

IN THE SUPREME COURT OF OHIO

STATE OF OHIO *EX REL.*
MATTHEW WOLF,
CHRIS LACY, AND
WILLIAM BARKSDALE,

Relators,

v.

J. KENNETH BLACKWELL,
Secretary of State of Ohio
30 East Broad Street
Columbus, Ohio 43215

and

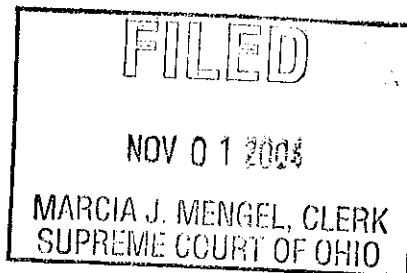
BOARD OF ELECTIONS OF
FRANKLIN COUNTY, OHIO
280 East Broad Street
Columbus, Ohio 43215,

Respondents.

04-1834

Case No. _____

Original Action in
Mandamus



VERIFIED COMPLAINT FOR EMERGENCY PEREMPTORY WRIT OF
MANDAMUS

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COMPLAINT FOR EMERGENCY PEREMPTORY WRIT OF MANDAMUS

Preliminary Statement

1. Relators seek an emergency peremptory writ of mandamus ordering that they, and other similarly situated individuals who have been duly designated as challengers at precinct voting locations throughout Ohio, be permitted to fulfill their statutory role in safeguarding the integrity of Ohio's voting process in Tuesday's election. All three Relators were duly appointed to act as challengers and witnesses at specific precincts within Franklin County during Tuesday's balloting. But because all three Relators have been designated to act as challengers at precincts that share a single voting location, Respondents, in violation of their clear legal duties, refuse to permit more than one of the three to appear and act as a challenger and witness at the voting location. Respondents act in direct contravention of Ohio statutes.

Respondents apparently do so because late Saturday, October 30, 2004, the common pleas court of Cuyahoga County ruled, contrary to Ohio law, that *only a single individual may act as a challenger at each voting location in Ohio regardless of the number of precincts voting at that location*. In doing so, the trial court ignored the direct wording of the controlling statutory definition of "polling place" found in R.C. 3501.01(R) and judicially imposed a new definition never before recognized in Ohio law. The court exacerbated its error by ordering the Secretary of State to inform all eighty-eight county Boards of Elections of its decision that "the boards are to allow only one challenger . . . per polling place" irrespective of the number of precincts voting there and by threatening violators of its order with "imposition of all available sanctions, including the imposition of jail time. . . ."

Given the timing of the common pleas decision, Relators lack an effective and adequate remedy at law and therefore seek an emergency peremptory writ of mandamus requiring Respondent Blackwell to instruct the eighty-eight Boards of Elections that, as he directed prior to the common pleas court order, all individuals who have been properly designated pursuant to statute shall be permitted to act as challengers and witnesses at the *precinct* voting locations for which they were designated, irrespective of the number of precincts voting at a single location. Relators ask that this Court also order Blackwell to communicate the correct instructions to each Board of Elections before voting commences Tuesday and order the Respondent Franklin County Board of Elections, and each of the other Boards of Elections, to comply. Failure to grant this emergency writ will taint Ohio's highly visible role in tomorrow's election and directly thwart the safeguards established by the General Assembly to assure integrity in the election process.

The Parties

2. Relator Matthew Wolf has been duly appointed by the Franklin County Republican Party as a challenger and witness for Tuesday's election at Franklin County's Seventy-Third Ward, Precinct A, which votes at Christ Fellowship Church, 4481 East Dublin Granville Road, Westerville, Ohio 43081.

3. Relator Chris Lacy has been duly appointed by the Franklin County Republican Party as a challenger and witness for Tuesday's election at Franklin County's Sixty-Second Ward, Precinct H, which votes at Christ Fellowship Church, 4481 East Dublin Granville Road, Westerville, Ohio 43081.

4. Relator William Barksdale has been duly appointed by the Franklin County Republican Party as a challenger and witness for Tuesday's election at Franklin County's Seventy-Third Ward, Precinct G, which votes at Christ Fellowship Church, 4481 East Dublin Granville Road, Westerville, Ohio 43081.

