

IN THE SUPREME COURT OF OHIO

08-0478

THE STATE OF OHIO EX. REL.  
SUMMIT COUNTY REPUBLICAN  
PARTY EXECUTIVE COMMITTEE  
520 S. Main Street, Suite 2437  
Akron, Ohio 44311

CASE NUMBER: \_\_\_\_\_

RELATOR,

vs.

JENNIFER BRUNNER  
OHIO SECRETARY OF STATE  
180 East Broad Street, 15<sup>th</sup> Floor  
Columbus, Ohio 43215-3726

EXPEDITED ELECTIONS MATTER  
Brought Pursuant to Rule X, Section  
9 Rules of Practice of the Supreme Court  
and Ohio Revised Code Section 3501.07

RESPONDENT.

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RELATOR'S MOTION FOR EMERGENCY WRIT,  
STAY, OR OTHER IMMEDIATE RELIEF

---

TIMOTHY J. GRENDALL (#0005827)  
Grendell & Simon Co., L.P.A.  
6640 Harris Road  
Broadview Heights, Ohio 44147  
Phone No.: (440) 746-9600  
Fax No.: (440) 746-9604  
E-mail: [grendellandsimon@yahoo.com](mailto:grendellandsimon@yahoo.com)

COUNSEL FOR RELATOR  
SUMMIT COUNTY REPUBLICAN PARTY EXECUTIVE COMMITTEE

## MOTION

Relator, Summit County Republican Party Executive Committee, hereby respectfully moves this Honorable Court for an emergency writ, alternate writ, emergency other writ, stay or other appropriate relief mandating and directing that Respondent Jennifer Brunner, Secretary of State, withdraw her alleged, but unlawful, appointment of Donald Varian to the Summit County Board of Elections and/or otherwise prohibiting Respondent Brunner from permitting Mr. Varian from acting on her behalf or her appointee on the Summit County Board of Elections until this original action has been fully and finally adjudicated by this Honorable Court.

In view of the reorganization or organization meeting of The Summit County Board of Elections scheduled for Wednesday, March 5, 2008 and the intent of Donald Varian, Brunner's unlawfully and improperly appointee to that Board, to participate as a voting member of the Elections Board at that meeting, the emergency relief requested by Relator Summit County Republican Party Executive Committee is necessary to prevent irreparable harm to Relator and to maintain the status quo until this Court has had adequate time to review and take action in this case. The irreparable harm that Relator will suffer if emergency relief is not granted by this Court includes the usurpation of Relator's right to challenge Respondent Brunner's denial of approval of the Relator's recommended appointee to the Summit County Board of Elections as provided in O.R.C. Section 3501.07.

Unless the emergency relief requested is granted, Respondent Brunner will unilaterally rewrite O.R.C. Section 3501.07 to allow Relator to arbitrarily deny two recommendations by a local party executive committee and then unilaterally appoint her


choice, thereby circumventing the clear mandamus right expressly specified in Section 3501.07.

This Motion is supported by the Verified Petition filed by Relator to commence this action and the sworn Affidavits attached to that petition.

A brief in support of this Motion is attached hereto and incorporated herein.

Respectfully submitted,

Grendell & Simon Co., L.P.A.  
6640 Harris Road  
Broadview Heights, Ohio, 44147

By:   
TIMOTHY J. GREDELLE (#0005827)  
Phone No.: (440) 746-9600  
Fax No.: (330) 659-2278  
E-mail: [grendellandsimon@yahoo.com](mailto:grendellandsimon@yahoo.com)

## BRIEF IN SUPPORT

Granting the emergency writ, stay or other immediate relief requested by Relator, Summit County Republican Party Executive Committee, is necessary:

- (1) to maintain the status quo for 10-14 days so that this Court will have the adequate opportunity to fully review and adjudicate this action;
- (2) to prevent the negative disruption of the Summit County Board of Elections which will result if Respondent Brunner is permitted to sit her unlawfully appointed member (Donald Varian) on the Board of Elections at its reorganizational or organizational meeting on March 5, 2008. (if this Court grants the mandamus approving the County Party recommended appointed Brian K. Daley, the decisions of the Summit County Board of Elections on March 5, 2008 will be subject to legal challenge and reversal); and
- (3) to preserve Relator's right to a functional remedy in the form of mandamus as provided by O.R.C. Section 3501.07, which, if granted, will result in Brian K. Daley being appointed to the Summit County Board of Elections, not Donald Varian.

