

**IN THE SUPREME COURT OF OHIO**

STATE EX. REL. WILLIAM DEMORA et	)	
al.,	)	
	)	
Relators,	)	CASE NO. 2022-0661
	)	
vs.	)	
	)	ORIGINAL ACTION FOR
OHIO SECRETARY OF STATE FRANK	)	WRIT OF MANDAMUS
LAROSE, et al.,	)	
	)	
Respondents	)	
	)	

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RESPONDENT CUYAHOGA COUNTY BOARD OF ELECTIONS’  
BRIEF IN RESPONSE COMPLAINT FOR WRIT OF MANDAMUS  
OF INTERVENING RELATOR SHAFRON HAWKINS

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**BRIEF OF RESPONDENT**  
**CUYAHOGA COUNTY BOARD OF ELECTIONS**

**I. STATEMENT OF FACTS AND THE CASE**

Intervening Relator Hawkins (“Relator Hawkins”) seeks a writ of mandamus against the Cuyahoga County Board of Elections (“Cuyahoga BOE”) to certify his candidacy for the 15th Ohio House District. Relator Hawkins initially sought to run for the 15th Ohio House District in February 2022. See, Hawkins Complaint at ¶48. But he withdrew his candidacy on March 4, 2022 for the General Assembly seat, and filed to run for Congress in the May 3, 2022 primary. See, *Id.* at ¶¶54-58, 64. See also, Affidavit of Hawkins at ¶11.

After Mr. Hawkins withdrew his candidacy for the Ohio House seat on March 4, 2022 and declared his candidacy for the US Congress, the Secretary of State issued Directive 2022-31 removing the state representative contests from the May 3, 2022 ballot. See, Hawkins Complaint at ¶¶25, 30. Mr. Hawkins was certified as a Republican candidate for the US Congress in the 13th House District on the May 3, 2022 ballot, but failed to secure sufficient votes to receive the party’s nomination at the primary election. See, Affidavit of Perlatti at ¶6.

The Secretary of State issued Directive 2022-34 on May 28, 2022 in response to the Southern District Court of Ohio order to hold state primary races on August 2, 2022. Hawkins Complaint at ¶¶33, 35. In the May directive, the Secretary of State pronounced that the filing deadlines for the state primaries remain unaffected by the federal District Court’s decision, and those candidates seeking to run in the August 2, 2022 primary must have filed in February, 2022. Hawkins Complaint at ¶36.

Having lost the Congressional primary on May 3, 2022, Relator Hawkins sought to rescind his withdraw from the 15th Ohio House District contest on June 3, 2022 to run in the August 2,

2022 primary. See, *Id.* at ¶59. Relator Hawkins sought to reinstate his candidacy through a letter dated June 3, 2022, and Relator did not file a new declaration of intent to run and instead relies on his previously withdrawn declaration. See, *Id.* at ¶¶79-80. See also, Affidavit of Hawkins at ¶13 and Affidavit of Perlatti at ¶¶7-8. The Respondent Cuyahoga County Board of Elections (“Cuyahoga BOE”) rejected Relator Hawkins’ attempt to “withdraw his withdraw” and refused to reinstate his candidacy for the 15th Ohio House District. See, *Id.* at ¶¶60, 65.

Relator Hawkins seeks an order from this Court compelling the Cuyahoga BOE to recognize his write-in candidacy for the 15th Ohio House District in the August 2, 2022 primary election based on his withdrawn declaration of intent. See, Hawkins Complaint at ¶¶5, 49-50, 58-59, 64 and Prayer at ¶C. Relator Hawkins has not filed any petitions, declarations or other instruments to perfect his candidacy for the Ohio House District 15 seat other than his February 22, 2022 filing that he subsequently withdrew on March 4, 2022. See, Perlatti Affidavit at ¶7.

The Cuyahoga BOE was not an original party to this action, and Intervening Relator Hawkins seeks include the Cuyahoga BOE in this suit through its intervening complaint without causing service of summons on the Cuyahoga BOE. See, Docket.

## **II. LAW & ARGUMENT**

The Court should deny Relator Hawkins’ request to issue a Writ of Mandamus against the Cuyahoga BOE because Relator can prove no set of facts in support of their claim that would entitle it to the extraordinary relief sought. Relator’s mandamus request fails because: (1) the Cuyahoga BOE has not received service of summons and complaint; (2) the Relator Hawkins has no clear legal right to certification of his candidacy to run again in the August 2, 2022 state primary; and (3) the Cuyahoga BOE lacks the authority to perform the act that Relator Hawkins demands.

**A. The Cuyahoga BOE has not received service of process**

Relator filed a verified complaint naming the Cuyahoga BOE as a respondent to this action without causing service of summons on the Cuyahoga BOE. Under S. Ct. Prac. R. 12.01(2)(b), the Ohio Rules of Civil Procedure supplement the Court’s rules governing original actions. Under the applicable rules, the claimant bears the burden of perfecting service of process and showing that proper service was made. *Confidential Servs., Inc. v. Dewey*, Tenth Dist. App. No. 98AP-905, 1999 Ohio App. LEXIS 1694, \*5, 1999 WL 224431 (citing, *Jurko v. Jobs Europe Agency* 43 Ohio App. 2d 79, 85, 334 N.E.2d 478 (1975)). “If a trial court lacks personal jurisdiction over a party because that party has not been properly served, any judgment entered against that party is a nullity and is void.” *Id.*, citing, *O.B. Corp. v. Cordell*, 47 Ohio App. 3d 170, 171, 547 N.E.2d 1201 (1988). Without being issued service of summons and complaint, the Cuyahoga BOE is not properly before the Court, and no mandamus should issue against it.

