



FILED
COURT OF APPEALS
2010 JUN 11 PM 4:02

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CLERK OF COURTS
MONTGOMERY CO. OHIO
36

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY

STATE, ex rel., C. Ralph Wilcoxson, II
Relator

CASE # 3A027 85

v.

Steven P. Harshman, Director
Montgomery County Board Of Elections et al.
Respondents

WRIT OF MANDAMUS
AND REQUEST TO BE PLACED
ON EXPEDITED DOCKET

COMPLAINT

NOW COMES the Relator, C. Ralph Wilcoxson, II, on relation to the State of Ohio and for his Complaint for Writ of mandamus against Respondent Montgomery County Board of Elections and states as follows:

NATURE OF THE CASE

This is an action and Complaint for a Writ of Mandamus to enforce rights that lie at the core of protected political speech. O.R.C § 3513.05 & § 3513.257. Additionally the Relator states that the Montgomery County Board of Elections has abused its discretion in failing to certify the Relator's petitions pursuant to O.R.C § 3501.38 General rules for petitions and declarations of candidacy.

At issue are two provisions of Ohio Law: Ohio Revised Code §3513.05 & §3513.257(c).

These provisions set out a signature-distribution for major party, minor party and independent candidates. The requirement, in the instant case, for would-be independent candidates is more than 38 times the requirement for candidates affiliated with the two major parties and more than 75 times the requirement for candidates affiliated with any minor party before they may appear on the ballot.

The Relator asserts that these provisions violate various rights guaranteed by the First and Fourteenth Amendments to the Ohio and United States Constitution and ask this Court for a writ of Mandamus ordering the Montgomery County Board of Elections to place the Relator's name on the ballot and declaratory and injunctive relief prohibiting state officials from enforcing the unconstitutional statutes now and in the future.

INTRODUCTION

This is an original action for a Writ of Mandamus to compel the Montgomery County Board of Elections to certify Relator C. Ralph Wilcoxson, II as a candidate for Judicial Office in the Montgomery County Common Pleas Court, Juvenile Division and instruct the county board of elections to place his name on the ballot for the November 2nd, 2010 election.

JURISDICTIONAL STATEMENT

The basis of this Court's jurisdiction is established by Article IV, § 1 of the Ohio Constitution, and jurisdiction as outlined in Article IV, § 3(B)(1) confers original jurisdiction in the Quo warranto, Mandamus, Habeas corpus, Prohibition, Procedendo and in any cause on review as may be necessary to its complete determination. Courts of appeals shall have such appellate jurisdiction as may be provided by law to review and affirm, modify, or reverse final orders or actions of administrative officers or agencies.

There is no dispute over the appellate court's original jurisdiction or this Court's jurisdiction to hear the appeal.

PARTIES

1. Relator C. Ralph Wilcoxson, II is a qualified elector residing in Montgomery County Ohio who desires to be a candidate for a judicial office of in Montgomery County Common Pleas Court, Juvenile Division.
2. Respondent is Steven P. Harshman, Director Montgomery County Board of Elections.

