

IN THE SUPREME COURT OF OHIO

State of Ohio ex rel. Brian M. Ames	:	
2632 Ranfield Rd	:	
Mogadore. Ohio 44260	:	CASE NO.
Relator	:	Original Action in Mandamus
vs.	:	Expedited Election Matter Under
OHIO SECRETARY SECRETARY OF STATE	:	S.C.Prac.R. 12.08
FRANK LAROSE	:	
22 North Fourth Street, 16th Floor	:	Peremptory Writ Requested
Columbus, Ohio 43214	:	
	:	
SUMMIT COUNTY BOARD OF ELECTIONS	:	
470 Grant Street	:	
Akron, Ohio 44311	:	
	:	
PORTAGE COUNTY BOARD OF ELECTIONS	:	
449 South Meridian Street, Room. 101	:	
Ravenna, Ohio 44266	:	
	:	
GEAUGA COUNTY COUNTY BOARD OF ELECTIONS	:	
470 Center St., Bldg. 6A	:	
Chardon, Ohio 44024	:	

Respondents

VERIFIED COMPLAINT FOR WRIT OF MANDAMUS

Brian M. Ames
2632 Ranfield Rd
Mogadore, OH 44260
330-354-3701
bmames00@gmail.com
Relator Pro Se

Dave Yost
OHIO ATTORNEY GENERAL
Bridget C. Coontz (0072919)
Assistant Attorney General
Constitutional Offices Section
30 E. Broad Street, 16th Floor
Columbus, OH 43215
(614) 466-2872
bridget.coontz@ohioago.gov
Counsel for Respondent Ohio Secretary of State Frank LaRose

Sherri Bevan Walsh (0030038)
53 University Avenue
Akron, Ohio 44308
(330) 643-2800
*Counsel for Respondent Summit County Board
of Elections*

Christopher J. Meduri (0065072)
241 South Chestnut Street
Ravenna, Ohio 44266
(330) 297-3850
cmeduri@portageco.com
*Counsel for Respondent Portage County Board
of Elections*

James R. Flaiz(0075242)
Courthouse Annex
231 Main Street, 3rd Floor
Chardon, Ohio 44024
(440) 279-2100
*Counsel for Respondent Geauga County Board
of Elections*

This action is brought in the name of the State of Ohio on relation of Relator Brian M. Ames who avers as follows:

Nature of the Action and Jurisdiction

1. This is an original action in mandamus against Ohio Secretary of State Frank LaRose, the Summit County Board of Elections, the Portage County Board of Elections, and the Geauga County Board of Elections commenced pursuant to this Court's original jurisdiction under Article IV, Section 2(B)(1)(b) of the Ohio Constitution and Chapter 2731 of the Ohio Revised Code, both of which govern mandamus actions, as well as Article IV, Section 2(B)(1)(f), which gives the Court original jurisdiction "[i]n any cause on review as may be necessary to its complete determination."

2. Relators' action seeks an Order, Judgment, and/or Writ from this Court compelling Respondent Ohio Secretary of State Frank LaRose to instruct and direct the Summit County Board of Elections, the Portage County Board of Elections, and the Geauga County Board of Elections to prevent electors from voting a different party's ballot in the August 2, 2022 election than they did in the May 3, 2022 election and to prevent electors from voting any party's ballot who did not vote in the May 3, 2022 election.

3. Relator affirmatively alleges that he acted with the utmost diligence and that there has been no unreasonable delay or lapse of time in asserting his rights given that that he commenced this action on the first business day following the discovery that voters who had not voted his party's ballot in the May 3, 2022 election would allowed to vote his party's ballot in the August 2, 2022 election. Relators also affirmatively allege that there is no prejudice to the Respondents. *See State ex rel. Polo v. Cuyahoga Cty. Bd. of Elections*, 74 Ohio St.3d 143, 145, 656 N.E.2d 1277 (1995).

Parties

4. Relator Brian M. Ames is a qualified elector who affiliates with the Republican Party and resides at 2632 Ranfield Road, Mogadore, OH 44260, which is in the 28th Ohio Senate District (the “28th District”) under the General Assembly district plan in place for the August 2, 2022 primary election. Relator Ames has been certified to the ballot as a candidate for the Republican State Central Committee for the 28th District.

