

In the Supreme Court of Ohio

THE STATE OF OHIO EX REL.,	:	
WILLIAM DEMORA,	:	Case No. 2022-0661
ET AL,	:	
	:	
	:	ORIGINAL ACTION IN
Relators;	:	MANDAMUS
	:	
v.	:	EXPEDITED ELECTION
	:	MATTER UNDER S. Ct. Prac.
OHIO SECRETARY OF STATE	:	R. 12.08
FRANK LaROSE,	:	
ET. AL,	:	
	:	
	:	
Respondents.	:	

**MERIT BRIEF OF
RESPONDENT LICKING COUNTY BOARD OF ELECTIONS,**

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STATEMENT OF THE CASE

The Relators, including Martin, one of their number, have initiated this action in Mandamus invoking the limited original jurisdiction of this Court. As part of his Petition, Martin alleges that “[r]espondent Licking county Board of Elections has a clear legal duty to certify Relator Martin as a candidate for the Ohio Democratic Party State Central Committee from the 20th Ohio Senate District at the August 2, 2022, primary election.” (SEE: Relator’s Petition, Page 27, Paragraph 144) Martin further alleges that he “...has a corresponding clear legal right to have her name certified as a candidate for the Ohio Democratic Party State Central Committee from the 20th Ohio Senate District at the August 2, 2022 primary election.” (SEE: Relator’s Petition, Page 27, Paragraph 145) On that basis Martin prays this Court to “[i]ssue an Order, Judgment, and/or Writ of Mandamus ordering the Licking County Board of Elections to certify Relator Martin’s candidacy for member of the Ohio Democratic Party State Central Committee from the 20th Ohio Senate District at the August 2, 2022, primary election.” (SEE: Relator’s Petition, Page 28, Paragraph G)

This action was set on the expedited calendar of this Court as an election matter. The Board filed a timely Answer in response to the Relators’ Petition, and, thereafter, the Relators filed their Merit Brief. The Board now files its Merit Brief in response thereto.

STATEMENT OF RELEVANT FACTS

The Licking County Board of Elections (“Board”) is a county board of elections established, formed, created, and currently existing under relevant terms and provisions of R.C. Chapter 3501. The Board is charged with the responsibility of managing and overseeing the conduct and operation of elections held within Licking County, Ohio.

R.C. 3501.11 provides that an Ohio county board of elections “...shall exercise by a majority vote all powers granted to the board by Title XXXV of the Revised Code, (and) shall perform all of the duties imposed by law...” including a number of functions specifically identified in that section. Among the duties specifically imposed on each county board of elections is the responsibility to “[m]ake 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.” (SEE: R.C. 3501.11[E], Emphasis Added)

Frank LaRose (“Secretary LaRose”), a Respondent in this matter, is the duly elected, qualified, and currently serving Secretary of State of the State of Ohio. As such, Mr. LaRose is the chief elections officer of the State who is entrusted with the duty and responsibility of general oversight over elections held within Ohio.

Pursuant to R.C. 3501.05, the Ohio Secretary of State is obligated to perform certain specifically enunciated duties, including the responsibility to “(B)Issue instructions by directives and advisories in accordance with section 3501.53 of the Revised Code to members of boards as to the proper methods of conducting elections.” (SEE: R.C. 3501.05[B]). In addition, the Secretary must “[p]repare rules and instructions for the conduct of elections[.]” (SEE: R.C. 3501.05[C]); and “[c]ompel the observance by election officers in the several counties of the requirements of election laws.” (SEE: R.C. 3501.05[M]). R.C. 3501.053 provides, in relevant

part that “[t]he secretary of state may issue instructions as to the proper method of conducting elections to members of the boards of elections by permanent or temporary directives.” (SEE: R.C. 3501.053[A])

On May 4, 2022, before 4:00 o’clock P.M. on that date, Gary Martin (“Martin”), a Relator in this matter, delivered to the Licking County Board of Elections at the offices of said body in Newark, Ohio, a declaration of candidacy and a petition pursuant to which he sought to have his name included on the ballot for the position of member of the Ohio Democratic State Central Committee at the 2022 primary election. On May 28, 2022, Secretary LaRose issued Directive 2022-34, and caused copies of said directive to be forwarded to the various county boards of elections throughout the State of Ohio. The Board received a copy of the directive on the same date, and, subsequent to the receipt of the Directive, confirmed to officials of the Secretary of State’s Office that the Directive had been received by the Board and was in hand. (SEE: Affidavit of Luke A. Burton, Director of the Licking County Board of Elections, submitted as evidence by the Board).