5. Respondent J. Kenneth Blackwell is Secretary of State of Ohio ("Blackwell"). Pursuant to Ohio law, Blackwell has a mandatory duty to "[p]repare rules and 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 the elections laws," R.C. 3501.05(M).

6. Respondent Board of Elections of Franklin County, Ohio is responsible for the conduct of elections in Franklin County, and pursuant to R.C. 3501.11, "shall perform all duties imposed by law," including the duty to allow Relators to act as challengers and witnesses at their designated precincts in Tuesday's election.

The Factual Allegations

Appointment Of Relators As Challengers And Witnesses

7. Pursuant to R.C. 3505.21, a political party supporting candidates to be voted upon at any primary, special or general election, may appoint qualified electors to serve as challengers for such party at any of the polling places in the county. It also provides that the political party may appoint qualified electors to serve as witnesses during the counting of the ballots. The same person "may be appointed to serve as both challenger and witness."

8. R.C. 3505.21 requires that political parties "appointing witnesses or challengers shall notify the Board of Elections of names and addresses of its appointees

and the polling places at which they shall serve. Notification shall take place not less than eleven days before the election on forms prescribed by the Secretary of State and may be amended by filing an amendment with the board of elections at any time until four p.m. the day of the election.”

9. Consistent with these requirements of R.C. 3505.21, on October 22, 2004 sixty-eight (68) County Republican Parties filed properly completed Notice of Appointment forms with their respective county’s Board of Elections appointing challengers and witnesses on a precinct-by-precinct basis. Relators were but three of the hundreds appointed by the filings. The Notice of Appointment of the Franklin County Republican Party appointed Relator Wolf as a challenger and witness at Franklin County’s Seventy-Third Ward, Precinct A; Relator Lacy as a challenger and witness at Franklin County’s Sixty-Second Ward, Precinct H; and Relator Barksdale as a challenger and witness at Franklin County’s Seventy-Third Ward, Precinct G. All three Relators were appointed in full compliance with all statutory requirements.

10. As is true in many locations throughout Ohio, voters residing in the three precincts to which Relators were appointed as challengers and witnesses actually vote at a single location: Christ Fellowship Church, 4481 E. Dublin Granville Road, Westerville, Ohio 43081.

11. Relators having been properly appointed to serve as challengers and witnesses, Respondents have a clear statutory duty to permit them to fulfill the roles that the General Assembly envisioned for them in insuring integrity in Tuesday’s election: as a “challenger” to challenge, for good cause, the right of anyone who appears to vote on the basis of the person’s failure to meet requirements of citizenship, age, registration, or

residency in the precinct; and as a “witness” to observe the counting of ballots. Respondents’ failure to fulfill these clear statutory duties will impair the integrity of the election process and irreparably damage Relators, those similarly situated, and the other citizens of Ohio.

Blackwell’s Rules And Instructions

12. On or about October 20, 2004, Blackwell issued rules and instructions to all County Boards of Elections in Ohio entitled “Challenger and Witness Guidelines” (the “Guidelines”) for the November 2, 2004 general election. He did so pursuant to his mandatory duty to “[p]repare rules and instructions for the conduct of elections” under R.C. 3501.05(C). A copy of the Guidelines is attached as Exhibit A.

13. The Guidelines, consistent with R.C. 3505.21, provide that the deadline for filing the Notice of Appointment Forms for appointing challengers and witnesses for the November 2, 2004 election was 4:00 p.m. on October 22, 2004. The Notice of Appointment Forms appointing Respondents were filed timely.

14. The Guidelines also provide that “it is necessary to develop a policy for dealing with challengers posted *at the precinct*. The goal of this policy is to provide for the statutory rights of challengers, while maintaining order in polling location.” With respect to the number of challengers or witnesses, the Guidelines stated, “In no case shall more than six challengers and six witnesses be appointed for any one election *in any one precinct*.” (Emphasis added.)

15. On October 26, 2004, Blackwell issued Directive 2004-45 (the “Directive”) to clear up confusion as to whether more than one challenger and witness could be present in multi-precinct polling locations. This Directive, again issued

pursuant to Blackwell's duty to "prepare rules and instructions for the conduct of elections," R.C. 3501.05(C), expressly "overrul[ed] any previous documentation on the subject of challengers and witnesses being appointed on precinct or polling place basis" and provided that "entities appointing challengers *may appoint them on either a precinct or polling place basis*" but that "appointing entities may still only have one challenger or witness appointed *per precinct . . .*" (Emphasis added.) A copy of the Directive is attached as Exhibit B.

