

In The Supreme Court Of Ohio

Summit County Republican Executive Committee)	
)	
Plaintiff,)	CASE NO. 08-0478
)	
v.)	
)	
Secretary of State Jennifer Brunner)	RESPONDENT OHIO SECRETARY
)	OF STATE JENNIFER BRUNNER'S
Defendants.)	MOTION IN LIMINE
)	

**RESPONDENT OHIO SECRETARY OF STATE JENNIFER BRUNNER'S
MOTION IN LIMINE**

Now comes Respondent, Ohio Secretary of State Jennifer Brunner, by and through the undersigned counsel, and respectfully moves this Court to issue an order to: [1] limit the issue before the Court to the Secretary's of State's reasonable belief that Brian K. Daley was not competent to serve as a member of the Summit County Board of Elections, as opposed to his actual competence; [2] limit discovery to the issue of whether the Secretary of State had a reasonable belief in determining that Brian K. Daley was not competent to serve on the Summit County Board of Elections; and [3] disregard Relator's evidence pertaining to Brian K. Daley's competency, which was submitted with Relator's complaint. In the alternative, if the Court finds that Brian K. Daley's actual competence is to be addressed instead of only whether Secretary of State Brunner had reason to believe that Daley would not be competent, the Respondent requests

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CLERK OF COURT
SUPREME COURT OF OHIO

that an additional thirty (30) days be granted to conduct discovery. A memorandum in support of the Respondent's motion is attached hereto.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. This Court Should Limit the Issues Before the Court and the Discovery to be Conducted

The Respondent, Secretary of State Jennifer Brunner, requests that this Court limit the issues litigated and discovery conducted in the case at bar in accordance with RC 3501.07. The true issue before the Court is whether the Secretary of State had reason to believe that Brian K. Daley was not competent to serve on the Summit County Board of Elections. When a respective party's Executive Committee recommends an elector for appointment to a board of elections, the Ohio Revised Code specifically states "[t]he secretary of state shall appoint such elector, unless [s]he has **reason to believe** that the elector would not be a competent member of such board." RC 3501.07 (emphasis added). The words "reason to believe," indicate that it is irrelevant whether Mr. Daley actually is or is not competent to serve as a member of the Summit County Board of Elections. Rather, the statute merely requires, by its plain language, that the Secretary of State have reason to believe that any appointed elector will not be competent to serve as a member on the Board of Elections. This is an objective determination to be made by the Secretary of State, not a factual conclusion that must be proven to the acceptance by all. It has nothing to do with Daley's background or actual competence, only whether the Secretary of State had a reason to believe that he could not competently serve on the Summit County Board of Elections.

All evidence, therefore, about Mr. Daley's actual competence to serve on the board of elections is irrelevant. The only relevant issue in this case is whether Secretary of State Brunner had reason to believe he was not competent. Ohio Evidentiary Rules provide that "[e]vidence which is not relevant is not admissible." Ohio R. Evid. 402.

Because the Revised Code merely requires a reasonable belief, this Court should limit the issues in this case simply to Secretary of State Jennifer Brunner's reasonable belief that Mr. Daley was not competent to serve as a member of the Summit County Board of Elections. As a result, this Court should also limit discovery to Secretary of State Jennifer Brunner's reasonable belief that that Mr. Daley was not competent to serve as a member of the Summit County Board of Elections. Finally, this Court should disregard any evidence that has already been submitted to this Court to justify the actual competency of Mr. Daley as irrelevant to the issue before the Court.

II. In the Alternative, Respondent Requests an Additional Thirty Days to Conduct Discovery

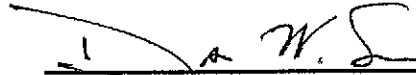
In the event this Court does not limit the issues and discovery in this case, Respondent asks this Court to issue an order granting them an additional 30 days to conduct discovery. The areas of information that are relevant or that might lead to the discovery of relevant information becomes much greater. At that point, the Secretary of State will have the right to depose numerous witnesses including friends, acquaintances, neighbors, and co-workers of Mr. Daley. She will need to delve much further into his background to see if there are other issues which would show him incompetent to serve on the board of elections. It would take the Secretary more than ten days to conduct discovery.

III. Conclusion

For the foregoing reasons, Respondent requests that the Court limit the issues and discovery before this Court to the reasonable belief of Secretary of State Jennifer Brunner. In the alternative, the Respondent requests that this Court grant additional time for the Respondent to conduct discovery.

Respectfully submitted,

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Certificate of Service

This is to certify a copy of the foregoing was served upon the following counsel of record by fax transmission on this 24 day of March, 2008.

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