5. Respondent Secretary of State Frank LaRose is the chief election officer of Ohio and has duties to “[i]ssue instructions by directives and advisories . . . to members of the [county boards of elections] as to the proper methods of conducting elections,” “[p]repare rules and instructions for the conduct of elections,” “[d]etermine and prescribe the forms of ballots,” and “[c]ompel the observance by election officers in the several counties of the requirements of the election laws.” R.C. 3501.05(B), (C), (G), and (M). The boards of elections must perform “duties as prescribed by law or the rules, directives, or advisories of the secretary of state.” R.C. 3501.11(P).

6. Respondent Summit County Board of Elections is the duly established and acting election authority for Summit County, Ohio, pursuant to R.C. 3501.06. Pursuant to R.C. 3501.22 a county board of elections shall “appoint for each election precinct four residents of the county in which the precinct is located, as precinct election officials.” Pursuant to R.C. 3513.19(A), “[i]t is the duty of any precinct election official, whenever any such official doubts that a person attempting to vote at a primary election is legally entitled to vote at that election, to challenge the right of that person to vote” for the 28th District under the General Assembly district plan in place for the August 2, 2022 completion of the May 3, 2022 primary election.

7. Respondent Portage County Board of Elections is the duly established and acting election authority for Portage County, Ohio, pursuant to R.C. 3501.06. Pursuant to R.C. 3501.22

a county board of elections shall “appoint for each election precinct four residents of the county in which the precinct is located, as precinct election officials.” Pursuant to R.C. 3513.19(A), “[i]t is the duty of any precinct election official, whenever any such official doubts that a person attempting to vote at a primary election is legally entitled to vote at that election, to challenge the right of that person to vote” for the 28th District under the General Assembly district plan in place for the August 2, 2022 completion of the May 3, 2022 primary election.

8. Respondent Geauga County Board of Elections is the duly established and acting election authority for Portage County, Ohio, pursuant to R.C. 3501.06. Pursuant to R.C. 3501.22 a county board of elections shall “appoint for each election precinct four residents of the county in which the precinct is located, as precinct election officials.” Pursuant to R.C. 3513.19(A), “[i]t is the duty of any precinct election official, whenever any such official doubts that a person attempting to vote at a primary election is legally entitled to vote at that election, to challenge the right of that person to vote” for the 28th District under the General Assembly district plan in place for the August 2, 2022 completion of the May 3, 2022 primary election.

Allegations in Support of Claims

9. This case presents a question of first impression as never has a primary election been so chaotic.

10. On July 8, 2022, Relator Ames inquired of Ohio Attorney General Frank LaRose “[m]ay an elector request a different party ballot for the August election than for May?” A true and accurate copy of the response is attached hereto as Exhibit 1.

11. On July 8, 2022, Relator Ames inquired of the Director of the Portage County Board of Elections “[m]ay an elector request a different party ballot for the August election than for May?” A true and accurate copy of the response is attached hereto as Exhibit 2.

12. Relator Ames is certified as a candidate for 28th District State Central Committeeman, Republican as shown on the Summit County Board of Elections candidate list, a true and accurate copy of which is attached hereto as Exhibit 3.

13. Relator Ames is certified as a candidate for Republican State Central Committeeman,-28th District as shown on the Portage County Board of Elections candidate list, a true and accurate copy of which is attached hereto as Exhibit 4.

14. Ohio law set the primary for May 3, 2022. But when no General Assembly–redistricting map was validated, the May 3 primary did not occur for the General Assembly and state-central-committee candidates who met all the statutory petition requirements and the February 2, 2022, filing deadline (or the February 22, 2022, deadline for write-in candidates). *State ex rel. DeMora v. LaRose*, Slip Opinion No. 2022-Ohio-2173, at ¶52, KENNEDY, J., concurring in part and dissenting in part.

15. Enter the federal three-judge panel formed pursuant to 28 U.S.C. 2284. With the Ohio Redistricting Commission and the Ohio Supreme Court at an “impasse,” some Ohio voters sought relief in the federal court. See Complaint for Declaratory and Injunctive Relief at 3, *Gonidakis v. LaRose*, ___ F.Supp. ___, 2022 U.S. Dist. LEXIS 72172 (S.D.Ohio 2022) (No. 2:22-cv-0773). In granting the relief sought, the federal panel did nothing more than declare the commission’s third map (“Map 3”) valid for purposes of the primary and liberate the candidates who were legally qualified to appear on the May 3 primary ballot by setting a date for them to finish the May 3 primary. It did not change what it took to qualify to be a candidate on the ballot, and no one intervened and asked the federal panel to change the qualifications to be named on the ballot. *Id* at ¶53.