16. Thus, under the Guidelines and Directive issued by Blackwell interpreting Ohio law, Relators each were to be permitted to act as challengers and witnesses in their respective precincts even though all three precincts vote at the same location.

The Cuyahoga County Action

17. On Friday, October 29, 2004, Shirley Thompson and John and/or Jane Does commenced a class action against Blackwell, the Cuyahoga County Board of Elections, and John and Jane Doe in the Common Pleas Court of Cuyahoga County, Case No. 04-546530 (O'Donnell, J.) (the "Trial Court Action"). Neither Relators nor any other challenger or witness appointed by a political party was joined as a party. The complaint alleges that the October 26 Directive does not comply with R.C. 3505.21, that it will cause harassment and intimidation of minority voters on election day, and seeks declaratory and injunctive relief. Plaintiffs also filed a motion seeking a TRO.

18. Late on Saturday, October 30, 2004, the trial court granted sweeping *permanent* injunctive relief. The court declared that only *one* challenger per political party would be allowed in a single polling location, regardless of the number of precincts voting at that location. In doing so, the court fashioned its own definition of "polling

place,” expressly ignoring the statutory definition found in R.C. 3501.01(R). The Court then ordered Blackwell to notify all eighty-eight (88) county boards of elections, by 8:00 PM on Sunday, October 31, 2004, that “Directive 2004-45 is vacated and of no force and effect as it pertains to the number of challengers per entity per polling place.” The Court also instructed Blackwell to advise each Board of Elections that “on Election Day, the boards are to allow only one challenger per challenging entity per polling place.” The order also provides that “[f]ailure of any party or person hereby restrained to comply with this order may result in the imposition of all available sanctions, including imposition of jail time. . . .” A copy of the Trial Court Order is attached as Exhibit C.

**Clear Legal Duty To Permit Duly Appointed
Challengers And Witnesses To Act At Each Precinct
Irrespective Of The Number Of Precincts Voting
In A Single Location**

19. As Blackwell stated in both the Guidelines and the Directive, Ohio law provides for appointment of challengers and witnesses on a precinct-by-precinct basis, irrespective of the number of precincts voting in a single location. R.C. 3505.21 provides that a “political party . . . may appoint to any of the *polling places* in the County . . . one person . . . who shall serve as challenger for such party . . . , and one person . . . who shall serve as witness during the counting of the ballots; provided that one such person may be appointed to serve as both challenger and witness.” R.C. 3501.01(R) provides the keystone – the statutory definition of “*polling place*”: “that place provided for *each precinct* at which the electors having a voting residence in such precinct may vote.” Thus, substituting the statutory definition of “polling place” into R.C. 3505.21 makes clear that a political party may appoint to “*each precinct* at which the electors having a voting residence in such precinct may vote” . . . “one person . . . who shall serve as a

challenger and/or witness.” In short, R.C. 3505.21 and 3501.01(R) provide, clearly and unambiguously, for appointment of challengers and witnesses on a precinct-by-precinct basis and not on a voting location only basis.

20. Moreover, R.C. 3506.13, the statute providing for appointment of challengers and witnesses to voting locations employing mechanical voting equipment, is equally clear that challengers and witnesses may be appointed on a precinct-by-precinct basis rather than by voting location:

In precincts where marking devices, automatic tabulating equipment, voting machines, or any combination of these are used, challengers and witnesses may be appointed as prescribed in section 3505.21 of the Revised Code. The duties and privileges of challengers in *such precincts* during the hours the polls are open, shall be as provided in section 3505.21 of the Revised Code. . . .

R.C. 3506.13 (emphasis added).

21. Thus, R.C. 3505.21, 3501.01(R) and 3506.13 grant Relators and other duly appointed challengers and witnesses the right to fulfill their statutorily defined responsibilities at their designated precincts no matter how many such precincts vote at the same location. Indeed, there is no other construction that would harmonize these three statutes.

