render nugatory the charter provisions concerning council's duties concerning initiative matters. And although Section 42 of the charter indicates that the municipal official or entity's determination of sufficiency concerning a petition may be made as late as forty days before an election, it does not purport to negate the other charter provisions.

Moreover, accepting respondents' argument that the city clerk can determine sufficiency even after he has been ordered by city council to serve a certified copy

of the ordinance on the board of elections would contravene the general rule that only a new ordinance can repeal an existing ordinance. *State ex rel. Commt. for the Referendum of Ordinance No. 3543-00 v. White* (2000), 90 Ohio St.3d 212, 217, 736 N.E.2d 873. Council enacted no new ordinance repealing Ordinance No. 1760-01 here.

Therefore, construing the pertinent charter and statutory provisions *in pari materia,* McSweeney lacked authority following the enactment of Ordinance No. 1760-01 to determine that the petition was insufficient. At the time that the ordinance was enacted, he had a duty under the charter to *immediately* certify the ordinance to the proper election officials. Columbus Charter, Section 200. In fact, the ordinance itself ordered McSweeney to *forthwith* serve a copy of the ordinance on the board of elections. McSweeney did neither despite his clear legal duty to do so under the charter and the ordinance.

Laches

The intervening respondents assert that because Ditmars relies upon the October 23 mayoral approval of the October 22 enactment of Ordinance No. 1760-01 to support his claim that McSweeney had a duty to serve a certified copy of the ordinance on the board of elections, Ditmars's expedited election action for extraordinary relief in mandamus is barred by laches. This assertion is meritless.

It is axiomatic that relators in election cases must act with the utmost diligence. *State ex rel. Newell v. Tuscarawas Cty. Bd. of Elections* (2001), 93 Ohio St.3d 592, 595, 757 N.E.2d 1135. But there is no evidence in this case that Ditmars delayed in asserting his claims here. He could have reasonably relied upon the passage of Ordinance No. 1760-01, which indicated that the initiative was proceeding to be placed upon the May 7 ballot, until McSweeney notified him by letter dated February 13, 2002, that the initiative had not been certified to the board of elections. Ditmars then filed this action within two days of the notification letter. And the date for the preparation of absentee ballots [764 N.E.2d 979] has not yet passed. See R.C. 3509.01. Therefore, under these circumstances, laches does not bar Ditmars's mandamus claim.

Conclusion

Based on the foregoing, Ditmars has established entitlement to the requested extraordinary relief in mandamus. He has a clear legal right under Ordinance No. 1760-01 and the Columbus Charter to have McSweeney immediately serve a certified copy of the ordinance on the board of elections, and McSweeney has a corresponding clear legal duty to do so. We therefore grant Ditmars a writ of

mandamus to compel McSweeney to serve a certified copy of Ordinance No. 1760-01 on the board of elections. [4]

Writ granted.

MOYER, C.J., FRANCIS E. SWEENEY, SR. and LUNDBERG STRATTON, JJ., concur.

DOUGLAS, RESNICK and COOK, JJ., concur in judgment.

PFEIFER, J., dissents.

Notes:

[1] For purposes of the proposed ordinance, the Big Darby watershed is defined as the area of land in which the natural surface water drains into the Big Darby Creek, the Hellbranch Run, the Clover Groff Ditch, or the Hamilton Ditch.

[2] Rocky Lee Blauser is a partner in Blauser Farm Partnership, which owns a two-hundred-three-acre farm located within the Big Darby watershed, and would be adversely affected by the enactment of the proposed ordinance.

[3] R.C. 3501.38(E) provides, "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."

