Supreme Court of Ohio Clerk of Court - Filed January 19, 2016 - Case No. 2015-2092

IN THE SUPREME COURT OF OHIO

STATE ex rel. CORNERSTONE DEVELOPERS, LTD.,	:	Case No. 2015-2092
Relator,	:	
v.	:	Original Action in Mandamus/Prohibition
GREENE COUNTY BOARD OF ELECTIONS, et al.,	:	
Respondents.	:	

MERIT BRIEF OF RESPONDENT OHIO SECRETARY OF STATE JON HUSTED

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I. INTRODUCTION

In this case, Relator does not contend that Respondent Secretary of State actually failed to perform his constitutional or statutory duties. Rather, Relator attempts to control the *outcome* of those duties before Respondent even has time to act. Relator requests extraordinary relief in mandamus and prohibition, to either direct Respondent to remove a local ballot issue from the ballot, or prohibit Respondent from placing it on the ballot in the first place. But Respondent has yet to perform his administrative review of the ballot language in question. Indeed, Relator filed this original action before Respondent had even received notice of this ballot issue.

In any event, Respondent has no legal duty to place or remove local issues on county ballots. Moreover, Respondent has no legal duty here—and Relator has no legal right—to keep an issue off the ballot on the basis that, if approved, it may be unlawful. Accordingly, Respondent is not a proper party from whom to request relief in either mandamus or prohibition.

In addition, Relator has an adequate alternative remedy *if and after* the ballot issue in question is approved (or, indeed, rejected) by the electorate: a court action challenging the legality of the ballot issue. Of course, if the ballot issue does not pass, all of Relator's concerns are moot. Finally, this Court has unequivocally determined that placing of issues on ballots is not quasi-judicial and therefore not appropriate for a writ of prohibition.

For these reasons, Relator is not eligible for relief in either mandamus or prohibition.

II. STATEMENT OF FACTS

On December 29, 2015, Relator Cornerstone Developers, Ltd., brought this action to challenge the potential placement of a 5.3 mill tax levy to fund the Replacement Fire District (hereafter "ballot issue") on the March 15, 2016 primary ballot in Greene County. Am. Compl. p. 20. Relator requests a writ of mandamus compelling Respondent to remove the ballot issue

from the county ballot, as well as a writ of prohibition preventing Respondent from placing the ballot issue on the county ballot. *Id*.

Contrary to Relator's allegations, Respondent did not receive the ballot issue in question from the Greene County Board of Elections for administrative review until January 8, 2015. Am. Compl. ¶ 67; Exh. 1, Affidavit of Matthew Walsh, ¶ 5. Accordingly, Respondent is currently reviewing the ballot language of the proposed issue and weighing whether to give approval in accordance with R.C. 3501.05(J) (directing the Secretary to "give final approval to ballot language for any local question or issue approved and transmitted by boards of elections"). Affidavit of Matthew Walsh, ¶ 6.

On December 29, 2015, Relator requested that Respondent reject the ballot issue as unlawful. Am. Compl. ¶ 67. Rather than wait for Respondent to reply—and perhaps to explain that the ballot issue had not yet arrived for administrative review—Relator filed this request for extraordinary relief on the very same day.

On January 11, 2016, Relator filed a motion to file a supplemental complaint *instanter*. The supplemental complaint did not add any new allegations concerning Respondent. *See* Mtn. to Supplement at 2-4.

III. LAW AND ARGUMENT

A. Standards of Review

Relator requests relief in both mandamus and prohibition. "A writ of mandamus is an extraordinary remedy, exercised by this court with caution and issued only when the right is clear." *State ex rel. Brown v. Ashtabula Cty. Bd. of Elections*, 142 Ohio St.3d 370, 2014-Ohio-4022, 31 N.E.3d 596, ¶ 11. To justify such extraordinary relief, Relators "must establish a clear legal right to the requested relief, a corresponding clear legal duty on the part of the board to

provide it, and the lack of an adequate remedy in the ordinary course of the law." *State ex rel. Voters First v. Ohio Ballot Bd.*, 133 Ohio St.3d 257, 2012-Ohio- 4149, 978 N.E.2d 119, ¶ 22. Relators "must prove these requirements by clear and convincing evidence." *State ex rel. Cincinnati for Pension Reform v. Hamilton Cty. Bd. of Elections*, 137 Ohio St.3d 45, 2013-Ohio-4489, 997 N.E.2d 509, ¶ 20; *see also* Relator's Br. at 17 (outlining the same standards).

