

IN THE OHIO SUPREME COURT

State ex rel. BRIAN M. AMES	:	Case No. 2022-0850
	:	
Relator,	:	Original Action in Mandamus
	:	
v.	:	Expedited Election Matter
	:	Pursuant to S.Ct.Prac.R. 12.08
FRANK LAROSE	:	
OHIO SECRETARY OF STATE, et al.	:	
	:	
Respondents.	:	

**MERIT BRIEF OF RESPONDENT
PORTAGE COUNTY BOARD OF ELECTIONS**

Brian M. Ames, *Pro Se*
2632 Ranfield Road
Mogadore, Ohio 44260
(330) 354-3701
Bmames00@gmail.com

Relator

VICTOR V. VIGLUICCI (0012579)
Portage County Prosecutor
CHRISTOPHER J. MEDURI (0065072)
Division Chief Assistant Prosecutor
241 South Chestnut Street
Ravenna, Ohio 44266
(330) 297-3850 Telephone
(330) 297-4594 Facsimile
cmeduri@portageco.com

*Counsel for Respondent
Portage County Board of Elections*

DAVID YOST (0056290)
Ohio Attorney General
ALLISON DANIEL (0096186)
IRIS JIN (0092561)
Assistant Attorneys General
Constitutional Offices Section
30 East Broad Street, 16th Floor
Columbus, Ohio 43215
[Tel:614-466-2872](tel:614-466-2872) [Fax:614-728-7592](tel:614-728-7592)
Allison.Daniel@OhioAGO.gov
Iris.Jin@OhioAGO.gov

*Counsel for Respondent
Ohio Secretary of State Frank LaRose*

JAMES R. FLAIZ (0075242)
Geauga County Prosecutor
KRISTEN RINE (0083735)
Assistant Prosecuting Attorney
Geauga County Prosecutor's Office
231 Main Street-3rd Floor
Chardon, Ohio 44024
Tel: 440-279-2100
James.Flaiz@gcpao.com
Krine@gcpao.com

*Counsel for Respondent
Geauga County Board of Elections*

SHERI BEVAN WALSH
Summit County Prosecutor
MARRETT HANNA (0065689)
CARRIE HILL (0099785)
Assistant Prosecuting Attorneys
53 University Ave., 7th Floor
Akron, Ohio 44308
mhanna@prosecutor.summitoh.net
chll@prosecutor.summitoh.net

*Counsel for Respondent
Summit County Board of Elections*

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1. INTRODUCTION

Relator Brian M. Ames filed this action on July 8, 2022. The Complaint provides that Mr. Ames is a candidate for the “28th District State Central Committeeman, Republican” on the ballot for the August 2, 2022 primary election.

In light of the dates relevant to this matter, there has not been sufficient diligence concerning this expedited election matter, and the claims must accordingly be denied.

Among other things, the Complaint seeks an order that Ohio Secretary of State Frank LaRose “instruct and direct the county boards of election and their precinct election officials to challenge electors who request a ballot for a party other than the party ballot vote in the May 3, 2022.” *See* Compl., Prayer for Relief, ¶ 1. As the Court has previously noted the primary election is underway, with early in-person and absentee voting having begun, as well ballots for overseas military and civilian personnel having already been mailed. *See State ex rel. Jones v. LaRose*, Slip Opinion No. 2022-Ohio-2445, ¶ 16

II. Statement of Facts

The Respondent Portage County Board of Elections concurs and defers to the statement of facts provided in the Merit Brief of the Respondent Ohio Secretary of State Frank LaRose.