STATEMENT OF THE FACTS

3. Relator is a 46 year old African American Male residing in Montgomery County, Ohio.
 4. Relator has been licensed to practice Law in Ohio since 1993.
 5. O.R.C §1907.13 sets forth the qualifications of County Court Judges.
 6. Relator is an independent candidate as defined in O.R.C §3501.01(I).
 7. Relator meets the qualifications as outlined in O.R.C §1907.13
 8. On May 3, 2010, Relator, in an effort to be placed on the November 2, 2010 ballot, filed with a statement of candidacy and nominating petition, as prescribed in §3513.257 & §3513.05 of the Ohio Revised Code.
 9. Relator petitions contained more than 2200 signatures.
 10. On May 4, 2010 Relator was placed on administrative leave and was later terminated from his employ in retaliation for expressing a desire to run for judicial office.
 11. Relator was threatened with financial ruin if he proceeded and gained access to the ballot.
 12. Relator, an Independent Candidate, was required to submit 1893 valid signatures to overcome the signature requirement outlined in O.R.C §3513.05 and §3513.257.
 13. Candidates for Judicial Office affiliated with a major party (i.e. Democratic or Republican) are required to provide petitions containing only 50 valid signatures.
 14. Candidates for Judicial Office affiliated with a minor party are required to provide petitions containing only 25 valid signatures.
 15. On May 20, 2010, Relator received written notice from the Board of Elections that they had voted not to certify the petitions "due to insufficient Valid Signatures". The notice was signed by Steven P. Harshman, Director and Betty J. Smith, Deputy Director.
 16. Relator contacted the Montgomery County Board of Elections and received a report detailing the signatures that were stricken as invalid.
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17. Relator's review of the report revealed several errors made by the Montgomery County Board of Elections.
18. Respondent, Montgomery County Board of Elections failed to count valid signatures of registered voters in Montgomery County, Ohio.
19. Respondent failed to diligently search its database and verify signatures as required by O.R.C §3513.263.
20. Respondent improperly and incorrectly invalidated signatures based on petition dates.
21. Respondent improperly invalidated signatures and failed to properly check voter addresses.
22. Respondent improperly invalidated signatures and failed to check elector status.
23. The Montgomery County Board Of elections has engaged in an abuse of discretion in failing to certify the Relator's petitions.
24. The Board of Elections application of the statute and subsequent failure to certify "is an unconstitutional infringement of Relators' right to ballot access and the right of a voter to vote for a candidate of his/her choice as guaranteed by the First and Fourteenth Amendments of the Constitution of the State of Ohio and the United States of America.
25. Relator asserts that the application of O.R.C. §3513.257(C) does unreasonably interfere with the right of voters to have candidates of their choice placed on the ballot.
26. Relator lacks a plain and adequate remedy in the ordinary course of law.
27. Relator requests that the matter be set on the court's accelerated calendar Pursuant to App. R. 11.1 and as provided in O.R.C §3515.08.

MEMORANDUM AND ARGUMENT

The Ohio Board of Elections Missions statement reads as follows;

"The Elections Division of the Ohio Secretary of State's office wants to ensure that Ohio elections are free, fair, open and honest; and to encourage the highest level of participation in our democracy."

Further the Ohio Secretary of State on its' website states;

"the purpose of election law is to recognize that the state has a substantial and compelling interest in protecting its electoral

process by encouraging political stability, ensuring that the winner of the election will represent a majority of the community, providing the electorate with an understandable ballot, and enhancing voter education, thus fostering informed and educated expressions of the popular will in a general election... and ensuring fair and honest elections while leaving unimpaired the political, voting, and associational rights secured by the first and fourteenth amendments to the United States Constitution."

In the instant case the access to the Montgomery County ballot is being denied to Relator in part due to the onerous and disparate signature requirements for independent candidates. These requirements are governed by O.R.C §3513.05 and §3513.257. §3513.257, the applicable statute for independent candidates, states in pertinent part:

Each person desiring to become an independent candidate for an office for which candidates may be nominated at a primary election, except persons desiring to become independent joint candidates for the offices of governor and lieutenant governor and for the offices of president and vice-president of the United States, shall file no later than four p.m. of the day before the day of the primary election immediately preceding the general election at which such candidacy is to be voted for by the voters, a statement of candidacy and nominating petition as provided in section 3513.261 of the Revised Code. Persons desiring to become independent joint candidates for the offices of governor and lieutenant governor shall file, not later than four p.m. of the day before the day of the primary election, one statement of candidacy and one nominating petition for the two of them. Persons desiring to become independent joint candidates for the offices of president and vice-president of the United States shall file, not later than four p.m. of the seventy-fifth day before the day of the general election at which the president and vice-president are to be elected, one statement of candidacy and one nominating petition for the two of them. The prospective independent joint candidates' statement of candidacy shall be filed with the nominating petition as one instrument.

The statement of candidacy and separate petition papers of each candidate or pair of joint candidates shall be filed at the same time as one instrument.