To be entitled to a writ of prohibition, Relator must establish that (1) a lower tribunal is about to or has exercised judicial or quasi-judicial power, (2) the exercise of that power is unauthorized by law, and (3) denying the writ would result in injury for which no other adequate remedy exists in the ordinary course of law. *See State ex rel. Balas-Bratton v. Husted*, 138 Ohio St.3d 527, 2014-Ohio-14068 N.E.3d 933, ¶ 15; *State ex rel. Bell v. Pfeiffer*, 131 Ohio St.3d 114, 2012-Ohio-54, 961 N.E.2d 181, ¶ 18, 23; S*tate ex rel. Miller v. Warren Cty. Bd. of Elections*, 130 Ohio St.3d 24, 2011-Ohio-4623, 955 N.E.2d 379, ¶ 12.

In this case, Relator does not contend that Respondent actually failed to perform his constitutional or statutory duties. Rather, Relator attempts to control the outcome of those duties before Respondent even has time to act. Respondent did not receive the ballot issue before the original complaint in this action was filed and, to date, has not completed his administrative review of the ballot language. Still, Relator seeks a writ of mandamus to compel Respondent to remove the issue from the county ballot, or a writ of prohibition preventing Respondent from placing the issue on the county ballot in the first place. Relator ignores the fact, however, that Respondent has no legal duty to perform, and Relator has no legal right to request, this relief. In addition, Relator has an adequate alternative remedy after the ballot issue in question is approved (or, indeed, rejected) by the electorate: a challenge to the substantive legality of the ballot issue itself. For these reasons, Relator is not eligible for relief in mandamus. And because Relator is

not challenging any judicial or quasi-judicial act by Respondent, Relator is also not eligible for relief in prohibition.

B. Relator cannot prove that Respondent engaged in fraud, corruption, or abuse of discretion, or acted in clear disregard of applicable legal provisions, as Relator never gave Respondent an opportunity to act.

"In extraordinary actions challenging the decisions of the Secretary of State and boards of elections, the standard is whether they engaged in fraud, corruption, or abuse of discretion, or acted in clear disregard of applicable legal provisions." *State ex rel. Husted v. Brunner*, 123 Ohio St.3d 288, 2009-Ohio-5327, 915 N.E.2d 1215, ¶ 9 (mandamus), quoting W*hitman v. Hamilton Cty. Bd. of Elections*, 97 Ohio St.3d 216, 2002-Ohio-5923, 778 N.E.2d 32, ¶ 11 (prohibition). In the absence of any evidence or allegation of fraud or corruption by Respondent, the dispositive issue is whether Respondent abused his discretion or clearly disregarded applicable law in his administrative review of the ballot language pursuant to R.C. 3501.05(J).[1]

Here, Relator is not eligible for extraordinary relief, as it cannot prove that Respondent abused his discretion or clearly disregarded the law. As Respondent has yet to complete his administrative review, an order to control his upcoming decision on whether to approve the ballot language is not appropriate for extraordinary relief. Relator filed its request for extraordinary relief the very same day it requested action from Respondent, without giving Respondent any time to conduct its review. In fact, Respondent did not even receive the ballot language at issue until January 8, 2016, more than a full week after Relator filed its complaint in this Court. As Respondent has not yet had a chance to exercise his discretion, Relator cannot

[1] R.C. 3501.05 explains the Secretary of State's election duties. Contrary to Relator's assertion, R.C. 3501.11(V) discusses obligations of boards of elections, not the Secretary of State. *See* Relator's Br. at 18; R.C. 3501.11(V) (requiring boards of elections to "[g]ive 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").

show that Respondent abused his discretion or clearly disregarded applicable law. Accordingly, Relator is not entitled to any extraordinary relief from this Court.

C. Relator's request for a writ of mandamus must be denied because Respondent has no legal duty—and Relator has no corresponding legal right—to the relief requested.

1. Respondent has no legal duty to place or remove local issues from a ballot and therefore is not a proper party to provide the requested relief.

