

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

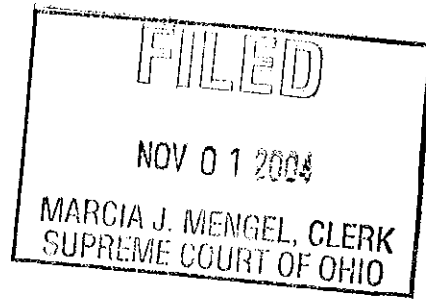
BOARD OF ELECTIONS OF  
FRANKLIN COUNTY, OHIO  
280 East Broad Street  
Columbus, Ohio 43215,

Respondents.

04-1834

Case No. \_\_\_\_\_

Original Action in  
Mandamus



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**MEMORANDUM OF RELATORS IN SUPPORT OF MOTION FOR  
EMERGENCY PEREMPTORY WRIT OF MANDAMUS**

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**MEMORANDUM IN SUPPORT OF MOTION FOR EMERGENCY  
PEREMPTORY WRIT OF MANDAMUS**

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. Action is needed now to safeguard tomorrow's election – already myriad instances of voter registration fraud have been documented throughout the state. See John P. Coyne, *Vote Fraud & Crack: A Case for Dick Tracy?*, *Cleveland Plain Dealer*, Oct. 19, 2004.

**I. Facts**

**A. Appointment Of Relators As Challengers And Witnesses Pursuant To Ohio Law**

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.”

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.”

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. Complaint ¶ 9.

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. Complaint ¶ 10.

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. Complaint ¶ 11.

**B. Blackwell's Rules And Instructions**

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). Complaint ¶ 12.

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. Complaint ¶ 13.

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.) Complaint ¶ 14.

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.) Complaint ¶ 15.

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.

**C. The Cuyahoga County Action**

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. Complaint ¶ 17.

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. . . .” Complaint ¶ 18.

## II. The Law

### A. Issuance Of A Writ of Mandamus Is Appropriate To Compel Compliance With Election Law

The Ohio Constitution expressly confers upon this Court the original jurisdiction to issue writs of mandamus. *See* Section 2(B)(i)(b), Article IV, Ohio Constitution. The statutory definition of mandamus provides that it is a writ issued in the name of the State commanding the performance of an act that the law requires as a duty of office, trust, or station. R.C. § 2731.01. Mandamus is described as an extraordinary legal remedy with the function to compel the performance of a ministerial legal duty as to which there is a default. *See, e.g., State ex rel. Willis v. Sheboy* (1983), 6 Ohio St.3d 167, 451 N.E.2d 1200, paragraph two of the syllabus. In order for a writ of mandamus to issue, this Court has established that the relator must have a clear legal right to the relief prayed for, the respondent must have a clear legal duty to provide that relief, and the relator must not have a plain and adequate remedy at law. *See e.g., White v. Clinton Cty. Bd. of Com’rs* (1996), 76 Ohio St.3d 416, 423, 667 N.E.2d 1223, 1229. 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.

Mandamus is an extraordinary remedy, issued to an inferior entity or person, commanding the performance of an act that the law specifically enjoins as a duty. R.C. 2731.01. Where a petition stating a proper cause of action in mandamus is filed originally in this Court, the Court has no authority to exercise jurisdictional discretion. Rather, the Court simply must determine whether a public officer or agency is under a clear legal duty to perform an official

act, and whether relator lacks a plain and adequate remedy in the ordinary course of law for the public officer's failure to take action. See *State ex rel. Pressley v. Industrial Commn.* (1976), 11 Ohio St. 2d 141, 228 N.E.2d 631; see also *Patton v. Springfield Bd. of Edn.* (1988), 40 Ohio St. 3d 14, 531 N.E.2d 310; *State ex rel. Westchester Estates, Inc. v. Bacon* (1980), 61 Ohio St. 2d 42, 399 N.E.2d 81.