The nominating petition shall contain signatures of qualified electors of the district, political subdivision, or portion of a political subdivision in which the candidacy is to be voted on in an amount to be determined as follows:

(A) If the candidacy is to be voted on by electors throughout the entire state, the nominating petition, including the nominating petition of independent joint candidates for the offices of governor and lieutenant governor, shall be signed by no less than five thousand qualified electors,

provided that no petition shall be accepted for filing if it purports to contain more than fifteen thousand signatures.

(B) If the candidacy is to be voted on by electors in any district, political subdivision, or part thereof in which less than five thousand electors voted for the office of governor at the most recent election for that office, the nominating petition shall contain signatures of not less than twenty-five qualified electors of the district, political subdivision, or part thereof, or a number of qualified signatures equal to at least five per cent of that vote, if this number is less than twenty-five.

(C) If the candidacy is to be voted on by electors in any district, political subdivision, or part thereof in which five thousand or more electors voted for the office of governor at the most recent election for that office, the nominating petition shall contain a number of signatures equal to at least one per cent of those electors.

§3513.05, the applicable statute for major party candidates, states in pertinent part:

Except as otherwise provided in this paragraph, if the declaration of candidacy is of one that is to be submitted only to electors within a district, political subdivision, or portion thereof, the petition shall be signed by not less than fifty qualified electors who are members of the same political party as the political party of which the candidate is a member. If the declaration of candidacy is for party nomination as a candidate for member of the legislative authority of a municipal corporation elected by ward, the petition shall be signed by not less than twenty-five qualified electors who are members of the political party of which the candidate is a member.

I. BALLOT ACCESS

The right of political parties or candidates to a place on the ballot bears directly on the right of citizens to vote. If parties or candidates are kept off the ballot, their adherents are compelled to vote for representatives other than those of their choice. The denial of a place on the ballot thus constitutes a deprivation of the franchise. Onerous signature requirements make it nearly impossible for independent candidates to participate in the electoral process and for initiative campaigns to get measures on the ballot. A review of these statutes makes it hard not to see the restrictions as a deliberate effort on the part of legislators to keep independent candidates and grassroots initiatives off the ballot. A person of ordinary intelligence and common sense, when comparing ORC §3513.05 and §3513.257, readily understands the effect on a voters right to choose and vote for a candidate of their choice and the ultimate effect of freezing the status quo

and eliminating competition in the political marketplace. How long will these measures continue to muffle and suppress the voices of Ohio voters?

Given the importance of the right to vote in our system of government, it must be zealously protected. Voting is a “fundamental political right, because it is preservative of all rights.” *Yick Wo v. Hopkins* (1886), 118 U.S. 356, 370; *Reynolds v. Sims* (1964), 377 U.S. 533, 562. The arc of American history, from the Fifteenth, Nineteenth, and Twenty-sixth amendments to the United States Constitution to the Voting Rights Act of 1965 and the National Voter Registration Act of 1993, bends toward expansion and protection of the right to vote. When an individual qualifies to register and exercise this vital right, it should not, nor the effectual purpose of it, be removed lightly.

The Supreme Court has long held that: “No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined.” *Wesberry v. Sanders*, 376 U.S. at 17. It is also settled law that at the core of the fundamental right to vote is “the right of qualified voters within a state to cast their ballots *and have them counted*.” *United States v. Classic*, 313 U.S. 299, 315 (1941) (emphasis added); *Shelley v. Kraemer*, 334 U.S. at 22 (“Equal protection of the laws is not achieved through indiscriminate imposition of inequalities.”). In holding that Florida’s vote-counting method violated equal protection, the Court explicitly based its decision on equal protection doctrine developed in earlier cases requiring equal weight to each vote and equal dignity to each voter. *Id.* at 104, 107 (citing *Harper v. Virginia Bd. of Elections*, 383 U.S. 663, 665 (1966), *Reynolds v. Sims*, 377 U.S. 533, 555 (1964), *Gray v. Sanders*, 372 U.S. 368 (1962), and *Moore v. Ogilvie*, 394 U.S. 814 (1969)). In each of these cases, the weight of a citizen’s votes impermissibly turned on his or her place of residence. For example, in *Reynolds*, the Court struck down a legislative apportionment scheme that gave some voters less representation than others, solely based on the jurisdiction within which they lived. The Court held that “diluting the weight of votes because of place of residence impairs basic constitutional rights under the Fourteenth Amendment.” 377 U.S. at 566; see also *Moore v. Ogilvie*, 394 U.S. at 818-819 (striking down apportionment plan that gave greater voting strength to rural counties than to urban counties). This line of cases establishes that inequalities in the realm of voting – particularly those that accord greater weight to voters in