Ohio Revised Code Section 3501.07 sets forth the statutory process for the appointment of members to local county boards of elections.

Ohio Rev. Code Section 3501.07 permits the appropriate party county executive committee to recommend a candidate for a vacancy in the county board of elections. The statute also provides: The Secretary of State shall appoint such qualified elector, unless he has reason to believe that the elector would not be a competent member of such board. In such cases the Secretary of State's shall so state in writing to the

chairman of such county executive committee, with the reasons therefore, and such committee may either recommend another elector or may apply for a writ of mandamus to the Supreme Court to compel the Secretary of State to appoint the elector so recommended. If no such recommendation is made, the Secretary of State shall make the appointment.

The Ohio Supreme Court, in *State Ex Rel. Cuyahoga County Democratic Party Executive Committee v. Taft, Secretary of State* (1993), 67 Ohio St.3d 1 (see Exhibit A attached hereto and made a part hereof), granted a writ of mandamus to the Cuyahoga County Democratic Party ordering that then Secretary of State, Bob Taft, approve the Cuyahoga County Democratic Party Executive Committee's recommendation to appoint Jimmy Dimora to the Cuyahoga County Board of Elections on the basis that the Secretary of State's suspicion of campaign finance law violations did not justify the conclusion that the recommended appointee, Dimora, was incompetent to serve on the Board of Elections.

In this case, Respondent Brunner has declined to approve the appointee recommended by Relator Summit County Republican Party Executive Committee on the basis of her unfounded and unsupported suspicion or perception that the recommended appointee, Brian K. Daley, did not have the proper "temperament" to serve on the Summit County Board of Elections. Brunner's action was predicated solely on an editorial concerning a prior, unrelated city council election and the unsworn and unverified letter of someone who clearly did not like the recommended appointee, Mr. Daley. Brunner's action warrants the granting of the writ of mandamus sought by Relator herein pursuant to O.R.C. Section 3501.07.

Moreover, Respondent Brunner has contravened and violated O.R.C. Section 3501.07 by appointing Donald Varian to the Summit County Board of Elections before Relator had the opportunity to file a mandamus action seeking reversal of her disapproval of the recommended appointee Brian K. Daley. As a result of Brunner's unlawful action, Mr. Varian is empowered by Brunner to participate in the reorganizational or organizational meeting of the Summit County Board of Elections, scheduled for March 5, 2008. At the March 5, 2008 meeting, the Elections Board, as part of such reorganization, can make hiring and firing decisions that can have permanent consequences. Upon this Court's subsequent grant of a writ ordering the approval of the recommended appointee, Brian K. Daley, to the Elections Board, those prior decisions will be subject to review and reversal, and such reversal could lead to litigation and other disruptions of the Summit County Board of Elections. Such potential for disruption of the Board by an unlawful appointee, Mr. Daley, pending this Court's adjudication of this mandamus action is precisely the situation when an emergency writ is "necessary to enforce the administration of justice". Smith v. Granville Twp. Bd. of Trustees (1996), 77 Ohio St.3d 1215 671 N.E.2d 1277. (see Exhibit B attached hereto and made a part hereof).

Indeed, in the absence of the issuance of an emergency writ in this case, Respondent Brunner will irreparably frustrate Relator Summit County GOP Executive Committee's right to pursue this mandamus action to completion since the unlawful appointee, Mr. Varian, will have taken reorganizational actions on the Board of Elections in lieu of the recommended appointee, Brian K. Daley.