Relator is also not entitled a writ of mandamus or prohibition in this case because Respondent is not the proper party to provide the relief sought. Relator requests a writ of mandamus "ordering [Respondent] to remove" the ballot issue from the March 15, 2016 Greene County ballot, and a writ of prohibition "preventing [Respondent] from placing" the ballot issue on the ballot. Am. Compl. p. 20. But Respondent is not tasked under Ohio law with placing or removing local ballot issues on ballots. Rather, those responsibilities lie with a county board of elections. *See, e.g.*, R.C. 3501.02(F)(1) ("[A]ny question or issue, except a candidacy, to be voted upon at an election shall be certified, for placement upon the ballot, to the board of elections . . . ."); R.C. 3505.06(E) ("A condensed text that will properly describe the question, issue, or an amendment proposed by other than the general assembly shall be used as prepared and certified by the secretary of state for state-wide questions or issues or *by the board for local questions or issues*.") (emphasis added); *see also* Exh. 2, Ohio Secretary of State, *Ohio Ballot Questions and Issues Handbook*, p. 1-10-11 ("[W]hether or not a question or issue remains on the ballot is a decision of the board members, made in a public meeting.").[2]

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[2] Available at http://www.sos.state.oh.us/sos/upload/elections/eoresources/general/2013qandi.pdf. Courts may take judicial notice of "public records and government documents" on official websites. *See Gerritsen v. Warner Bros. Entertainment Inc*., C.D. Cal. No. CV 14-0330, 2015 WL 4069617, *12 (Jan. 30, 2015) (and cases therein) (under Fed. Evid.R. 201, courts "can take judicial notice of '[p]ublic records and government documents available from reliable sources on the Internet,' such as websites run by governmental agencies"); *see also Busby v. Bank of*

Respondent's duties regarding local questions and issues are comparatively limited: "Please note that comments provided [by the Secretary of State] on proposed ballot language do not imply that the question or issue cannot be placed on the ballot." *Ohio Ballot Questions and Issues Handbook*, p. 1-11. That is, Respondent conducts a limited administrative review of the ballot language, rather than orders what local issue can be placed or removed on the ballot. Without a clear legal duty, Relator is not entitled to a writ of mandamus.

Further, this Court has held that a court cannot create the legal duty a relator would have enforced through a writ of mandamus; the duty must already exist in the law. *State ex rel. Hodges v. Taft*, 64 Ohio St.3d 1, 3, 591 N.E.2d 1186 (1992), citing *State ex rel. Stanley v. Cook*, 146 Ohio St. 348, 66 N.E.2d 207 (1946). Because Respondent has no legal duty to place or remove a local ballot issue from a ballot—and because Relator has no legal right to order such an act—the Court cannot create such a duty here through a writ.

2. Respondent has no legal duty to keep an issue off the ballot on the basis that, if approved, it may be unlawful.

Even if Respondent could provide the requested relief—and he cannot—he has no legal duty to withhold approval of the ballot language on the grounds requested by Relator. Relator alleges that Respondent "reject the Ballot Initiative as unlawful" on the grounds that the issue, if approved, would be "in violation of R.C. § 505.37 because a Township does not have authority to end Fire and EMS Services to incorporated areas[.]" Am. Compl. ¶ 68-69. But Respondent cannot keep an issue off the ballot on the basis that, if approved, it may be unlawful. *See State ex rel. Kilby v. Summit Cty. Bd. of Elections*, 133 Ohio St.3d 184, 2012-Ohio-4310, 977 N.E.2d 590, ¶ 19 (limiting an evaluation of the propriety of ballot language for local issues to a three-

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America, N.A., S.D. Ohio No. 3:14-CV-410, 2015 WL 1825831, *1 (Apr. 22, 2015) report and recommendation adopted, S.D. Ohio No. 3:14-CV-410, 2015 WL 3505526 (June 3, 2015) ("Public records and government documents, including those available from reliable sources on the Internet, are subject to judicial notice.").

part test: that it must fairly inform the voter of the subject on the ballot, refrain from the use of persuasive or argumentative language, and not have a fraudulent, confusing, or misleading effect), citing *Jurcisin v. Cuyahoga County Bd. of Elections*, 35 Ohio St.3d 137, 141-42, 519 N.E.2d 347 (1988).