III. ARGUMENT

A. Standard of Review

A relator must establish by clear and convincing evidence entitlement to the extraordinary relief of a writ of mandamus. *State ex rel. Davis v. Summit Cty. Bd. of Elections*, 137 Ohio St.3d 222, 2013-Ohio-4616, 998 N.E.2d 1093, ¶ 12. A relator must establish a clear legal right to the relief requested, that there is a clear legal duty on the part of the respondent, and that there is no adequate remedy at law. *State ex rel. Water v. Spaeth*, 131 Ohio St.3d 55, 2012-Ohio-69, 960

N.E.2d 452, ¶ 6. “In extraordinary actions challenging the decisions of the Secretary of State and boards of elections, the standard is whether they engaged in fraud, corruption, or abuse of discretion, or acted in clear disregard of applicable legal provisions.” *Id.*, ¶ 7, citing *State ex rel. Husted v. Brunner*, 123 Ohio St.3d 288, 2009-Ohio-5327, 915 N.E.2d 1215, quoting *Whitman v. Hamilton Cty. Bd. of Elections*, 97 Ohio St.3d 216, 2002-Ohio-5923, 778 NE.2d 32, ¶ 11.

B. Relator’s Claims are Barred by Laches

“In election cases, a relator must act with the utmost diligence.” *State ex rel. Jones v. LaRose*, Slip Opinion No. 2022-Ohio-2445, ¶ 11, citing *State ex rel. Syx v. Stow City Council*, 161 Ohio St.3d 201, 2020-Ohio-4393, 161 N.E.3d 639, ¶ 11. “Laches may bar relief in an election matter if the person seeking relief fails to act with diligence. *Id.* citing *State ex rel. Monroe v. Mahoning Cty. Bd. of Elections*, 137 Ohio St.3d 62, 2013-Ohio-4490, 997 N.E. 524, ¶ 30.

“The elements of laches are (1) unreasonable delay or lapse of time in asserting a right, (2) absence of an excuse for the delay, (3) knowledge, actual or constructive, of the injury or wrong, and (4) prejudice to the other party.” *Id.*, citing *State ex rel. Carrier v. Hilliard City Council*, 144 Ohio St.3d 592, 2016-Ohio-155, 45 N.E.3d 1006, ¶ 8.

In this matter the Relator filed this action on July 8, 2022. This was several weeks after the Ohio Secretary of State’s May 28, 2022 Directive 2022-34-which at the very least is constructive notice. For instance, a portion of the Directive 2022-34 provides that “[v]oters may request a ballot for either major political party or an issues-only ballot, if applicable, regardless of their participation in the May 3, 2022 Primary Election.” Respondent Portage County Board of Elections’ Answer, exhibit 1, at page 8.

Under R.C. 3513.39 (“Challenges”) “[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 the election, to challenge the right of that person to vote.” R.C. R.C. 3513.39(A). Additionally, “[w]hen the right of a person to vote is challenged upon the ground set forth in division (A)(3) of this section, membership in or political affiliation with a political party shall be determined by the person’s statement, made under penalty of election falsification, that the person desires to be affiliated with and supports the principles of the political party whose primary ballot the person desires to vote.” R.C. 3513.19(B).

Additionally, Ohio Secretary of State Directive 2022-13 concerning “election day voting” provides that “[p]recinct election officials, board of elections members, directors, deputy directors, and clerks can only challenge the right to vote of any elector on the grounds that the voter is not affiliated with or is not a member of the political party whose ballot the person desires to vote, if that official has personal knowledge that the individual is a member of a different party.” Ohio Secretary of State Directive 2022-13, at pg. 288. “Boards of elections may not require every voter, or every voter who previously voted a ballot for a different political party, to sign a “Statement of Person Challenged as to Party Affiliation * * * before permitting that person to cast a ballot, either in person or by mail.” *Id.*

The Court has mentioned that “[p]arty affiliation in Ohio is purely a matter of self-identification, and that self-identification is subject to change.” *State ex rel. Stevens v. Fairfield Cty. Bd. of Elections*, 152 Ohio St.3d 584, 2018-Ohio-1151, 99 N.E.3d 376, ¶ 20.

Concerning prejudice to the respondent(s), as previously noted by this Court, early voting has already begun. *See Id.*, ¶ 16. Qualified electors have a right to vote.

Every citizen of the United States, of the age of eighteen years, who has been a resident of the state, county, township, or ward, such time as may be provided by law, and has been registered to vote for thirty days, has the qualifications of an elector, and is entitled to vote at all elections. Any elector who fails to vote in at least one election during any period of four consecutive years shall cease to be an elector unless he again registers to vote.