Additionally, the failure to grant the emergency relief requested will condone Respondent Brunner's circumvention of O.R.C. Section 3501.07 by allowing her to arbitrarily deny a local executive committee's first two recommendations and then appoint Respondent's personal choice to the Elections Board. Respondent's action would render O.R.C. Section 3501.07 a nullity and essentially eliminate local county party input into this Election Board selection process. Such result would place too much power in the hands of the Secretary of State and lead to the extinction of Ohio's long standing bi-partisan approach to the makeup of county elections boards.

Finally, the granting of the emergency relief sought by Relator for ten to fourteen days to allow this Court to fully adjudicate this mandamus/prohibition action will not prejudice Respondent Brunner or her ability to operate the Summit County Board of Elections since such a short delay will not hamper the Board's ability to continue its current operations during that short interim period. By contrast, the failure to grant such relief will cause potential chaos with respect to such operation because of the uncertainty as to the legal authority and status of the fourth member of the Summit County Board of Elections.

For all of the reasons stated above and on the basis of the facts stated in the Verified Petition filed herewith, Relator, Summit County Republican Executive Committee is entitled to an emergency writ, stay, or other immediate relief maintaining the status quo until the legal actions in the Verified Petition have been fully and finally adjudicated by this Court. Such relief is "necessary to enforce the administration of justice," Smith v. Granville Twp. Bd. of Trustees (1996), 77 Ohio St.3d 1215 671 N.E.2d 1277.

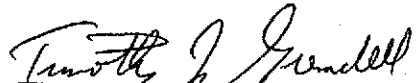
Respectfully submitted,

Grendell & Simon Co., L.P.A.  
6640 Harris Road  
Broadview Heights, Ohio 44147

By:   
TIMOTHY J. GREDELLE (#0005827)  
Phone No.: (440) 746-9600  
Fax No.: (330) 659-2278  
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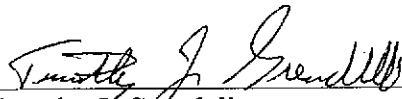
**ADDITIONAL CERTIFICATION**

The undersigned hereby certifies that he has notified the office of the Ohio Secretary of State and the Ohio and Office of the Attorney General of the filing of this Motion for Emergency Relief, has forwarded a copy of this motion to those offices by facsimile, and has notified both of those offices of Relator's attempt to ask this Court to act on said Motion immediately. All of said actions have been taken by the undersigned on March 4, 2008.

  
Timothy J. Grendell  
*Attorney for Relator*

**CERTIFICATE OF SERVICE**

Counsel for Relator has served a copy of this Motion for Emergency Writ, Stay or Other Relief by facsimile to the Respondent Jennifer Brunner and the Ohio Attorney General Marc Dann on March 4, 2008.

  
\_\_\_\_\_  
Timothy J. Grendell  
*Attorney for Relator*

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67 Ohio St. 3d 1, \*; 615 N.E.2d 615, \*\*;  
1993 Ohio LEXIS 1567, \*\*\*

The State ex rel. Cuyahoga County Democratic Party Executive Committee v. Taft, Secretary  
of State

No. 93-47

Supreme Court of Ohio

67 Ohio St. 3d 1; 615 N.E.2d 615; 1993 Ohio LEXIS 1567

May 19, 1993, Submitted

June 11, 1993, Decided

**SUBSEQUENT HISTORY:** [\*\*\*1] As Amended.**PRIOR HISTORY:** In Mandamus.

In December 1992, relator, the Cuyahoga County Democratic Party Executive Committee, recommended James ("Jimmy") Dimora, the Mayor of Bedford Heights, to respondent, Secretary of State Bob Taft, for appointment to a vacancy on the Cuyahoga County Board of Elections. Dimora is a qualified elector of Cuyahoga County, an officer or member of numerous governmental, charitable, civic, and fraternal organizations, and the recipient of many awards honoring his community service.