All of Relator's propositions of law—whether the township complied with R.C. 5705.03(B); the scope of the township's authority under R.C. 505.37(C); the proper grounds for creating a replacement district under R.C. 505.37(B); or whether a political subdivision may remove services from real estate subject to a TIF—are outside the scope of Respondent's administrative review of ballot language. Relator's Br. *passim*. Respondent's review, conducted pursuant to R.C. 3501.05(J), "consists of examining the ballot language to determine if the relevant information from the documents (i.e., supporting resolution, ordinance, or petition) that accompanied the ballot language submission matches the information in the submitted ballot language." *Ohio Ballot Questions and Issues Handbook*, p. 1-10. In other words, Respondent compares the board's proposed ballot language to the authorizing documents the taxing authority filed with the board of elections to make sure that the information matches. For example, if "the subdivision's resolution states the millage amount for a proposed tax levy is 5 mills; the ballot language must accurately reflect the 5 mills." *Id.* As discussed further below, any challenge to the legal effect of the substantive text of the proposed amendment must await the passage of the amendment. *State ex rel. DeBrosse v. Cool*, 87 Ohio St.3d 1, 6, 716 N.E.2d 1114 (1999) ("Any claims alleging the unconstitutionality or illegality of the substance of the proposed ordinance, or action to be taken pursuant to the ordinance when enacted, are premature before its approval by the electorate"). Accordingly, Relator has no legal right to the extraordinary relief sought.

D. Relator's request for a writ of mandamus must be denied because it has an adequate alternative remedy to challenge the validity of the ballot issue *after* approval by the electorate.

Relator's request must be denied for the additional reason that it has an adequate alternative remedy at law to challenge the ballot issue if and after approval by the electorate. In fact, a post-approval challenge is the exclusive remedy for the relief Relator now seeks: "Any challenge by the appellants to the [ballot initiative] could have been made after it had become effective, not before." *Jurcisin v. Cuyahoga Cty. Bd. of Elections*, 35 Ohio St. 3d 137, 146, 519 N.E.2d 347 (1988). In that case, this Court held that a trial court "erred in addressing the validity of the amendment before it became law." *Id.*; *see also State ex rel. Kilby v. Summit Cty. Bd. of Elections*, 2012-Ohio-4310, ¶ 12, 133 Ohio St. 3d 184, 188, 977 N.E.2d 590, 595 ("[I]f Kilby is attacking the substantive text of the proposed amendment, his challenge must await the passage of the amendment."); *State ex rel. Hazel v. Cuyahoga Cty. Bd. of Elections*, 80 Ohio St.3d 165, 169, 685 N.E.2d 224 (1997) (claim that proposed ordinance violates R.C. 731.19 by containing more than one subject is premature prior to the electorate's approval of the ordinance).

Accordingly, Relator's request to compel Respondent to "reject the Ballot Initiative as unlawful" must be rejected as improper. Am. Compl. ¶ 68. "It is well-settled that *this court will not consider, in an action to strike an issue from the ballot, a claim that the proposed amendment would be unconstitutional if approved*, such claim being premature." *State ex rel. Cramer v. Brown*, 7 Ohio St.3d 5, 6, 454 N.E.2d 1321 (1983) (emphasis added), citing *Pfeifer v. Graves*, 88 Ohio St. 473, 104 N.E. 529 (1913), paragraph five of the syllabus; *Weinland v. Fulton*, 99 Ohio St. 10, 121 N.E. 816 (1918); *Cincinnati v. Hillenbrand*, 103 Ohio St. 286, 133 N.E. 556 (1921), paragraph two of the syllabus; *State, ex rel. Marcolin, v. Smith*, 105 Ohio St. 570, 138 N.E. 881 (1922); *State, ex rel. Kittel, v. Bigelow*, 138 Ohio St. 497, 37 N.E.2d 41 (1941), paragraph one of the syllabus; *see also State ex rel. Wilen v. Kent*, 144 Ohio St. 3d 121,

2015-Ohio-3763, 41 N.E.3d 390, ¶ 11 (same); *State ex rel. Walker v. Husted*, 2015-Ohio-3749, ¶ 16 ("An unconstitutional proposal may still be a proper item for referendum or initiative. If passed, the measure becomes void and unenforceable only when declared unconstitutional by a court of competent jurisdiction.").

Because Relator has an adequate alternative remedy—in fact the *only* proper remedy—to challenge the substance of the ballot issue after approval by the electorate, it is not entitled to extraordinary relief in either mandamus or prohibition.

E. In addition to an adequate alternative remedy, Relator's request for a writ of prohibition must be denied for failing to challenge an exercise of judicial or quasi-judicial power.