Ohio Constitution, Article V, Section 1.

At all times-including during this unique series of events that have occurred during 2022-the United States Constitution and the Ohio Constitution remains paramount. A three-judge panel for the United States District Court for the Southern District of Ohio noted that “[e]veryone agrees that legal and practical requirements” precluded “Ohio from holding a primary election for its state legislature on May 3, the date provided by statute.” *Gonidakis v. LaRose*, ---F.Supp.3d---(2022), 2022 WL 1175617 (S.D. Ohio 2022) at * 1. “The U.S. Supreme Court has framed the right to vote as a fundamental right because it is ‘preservative of other basic civil and political rights.’” *Id.* at *10, quoting *Reynolds v. Sims*, 377 U.S. 533, 562, 84 S.Ct. 1362, 12 L.Ed.2d 506 (1964). “For that reason, the Supreme Court has told us that ‘the Constitution protects the right of all qualified citizens to vote, in state as well as federal elections.’” *Id.* “[T]he Constitution applies once a state decides to hold a primary.” *Id.* at * 15. “[I]f a state holds a primary for its officers, including state representatives and senators, the Federal Constitution’s protection of the right to vote applies. *Id.*

The Relator is unable to establish by clear and convincing evidence that there is a clear legal right to the relief requested, nor a clear legal duty on the respondent(s). Additionally, this claim is barred by the doctrine of laches.

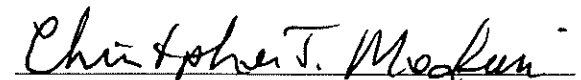
The Respondent Portage County Board of Elections concurs with the Respondent Ohio Secretary of State Frank LaRose’ Merit Brief and defers to the Secretary of State’s argument as further basis for Relator’s request for the extraordinary relief of a writ of mandamus to be denied.

C. Conclusion

For the reasons set forth above, Relator’s request for a writ of mandamus and any alternative relief should be denied.

Respectfully submitted,

VICTOR V. VIGLUICCI (0012579)
PORTAGE COUNTY PROSECUTOR


Christopher J. Meduri (0065072)

Division Chief Assistant Prosecutor
241 South Chestnut Street
Ravenna, Ohio 44266
(330) 297-3850 telephone
(330) 297-3850 facsimile
cmeduri@portageco.com

Counsel for Respondent
Portage County Board of Elections

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of August, 2022, the foregoing Merit Brief of Respondent Portage County Board of Elections was served by electronic mail upon the following:

Brian M. Ames
2632 Ranfield Road
Mogadore, Ohio 44260
330-354-3701
Bmames00@gmail.com

Relator Pro Se

DAVID YOST (0056290)
Ohio Attorney General
ALLISON DANIEL (0096186)
IRIS JIN (0092561)
Assistant Attorneys General
Constitutional Offices Section
30 East Broad Street, 16th Floor
Columbus, Ohio 43215
~~Tel: 614-466-2872~~ Fax: 614-728-7592
Allison.Daniel@OhioAGO.gov
Iris.Jin@OhioAGO.gov

Counsel for Respondent
Ohio Secretary of State Frank LaRose

JAMES R. FLAIZ (0075242)
Geauga County Prosecutor
KRISTEN RINE (0083735)
Assistant Prosecuting Attorney
Geauga County Prosecutor's Office
231 Main Street-3rd Floor
Chardon, Ohio 44024
Tel: 440-279-2100
James.Flaiz@gcpao.com
Krine@gcpao.com

Counsel for Respondent
Geauga County Board of Elections

SHERI BEVAN WALSH
Summit County Prosecutor
MARRETT HANNA (0065689)
CARRIE HILL (0099785)
Assistant Prosecuting Attorneys
53 University Ave., 7th Floor
Akron, Ohio 44308
mhanna@prosecutor.summitoh.net
chll@prosecutor.summitoh.net

Counsel for Respondent
Summit County Board of Elections