Mandamus is an appropriate remedy to compel a board of elections to allow witnesses and challengers at the polls. See *Pendleton v. Board of Supervisors* (1904), 2 Ohio L. 304.

Here, Relators establish each of the elements entitling them to a writ of mandamus commanding Respondents to allow them to enter the precincts for which they have been duly designated and carry out their statutory prerogatives as challengers and/or witnesses. First, as shown below, Respondents Blackwell and Board of Elections have clear legal duties to comply with, and indeed to enforce, the election laws of Ohio. Second, as a result, Relators have a clear legal right to — and a beneficial interest in — being allowed to exercise their statutory roles as challengers and witnesses in their assigned election precincts. And third, inasmuch as Respondents are denying Relators' right to act in their designated roles in *tomorrow's* November 2, 2004 general election, Relators lack an adequate remedy in the ordinary course of law. See *State ex rel. Steele v. Morrissey*, \_\_\_ Ohio St.3d \_\_\_, 2004-Ohio-4960, at ¶ 16 (deciding more than five weeks ago, on September 23, 2004, that a relator lacked an adequate remedy in the ordinary course of law because of the then proximity of tomorrow's election). For a remedy to be adequate, it must be complete, beneficial, and speedy. See *State ex rel. Arnett*, 80 Ohio St.3d at 259. But, unless relief is granted today, any remedy will be neither complete, beneficial nor speedy — it will be simply meaningless.

This Court must issue an extraordinary writ in order to insure that the Relators will not be deprived of their statutory role and right to act as challengers and witnesses at their designated precinct on election day.

**B. Respondents Have A Clear Legal Duty To Allow Relators To Perform Their Duties As Challengers At Each Designated Precinct Irrespective Of The Number Of Precincts Voting At The Same Location**

Respondent Blackwell, as the chief election officer of Ohio, is charged with the duty of carrying out elections in compliance with state laws. R.C. 3501.04. Among his specific duties are to (1) compel the observance by election officers in the various counties of the requirements of state election laws, (2) issue directives and advisories to members of the boards of elections for the proper methods of conducting elections, and (3) prepare rules and instructions for the conduct of elections. R.C. 3501.05(B), (C), and (M). Similarly, Respondent Franklin County Board of Elections is charged with responsibility for conducting all elections in Franklin County “as prescribed by law or the rules, directives, or advisories of the secretary of state.” R.C. 3501.11(P). Therefore, included among the Respondents’ clear legal duties is assuring that Relators are allowed to act as challengers and witnesses at their designated precincts in Tuesday’s election as mandated by Ohio law.

**1. Relators Are Duly Appointed Challengers And Witnesses Under R.C. 3505.21**

R.C. 3505.21 and 3506.13 govern the appointment of challengers and witnesses at polling precincts on election day. Under R.C. 3505.21, any political party supporting candidates may appoint challengers to any “polling place.”<sup>1</sup>

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<sup>1</sup> Specifically, R.C. 3505.21 states in part: “Any political party or group of candidates appointing witnesses or challengers shall notify the board of elections of the 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

In accordance with the requirements of R.C. 3505.21, the Franklin County Republican Party appointed Relators to be challengers and witnesses at three Franklin County polling precincts, just as sixty-seven (67) other County Republican parties did for their precincts. Complaint ¶ 9. The polling place for each of the three precincts to which Relators have been designated is located at the same place: Christ Fellowship Church, 4481 E. Dublin Granville Road in Westerville, Franklin County, Ohio. Verified Complaint ¶ 9. The Franklin County Republican Party duly appointed Relators at least eleven days before tomorrow's election, in accordance with the statutory deadline imposed by R.C. 3505.21. *Id.*, ¶ 8. Accordingly, the Relators and their respective political parties have complied with the provisions of R.C. 3505.21, entitling them to be challengers and/or witnesses in the precincts for which they were designated. As duly appointed challengers and witnesses, Relators are now entitled to the protection and benefit of "all of the rights and privileges granted to them by Title XXV of the Revised Code," which include the right to challenge the qualifications of electors appearing to vote at their designated precincts pursuant to the procedures provided by statute. R.C. 3505.20.