Taft reviewed these qualifications in considering the executive committee's recommendation. However, after learning of a newspaper article that questioned Dimora's compliance with campaign finance laws, Taft also reviewed financial reports filed in 1990 through 1992 by committees for Dimora's mayor and county commissioner candidacies. Taft discovered some errors and omissions in these reports that he considered to be "potential violations" of state campaign finance laws. These errors and omissions have apparently been reported to the Ohio Elections Commission ("OEC").

Because he suspected Dimora of having violated campaign finance laws, Taft concluded that Dimora was incompetent [\*\*\*2] to serve as a member of the board of elections. Therefore, Taft rejected the executive committee's recommendation. The executive committee now seeks a writ of mandamus ordering Dimora's appointment.

**DISPOSITION:** *Writ granted.***CASE SUMMARY**

**PROCEDURAL POSTURE:** Relator Cuyahoga County Democratic Party Executive Committee sought a writ of mandamus ordering the appointment of its recommended candidate by respondent Secretary of State to the Cuyahoga County Board of Elections.

**OVERVIEW:** After learning of a newspaper article that questioned the nominee's compliance with campaign finance laws, the Secretary reviewed financial reports in which he discovered some errors and omissions that he considered to be "potential violations" of state campaign finance laws. Because he suspected the nominee of having violated campaign finance laws, the Secretary concluded that the nominee was incompetent to serve as a member of the Board and rejected the Committee's recommendation. The Committee contended that the Secretary's rejection of its recommendation was an abuse of its discretion. The court agreed and issued the writ of mandamus. The court held that Ohio Rev. Code § 3501.07 afforded the Secretary broad discretion in determining whether recommended appointees were competent to be members of the Board. However, the court also held that when the Secretary rejected a recommended appointee for failure to comply with the campaign finance laws, suspected violations of those requirements would not, standing alone, justify the conclusion that the appointee was incompetent to serve.

**OUTCOME:** The court granted the writ of mandamus and ordered that the Secretary approve the Committee's recommendation to appoint the nominee to the Board's vacant position.

**CORE TERMS:** secretary, appointee, recommendation, board of elections, recommended, campaign finance, secretary of state, writ of mandamus, elector, appointment, vacancy, executive committee, appoint, county executive, broad discretion, recommend, adhere, qualifications, approve

#### LEXISNEXIS® HEADNOTES

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**HN1** Ohio Rev. Code § 3501.07 permits the appropriate county executive committee to recommend a candidate for a vacancy on the county board of elections. The statute also provides: The Secretary of State shall appoint such qualified elector, unless he has reason to believe that the elector would not be a competent member of such board. In such cases the Secretary of State shall so state in writing to the chairman of such county executive committee, with the reasons therefor, and such committee may either recommend another elector or may apply for a writ of mandamus to the supreme court to compel the Secretary of State to appoint the elector so recommended. In such action the burden of proof to show the qualifications of the person so recommended shall be on the committee making the recommendation. If no such recommendation is made, the Secretary of State shall make the appointment. This statute affords the Secretary of State broad discretion in determining whether recommended appointees are competent to be members of boards of elections. [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)

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[Governments](#) > [Local Governments](#) > [Duties & Powers](#)

**HN2** The Supreme Court of Ohio holds that when the Secretary of State rejects a recommended appointee to a county board of elections for failure to comply with the campaign finance laws, suspected violations of these requirements will not, standing alone, justify the conclusion that the appointee is incompetent to serve. [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)

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HEADNOTES

*Mandamus to compel Secretary of State to approve Democratic Party Executive Committee's recommendation for appointment to vacancy on board of elections -- Writ granted, when.*

**COUNSEL:** Donald J. McTigue; Porter, Wright, Morris & Arthur, Anthony J. Celebrezze, Jr. and Kathleen M. Trafford, for relator.

Lee Fisher, Attorney General; Squire, Sanders & Dempsey, David J. Young and Pamela Hackes Thurston, for respondent.