[4] By so holding, we are not ordering the board of elections to place this initiative on the May 7 ballot. In fact, Ditmars concedes that the board of elections is authorized to consider the sufficiency and validity of the initiative petition. And nothing in the Columbus Charter, R.C. 731.28, or precedent negates the board's statutory authority to determine the sufficiency of the petition. See *Sinay,* 80 Ohio St.3d at 231, 685 N.E.2d 754 ("If the General Assembly had intended to completely divest boards of elections, which are the local authorities best equipped to gauge compliance with election laws, of their authority to determine the sufficiency and validity of these petitions, it would have done so with unambiguous language"); see, also, *State ex rel. Kennedy v. Cuyahoga Cty. Bd. of Elections* (1976), 46 Ohio St.2d 97, 75 O.O.2d 100, 346 N.E.2d 283, holding that because nothing in the municipal charter referred to the board of elections or purported to negate the board's duties, the board retained its full authority. Finally, the parties jointly dismissed the board of elections from this mandamus action. Therefore, the board of elections retains its authority to determine the sufficiency and validity of the initiative petition.

[redacted]

[redacted]

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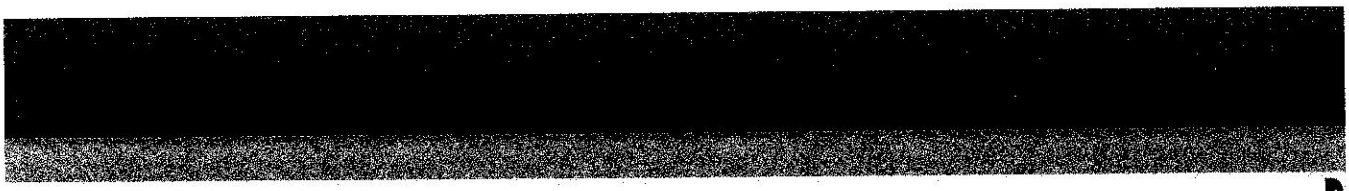

117 Ohio St.3d 116 (Ohio 2008)

881 N.E.2d 1252, 2008-Ohio-566

The STATE ex rel. GROUNDS

v.

HOCKING COUNTY BOARD OF ELECTIONS et al.

No. 2008-0188.

Supreme Court of Ohio.

February 15, 2008

Submitted Feb. 12, 2008.

[881 N.E.2d 1253] The McTigue Law Group, Donald J. McTigue , Mark A. McGinnis , Columbus, and John M. Stephan , Boston, MA, for relator.

Downes, Hurst & Fishel, Mark A. Fishel , and Dave A. Riepenhoff , Columbus, for respondents.

Robert L. Berry Co., L.P.A., and Robert L. Berry , urging denial of the writ for amicus curiae, Buckeye State Sheriffs Association.

PER CURIAM.

{¶ 1} This is an expedited election action for a writ of mandamus to compel respondents, the Hocking County Board of Elections and its members, to certify the candidacy of relator, Phillip Grounds, for the March 4, 2008 primary election for Hocking County sheriff or, in the alternative, to immediately compel the board and its members to determine whether Grounds meets the eligibility requirements of R.C. [redacted](B) . Because the board neither abused its discretion nor clearly disregarded applicable law by upholding a protest to the relator's candidacy, we deny the writ.

Application of Candidacy and Administrative Findings

{¶ 2} On December 3, 2007, relator, Phillip Grounds, filed an application with Judge Thomas H. Gerken, the administrative judge of the Hocking County Court of Common Pleas, to be a candidate for sheriff of Hocking County, Ohio. In the application, Grounds swore, "During the three-year period immediately prior to January 4, 2008, I [obtained or held] a valid basic peace officer certificate of training issued by the Ohio peace officer training commission and have been employed for at least *one day of* the last three years prior to the qualification date as a full-time law enforcement officer as defined in R.C. 2901.01 performing duties related to the enforcement of statutes, ordinances or codes [R.C.

[redacted] (B)(8)(b)] ." (Emphasis added; bracketed citations sic.) Grounds handwrote "one day of" Before "the last three years," and the remainder of the

application form was preprinted. According to Grounds, this portion of his application contained a typographical error because it should have referred to R.C. [redacted] (B)(8)(a) instead of R.C. [redacted] (B)(8)(b) . Grounds claimed that he had informed Judge Gerken that he qualified **[881 N.E.2d 1254]** under R.C. [redacted] (B)(8)(a) , but the judge instead handed him an application form referring to R.C. [redacted] (B)(8)(b) .