BACKGROUND

16. To understand this case, one must begin from a vantage point of knowing what happened to some candidates who had lawfully qualified to be on the May 3 primary ballot and understanding what the federal court ordered, effective May 28, 2022. *Id* at ¶56.

17. R.C. 3501.01(E)(1) defines “primary election” as follows:

“Primary” or “primary election” means an election held for the purpose of nominating persons as candidates of political parties for election to offices, and for the purpose of electing persons as members of the controlling committees of political parties and as delegates and alternates to the conventions of political parties. *Primary elections shall be held on the first Tuesday after the first Monday in May of each year except in years in which a presidential primary election is held.* (Emphasis added.) *Id* at ¶57.

18. By definition, Ohio’s primary election had to be held on May 3. Every element of eligibility for the ballot builds from that date. Declarations of candidacy with supporting petitions are due 90 days before May 3. R.C. 3513.05. Those petitions had to be open for public inspection through the 80th day before May 3; the boards of elections were required to verify signatures by the 78th day prior to May 3 and had to permit challenges to those petitions by the 74th day before May 3. *Id.* *Id* at ¶58.

19. Between the commission’s adoption of the second and third redistricting plans, two significant things happened. The General Assembly took action, and some Ohio voters filed a complaint for declaratory and injunctive relief in the United States District Court for the Southern District of Ohio, Eastern Division. See Complaint at 3, *Gonidakis*, ___ F.Supp.___, 2022 U.S. Dist. LEXIS 72172 (No. 2:22-cv-0773). *Id* at ¶60.

20. Anticipating that district lines would change prior to the primary election, the General Assembly passed 2022 Sub.H.B. No. 93 (“H.B. 93”) to address the uncertainty regarding the district lines. The governor signed it into law as an emergency measure on January 28, 2022.

It left firmly in place the February 2 and February 22 dates for prospective candidates to file their declarations of candidacy for the Ohio House, Senate, and state central committees. *Id* at ¶61.

21. The General Assembly never changed the primary date. H.B. 93 remained a bill that addressed a May 3, 2022, primary date. *Id* at ¶63.

22. H.B. 93 attempted to prevent electoral chaos. With its passage, the General Assembly gave protection to those candidates who were legally qualified to be on the primary ballot. Even with shifting district lines, they would be able to easily change their district if they were drawn out of their original one. Everyone knew that the primary date was not changing and that filing by the February 2 or February 22 deadlines created a safe harbor as long as the candidate had declared his or her candidacy by the applicable date. *Id* at ¶64.

23. With the commission and a majority of this court at an impasse, there were no General Assembly–district lines drawn in time for the May 3 primary. Without a General Assembly–redistricting plan, candidates whose nominating petitions were submitted by either of the February 2022 deadlines and approved by the boards of elections were severed from the May 3 primary because their districts were undefined. Secretary of State Directive 2022-31, Revised Form of Ballot for the May 3, 2022 Primary Election, available at <https://www.ohiosos.gov/globalassets/elections/directives/2022/dir2022-31.pdf#page=1> (accessed June 19, 2022) [<https://perma.cc/BX6V-ARBK>]. *Id* at ¶65.

24. As a result, Ohio entered uncharted territory with its General Assembly and state-central-committee candidates excised from the scheduled primary ballot. *Id* at ¶66.

What the federal court ordered

25. The Ohio voters who sought declaratory and injunctive relief in federal court asked that court to “declare that the current state legislative districts (or lack thereof) violate” the United States Constitution, Complaint at 3, *Gonidakis*, ___ F.Supp. ___ (No. 2:22-cv-0773), 2022

U.S. Dist. LEXIS 72172, and to declare the second map adopted by the redistricting commission valid for the 2022 election cycle, *id.* *Id* at ¶67.

26. A three-member federal-district-court panel considered what to do if the commission was unable to meet this court's requirements for a General Assembly–district plan. The panel, though wary of acting, was very aware of Ohio's election timelines and decided in an April 20, 2022, order that May 28, 2022, would be the point of no return to announce an election date for those candidates who had been severed from the May 3 primary, see *Gonidakis*, ___ F.Supp. ___, 2022 U.S. Dist. LEXIS 72172, at *8. *Id* at ¶68.