**JUDGES:** A.W. Sweeney, Douglas, Resnick, F.E. Sweeney and Pfeifer, JJ., concur. Moyer, C.J., dissents. Wright, J., not participating.

**OPINION BY:** PER CURIAM

OPINION

**[\*2] [\*\*615]** The executive committee mainly argues that Taft's rejection of its recommendation was an abuse of discretion. We agree and, therefore, issue the requested writ of mandamus.

**HN1** R.C. 3501.07 permits the appropriate county executive committee to recommend **[\*\*616]** a candidate for a vacancy on the county board of elections. The statute also provides:

"The secretary of state shall appoint such [qualified] elector, unless he has reason to believe that the elector would not be a competent member of such board. In such cases the secretary **[\*\*\*3]** of state shall so state in writing to the chairman of such county executive committee, with the reasons therefor, and such committee may either recommend another elector or may apply for a writ of mandamus to the supreme court to compel the secretary of state to appoint the elector so recommended. In such action the burden of proof to show the qualifications of the person so recommended shall be on the committee making the recommendation. If no such recommendation is made, the secretary of state shall make the appointment."

We have held that this statute affords the Secretary of State "broad discretion in determining whether recommended appointees are competent to be members of boards of elections," State ex rel. Democratic Executive Comm. v. Brown (1974), 39 Ohio St.2d 157, 160, 68 O.O.2d 100, 102, 314 N.E.2d 376, 378, and we continue to adhere to this view. However, **HN2** we now hold that when the Secretary of State rejects a recommended appointee for failure to comply with the campaign finance laws, suspected violations of these requirements will not, standing alone, justify the conclusion that the appointee is incompetent to serve.

Accordingly, we hereby grant the writ of mandamus **[\*\*\*4]** and order that Taft approve the executive committee's recommendation to appoint Dimora to the vacancy existing on the Cuyahoga County Board of Elections.

Writ granted.

A.W. Sweeney, Douglas, Resnick, F.E. Sweeney and Pfeifer, JJ., concur.

Moyer, C.J., dissents.

Wright, J., not participating.

**DISSENT BY: MOYER**

**DISSENT**

Moyer, C.J., dissenting.

I respectfully dissent from the majority opinion because it fails to follow well-established law of this state and because it sends the wrong message with respect to the qualifications required of persons serving as members of a county board of elections.

In an opinion that sweeps aside precedent of this court establishing the broad discretion of the Secretary of State under R.C. 3501.07 to reject the recommendation [\*3] of a county political party, the majority claims to adhere to the principle of law established in State ex rel. Democratic Executive Comm. v. Brown (1974), 39 Ohio St.2d 157, 68 O.O.2d 100, 314 N.E.2d 376. The majority concludes that the Secretary of State does not have the discretion to reject a recommended appointee because he has failed to comply with campaign finance laws. I fail to comprehend why the Secretary [\*\*\*5] of State has discretion to reject an appointee on the basis of a potential personality conflict or conflict of interest, as we have previously held, but does not have the discretion to reject an appointment on the basis that the appointee has violated campaign finance laws. There can hardly be a clearer case of this court's substitution of its judgment for that of the Secretary of State.

The second reason the writ of mandamus should be denied is that the majority of this court has now held that the Secretary of State has a clear legal duty to seat a person on a board of elections who has violated the very campaign finance laws the appointee is required to administer.

The writ should be denied.







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Date/Time: Monday, March 3, 2008 - 8:53 AM EST

\* Signal Legend:

-  - Warning: Negative treatment is indicated
-  - Questioned: Validity questioned by citing refs
-  - Caution: Possible negative treatment
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\* Click on any *Shepard's* signal to *Shepardize*® that case.

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SMITH v. GRANVILLE TWP. BD. OF TRUSTEES

Ohio 1996.

Supreme Court of Ohio.

SMITH, Agent for Annexation Petitioner, et al.,  
Appellants,

v.

