

IN THE SUPREME COURT OF OHIO

State of Ohio ex rel. William DeMora : CASE NO. 2022-0661
et al., :
Relators, : MERIT BRIEF OF RESPONDENT
 : MONTGOMERY COUNTY BOARD
 : OF ELECTIONS
vs. :
Ohio Secretary of State Frank LaRose, :
et al., :
Respondents. :

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ARGUMENT

Respondent’s Proposition of Law: Respondent Montgomery County Board of Elections is not the proper party to this action in mandamus as it has no discretion but to follow the directives of Respondent Secretary of State

Now comes Respondent Montgomery County Board of Elections (hereafter “Respondent Montgomery County”) by and through counsel, and hereby submits its Merit Brief pursuant to this Court’s scheduling order issued June 1, 2022. Respondent Montgomery County states that it is not the proper party to this action as it has no discretion but to follow the directives issued by Respondent Ohio Secretary of State Frank LaRose (“Respondent LaRose”), and thus a writ of mandamus cannot be issued compelling Respondent to place Relator Leronda Jackson (“Relator Jackson”) on the August 2, 2022 ballot.

“In order to grant relator a writ of mandamus, this court must find that the relator has a clear legal right to the relief requested, that the respondent is under a clear legal duty to perform the requested act, and that the relator has no plain and adequate remedy at law.” *State ex rel. Donegan v. Cuyahoga Cty. Board of Elections*, Eighth Dist. Cuyahoga App. No. 77575, 136 Ohio App. 3d 589, 593, 737 N.E. 2d 545, 547 (Feb. 10, 2000), citing *State ex rel. Rogers v. Taft* (1992), 64 Ohio St.3d 193, 594 N.E.2d 576; *State ex rel. Hodges*, 64 Ohio St.3d at 3, 591 N.E.2d at 1188–1189; *State ex rel. Klein v. Cuyahoga Cty. Bd. of Elections* (1995), 102 Ohio App.3d 124, 656 N.E.2d 1031. “When adjudicating an extraordinary writ action in an election matter involving the review of a decision of a board of elections, the writ of mandamus may be issued if it is determined that the board engaged in fraud, corruption, *abuse of discretion*, or a *clear disregard of statutes or applicable legal provisions*.” *Id* (emphasis added), citing *State ex rel. Kelly v. Cuyahoga Cty. Bd. of Elections* (1994), 70 Ohio St.3d 413, 639 N.E.2d 78; *State ex rel. White v. Franklin Cty. Bd. of Elections* (1992), 65 Ohio St.3d 5, 598 N.E.2d 1152; *State ex*

rel. O'Donnell v. Cuyahoga Cty. Bd. of Elections (2000), 136 Ohio App.3d 584, 737 N.E.2d 541. For the reasons that follow, Relator Jackson cannot establish that Relator Montgomery County is 'under a clear legal duty to perform the requested act' and therefore the Writ must be denied as to Respondent Montgomery County.

Respondent LaRose, as Ohio Secretary of State, Ohio's chief election officer, has "such powers and duties relating to the registration of voters and the conduct of elections as are prescribed in Title XXXV of the Revised Code". R.C. 3501.04. Respondent LaRose, as Ohio Secretary of State, appoints all county boards of elections members, including the members of Respondents. R.C. 3501.05(A). Respondent LaRose's duties include issuing instructions via directives to these county members, R.C. 3501.05(B), as well as preparing rules and instructions for the conduct of elections. R.C. 3501.05(C). Specifically to this matter, the "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." R.C. 3501.53

The duties of the boards of elections are found in R.C. 3501.11. Amongst these duties are R.C. 3501.11(E) 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", and R.C. 3501.11(P), which states that the boards shall "perform other duties as prescribed law or the rules, directives, or advisories of the secretary of state." It is not at Respondent Montgomery County's discretion to implement or follow the directives of the secretary of state. These instructions "are binding upon subordinates in that violations may constitute grounds for removal, and that it is within the authority of the Secretary of State to adopt such rules, regulations, and instructions..." *Id. at 596, 549* quoting 1930 Ohio Atty.Gen.Ops. No. 1423, at 598.

On May 28, 2022 Respondent LaRose issued Secretary of State Directive 2022-34 (“Directive 2022-34”, included in Relator’s Merit Brief as “Relator’s Evidence – Exhibit A”). Section IV of that Directive plainly required any Board of Elections, including Respondent Montgomery County that, “[i]f a declaration of candidacy or declaration of intent to be a write-in candidate was filed after [February 22, 2022 for a write in candidate], the board must reject the candidacy” based on Respondent LaRose’s opinion that the federal court order “did not alter the partisan candidate filing deadlines for the primary election” by moving the date of that election. See Directive 2022-34 at Section IV.

Relator Jackson is seeking a Writ of Mandamus from this Court compelling Respondent Montgomery County to place her on the primary ballot, but such a writ may not be issued when there is ‘no clear duty to perform such an act.’ To the contrary, Respondent Montgomery County was under a clear legal duty not to place Relator Jackson on the ballot for the August 2, 2022 primary because doing so would be in direct violation of Directive 2022-34 which is binding on Respondent Montgomery County. Whether Respondent Montgomery County agrees or disagrees with the conclusion reached by Respondent LaRose concerning the filing deadline after the federal court ordered the primary moved from May to August, 2022 is irrelevant; Respondent Montgomery County was required by law (cited above) to follow the Directive of Respondent LaRose. Just as no public body could be compelled by a Writ of Mandamus to violate the law, neither can Respondent Montgomery County be compelled to violate a Directive from Respondent LaRose, as that Directive as the force and effect of law on all Boards of Elections.

For the reasons stated above, Respondent Montgomery County Board of Elections, by and through counsel of the Prosecuting Attorney for Montgomery County, hereby requests this

Court to deny the Writ of Mandamus as directed to Respondent Montgomery County Board of Elections.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was filed using the court's electronic filing system and a copy sent via electronic mail to all attorneys of record.

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