As part of Directive 2022-34, Secretary LaRose advised the Board that “[o]n May 27, 2022, a three-judge panel for the Southern District of Ohio (2-1) ordered ‘[a]ssuming no map is approved by midnight on Saturday, May 28, we order Secretary of State Frank LaRose to push back Ohio’s state primaries to August 2, 2022, and to implement Map 3 for this year’s election *only*.’” (SEE: Copy of Directive 2022-034 submitted as evidence by the Board, emphasis in original) The Directive further indicated that “[t]he federal court order requires the Secretary of State’s Office to conduct a primary election on August 2, 2022, for the offices of State Representative, State Senator, and member of State Central Committee.” (SEE” Copy of Directive 2022-34 submitted

as evidence by the Board) At Paragraph IV of the Directive, Secretary LaRose indicated further that:

“The federal court order did not alter the partisan candidate filing deadlines for the primary election. The filing deadline for candidates for State Representative, State Senator, or member of State Central Committee to file a declaration of candidacy was 4:00 p.m. on February 2, 2022. Write-in candidates for the primary election were required to file their declaration of intent to be a write-in candidate by February 22, 2022. If a declaration of candidacy or declaration of intent to be a write-in candidate was filed after those filing deadlines the board must reject the candidacy.” (SEE: Paragraph IV of Directive 2022-34 submitted as evidence by the Board)

On June 2, 2022, the Board met, and voted to reject the declaration of candidacy and petition presented to the Board by Martin on May 4, 2022. The action of the Board in rejecting the documents proffered by Martin was based solely on the fact that they were submitted after the filing deadlines outlined by Secretary LaRose in Directive 2022-34, and, therefore, that the Board was obligated to reject Martin’s candidacy. The Board made no further evaluation as to the propriety of the filings or the validity of signatures contained in the Petition. (SEE: Burton Affidavit submitted as evidence by the Board) The Board notes that, representations of Martin notwithstanding, Todd Shafer timely filed his petition and declaration of candidacy as to the position of member of the Democratic State Central Committee for the 20th Ohio Senatorial District, and Mr. Shafer’s name will appear as a candidate for said position on the August 2, 2022, primary ballot. (SEE: Burton Affidavit and Shafer filing documents submitted as evidence by the Board).

ARGUMENT AND LAW

I. LEGAL STANDARDS

Article IV, Section 2 of the Ohio Constitution provides in relevant part that:

“(B)(1) The Supreme Court shall have original jurisdiction over the following:

- (a) Quo Warranto;
- (b) Mandamus
- (c) Habeas corpus;
- (d) Prohibition;
- (e) Procedendo;
- (f) In any cause on review as may be necessary for its complete determination;
- (g) Admission to the practice of law, and all matters relating to the practice of law.”

Rule 12.01 of the Rules of Practice of the Ohio Supreme Court provide that: “S. Ct. Prac. R. 12.01 through 12.10 apply only to actions brought under Article IV, Section 2 of the Ohio Constitution.”

II. **IN VIEW OF THE LIMITED AUTHORITY AND DISCRETION OF THE LICKING COUNTY BOARD OF ELECTIONS, AND THE CLEAR AND EXPLICIT MANDATE OF THE OHIO SECRETARY OF STATE THAT THE BOARD “MUST REJECT” THE MARTIN FILINGS, THE BOARD IS UNDER NO CLEAR DUTY OR OBLIGATION TO CERTIFY THE MARTIN CANDIDACY TO THE BALLOT AT THE AUGUST 2, 2022, PRIMARY ELECTION, AND RELATOR MARTIN HAS NO CLEAR LEGAL RIGHT TO HAVE HIS CANDIDACY SO CERTIFIED, AND THE ISSUANCE BY THIS COURT OF AN EXTRAORDINARY WRIT OF MANDAMUS DIRECTING THE BOARD TO TAKE THE ACTION PRAYED BY MARTIN IS UNSUPPORTED AND INAPPROPRIATE.**

As is indicated above, Martin prays that this Court “[i]ssue an Order, Judgment, and/or Writ of Mandamus...” directing the Board to take the action which he seeks of them. (SEE: Relators’ Petition, Page 28, Paragraph G) Although the Relators make reference to unspecified “orders” or “judgments”, in addition to a Writ or Writs of Mandamus, the jurisdiction of this Court is limited by Article IV, Section 2 of the Ohio Constitution to those types and categories of actions

explicitly set forth therein. Mandamus is so included. Unspecified orders and judgments are not. This action, therefore, must and does sound in Mandamus, and the Relators herein bear the significant burden of establishing all of the requisite criteria for the issuance by this Court of an extraordinary Writ of Mandamus commanding the Board to take affirmative action as Martin prays.