22. Nonetheless, Respondents refuse to allow Relators to exercise their legal rights. Respondents breach their clear legal duty under R.C. 3505.21, 3501.01(R) and 3506.13 by stating that they will comply with the Trial Court’s Order which expressly disregarded these statutory definitions and judicially fashioned a definition of “polling place” previously unknown in Ohio law:

This Court finds that “polling place” as used in Ohio Revised Code sections 3505.20 and 3505.21 (the “challenger statutes”) means that public school, public building, other building or other part of any building that a

county board of elections has designated as a location where voting may take place, regardless of the number of precincts served at that location.

Trial Court Order at 2. The Order makes reference to neither R.C. 3501.01(R) nor 3506.13. By ignoring the statutory definition of “polling place” and creating its own, the Trial Court simply misconstrued Ohio law with disastrous implications to the integrity of Tuesday’s election.

23. Construing R.C. 3505.21 in the manner ordered by the Trial Court unlawfully limits the rights of Relators and the other challengers and witnesses designated by Ohio’s county political parties. Equally importantly, it precludes, in the absence of relief from this Court, the ability of Blackwell and the Boards of Elections to fulfill their clear legal duty of permitting challengers and witnesses to participate at each precinct voting location no matter how many precincts may vote at a single location.

24. Indeed, applying R.C. 3505.21 in the manner required by the Trial Court in situations where multiple precincts have polling places at the same location (i.e., the Christ Fellowship Church) literally eviscerates the role the General Assembly envisioned for witnesses and challengers as it requires one person to do the impossible -- perform his or her function as a witness or challenger in multiple precincts at the same time. The Trial Court’s hurried decision cannot be – and is not – the law of Ohio.

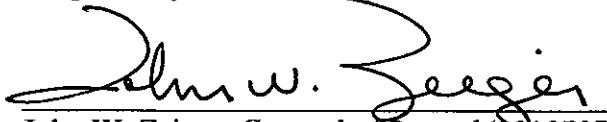
**Relators Lack An Adequate And Effective
Remedy In The Ordinary Course Of The Law**

25. For a remedy to be adequate, it must be complete, beneficial, and speedy. *See State ex rel. Arnett v. Winemiller* (1997), 80 Ohio St.3d 255, 259, 685 N.E.2d 1219, 1222.

26. The November 2, 2004 general election is now less than twenty-four (24) hours from commencing. Though the Trial Court Action remains pending, it is impossible for Relators to intervene and obtain effective relief through the trial and appeal courts resolving the issue of their rights to act as challengers and witnesses before the commencement of the election. Thus, the legal remedy available to Relators through the Trial Court Action is not, and cannot be, complete, beneficial, or speedy. Relators and the citizens of Ohio need certainty and finality now to assure that the election process on November 2, 2004 is conducted in accord with Ohio law and with the utmost integrity.

27. Therefore, Relators respectfully request this Court issue an emergency peremptory writ of mandamus directing Respondent J. Kenneth Blackwell, Secretary of State of Ohio, to reissue and enforce his Directive permitting one duly designated challenger and one duly designated witness *per precinct*, no matter how many precincts vote at a single location. Respondents also request that this Court order Blackwell to inform each of the eighty-eight County Boards of Election of the decision of this Court prior to commencement of voting on Tuesday and to instruct each Board and all of its poll workers to comply fully with it by permitting duly appointed challengers and witnesses to serve on a precinct-by-precinct basis rather than attempting to limit them to a single challenger and a single witness at voting locations serving more than a single precinct. Respondents further request that this Court order the Franklin County Board of Elections, and all other County Boards of Elections, to comply with this Court's decision and the Directive.

Respectfully Submitted,



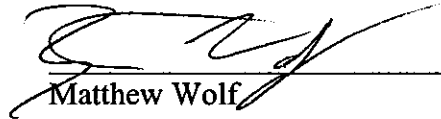
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Attorneys for Relators

Verification


Matthew Wolf, being duly cautioned and sworn, states that he has read this Complaint For Emergency Peremptory Writ Of Mandamus and, based upon personal knowledge, believes each of the factual allegations herein to be true.


Matthew Wolf

Sworn to before me and subscribed in my presence this 31st day of October,
2001.



VLADIMIR P. BELO
ATTORNEY AT LAW
Notary Public, State of Ohio
My Commission Has No Expiration
Section 147.03 R.C.


Notary Public

My commission expires on: No expiration

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