27. The federal panel did not set a new date for the 2022 primary because, as set forth above, that date was already determined by Ohio statute. *Id* at ¶70.

28. The panel took a hands-off approach to all aspects of the Ohio election except determining the appropriate map to use and the appropriate date to finish the fractured primary election. *Id* at ¶72.

29. The federal panel protected two classes of Ohioans. First, the panel safeguarded Ohio voters' right to vote for representation in the General Assembly and state central committees from among those candidates that were properly qualified to run for office in the May 3 primary. Second, it preserved the ability of people who met the prescribed requirements for candidacy for General Assembly and state-central-committee seats in the May 3 primary to stand for election. *Id* at ¶73.

Relator Ames has a clear legal right and Respondents have a clear legal duty

30. To be entitled to a writ of mandamus, the relators must establish by clear and convincing evidence that (1) they have a clear legal right to the requested relief, (2) the boards of elections and/or the secretary of state have a clear legal duty to provide it, and (3) the relators do not have an adequate remedy in the ordinary course of the law. *See State ex rel. Linnabary v.*

Husted, 138 Ohio St.3d 535, 2014- Ohio-1417, 8 N.E.3d 940, ¶ 13. A failure to establish any of these elements will result in a denial of the petition for a writ of mandamus. *See Creasy v. Waller*, 1 Ohio St.3d 93, 93-94, 438 N.E.2d 414 (1982).

31. The fact that legally qualified candidates were severed from the May 3 primary ballot does not create a clear legal right for electors who did not vote a party's ballot in the May 3 election to vote it in the August 2 election.

32. The primary date was set by statute, and that date was May 3, 2022. The federal court set the date of August 2 to give Ohio voters an opportunity to finish the May 3 primary and allow those candidates who were legally qualified to appear on that ballot to stand for election in hopes of obtaining their party's nomination for the general election. *Id* at ¶76.

33. There is only one singular primary election that extends over both the May 3 and August 2 elections. There is no law authorizing a second primary.

34. There is no law authorizing those who did not qualify themselves to vote for a party's candidates by May 3 election to qualify them in the August 2 election.

35. The severance of Relator Ames from the May 3 ballot did not deprive him of his clear legal right to face election by the same voters he would have faced in the May 3 election.

Claims for Relief

Count 1: Relator Ames is entitled to face election by precisely the same voters as he would have faced in the May 3, 2022

36. Relator incorporates the above paragraphs as if fully rewritten herein.

37. Nothing in Ohio law authorizes the Ohio Secretary of State or the county boards of elections to allow electors other than those qualified to vote a party's ballot in the May 3, 2022 election to vote that party's ballot in the August 2, 2022 election.

38. Nothing in Ohio law authorizes the Ohio Secretary of State or the county boards of elections to alter the date by which electors must qualify to vote in a primary.

39. Nothing in Ohio law permits an elector to vote for different party's candidates in the same primary election.

Prayer for Relief

WHEREFORE, Relator prays the Court grant all of the following:

- (1) Issue an Order, Judgment and/or Writ of Mandamus ordering Secretary of State Frank LaRose, with respect to the August 2, 2022 continuation of the May 3, 2022 primary election, to instruct and direct the county boards of election and their precinct election official to challenge electors who request a ballot for a party other than the party ballot vote in the May 3, 2022;
- (2) Grant a Peremptory Writ of Mandamus ordering the relief set forth above after the filing of the Answers to the Complaint;
- (3) Assess the costs of this action against the Secretary of State; and
- (4) Award such other relief as may be appropriate.

Respectfully Submitted,



Brian M. Ames
Relator *pro se*
2632 Ranfield Rd
Mogadore, OH 44260
(330) 354-3701
bmames00@gmail.com

AFFIDAVIT OF VERIFICATION

State of Ohio)
)SS
County of Portage)

Now comes Brian M. Ames, who, having first been duly cautioned and sworn deposes
and says as follows:

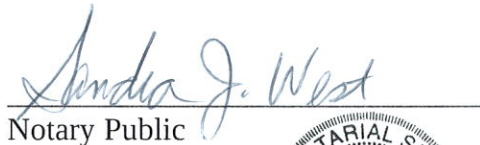
1. I am, and have been during all time periods relevant to the foregoing Complaint, a citizen and taxpayer residing in Portage County, Ohio.
2. I have read the foregoing Complaint and swear that I have personal knowledge of the facts stated therein and that the facts stated therein are true and accurate to the best of my information, knowledge, and belief.
3. I am certified to the ballot as a candidate for Republican State Central Committee for the 28th Senate District.
4. Exhibits 1, 2, 3, 4, and 5 attached hereto are true and accurate copies of the originals.