{¶ 3} In accordance with R.C. [redacted] (B)(7) , Judge Gerken instructed Grounds to prepare a complete history of his places of employment for a period of six years prior to the January 4, 2008 qualification date, but Grounds did not include in that history any employment with the village of Commercial Point, Ohio.

{¶ 4} On December 3, 2007, Judge Gerken made findings pursuant to R.C. [redacted] (B) and forwarded them with Grounds's employment and residence histories to respondent Hocking County Board of Elections.

Protest

{¶ 5} In January 2008, Stephen V. Mowery filed a protest against Grounds's application to be a candidate for sheriff. Mowery raised several issues, including that Grounds did not meet the requirements of R.C. [redacted] (B)(8)(b) , which Grounds had sworn that he satisfied in his notarized application, that Grounds did not meet the alternate requirement in R.C. [redacted] (B)(8)(a) , and that Grounds's application did not contain a complete employment history, because it did not include his employment with Commercial Point.

Board Hearing and Decision

{¶ 6} On January 18, 2008, respondents conducted a hearing on the protest. During the hearing, Grounds conceded that he did not qualify as an eligible candidate under R.C. [redacted] (B)(8)(b) . Grounds claimed that he did meet the alternate requirement under R.C. [redacted] (B)(8)(a) based on his employment as an auxiliary police officer for Commercial Point for eight hours and 15 minutes on November 30, 2007. He had sought that unpaid employment in order to meet the eligibility requirement to run for sheriff. At the hearing, Grounds admitted that although he had relied on this employment to satisfy the R.C. [redacted] (B)(8)(a) eligibility requirement, he had failed to list it on the employment history he submitted with his application to Judge Gerken.

{¶ 7} At the conclusion of the hearing, the board of elections upheld the protest and rejected Grounds's candidacy. Grounds later contacted the director of the elections board and requested a written decision. The director informed Grounds that there was no written decision, but Grounds insisted that she prepare one. In a subsequent letter to Grounds, the director noted, "The [board's] decision was based on the fact that the application filed with the Court of Common Pleas stated you were a qualified candidate under R.C. [redacted] (B) 8(b) and the board determined you did not meet the qualifications as outlined in that section of

code." This letter was prepared by the director without the knowledge, direction, or approval of the board or any board member.

Expedited Election Case

{¶ 8} On January 24, Grounds filed this expedited election case for a writ of mandamus to compel the board and its members to certify his candidacy for the office of Hocking County sheriff at the March 4, 2008 primary election. In the alternative, Grounds requests a writ of mandamus to compel the board and its members to conduct a hearing to determine whether Grounds meets the requirements of R.C. [redacted] (B) . The board and its members submitted an answer, and the parties filed evidence and briefs pursuant to the expedited schedule in S.Ct.Prac.R. X(9). The Buckeye State Sheriffs Association filed an amicus curiae brief in support of the board of elections and its members.

{¶ 9} This cause is now before the court for our consideration.

[881 N.E.2d 1255] Mandamus

{¶ 10} To be entitled to the writ, Grounds must establish a clear legal right to certification of his candidacy and placement of his name on the March 4 election ballot or to a hearing to permit him to introduce evidence of his compliance with R.C. 311.01(B)(8)(a) , a corresponding clear legal duty on the part of the board of elections and its members, and the lack of an adequate remedy in the ordinary course of law. *State ex rel. Duncan v. Portage Cty. Bd. of Elections,* 115 Ohio St.3d 405, 2007-Ohio-5346, 875 N.E.2d 578, ¶ 8. Given the proximity of the March 4 election, Grounds has established that he lacks an adequate remedy in the ordinary course of law. *State ex rel. Columbia Res. Ltd. v. Lorain Cty. Bd. of Elections,* 111 Ohio St.3d 167, 2006-Ohio-5019, 855 N.E.2d 815, ¶ 28 .

