

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
CIVIL DIVISION

Ohio Democratic Party, <i>et al</i> ,	:	
Relators,	:	
-vs-	:	CASE NO. 06 CVH 11609
J. Kenneth Blackwell	:	JUDGE WHITE
Secretary, State Of Ohio,	:	
Respondent.	:	

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FRANKLIN COUNTY, OHIO

DECISION DENYING RESPONDENT'S MOTION TO DISMISS

Rendered this 16th day of October, 2006

WHITE, J.

This matter is before the Court on Respondent, J. Kenneth Blackwell, Ohio Secretary of State's ("Respondent") Motion To Dismiss filed on October 6, 2006. Relators, Ohio Democratic Party, *et al*, ("Relators) filed its Memo in Opposition on October 10, 2006. No Reply has been filed.

In Respondent's Motion To Dismiss, Respondent argues that pursuant to R.C. 3501.05(B) and (C), the general duties of the Respondent are to issue directives and advisories to members of the boards [of election] as to the proper methods of conducting elections, and to prepare rules and instructions for the conduct of elections. Respondent argues that these provisions do not establish a specific, definite, clear and unequivocal duty that may be subjected to a

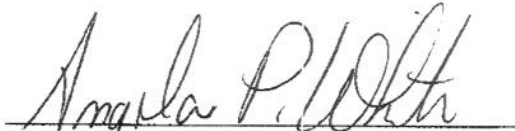
mandamus action. Respondent also argues that Relator's claims are barred by laches because it was not filed timely.

In response, Relators argued that they are not asserting that the directives of the Respondent are incorrect, but that the Respondent has failed to do anything to comply with R.C. 3501.04. Relators further argued that if it decided to file this action earlier, it would have been considered premature. Additionally, Relator has sent a letter to Respondent requesting that it comply with its statutory duties; however, Respondent failed to comply leaving Relator with no other option but to file this cause of action in August.

For Respondent's Motion to be granted, Respondent bears the burden of showing, "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *O'Brien v. University Community Tenants Union*, (1975), 42 Ohio St.2d 242, 245. Although this Court is mindful of the Ohio Supreme Court decision in *State ex. rel. Hodges v. Taft*, (1992), 64 Ohio St. 3d 1, this Court is not persuaded at this time that Relator can prove a set of facts in support of their claim. As the Supreme Court noted, a writ [of Mandamus] cannot be issued to control an officer's exercise of discretion, but it can be issued to compel him to exercise it when he has a clear legal duty to do so. *Taft* at 6.

This Court finds at this time that Respondent's Motion is not well taken and is hereby **DENIED**. All parties are required to submit their briefs in response to Relator's Writ of Mandamus no later than Friday, October 20, 2006.

SO ORDERED.


ANGELA P. WHITE, JUDGE

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