Further, Affiant sayeth naught.



Brian M. Ames

Before me, a Notary Public in and for said county and state, personally appeared Brian M. Ames who swore to the truth of the foregoing Affidavit of Verification and subscribed same in my presence at Rootstown, Ohio on this 8th day of July, 2022.


Notary Public



Sandra J. West
Notary Public, State of Ohio
My Commission Expires
October 16, 2024
Recorded in Portage County



Brian Ames <bmames00@gmail.com>

Reply From Ohio Secretary of State Frank LaRose's Office

Election <Election@ohiosos.gov>

Fri, Jul 8, 2022 at 12:24 PM

To: "bmames00@gmail.com" <bmames00@gmail.com>

Mr. Ames –

Thank you for contacting Ohio Secretary of State Frank LaRose's office. We appreciate hearing from you.

There is no requirement for a voter to vote in the same party's primary election as they did in the May primary.

Please let me know if we can be of any further assistance.



Dave Ward | Director of Constituent Affairs

Office of the Ohio Secretary of State

O: 614.644.0816

OhioSoS.gov

This message and any response to it may constitute a public record and thus may be publicly available to anyone who requests it.

Exhibit 1



Brian Ames <bmames00@gmail.com>

Primary voting

Faith Lyon <flyon@portagecounty-oh.gov>
To: Brian Ames <bmames00@gmail.com>

Fri, Jul 8, 2022 at 11:22 AM

Brian,

Yes, per the Ohio Secretary of State, voters may request a ballot for either major political party regardless of their participation in the May 3, 2022 Primary Election.

Best,
Faith

Faith Lyon, Director - CERA, OREO
Portage County Board of Elections
[449 S. Meridian St. Room 101](#)
[Ravenna, OH 44266](#)
[Phone: 330-297-3511](#)
[Fax: 330-297-3518](#)
www.portagecounty-oh.gov/board-elections

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[ZA102637858](#)

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From: Brian Ames <bmames00@gmail.com>
Sent: Friday, July 8, 2022 9:26 AM
To: Faith Lyon <flyon@portagecounty-oh.gov>
Subject: [External] Primary voting

Faith,

May an elector request a different party ballot for the August election than for May?

Best regards,

Brian M. Ames

Exhibit 2

**SUMMIT COUNTY
SUMMIT COUNTY BOARD OF ELECTIONS
470 GRANT STREET
AKRON, OHIO 44311
PRIMARY ELECTION - August 2, 2022**

NAME ADDRESS

27TH DISTRICT STATE CENTRAL COMMITTEEMAN, DEMOCRATIC

VOTE FOR NO MORE THAN 1 - TERM COMM 09/06/22

Tom Bevan (D)	530 MEADOWRIDGE WAY	HUDSON 44236
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27TH DISTRICT STATE CENTRAL COMMITTEEMAN, REPUBLICAN

VOTE FOR NO MORE THAN 1 - TERM COMM 09/06/22

Mark Gillig (R)	1708 SACKETT AVE	CUYAHOGA FALLS 44223
Michael L. Harrison (R)	4614 DRESHER TRL	STOW 44224
Don L. Robart (R)	1745 CALVERT DR	CUYAHOGA FALLS 44223
Scott W. Sigel (R)	1007 BUNKER DR	FAIRLAWN 44333
Bryan C. Williams (R)	2834 ORCHARD GROVE CT	FAIRLAWN 44333

27TH DISTRICT STATE CENTRAL COMMITTEEWOMAN, DEMOCRATIC

VOTE FOR NO MORE THAN 1 - TERM COMM 09/06/22

Erin Dickinson (D)	117 CHESHIRE RD	HUDSON 44236
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27TH DISTRICT STATE CENTRAL COMMITTEEWOMAN, REPUBLICAN