“In order for a writ of mandamus to issue, the relator must demonstrate that ‘(1) there is no plain and adequate remedy in the ordinary course of law; (2) the respondent is under a clear legal duty to perform some act or acts; and (3) the relator has a clear legal right to the relief prayed for.’” *State ex rel. Smith v. Sandusky County Board of Elections*, 155 Ohio App. 3d 211, 800 N.E. 2d 81, 2003-Ohio-5856, HN 1, Page 8 (Ohio App., 6th Dist., 2003), citing and quoting *State ex rel. Durkin v. Mahoning County Board of Elections* (1996), 115 Ohio App. 3d 180, 183, 684 N.E. 2d 1289.

“In an action requesting that a board of elections certify a candidate on a ballot, relief in mandamus is not appropriate unless the candidate-relator establishes that the board’s decision resulted from ‘fraud, corruption, or clear disregard of applicable law.’” *State ex rel. Reading v. Cuyahoga County Board of Elections*, 147 Ohio App. 3d 172, 2001-Ohio-4143, 769 N.E. 2d 405, citing *State ex rel. O’Beirne v. Geauga County Board of Elections* (1997), 80 Ohio St. 3d 176, 685 N.E. 2d 502. *State ex rel. Smith v. Sandusky County Board of Elections, supra.*, HN 4, P 11.

SEE also: *State ex rel. Miller v. Cuyahoga County Board of Elections*, 103 Ohio St. 477, 817 N.E. 2d 1, 2004-Ohio-5532 (2004).

An “abuse of discretion” for the purposes of this matter “...implies an unreasonable, arbitrary, or unconscionable attitude.” *State ex rel. Wellington v. Mahoning County Board of Elections*, 120 Ohio St. 3d 198, HN 3, P 11, 897 N.E. 2d 641, 2008-Ohio-5510 (2008). The court, in such cases, “...must determine whether the board [of elections] acted fraudulently or corruptly, abused its discretion, or clearly disregarded applicable law.” SEE also: *State ex rel. Brown v. Butler County Board of Elections*, 109 Ohio St. 3d 63, 2006-Ohio-1292, 846 N.E. 2d 8, PL 23.

Since there is no evidence or claim of fraud or corruption here, Martin "...must establish that the board of elections abused its discretion or clearly disregarded applicable law..." *State ex rel. Wellington v. Mahoning County Board of Elections, supra.*, HNs 2 and 3, Page 11.

The Ohio Secretary of State is imbued by statute with the authority to "[i]ssue instructions by directives and advisories in accordance with 3501.053 of the Revised Code to members of the boards as to the proper methods of conducting elections[.], R.C. 3501.05(B), to [p]repare instructions for the conduct of elections[.], R.C. 3501.05(C); and to "[c]ompel the observance by election officers in the several counties of the requirements of election laws", R.C. 3501.05(M). County boards of elections may perform the duties imposed upon them by law in a manner which is "...not inconsistent with law or the rules, directives, or advisories issued by the secretary of state." R.C. 3501.11(E). It is the duty of the Secretary of State "...to advise with and direct members of the boards of elections 'as to the proper methods of conducting elections' and 'to compel the observance by election officers in the several counties, of the requirements of the law.'" *State ex rel. Melvin v. Sweeney*, 154 Ohio St. 223, 94 N.E. 2d 785 HN 1, P 787, 43 O.O. 36 (1950).

In the instant matter, Secretary LaRose, as Ohio's chief election official, in discharge of his duties and obligations to oversee elections throughout the state, and to provide advice and direction to local boards of election in operational oversight of elections "on the ground", issued Directive 2022-34 in which he directed that local boards "...must reject the candidacy[.]" of any candidate, such as Martin, who filed after the original filing deadlines described in the Directive. In compliance with the Secretary's directive and solely on that basis, the Licking County Board of Elections voted to reject Martin's proffer. Not only is the Board under no legal duty to accept the filing, absent a withdrawal or modification of the Secretary's directive, the Board enjoys no discretion or prerogative to do so. Since the Board, therefore, is under no clear legal duty to afford

to Martin the relief he seeks and has no discretion to do so, and Martin has no clear legal right to that relief, the issuance by this Court of a Writ of Mandamus commanding the Board to take any action is inappropriate as a matter of law.

CONCLUSION

The Board, therefore, prays this Court to dismiss the Relator's Petition as it is applicable to the Board and any action sought thereof; that the Board be held harmless from any costs of these proceedings; and that the Board be afforded such other relief, both legal and equitable as may be just and proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing Submission of Evidence has been served upon the following via electronic mail this 8th day of June, 2022:

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