In addition to the adequate alternative remedy noted above, Relator's request for a writ of prohibition is also inappropriate for failing to challenge an exercise judicial or quasi-judicial power. *See Barton v. Butler County Bd. of Elections*, 39 Ohio St. 3d 291, 291, 530 N.E.2d 871 (1988) ("For a writ of prohibition to issue, a court must find that the respondent is about to exercise judicial or quasi-judicial power, that the exercise of such power is unauthorized by law, and that relator has no other adequate remedy at law.") (quotation omitted). This Court defines "quasi-judicial" authority as "the power to hear and to determine controversies between the public and individuals which require a hearing resembling a judicial trial." *State ex rel. Brookpark Entm't, Inc. v. Cuyahoga Cty. Bd. of Elections*, 60 Ohio St. 3d 44, 46, 573 N.E.2d 596 (1991) (quotation omitted).

This Court has unequivocally determined that "the placing of the issues on the ballots is ministerial in nature and not quasi-judicial." *State ex rel. Glass v. Brown*, 52 Ohio St. 2d 7, 8, 368 N.E.2d 837 (1977) (considering a complaint related to a proposed amendment to the Ohio Constitution), quoting *State ex rel. O'Grady v. Brown*, 48 Ohio St. 2d 17, 20-21, 356 N.E.2d 296 (1976); *see also State ex rel. Youngstown v. Mahoning Cty. Bd. of Elections*, 72 Ohio St. 3d 69,

71, 647 N.E.2d 769 (1995) ("The act of placing issues on the ballot is ministerial rather than quasi-judicial, so prohibition will not lie to prevent their placement."); *State ex rel. Semik v. Cuyahoga Cty. Bd. of Elections*, 67 Ohio St.3d 334, 337, 617 N.E.2d 1120, 1123 (1993) (holding that "actions in placing the proposed amendment on the ballot are not quasi-judicial, and the writ cannot be allowed"); *State ex rel. Toncray v. Summit Cty. Bd. of Elections*, 68 Ohio St. 2d 38, 38, 428 N.E.2d 401, 401 (1981) (holding that "placing issues on the ballot is not an exercise of quasi-judicial power"). The review of ballot language approved by a local board of elections does not involve hearings resembling a judicial trial. *See State ex rel. Parrott v. Brunner*, 117 Ohio St.3d 175, 2008-Ohio-813, 882 N.E.2d 908, ¶ 8 (prohibition could not lie against the Secretary of State when there was no requirement for the Secretary to hold a quasi-judicial hearing). Because Relator "has not demonstrated that the Secretary [of State] is about to usurp judicial or quasi-judicial power," Relator is not entitled to a writ of prohibition. *State ex rel. Glass*, 52 Ohio St. 2d at 8.

F. The complaint is barred by laches because of Relator's unexcused and prejudicial delay.

Even if this Court were to find that mandamus or prohibition is an appropriate remedy, and that the claim is not in fact premature, then in the alternative Relator's case is barred by laches. Laches bars an action where there is an "(1) unreasonable delay or lapse of time in asserting a right, (2) absence of an excuse for the delay, (3) knowledge, actual or constructive, of the injury or wrong, and (4) prejudice to the other party." *State ex rel. Owens v. Brunner*, 125 Ohio St.3d 130, 2010-Ohio-1374, 926 N.E.2d 617, ¶ 16, quoting *State ex rel. Polo v. Cuyahoga Cty. Bd. of Elections*, 74 Ohio St.3d 143, 145, 656 N.E.2d 1277 (1995). Further, in elections cases, "laches is not an affirmative defense, and [relators] have the burden of proving that they acted with the requisite diligence." *Smith v. Scioto County Bd. of Elections*, 123 Ohio St.3d 467,

2009-Ohio-5866, 918 N.E.2d 131, ¶ 14, quoting *State ex rel. Vickers v. Summit Cty. Council*, 97 Ohio St.3d 204, 2002-Ohio-5583, 777 N.E.2d 830 ¶ 13. Each laches factor is met in the present action and Relators fail to prove otherwise.