some counties compared with others or are discriminatory in their application are subject to heightened constitutional scrutiny. It is, of course, hornbook law that strict scrutiny is the proper standard for assessing state action that impairs the exercise of fundamental rights, such as the right to vote. See Laurence H. Tribe, *American Constitutional Law* § 16-7, at 1454 (2d ed. 1988); see also, *Idaho Coalition United for Bears v. Cenarrussa*, 342 F.3d 1073 (9th Cir. 2003) (applying strict scrutiny to state's regulation of election process). As the Court stated in *Harper*: "Especially since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement must be carefully and meticulously scrutinized." *Harper*, 383 U.S. at 667; see also *Reynolds*, 377 U.S. at 562 ("any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized"). Practices that deny electoral equality may therefore be upheld only if narrowly tailored to serve a compelling state interest.

The Due Process Clause of the Fourteenth Amendment prohibits the government from enacting and enforcing regulations that are either arbitrary or capricious, or that have no rational relationship to a legitimate governmental interest. In the voting context, as the Court noted in *Bush v. Gore*, 531 U.S. at 105, the Constitution embodies a "minimum requirement for nonarbitrary treatment of voters necessary to secure the fundamental right." Courts are even more demanding when the "liberty" interest subject to regulation is fundamental in the constitutional sense.

In the instant case, the disparity in the number of signatures required by O.R.C. 3513.257(C) for a independent candidate vs. a candidate that is affiliated with a major political party (i.e. Republican or Democrat) is disparate and the application in this case resulted in the Relator being required to produce more than **38** times the number of signatures than that of his major party counterpart and more than **75** times the number required of a minor party candidate. The application of O.R.C §3513.257(c) treads heavily on the voter's First Amendment right to choose their own candidates a right that the Supreme Court has repeatedly held sacred and cannot be justified by a state's interest in minimizing Madisonian factionalism.

The Supreme Court has also recognized that not every restriction on a party's associational rights is unconstitutional and that States have "a major role to play in structuring and monitoring the

election process.” *Id.* at 572; *see Burdick v. Takushi*, 504 U.S. 428, 433 (1992); *Anderson v. Celebrezze*, 460 U.S. 780, 788 (1986). To determine whether a particular restriction violates the First and Fourteenth Amendments, a court must first weigh the “character and magnitude” of the burdens that the State imposes on those rights against the interests that the State offers as justification for those burdens. *Anderson*, 460 U.S. at 789. When the law “imposes only ‘reasonable, nondiscriminatory restrictions’” upon a party’s rights ‘the State’s important regulatory interests are generally sufficient to justify’ the restrictions.” *Burdick*, 504 U.S. at 434 (quoting *Anderson*, 460 U.S. at 788, 788-89 n.9). But when the law imposes severe or discriminatory burdens, the regulation “must be narrowly tailored and advance a compelling state interest.” *Timmons*, 520 U.S. at 358. A court must therefore be careful not to confuse a state’s legitimate interest in putting a check on the kind of factionalism described in *The Federalist No. 10* with a state’s illegitimate interest in shielding parties from competition. As Justice O’Connor has explained, the political party or parties in power have an incentive “to shape the rules of the electoral game to their own benefit.” *Clingman v. Beaver*, 544 U.S. 581, 603 (2005) (O’Connor, J., concurring). Heightened scrutiny is often necessary to ensure that the state’s asserted interest in political stability is “not merely a pretext for exclusionary or anticompetitive restrictions.” *Id.* O.R.C 3513.257(C) imposes certain qualifications upon persons who seek to be candidates for judicial office. Legislative bodies like the General Assembly are generally authorized to promulgate qualifications for those who seek public office. *State ex rel. Platz v. Mucci* (1967), 10 Ohio St.2d 60, 61, 39 O.O.2d 48, 49, 225 N.E.2d 238, 240; *State v. Bissantz* (1988), 40 Ohio St.3d 112, 115-116, 532 N.E.2d 126, 130. However these, restrictions on candidacy cannot impair the right of electors to vote for the candidate of their choice, which is protected by the Fourteenth Amendment Due Process and Equal Protection Clauses, as well as the right of persons to associate, which is protected by the First Amendment. *See, generally*, 3 Rotunda & Nowak, *Treatise on Constitutional Law: Substance and Procedure* (3Ed.1999) 708, Section 18.32.