{¶ 11} For the remaining requirements, to establish the requisite legal right and legal duty, Grounds "must prove that the board of elections engaged in fraud, corruption, abuse of discretion, or 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, ¶ 8. There is no evidence of fraud or corruption here.

{¶ 12} Grounds claims that the board of elections abused its discretion and clearly disregarded applicable law by upholding the protest against his candidacy because first, the board did not permit him to offer evidence that he met the requirement under R.C. 311.01(B)(8)(a) in lieu of the alternate under R.C. 311.01(B)(8)(b) , and second, the board erred in failing to find that he had met the R.C. 311.01(B)(8)(a) requirement and refusing to certify his candidacy for sheriff at the March 4, 2008 primary election based on the evidence introduced at the protest hearing.

{¶ 13}R.C. 311.01(B) sets forth the eligibility requirements for sheriff candidates, including:

{¶ 14}"(8) The person meets at least one of the following conditions:

{¶ 15} "(a) Has obtained or held, within the four-year period ending immediately prior to the qualification date, a valid basic peace officer certificate of training issued by the Ohio peace officer training commission or has been issued a certificate of training pursuant to section 5503.05 of the Revised Code , and, within the four-year period ending immediately prior to the qualification date, has been employed as an appointee pursuant to section 5503.01 of the Revised Code or as a full-time peace officer as defined in section 109.71 of the Revised Code performing duties related to the enforcement of statutes, ordinances, or codes;

{¶ 16} "(b) Has obtained or held, within the three-year period ending immediately prior to the qualification date, a valid peace officer certificate of training issued by the Ohio peace officer training commission and has been employed for at least the last three years prior to the qualification date as a full-time law enforcement officer, as defined in division (A)(11) of section 2901.01 of the Revised Code , performing duties related to the enforcement of statutes, ordinances, or codes."

{¶ 17} Although Grounds swore in his application that he met the requirements of R.C. 311.01(B)(8)(b) , at the protest hearing, he disclaimed reliance on that subsection and instead argued that he met the requirements of R.C. 311.01(B)(8)(a) because he had worked one day during the pertinent four-year period as a police officer for Commercial Point. Grounds initially claims that the board of elections abused its discretion and clearly disregarded applicable law by limiting its decision to **[881 N.E.2d 1256]** the determination of whether Grounds met R.C. 311.01(B)(8)(b) and not considering whether he qualified under R.C. 311.01(B)(8)(a) .

{¶ 18} Grounds's claim lacks merit. The transcript of the protest hearing establishes that the board did not preclude Grounds from introducing evidence that he qualified under R.C. 311.01(B)(8)(a) instead of R.C. 311.01(B)(8)(b) . When asked by the chair of the elections board whether he had any witnesses, Grounds declared that he did not need any other witnesses because he had established that he qualified under R.C. 311.01(B)(8)(a) . In the board's discussion concerning the motion to reject Grounds's candidacy, a board member opined that Grounds did not qualify under R.C. 311.01(B)(8)(a) . And although the written notification prepared by the director at Grounds's insistence stated that the board's decision was based solely on R.C. 311.01(B)(8)(b) , this letter was not prepared by the board or with the board's approval.

{¶ 19} Therefore, the board did not limit its decision to R.C. 311.01(B)(8)(b) , and the remaining issue is whether the board of elections abused its discretion

and clearly disregarded applicable law by upholding the protest and rejecting Grounds's candidacy.

R.C. [illegible](B)(7) Employment-History Requirement

{¶ 20} In regard to whether the board of elections erred in rejecting Grounds's candidacy, R.C. [illegible](B)(7) specifies that no person is eligible to be a candidate for sheriff unless the person has prepared "a complete history of the person's * * * places of employment for a period of six years immediately preceding the qualification date, indicating the name and address of each employer and the period of time employed by that employer." This history must be filed with the administrative judge of the court of common pleas of the county, who must forward it to the board of elections before the qualification date. Id.