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state and may be amended by filing an amendment with the board of elections at any time until four p.m. of the day before the election. The challenger and witness serving on behalf of a political party shall be appointed in writing by the chairman and secretary of the respective controlling party committees. Challengers and witnesses serving for any five or more candidates shall have their certificates signed by such candidates. Challengers and witnesses so appointed may file their certificates of appointment with the presiding judge of the precinct at the meeting on the evening prior to the election, or with the presiding judge of the precinct on the day of the election. Witnesses shall not be admitted to the booths before the closing of the polls except for the purpose of filing their certificates. Upon the filing of a certificate the person named as challenger therein *shall be permitted to be in and about the polling place during the casting of the ballots and shall be permitted to watch every proceeding of the judges and clerks of elections from the time of the opening until the closing of the polls.* Any such witnesses so appointed may inspect the counting of the ballots in the precinct from the time of the closing of the polls until the counting is completed and the final returns are certified and signed. The judges of elections *shall protect such challengers and witnesses in all of the rights and privileges granted to them by Title XXXV [35] of the Revised Code.*" (Emphasis added.)

2. **As Duly Appointed Challengers And Witnesses, Respondents Have A Clear Legal Duty To Permit Relators To Act At Each Precinct Irrespective Of The Number Of Precincts Voting In A Single Location**

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.

The interplay between the statutory definitions of “precinct” and “polling place” also reveals that Relators are correct that challengers and witnesses are appointed on a precinct-by-precinct basis. R.C. 3505.01 defines “precinct” to mean “a district within a county established by the board of elections of such county within which all qualified electors having a voting residence therein may vote at the same polling place.” R.C. 3505.01(Q). In turn, “polling place” is statutorily defined as “that place provided for each precinct at which the electors having a voting residence in such precinct may vote.” R.C. 3505.01(R). By their text, these definitions

are therefore dependent on one another. But while a physical polling location may have multiple precincts within it, these statutes do *not* limit that location to only one challenger and one witness appointed there.

By statutory definitions, each election *precinct* has a distinct *polling place*; every elector from a given precinct will vote at the same “polling place.” R.C. 3505.01(Q). Consistent with this definition, the General Assembly has defined “polling place” with reference to “precinct”: the “polling place” is the designated voting location *for each precinct*. R.C. 3505.01(R). In turn, a “polling place,” under the statutory definition, is comprised of two elements: (1) a physical location (*i.e.*, a “place”) and (2) a precinct for which that “place” is the designated voting location. Accordingly, while a physical polling location may have several different precincts, it is *not* deemed to be a single “polling place” within the meaning of R.C. 3505.21. Rather, when a polling location has multiple precincts, that location also has multiple “polling places.” The location where Relators are assigned to be challengers and witnesses during tomorrow’s election is a clear example because it has three precincts voting there; because it has three precincts, it also has at least three polling places at that location as well.

The appropriateness of this interpretation is strengthened by considering the language of R.C. 3506.13, the statute providing for appointment of challengers and witnesses to voting locations employing mechanical voting equipment:

*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).

Quite plainly, the statute refers back to R.C. 3505.21 to set forth the duties, privileges, and manner of appointing challengers. Equally plain, however, is that R.C. 3506.13 contemplates the presence of challengers on a *precinct-by-precinct* basis. By the statute's terms, *each precinct* is to have a challenger present, if such person has been duly appointed by his or her political party (as each of the Relators here).