Therefore, in order to determine the whether the instant application of O.R.C. 3513.257(C) has infringed on the constitutional rights of the Relator and the voters of Montgomery County. The court must apply the modified balancing test adopted by the United States Supreme Court in voting- and ballot-access cases. *Purdy*, 77 Ohio St.3d at 342, 673 N.E.2d at 1355; *Burdick v.*

Takushi (1992), 504 U.S. 428, 433-434, 112 S.Ct. 2059, 2063-2064, 119 L.Ed.2d 245, 253-254. Under this test, in deciding whether a state election law violates First and Fourteenth Amendment constitutional rights, we must first weigh the character and magnitude of the burden the law imposes on those rights against the interests the state contends justify that burden, and consider the extent to which the state's interests necessitate the burden. *Anderson v. Celebrezze* (1983), 460 U.S. 780, 789, 103 S.Ct. 1564, 1570, 75 L.Ed.2d 547, 558. Regulations imposing severe burdens on voters' and candidates' rights must be narrowly tailored to serve a compelling state interest, while lesser burdens require less exacting review, and a state's important regulatory interests usually justify reasonable, nondiscriminatory restrictions. See *Timmons v. Twin Cities Area New Party* (1997), 520 U.S. 351, 358-359, 117 S.Ct. 1364, 1370, 137 L.Ed.2d 589, 598.

The statute demonstrates in practice and form a statistically substantial disparity. The Respondents cannot overcome that burden. The Relator prays that the Board of Elections be ordered to place Relator on the November 2, 2010 ballot for the office of Judge for the Common Pleas Court of Montgomery County, Ohio Juvenile Division.

II. PETITION ISSUES

The Montgomery County Board of Elections failed to properly and diligently search for voter status when reviewing Relator's petitions. Relator with his limited resources conducted a review of the invalidated signatures as submitted by the Montgomery County Board of Elections. Relator's review revealed substantial errors in the number of signatures that the respondent invalidated. Those errors are a direct cause of the Relator's petitions not being certified.

The respondent in reviewing the Relator's petitions invalidated petitions for the following reasons;

1. Missing physical addresses
2. Addresses do not agree
3. Date issues (date proceeding or following collection)
4. Signatures do not match
5. Signer was not a qualified elector

6. Duplicate signatures
7. Illegible
8. Circulator signed petition he/she circulated

Relator's review revealed errors that substantially decrease the number of signatures invalidated. The purpose of election law is to assure the people's right to free and equal elections, as guaranteed by the Ohio and US Constitution. The full exercise of that purpose demands that the people be afforded the means to form political parties, nominate candidates and cast ballots for whomever they choose. To secure the right to free and equal elections and to preserve the integrity of the democratic political process. To that end it is essential that an orderly system be established. However courts have indicated that we "must avoid unduly technical interpretations that impede the public policy favoring free, competitive elections." *State ex rel. Ruehlmann v. Luken* (1992), 65 Ohio St.3d 1, 3, 598 N.E.2d 1149; cf. *Stern v. Cuyahoga Cty. Bd. of Elections* (1968), 14 Ohio St.2d 175, 180, 43 O.O.2d 286, 237 N.E.2d 313 ("Absolute compliance with every technicality should not be required in order to constitute substantial compliance, unless such complete and absolute conformance to each technical requirement of the printed form serves a public interest and a public purpose").