Relators unreasonably delayed in bringing this action, with no excuse for the delay. "Extreme diligence and promptness are required in election-related matters.'" *State ex rel. Manos v. Delaware County Bd. of Elections*, 83 Ohio St. 3d 562, 563, 701 N.E.2d 371 (1998), quoting *In re Contested Election of November 2, 1993*, 72 Ohio St. 3d 411, 413, 650 N.E.2d 859 (1995). The proposed ballot issue will be voted on at the election on March 15, 2016. Am. Compl. ¶ 2. According to the complaint, the Sugarcreek Township Trustees passed a resolution on October 19, 2015, to place on the ballot a 5.3 mill tax levy to support the Replacement Fire District. Am. Compl. ¶ 6, 58. Relator was clearly aware of the resolution, as Relator was concurrently engaged in federal litigation over the same concerns, Am. Compl. ¶ 54, and even initiated a new action against Sugarcreek Township in the Greene County Court of Common Pleas on November 10, 2015. Am. Compl. ¶ 65. Yet Relator did not institute this action at that time, or even when the Greene County Board of Elections allegedly certified the 5.3 mill levy for the proposed Replacement Fire District on December 22, 2015. Am. Compl. ¶ 67. Relator waited to file this action until December 29, 2015. Relator alleges no facts to explain the delay in filing more than a week after the certification of the Board of Elections, or the more than two month delay after the resolution to place the issue on the ballot.

Relator's delay impairs the ability of the Greene County Board of Elections and Respondent Secretary of State to complete their duties, and could adversely affect the ability of Greene County voters to vote. Prejudice in expedited election cases occurs where a moving party's delay "impairs boards of elections' ability to prepare, print, and distribute appropriate

ballots because of the expiration of the time for providing absentee ballots." *Owens*, 2010-Ohio-1374, ¶ 19, quoting *State ex rel. Willke v. Taft*, 107 Ohio St.3d 1, 2005-Ohio-5303, 836 N.E.2d 536, ¶ 18. With the upcoming January 30, 2016, deadline for UOCAVA ballots (45th day before election day), this delay disrupts the time-sensitive and vital process of developing the ballot form for the election. 42 U.S.C. § 1973ff-1(a)(8); R.C. 3511.04. Any change to the ballot language impairs the ability of the Greene County Board of Elections to proof, finalize, and program ballots for the election in accordance with law. Because a change to the ballot at this stage jeopardizes the ability of Respondent and the Greene County Board of Elections to provide complete ballots to UOCAVA and regular voters, Relators requested relief should be denied.

Because of Relator's unexcused delay that prejudices affected voters, this Court should bar the complaint based on the doctrine of laches.

IV. CONCLUSION

For the reasons enumerated above, Relator's request for writs of mandamus and prohibition against Respondent Secretary of State should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing *Merit Brief of Respondent Ohio Secretary of State Jon Husted* was served on this 19th day of January 2016, by electronic mail and U.S. mail, postage prepaid, to:

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IN THE SUPREME COURT OF OHIO

STATE ex rel. CORNERSTONE DEVELOPERS, LTD.,	:	Case No. 2015-2092
Relator,	:	
v.	:	Original Action in Mandamus/Prohibition
GREENE COUNTY BOARD OF ELECTIONS, et al.,	:	
Respondents.	:	

APPENDIX

R.C. 3501.05……A-1

3501.05 Election duties of secretary of state.

The secretary of state shall do all of the following:

(A) Appoint all members of boards of elections;

(B) Issue instructions by directives and advisories in accordance with section 3501.053 of the Revised Code to members of the boards as to the proper methods of conducting elections.

(C) Prepare rules and instructions for the conduct of elections;

(D) Publish and furnish to the boards from time to time a sufficient number of indexed copies of all election laws then in force;

(E) Edit and issue all pamphlets concerning proposed laws or amendments required by law to be submitted to the voters;

(F) Prescribe the form of registration cards, blanks, and records;

(G) Determine and prescribe the forms of ballots and the forms of all blanks, cards of instructions, pollbooks, tally sheets, certificates of election, and forms and blanks required by law for use by candidates, committees, and boards;

(H) Prepare the ballot title or statement to be placed on the ballot for any proposed law or amendment to the constitution to be submitted to the voters of the state;

(I) Except as otherwise provided in section 3519.08 of the Revised Code, certify to the several boards the forms of ballots and names of candidates for state offices, and the form and wording of state referendum questions and issues, as they shall appear on the ballot;

(J) Except as otherwise provided in division (I)(2)(b) of section 3501.38 of the Revised Code, give final approval to ballot language for any local question or issue approved and transmitted by boards of elections under section 3501.11 of the Revised Code;

(K) Receive all initiative and referendum petitions on state questions and issues and determine and certify to the sufficiency of those petitions;

(L) Require such reports from the several boards as are provided by law, or as the secretary of state considers necessary;

(M) Compel the observance by election officers in the several counties of the requirements of the election laws;

(N)

(1) Except as otherwise provided in division (N)(2) of this section, investigate the administration of election laws, frauds, and irregularities in elections in any county, and report violations of election laws to the attorney general or prosecuting attorney, or both, for prosecution;

(2) On and after August 24, 1995, report a failure to comply with or a violation of a provision in sections 3517.08 to 3517.13, 3517.17, 3517.18, 3517.20 to 3517.22, 3599.03, or 3599.031 of the Revised Code, whenever the secretary of state has or should have knowledge of a failure to comply with or a violation of a provision in one of those sections, by filing a complaint with the Ohio elections commission under section

3517.153 of the Revised Code .

