

In the
Supreme Court of Ohio

State ex rel. Corey Speweik : Case No. 2020-0382
:
Relator, : Original Action in Mandamus
:
v. :
:
The Wood County Board of Elections, :
and The Honorable Frank LaRose :
:
Respondents.

OHIO SECRETARY OF STATE FRANK LAROSE'S MOTION TO DISMISS

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The Court should dismiss this mandamus action because the relator, Corey Speweik, has failed to state a claim upon which relief can be granted. Dismissal for failure to state a claim is appropriate “if, after all factual allegations are presumed true and all reasonable inferences are made in” Speweik’s “favor, it appears beyond doubt that [he] could prove no set of facts entitling [him] to the requested extraordinary relief in ... mandamus.” *State ex rel. Deiter v. McGuire*, 2008-Ohio-4536, ¶16, 119 Ohio St. 3d 384, 387; accord *State ex rel. Ethics First-You Decide Ohio PAC v. DeWine*, 2016-Ohio-3144, ¶ 8, 147 Ohio St. 3d 373, 375. To ultimately win a writ of mandamus, a relator “must establish a clear legal right to the requested relief, a corresponding clear legal duty on the part of respondents, and the lack of an adequate remedy in the ordinary course of the law.” *State ex rel. ACLU of Ohio v. Cuyahoga Cty. Bd. of Comm’rs*, 2011-Ohio-625, ¶22, 128 Ohio St. 3d 256, 260.

Even accepting Speweik’s allegations as true and drawing all reasonable inferences in his favor, he is not entitled to mandamus relief. The reason is this: Speweik has not established that Secretary LaRose will violate any “clear legal duty.” Speweik alleges that the Secretary “announced a plan to change the primary election date through the Franklin county courts.” Compl. ¶9. If the courts enjoin the March 17, 2020 election, Speweik says, the Secretary will violate his “clear, core legal duty to comply with Ohio’s election laws.” *Id.* ¶12. This does not follow. If the courts enjoin the March 17 election date, then the Secretary will have a clear legal duty to adhere to that injunc-

tion. Thus, *if* the courts enjoin the March 17 election, the Secretary will not violate any clear legal duty by complying with that injunction.

What is more, in the hours since Speweik's filing, Governor DeWine announced that Health Director Dr. Amy Acton would issue an order requiring the closure of polls on March 17. *See In re: Closure of Polling Locations in the State of Ohio on Tuesday March 17, 2020, Director's Order.* The Secretary will not violate a clear legal duty by complying with an order from Ohio's Health Director in the midst of a pandemic.

CONCLUSION

The Court should dismiss this mandamus action because the relator has failed to state a claim upon which relief can be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served this 16th day of March,

2020, by e-mail, on the following:

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