GRANVILLE TOWNSHIP BOARD OF TRUSTEES, Appellee.

No. 96-2350.

Submitted and Decided Nov. 4, 1996.

\*1215 APPEAL from the Court of Appeals of Licking County, No. 96-CA-98.

Vorys, Sater, Seymour &amp; Pease, Duke W. Thomas and Bruce L. Ingram, Columbus, for appellants.

Moots, Cope &amp; Stanton, Wanda L. Carter and Susan M. Zidek, Columbus, for appellee.

Daniel W. Drake, First Assistant City Attorney, Columbus, for amici curiae, City of Columbus and Ohio Municipal Attorneys Association.

Patricia S. Eshman, Columbus, for amicus curiae, Ohio Homebuilders Association, Inc.

John E. Gotherman, Columbus, for amicus curiae, Ohio Municipal League.

Edward M. Yosses, Toledo Director of Law, Toledo, for amicus curiae, City of Toledo.

This cause is pending before the court as a discretionary appeal. Upon consideration of appellants' motion for emergency alternative R.C. 2503.40 "other writ,"

IT IS ORDERED by the court that, with respect to the vote on the conditions of merger by the village of Granville and Granville Township, the Licking County Board of Elections impound the ballots of the November 5, 1996 general election and not count them until further order of the court.

MOYER, C.J., and DOUGLAS, RESNICK, FRAN-

CIS E. SWEENEY, Sr. and PFEIFER, JJ., concur.

COOK and STRATTON, JJ., dissent.

COOK, Justice, dissenting.

COOK, J., dissenting. Appellants request, for the third time, the court to issue an "other writ" pursuant to R.C. 2503.40. Currently, appellants seek an order directing the Licking County Board of Elections to impound and not count the ballots to the merger issue on the November 5, 1996 election ballot.

R.C. 2503.40 authorizes this court to issue, in addition to the original jurisdiction conferred by Section 2, Article IV of the Ohio Constitution, "writs of supersedeas in any case, and other writs not specifically provided for and not prohibited by law, when necessary to enforce the administration of justice." \*1216 Appellants fail to cite to, nor has our independent review revealed, a single case in which this court has granted such relief. Nonetheless, in this unprecedented decision, the majority issues an "other writ" against a non-party as part of a discretionary appeal. Because I believe the court lacks the authority to issue such a writ under these circumstances, I dissent.

Neither the case law cited by appellants, *State ex rel. Snyder v. Wheatcraft* (1974), 37 Ohio St.2d 53, 66 O.O.2d 158, 307 N.E.2d 258, nor Supreme Court Rules of Practice supports the use of R.C. 2503.40 in a discretionary appeal. Rather, these authorities reveal that the relief sought by appellants is more appropriately pursued as part of a mandamus or other original action.

In *Snyder, supra*, the court had ordered ballots to an election to be impounded as part of a mandamus action against the board of elections. Extraordinary writs, such as mandamus, are pursued through original actions and are instituted by the filing of a complaint. S.Ct.Prac.R. X(4). Appellants seek *Snyder* relief, not through the filing of an original action against the Licking County Board of Elections, but by motion as part of their discretion-

ary appeal from the decision of the Fifth District Court of Appeals.

In addition, the court lacks the authority either to issue a writ against a non-party or to join a party to a discretionary appeal. \*\*1278 Joinder pursuant to Civ.R. 19 is not available in an appellate review of a judgment. Civ.R. 1(C)(1). Moreover, the Certificate of Service attached to appellants' motion does not indicate that the Licking County Board of Elections was served with and is even aware of this motion for an "other writ" against it.

Because I believe this court lacks authority to grant a motion for an R.C. 2503.40 "other writ" as part of a discretionary appeal against a non-party, I would deny the motion.

STRATTON, J., concurs in the foregoing dissenting opinion.

Ohio 1996.

Smith v. Granville Twp. Bd. of Trustees  
77 Ohio St.3d 1215, 671 N.E.2d 1277

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