(O) Make an annual report to the governor containing the results of elections, the cost of elections in the various counties, a tabulation of the votes in the several political subdivisions, and other information and recommendations relative to elections the secretary of state considers desirable;

(P) Prescribe and distribute to boards of elections a list of instructions indicating all legal steps necessary to petition successfully for local option elections under sections 4301.32 to 4301.41, 4303.29, 4305.14, and 4305.15 of the Revised Code;

(Q) Adopt rules pursuant to Chapter 119. of the Revised Code for the removal by boards of elections of ineligible voters from the statewide voter registration database and, if applicable, from the poll list or signature pollbook used in each precinct, which rules shall provide for all of the following:

(1) A process for the removal of voters who have changed residence, which shall be uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965 and the National Voter Registration Act of 1993, including a program that uses the national change of address service provided by the United States postal system through its licensees;

(2) A process for the removal of ineligible voters under section 3503.21 of the Revised Code;

(3) A uniform system for marking or removing the name of a voter who is ineligible to vote from the statewide voter registration database and, if applicable, from the poll list or signature pollbook used in each precinct and noting the reason for that mark or removal.

(R) Prescribe a general program for registering voters or updating voter registration information, such as name and residence changes, by boards of elections, designated agencies, offices of deputy registrars of motor vehicles, public high schools and vocational schools, public libraries, and offices of county treasurers consistent with the requirements of section 3503.09 of the Revised Code;

(S) Prescribe a program of distribution of voter registration forms through boards of elections, designated agencies, offices of the registrar and deputy registrars of motor vehicles, public high schools and vocational schools, public libraries, and offices of county treasurers;

(T) To the extent feasible, provide copies, at no cost and upon request, of the voter registration form in post offices in this state;

(U) Adopt rules pursuant to section 111.15 of the Revised Code for the purpose of implementing the program for registering voters through boards of elections, designated agencies, and the offices of the registrar and deputy registrars of motor vehicles consistent with this chapter;

(V) Establish the full-time position of Americans with Disabilities Act coordinator within the office of the secretary of state to do all of the following:

(1) Assist the secretary of state with ensuring that there is equal access to polling places for persons with disabilities;

(2) Assist the secretary of state with ensuring that each voter may cast the voter's ballot in a manner that provides the same opportunity for access and participation, including privacy and independence, as for other voters;

(3) Advise the secretary of state in the development of standards for the certification of voting machines,

marking devices, and automatic tabulating equipment.

(W) Establish and maintain a computerized statewide database of all legally registered voters under section 3503.15 of the Revised Code that complies with the requirements of the "Help America Vote Act of 2002," Pub. L. No. 107-252, 116 Stat. 1666, and provide training in the operation of that system;

(X) Ensure that all directives, advisories, other instructions, or decisions issued or made during or as a result of any conference or teleconference call with a board of elections to discuss the proper methods and procedures for conducting elections, to answer questions regarding elections, or to discuss the interpretation of directives, advisories, or other instructions issued by the secretary of state are posted on a web site of the office of the secretary of state as soon as is practicable after the completion of the conference or teleconference call, but not later than the close of business on the same day as the conference or teleconference call takes place.

(Y) Publish a report on a web site of the office of the secretary of state not later than one month after the completion of the canvass of the election returns for each primary and general election, identifying, by county, the number of absent voter's ballots cast and the number of those ballots that were counted, and the number of provisional ballots cast and the number of those ballots that were counted, for that election. The secretary of state shall maintain the information on the web site in an archive format for each subsequent election.