{¶ 21} Even if we were to accept Grounds's claim that his one day of work for Commercial Point as a police officer satisfied the R.C. [illegible](B)(8)(a) eligibility requirement, Grounds would not have complied with the employment-history requirement of R.C. [illegible](B)(7) , because he admittedly failed to include this one day of work on the employment history submitted to Judge Gerken. R.C. [illegible](B)(7) is phrased in mandatory language and requires strict compliance. *State ex rel. Ditmars v. McSweeney* (2002), 94 Ohio St.3d 472, 476, 764 N.E.2d 971 ("the settled rule is that election laws are mandatory and require strict compliance and that substantial compliance is acceptable only when an election provision states that it is"); *State ex rel. Steele v. Morrissey*, 103 Ohio St.3d 355, 2004-Ohio-4960, 815 N.E.2d 1107, ¶ 33 .

{¶ 22} Grounds's noncompliance with the employment-history requirement was raised in the protest, admitted by Grounds at the protest hearing, and specified in the merit brief of the board of elections and its members.

{¶ 23} Therefore, even if-as Grounds claims-the board of elections committed error in rejecting his candidacy on the basis of R.C. [illegible](B)(8) , Grounds's noncompliance with R.C. [illegible](B)(7) justified the board's decision. See *State ex rel. Citizen Action for a Livable Montgomery v. Hamilton Cty. Bd. of Elections*, 115 Ohio St.3d 457, 2007-Ohio-5379, 875 N.E.2d 902, ¶ 49 (court will not vacate a correct determination by a board of elections even if that determination was based on an erroneous rationale); cf. *State ex rel. McGrath v. Ohio Adult Parole Auth.*, 100 Ohio St.3d 72, 2003-Ohio-5062, 796 N.E.2d 526, ¶ 8 ("Reviewing courts are not authorized **[881 N.E.2d 1257]** to reverse a correct judgment on the basis that some or all of the lower court's reasons are erroneous").

Timeliness of Board's Decision

{¶ 24} In his reply brief, Grounds claims that respondents waited too long to reject his candidacy because they did so less than 50 days before the election. Because Grounds did not raise this claim in his complaint or in his initial merit

brief, we need not address this argument. See, e.g., *Hoskins v. Simones*, 175 Ohio App.3d 166, 2007-Ohio-4084, 885 N.E.2d 1008, ¶ 38 (parties are not permitted to raise new arguments in their reply brief); *State ex rel. Evans v. Blackwell*, 111 Ohio St.3d 1, 2006-Ohio-4334, 854 N.E.2d 1023, ¶ 23, fn. 1 (party's failure to raise claim in complaint or amended complaint and delay in raising claim until reply brief in election case justified court of appeals' failure to address claim).

{¶ 25} Moreover, even if Grounds's new claim were properly before us, the claim lacks merit. The 50-day limit for an elections board to invalidate a declaration of candidacy or nominating petition does not apply to cases in which a written protest is filed. See R.C. 3501.39(A) and (B) . In fact, under R.C. 3513.05 , a written protest could have been filed against Grounds's candidacy "not later than four p.m. of the forty-ninth day before the day of the presidential primary election." The statute manifestly contemplates board decisions on these protests less than 50 days before the primary election.

Conclusion

{¶ 26} The board of elections neither abused its discretion nor clearly disregarded R.C. [illegible] in rejecting Grounds's candidacy for sheriff. Therefore, we deny the writ. Grounds is not entitled to be placed on the primary election ballot because he did not comply with R.C. [illegible](B)(7) .

Writ denied.

MOYER , C.J., and PFEIFER , LUNDBERG STRATTON , O'CONNOR , O'DONNELL , LANZINGER , and CUPP , JJ., concur.

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