

In The Supreme Court Of Ohio

**Summit County Republican
Executive Committee,**

Relator

vs.

Case No. 08-0478

Secretary of State Jennifer Brunner

Original Action in Mandamus

Respondent.

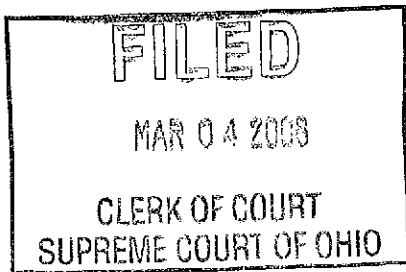
**Respondent Ohio Secretary Of State Jennifer Brunner's
Motion To Remove This Case From The Court's Expedited Elections Calendar**

Respectfully submitted,

Marc Dann
Attorney General



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Now comes Respondent Ohio Secretary of State Jennifer Brunner and, pursuant to S. Ct. Prac. R. X Sec. 9, asks this Court to issue an order removing this case from the expedited election calendar.

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Memorandum In Support

S. Ct. Prac. R. X Sec. 9 provides, in pertinent part,

Because of the necessity of a prompt disposition of an original action relating to a *pending election*, and in order to give the Supreme Court adequate time for full consideration of the case, if the action is filed within 90 prior to the election, the respondent shall file a response to the complaint within five days after service of the summons.

(emphasis added). Thus, by its own terms, the rule for setting a case on an expedited schedule is that the case itself must relate to a pending election. In this case, the Relator's case does not in any way relate to a pending election, and does not otherwise require this Court's review in an expedited fashion. Instead, the Relators are simply complaining about an appointment to the county's board of elections, and objecting to the county board's organizational meeting.

R.C. 3501.06 establishes March 1 of even-numbered years as the specific date on which the Secretary of State shall appoint Board members entering into a new four-year term. Boards are then required by R.C. 3501.09 to reorganize "within five days after the appointments to the board of elections are made by the secretary of state."

It is true that a county's executive party may file an original action in mandamus against the Ohio Secretary of State if she fails to appoint that party's designee to the county board of elections because the Secretary has reason to believe such an elector would not be a competent member of the board. However, the instant action does not relate to a pending election. *See* RC 3501.07. Rather, the complaint only deals with the question whether the Secretary had the authority under statute to reject the Summit County Republican Party Executive Committee's recommendation to appoint Brian Daley K. Daley as a member of the Summit County Board of Elections. R.C. 3501.07 does not allow party executive committees an unlimited number of opportunities to provide additional names. The time constraints of the statutory system required

that the Secretary move forward to make an appointment on March 1, and the board is now required by statute to reorganize on or before March 6, 2008.

Likewise, there is no reason for this Court to assign this case to the expedited docket as a result of the Relator's request to prohibit the Summit County Board of Elections from conducting its organizational meeting. Pursuant to state statute, within five days after the Secretary of State makes her appointments to the boards of elections, those boards must meet and organize by selecting one of their members as the chair of the board. RC 3501.09. The board must also select a director during this meeting and the director must be from a different political party than the chair. *Id.* Anytime after the board of elections conducts its organizational meeting and reports its results to the Secretary of State, the board can replace its chair or director by an affirmative vote of three members of the board. RC 3501.091. Thus, not only does the organization of a board of elections not relate to a pending election, the Revised Code specifically allows the board to reorganize itself at any time after the original organizational meeting. Because of this statutory provision, this Court should remove this case from the expedited elections calendar and allow the parties to develop their evidence and arguments in accordance with the regular calendar for original actions. This would allow the parties to properly brief the issues raised in this case and would also give this Court the time it needs to

properly evaluate the claims raised by the Relator.

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 4th day of March, 2008.

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