**B. Relators Fail to State a Claim for Relief in Mandamus**

For a writ of mandamus to issue, the relator must establish that (1) the relator has a clear legal right to obtain performance of an act; (2) the respondent is under a clear legal duty to perform the act; and (3) the relator has no plain and adequate remedy in the ordinary course of the law. *State ex rel. Allen v. Warren Cty. Bd. of Elections*, 115 Ohio St.3d 186, 2007-Ohio-4752, 874 N.E.2d 507, ¶ 8. Relator cannot demonstrate a clear legal right for the Cuyahoga BOE to recognize his write-in candidacy nor does the Cuyahoga BOE owe a clear legal duty to acknowledge the same. Relator Hawkins fails to invoke a clear legal duty or right to appear as a write-in candidate on the August 2, 2022 primary election.

**1. Relator Hawkins has no clear legal right to certification of his candidacy for the August 2, 2022 primary.**

Relator Hawkins seeks to “reinstate” his candidacy for the 15th Ohio House District by

rescinding the withdrawal filed on March 4, 2022. However, a candidate's withdrawal is "effected" upon filing under RC 3513.30(B), and the law goes on to provide that the boards of elections "shall remove the name of the withdrawn candidate from the ballots" under RC 3513.30(E). There is no ability to rescind an effected withdrawal, and the Cuyahoga BOE is compelled to honor the notice effected upon filing.

Relator Hawkins mistakenly relies on *State ex rel. Coble v. Lucas Cty. Bd. of Elections*, 2011-Ohio-4550, ¶ 30, 130 Ohio St. 3d 132, 137, 956 N.E.2d 282, 287 to contend that the law allows candidates to retract the withdrawal of their candidacy. However, *Coble* merely recognizes an exception under RC 3513.052(G) to the prohibition in RC 3513.261 on seeking multiple offices during a single election that allows candidates that timely withdraw their petitions to file a second petition to run in the election. Relator Hawkins did not file second declaration of intent to run as a write-in for the August 2, 2022 primary. Instead, Relator Hawkins relies on his initial declaration filed on February 22, 2022 but withdrew on March 4, 2022. The means to "reinstate" a withdrawn candidacy is timely filing a second declaration or petition. *State ex rel. Donnelly v. Green*, 106 Ohio App. 61, 64, 148 N.E.2d 519, 521 (8th Dist. 1958). Relator Hawkins has not filed – timely or not – a second declaration of his candidacy after withdrawing his first. Therefore, Relator Hawkins has no clear legal right to certification for the August primary.

Moreover, even if the filing deadlines are extended and Relator Hawkins timely files a declaration or petition for the August 2, 2022 primary, the "sore loser" statute in the third paragraph of RC 3513.04 prohibits a candidate from running in the next general election after failing to secure party nomination in the preceding primary. Relator Hawkins sought party nomination in the May 3, 2022 for the US Congressional seat. See, Perlatti Affidavit.



Accordingly, the sore loser statute prohibits Relator Hawkins from becoming a candidate at the following general election for any office other than the limited board of education seats excluded under the statute. In seeking to run in the second primary, Relator Hawkins is necessarily attempting to become a candidate in the next general election following the primary he previously contested and lost. Even though the primary elections are sequential, the statute would forbid Relator Hawkins from running in the general election that follows either primary. Certifying his candidacy for the primary election is futile since RC 3513.04 forbids him from running as a candidate in “the following general election.”

**2. Respondent Cuyahoga BOE has no clear legal duty to certify the Relator’s candidacy for the August 2, 2022 primary**

The Cuyahoga BOE lacks the authority to disregard the Secretary of State’s Directive 2022-34 ordering the rejection of any candidacy filed after February 22, 2022. The Cuyahoga BOE is obligated to only “make and issue rules and instructions, not inconsistent with law or the rules, directives, or advisories issued by the secretary of state, as it considers necessary for the guidance of election officers and voters” and “perform other duties as prescribed by law or the rules, directives, or advisories of the secretary of state[.]” See, R.C. §3501.11. The law prescribes that, “members of boards of elections act under the direct control of and are answerable only to the Secretary of State and are in law and fact deputies of the Secretary of State in his capacity as the chief election officer of the state.” *State ex rel. Columbus Blank Book Mfg. Co. v. Ayres*, 142 Ohio St. 216, 222 (1943). See also, RC § 3501.06(A) (each “board of elections \* \* \* shall be appointed by the secretary of state, as the secretary’s representatives.”)

The clear instructions from the Secretary of State in Directive 2022-34 not only deprives the Cuyahoga BOE of any duty to certify the Relator’s candidacy for the August primary, but the Cuyahoga BOE lacks the authority to perform the act that Relator Hawkins demands. Therefore,

Relator Hawkins fails to state a claim for mandamus against the Cuyahoga BOE since there is no duty to certify his candidacy for the primary.

**III. CONCLUSION**

Mandamus should not issue against the Cuyahoga BOE since the party is not properly before the Court without being served the summons or the complaint. Moreover, Relator Hawkins' withdrawal of his candidacy on March 4, 2022 compelled the Cuyahoga BOE to withhold recognition of his name on the ballot under RC 3513.30(B) and (E) unless he timely filed a second declaration to run in the primary. Furthermore, the law prohibits Relator Hawkins from running in the general election after his failed candidacy for party nomination in the congressional primary under RC 3513.04. Finally, the Cuyahoga BOE lacks the authority to recognize his candidacy due to the Secretary of State's Directive 2022-34 prohibiting any acceptance after the filing deadlines.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I served an accurate copy of the foregoing Respondent's Motion to Dismiss through electronic mail on the 14th day of June 2022 to:

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