(Z) Conduct voter education outlining voter identification, absent voters ballot, provisional ballot, and other voting requirements;

(AA) Establish a procedure by which a registered elector may make available to a board of elections a more recent signature to be used in the poll list or signature pollbook produced by the board of elections of the county in which the elector resides;

(BB) Disseminate information, which may include all or part of the official explanations and arguments, by means of direct mail or other written publication, broadcast, or other means or combination of means, as directed by the Ohio ballot board under division (F) of section 3505.062 of the Revised Code, in order to inform the voters as fully as possible concerning each proposed constitutional amendment, proposed law, or referendum;

(CC) Be the single state office responsible for the implementation of the "Uniformed and Overseas Citizens Absentee Voting Act," Pub. L. No. 99-410, 100 Stat. 924, 42 U.S.C. 1973ff, et seq., as amended, in this state. The secretary of state may delegate to the boards of elections responsibilities for the implementation of that act, including responsibilities arising from amendments to that act made by the "Military and Overseas Voter Empowerment Act," Subtitle H of the "National Defense Authorization Act for Fiscal Year 2010," Pub. L. No. 111-84, 123 Stat. 3190.

(DD) Adopt rules, under Chapter 119. of the Revised Code, to establish procedures and standards for determining when a board of elections shall be placed under the official oversight of the secretary of state, placing a board of elections under the official oversight of the secretary of state, a board that is under official oversight to transition out of official oversight, and the secretary of state to supervise a board of elections that is under official oversight of the secretary of state.

(EE) Perform other duties required by law.

Whenever a primary election is held under section 3513.32 of the Revised Code or a special election is held under section 3521.03 of the Revised Code to fill a vacancy in the office of representative to

congress, the secretary of state shall establish a deadline, notwithstanding any other deadline required under the Revised Code, by which any or all of the following shall occur: the filing of a declaration of candidacy and petitions or a statement of candidacy and nominating petition together with the applicable filing fee; the filing of protests against the candidacy of any person filing a declaration of candidacy or nominating petition; the filing of a declaration of intent to be a write-in candidate; the filing of campaign finance reports; the preparation of, and the making of corrections or challenges to, precinct voter registration lists; the receipt of applications for absent voter's ballots or uniformed services or overseas absent voter's ballots; the supplying of election materials to precincts by boards of elections; the holding of hearings by boards of elections to consider challenges to the right of a person to appear on a voter registration list; and the scheduling of programs to instruct or reinstruct election officers.

In the performance of the secretary of state's duties as the chief election officer, the secretary of state may administer oaths, issue subpoenas, summon witnesses, compel the production of books, papers, records, and other evidence, and fix the time and place for hearing any matters relating to the administration and enforcement of the election laws.

In any controversy involving or arising out of the adoption of registration or the appropriation of funds for registration, the secretary of state may, through the attorney general, bring an action in the name of the state in the court of common pleas of the county where the cause of action arose or in an adjoining county, to adjudicate the question.

In any action involving the laws in Title XXXV of the Revised Code wherein the interpretation of those laws is in issue in such a manner that the result of the action will affect the lawful duties of the secretary of state or of any board of elections, the secretary of state may, on the secretary of state's motion, be made a party.

The secretary of state may apply to any court that is hearing a case in which the secretary of state is a party, for a change of venue as a substantive right, and the change of venue shall be allowed, and the case removed to the court of common pleas of an adjoining county named in the application or, if there are cases pending in more than one jurisdiction that involve the same or similar issues, the court of common pleas of Franklin county.

Public high schools and vocational schools, public libraries, and the office of a county treasurer shall implement voter registration programs as directed by the secretary of state pursuant to this section.

The secretary of state may mail unsolicited applications for absent voter's ballots to individuals only for a general election and only if the general assembly has made an appropriation for that particular mailing. Under no other circumstance shall a public office, or a public official or employee who is acting in an official capacity, mail unsolicited applications for absent voter's ballots to any individuals.

Amended by 130th General Assembly File No. 64, SB 205, §1, eff. 6/1/2014.

Amended by 130th General Assembly File No. 47, SB 109, §1, eff. 2/25/2014.

Amended by 129th General AssemblyFile No.105, SB 295, §1, eff. 8/15/2012.

Amended by 129th General AssemblyFile No.40, HB 194, §1 Made subject to referendum in the Nov. 6, 2012 election. The version of this section thus amended was repealed by 129th General AssemblyFile No.105, SB 295, §1, eff. 8/15/2012.

Amended by 128th General AssemblyFile No.29, HB 48, §1, eff. 7/2/2010.

Effective Date: 08-28-2001; 05-07-2004; 05-02-2006; 08-22-2006; 2007 HB119 09-29-2007; 2008 HB350 09-12-2008

Related Legislative Provision: *See 130th General Assembly File No. 64, SB 205, §3.*