It makes little sense for the General Assembly to have allowed one challenger per precinct in R.C. 3506.13, yet limited the number of challengers to only one in each physical polling location in R.C. 3505.21. If that were the correct interpretation of the statutes at issue here, the rights conferred upon challengers in R.C. 3506.13 would be rendered meaningless. R.C. 3506.13 specifically states that all challengers "shall" have all of the "duties and privileges" as provided in R.C. 3505.21. But if R.C. 3505.21 truly meant that only one challenger per polling location is allowed, R.C. 3506.13's promise of allowing a challenger in "*precincts* where marking devices, automatic tabulating equipment, voting machines, or any combination of these are used" would be illusory.<sup>2</sup> The challenger could be assigned to a precinct, as contemplated by R.C. 3506.13, but not allowed to exercise his or her "duties and privileges" simply because there may be multiple precincts in the particular polling location to which he or she was assigned.

Rather, both R.C. 3506.13 and 3505.21 maintain their full vitality if read to assure that one challenger *per precinct* is authorized by the statutory scheme. Construction of the definition of "polling place" to be coextensive with "precinct" (*i.e.*, each "precinct" has by definition its own "polling place"), assures full protection of the statutory rights conferred both under R.C. 3506.13 and 3505.21. In short, this is the law of Ohio.

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<sup>2</sup> The precinct at which Relators would be challengers is the type of precinct described in R.C. 3506.13. Indeed, the description in R.C. 3506.13 would seem to encompass every voting precinct in the state.

Respondents nonetheless refuse to allow Relators to exercise their clear 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.

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.

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.

**C. Relators Lack An Adequate Remedy In The Ordinary Course**

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. But, 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 Tuesday's election. Thus, the legal remedy available to Relators through the Trial Court Action is not, and cannot be, complete, beneficial, or speedy. Mandamus therefore lies. *State ex rel. Smart v. McKinney* (1980), 64 Ohio St.2d 5, 6; see, also, *State ex rel. Thurn v. Cuyahoga Cty. Bd. of Elections* (1995), 72 Ohio St.3d 289, 291-292; *State ex rel. Smith v. Sandusky Cty. Bd. of Elections*, 155 Ohio App.3d 211, 2003-Ohio-5856, at ¶ 9; *State ex rel. Durkin v. Mahoning Cty. Bd. of Elections* (1996), 115 Ohio App.3d 180, 183. As this Court has aptly stated, "the relator need not follow a suicidal course under the 'ordinary course of law' doctrine." *Smart*, 64 Ohio St.2d at 6, citing *State ex rel. Tulley v. Brown* (1972), 29 Ohio St.2d 235, 237. Due to the protracted nature of election proceedings, then, Ohio courts are willing to grant extraordinary relief where appropriate to ensure compliance with Ohio's election statutes. Cf. *State ex rel. Taft v. Franklin Cty. Court of Common Pleas* (1998), 81 Ohio St.3d 480, 481 ("courts should be very reluctant to interfere with elections, *except to enforce rights or mandatory or ministerial duties as required by law*" (emphasis added)).

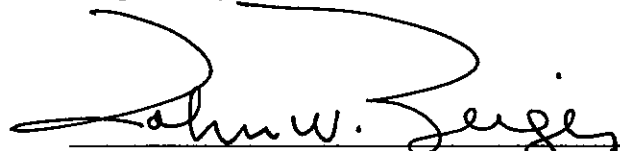
Relators and the citizens of Ohio need certainty and finality now to assure that the election process on November 2, 2004 is conducted in accord with Ohio law and with the utmost

integrity. Without relief from this Court, they have no remedy at all – let alone a complete, beneficial and speedy one.

**III. Conclusion**

Relators therefore meet the three requirements for issuance of a writ of mandamus. Here, the public interest screams out for action too. So Respondents 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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**CERTIFICATE OF SERVICE**

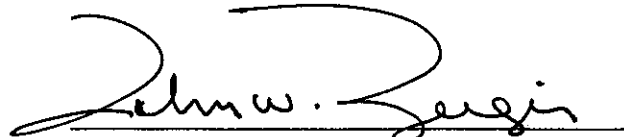
I hereby certify that a copy of the foregoing Relators' Memorandum In Support Of Motion For Emergency Peremptory Writ of Mandamus was served this 1st day of November, 2004, via hand delivery and electronic mail upon the following:

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