

SUPREME COURT FOR THE STATE OF OHIO

Ohio Citizen Action)
614 West Superior Avenue, Suite 1200)
Cleveland, Ohio 44113)

Relator,)
v.)

J. Kenneth Blackwell)
Ohio Secretary of State)
180 East Broad Street, 16th Floor)
Columbus, Ohio 43215)

Summit County Board of Elections)
470 Grant Street)
Akron, OH 44311-1157)

Cuyahoga County Board of Elections)
2925 Euclid Avenue)
Cleveland, OH 44115)

Respondents.)
)

Case No. _____

COMPLAINT FOR AN ORIGINAL WRIT OF MANDAMUS

Frederick M. Gittes (0031444)
fgittes@gitteschulte.com
Kathaleen B. Schulte (0031448)
kschulte@gitteschulte.com
Gittes & Schulte
723 Oak Street
Columbus, OH 43205
614-222-4735
614-221-9655 - fax

Counsel for Relator

JURISDICTION

1. This is an original action for a Writ of Mandamus, compelling Respondents to comply with their clear legal duty pursuant to Revised Code § 3505.30 to post summary statements of election results at each polling place. This action is brought pursuant to R.C. § 2731; Section 2, Article IV, Ohio Constitution for a Writ of Mandamus directed to Respondents.

PARTIES:

2. Relator, Ohio Citizen Action (OCA) is the state's largest environmental organization, with 100,000 dues-paying members. Relator has an interest in having all votes cast by registered voters properly counted, accounted for and made public in a timely and consistent manner. Relator is concerned that its members as well as other registered voters in Ohio may face a legitimate risk of vote manipulation and outright fraud during the vote tallying process administered by the Secretary of State's office. Such actions would violate the U.S. Constitution, federal law, as well as the Ohio Revised Code, § 3505.30. Relator sues on behalf of its members as well as itself.

3. Relator is a beneficial and interested party with no plain and adequate remedy at law.

4. Respondents include boards of elections for the following counties: Summit, and Cuyahoga.

5. Respondent, J. Kenneth Blackwell, is the Secretary of State of Ohio. In this capacity, he is Ohio's chief election officer and is responsible for administering all statewide elections, including those for federal office. Among other duties, Respondent: appoints all members of local boards of elections to serve as his representatives; issues instructions by directives and advisories to members of the boards as to the proper

methods of conducting elections; compels the observances by election officers in the several counties of the requirements of the election laws; and oversees the posting of summaries of election totals per precinct, canvassing of election results and totals and announces results. Respondent is named in his official capacity.

FACTUAL ASSERTIONS:

6. During previous election cycles Ohio has experienced a host of serious and high-profile voting and election embarrassments, including, voting machine irregularities, voter confusion and general anxiety with respect to the security and validity of election outcomes. Unfortunately, similar problems and concerns regarding the present election exist due to the several boards of election conducting the voting process in dissimilar manners, including plans to not post the summary of election as required by law.

7. Boards of elections are required by Ohio law to post a precinct judge-certified copy of the summary election results on the front of the polling places while simultaneously transmitting a similarly certified copy to the board of elections. R.C. § 3505.30 states, in part:

When the results of the ballots have been ascertained, such results shall be embodied in a summary statement to be prepared by the judges in duplicate, on forms provided by the board of elections. ***One copy shall be certified by the judges and posted on the front of the polling place, and one copy, similarly certified, shall be transmitted without delay to the board in a sealed envelope along with the other returns of the election.***

(Emphasis added)

8. Attached as Exhibit A is an affidavit demonstrating that Respondents have not directed nor do they plan to issue any such directives instructing polling places to post the summaries of elections results in compliance with law. In addition, the affidavit affirms that the elections officials have received informal guidance from Respondent Blackwell stating that they do not need to comply with the posting requirements of R.C. § 3505.30.

9. Attached as Exhibit B is a copy of the “Special Notice” provided by the Office of the Secretary of State, dated October 4, 2005, to all of the county boards of elections instructing them that they are not required to comply with the law (R.C. § 3505.30) and post a certified copy of the summary election results on the front of the polling places. The “Special Notice” states, in direct conflict to the requirement of R.C. § 3505.30, that “poll workers will not be required to post summary statements at the polling place.”

10. Respondent Blackwell is required to issue directives and guidance to boards of election, and enforce election laws concerning the State of Ohio. Respondent Blackwell has issued advisory guidance concerning some election-day procedures as recently as November 1, 2006. However, he has not issued any specific directives or guidance related to the “posting of summary results” requirement of R.C. § 3505.30. In fact, as shown in Exhibit B, Respondent Blackwell has issued advice contrary to the law. Respondent Blackwell has failed to adequately require the boards of election and the polling places to post the certified summary of election results, thus Respondent has not carried out his statutorily imposed duties and this will impact the right of plaintiffs as guaranteed under the Ohio Constitution and the United States Constitution.

11. Security and validity of the election results are a primary element of representative democracy. To ensure trust in the process and election results, and avoid any risk of election result manipulation, Respondents post the summary of election results as set forth in R.C. 3505.30. However, Respondents have failed to require compliance with this procedural safeguard of the electoral process.

12. Respondents must make every effort to assure Ohio voters that their votes will be properly and accurately accounted for and that no element of fraud or vote manipulation will occur. Moreover, Relator has made efforts to encourage Respondents to affirmatively take action and issue directives with respect to polling places posting summary of elections – no response has been received.

13. Relator has met the established requirements for a writ to be issued: 1) Relator has a clear legal right to the relief prayed for; 2) Respondents have a clear legal duty to perform the acts requested; and 3) Relator has no plain and adequate remedy in the ordinary course of law. *State ex rel. Manson v. Morris*, 66 Ohio St.3d 440, 441 (1993).

CLAIM FOR RELIEF:

WHEREFORE, in order to insure that Relator (its individual members) as well as all Ohio voters are able to have their Constitutional right to vote accounted for and protected, Relator prays relief as follows:

1. A writ of mandamus directing the respondents to comply with the requirements set forth in R.C. section 3505.05, and specifically:

a.) require that the several boards of election enforce the law and direct that polling places post a summary of the election results;

b) require that the several boards of election issue guidance and directives to the polling places within their jurisdiction concerning the manner in which they are to comply with the requirement to post a summary of the election results;

c) require that Secretary of State Blackwell issue guidance and directives to the several boards of election concerning the requirement to post a summary of the election results in compliance with R.C. section 3505.03.

2. An award of such other relief as the Court may deem just and equitable.

Respectfully submitted,

Frederick M. Gittes (0031444)
fgittes@gitteschulte.com
Kathaleen B. Schulte (0031448)
kschulte@gitteschulte.com
723 Oak Street
Columbus, Ohio 43205
Phone: 614-222-4735
Fax: 614-221-9655
Counsel for Relator