VOTE FOR NO MORE THAN 1 - TERM COMM 09/06/22

Kayla Atchison (R)	2764 COPLEY RD	COPLEY 44321
Debbie Carr (R)	2047 DORNOCH DR	UNIONTOWN 44685
Marcy Shay (R)	2996 OAKRIDGE DR	SILVER LAKE 44224
Stephanie Stock (R)	4634 GARRETT DR	NORTON 44203

28TH DISTRICT STATE CENTRAL COMMITTEEMAN, DEMOCRATIC

VOTE FOR NO MORE THAN 1 - TERM COMM 09/06/22

Brad Cromes (D)	550 E RIDDLE AVE	RAVENNA 44266
Pete Zeigler (D)	797 E MARKET ST APT 317	AKRON 44305

28TH DISTRICT STATE CENTRAL COMMITTEEMAN, REPUBLICAN

VOTE FOR NO MORE THAN 1 - TERM COMM 09/06/22

Brian M. Ames (R)	2632 RANFIELD RD	MOGADORE 44260
Mike Berger (R)	3976 ELEANOR ST	MOGADORE 44260
James S. Simon (R)	76 EDGERTON RD	AKRON 44303

28TH DISTRICT STATE CENTRAL COMMITTEEWOMAN, DEMOCRATIC

VOTE FOR NO MORE THAN 1 - TERM COMM 09/06/22

Kathleen Clyde (WITHDRAWN) (D)	456 HARVEY ST	KENT 44240
Elizabeth Walters (D)	325 MELBOURNE AVE	AKRON 44313

Exhibit 3

SUBJECT TO WITHDRAWAL

14:59:35

06/29/22

1

**SUMMIT COUNTY
SUMMIT COUNTY BOARD OF ELECTIONS
470 GRANT STREET
AKRON, OHIO 44311
PRIMARY ELECTION - August 2, 2022**

NAME

ADDRESS

28TH DISTRICT STATE CENTRAL COMMITTEEWOMAN, REPUBLICAN

VOTE FOR NO MORE THAN 1 - TERM COMM 09/06/22

Elayne Cross (R)	321 SUZANNE DR	KENT 44240
Patty Gascoyne (R)	17973 RAVENNA RD	CHAGRIN FALLS 44023
Mary E. O'Toole (R)	16770 JENNIFER LN	AUBURN TWP 44023

SUBJECT TO WITHDRAWAL

14:59:35

06/29/22

2

**PORTAGE COUNTY
PRIMARY ELECTION – AUGUST 2, 2022
OFFICIAL CANDIDATE LIST**

Name	Party Affiliation	Address
-------------	--------------------------	----------------

STATE REPRESENTATIVE – 35th DISTRICT

For State Representative

Vote for Not More Than 1 – Full Term Commencing 01/01/2023

Lori O'Neill	(DEM)	
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Steve Demetriou	(REP)	
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STATE REPRESENTATIVE – 72nd DISTRICT

For State Representative

Vote for Not More Than 1 – Full Term Commencing 01/01/2023

Kathleen Clyde	(DEM)	456 Harvey Street, Kent 44240
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Gail Pavliga	(REP)	1965 New Milford Road, Atwater 44201
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Exhibit 4

**PORTAGE COUNTY
PRIMARY ELECTION – AUGUST 2, 2022
OFFICIAL CANDIDATE LIST**

Name	Party Affiliation	Address
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DEMOCRATIC STATE CENTRAL COMMITTEEMAN – 28TH DISTRICT

For Member of State Central Committee, Man

Vote for Not More Than 1

Brad Cromes	(DEM)
Pete Zeigler	(DEM)

REPUBLICAN STATE CENTRAL COMMITTEEMAN – 28TH DISTRICT

For Member of State Central Committee, Man

Vote for Not More Than 1

Brian M. Ames	(REP)
Mike Berger	(REP)
James S. Simon	(REP)

DEMOCRATIC STATE CENTRAL COMMITTEEWOMAN – 28TH DISTRICT

For Member of State Central Committee, Woman

Vote for Not More Than 1

Elizabeth Walters	(DEM)
Kathleen Clyde	(DEM)

REPUBLICAN STATE CENTRAL COMMITTEEWOMAN – 28TH DISTRICT

For Member of State Central Committee, Woman

Vote for 1 Not More Than

Elayne Cross	(REP)
Patty Gascoyne	(REP)
Mary E. O'Toole	(REP)