The respondent invalidated signatures based on dates that were said to follow the collection date. The rejections are erroneous and an abuse of discretion. For example on petition # 10 line 13 respondent invalidated a signature and read the date as 9/18/10. The date actually says 4/18/10. Further support for the date being misread is a simple look at the signatures above and below the invalidated signature which all read 4/18/10. Similarly, petition 15 lines 6 & 13, petition # 18 lines 12 & 13, petition 38 line 2, petition# 47 line 10, petition# 50 line 10 & 11 petition# 54 line 4, petition# 79 lines 16, 17 & 18. Petition# 125 line 13, petition# 129 lines 1 & 5 were all invalidated because of the date being read by respondent incorrectly or the date containing the month and day without the year. Additionally, the respondents failed to diligently search for electors and validate the signatures of the qualified electors who signed the Relator's petitions.

The Relator has discovered 106 errors that the respondent has made as it relates to signatures that were not counted respondent found them not be an elector. The Relator has found those electors thru the respondent website and database. Additionally, the Relator has found 50 additional

errors that the respondent has failed to count because the address did not match the signature on file. Relator has secured Elector statements from the electors indicating that they not only signed the petition but also affixed their signature. 17 signatures were invalid because the circulator did not sign a complete address when completing the circulator statement. While that alone may constitute a failure but this circulator had signed a minimum of 20 other petitions as circulator so address and identity of the circulator is apparent. All signatures on Petition 106 line 1-15 were invalidated as a result of an incomplete signature that was counted by the respondent but not the circulator. The incomplete signature was printed in pencil without address/city or county information. While the Relator has reviewed the report from the respondent he is not in a position nor does he have the resources to research electors similar to the resources and access that respondent does. Relator suspects that the respondent has failed to complete its duty and has committed several more errors that caused them to fail in accurately count and validate signatures. This ultimately caused the respondent to erroneously fail to certify Relator's petitions. The Relator has completed and prepared a report for the court's review, if necessary, detailing the respondent's failures in accurately validating signature. Invalidating signatures for these hyper-technical violations do nothing to serve or advance the state's interest in preventing fraud. There is no question about the legitimacy or importance of a State's interest in counting only eligible voters' votes or their signatures on petitions is legitimate. However, if the purpose is to protect against fraud it is clear that there is no fraud in this case nor has there been an allegation of fraud. To summarily dismiss petitions is a violation of process. It certainly is not the least restrictive means of accomplishing the goal of voter confidence and participation in the democratic process. No vital public purpose or public interest is served by rejecting electors' signatures for technical reasons such as, incorrect dates or mis-written zip codes.

In voter cases a heightened standard of review is placed on proving that a registered elector is not qualified under Ohio law. The burden must be established be "clear and convincing evidence" See Secretary of State Directive 2008-79 (<http://www.sos.state.oh.us/SOS/Upload/elections/directives/2008/Dir2008-79.pdf>).

The Constitution of the State of Ohio sets forth the qualifications to vote in Ohio

elections: "Every citizen of the United States , of the age of eighteen years, who has been a

resident of the state, county, township, or ward, such time as may be provided by law, and has been registered to vote for thirty days, has the qualifications of an elector, and is entitled to vote at all elections..." Article V, §1.

Ohio Rev. Code § 3503.07 sets forth the requirements in order to register to vote in the state of Ohio : "Each person who will be of the age of eighteen years or more at the next ensuing November election, who is a citizen of the United States, *and who, if he continues to reside in the precinct until the next election, will at that time have fulfilled all the requirements as to length of residence to qualify him as an elector shall*, unless otherwise disqualified, be entitled to be registered as an elector in such precinct. When once registered, an elector shall not be required to register again unless his registration is canceled." (emphasis added)

Ohio courts have also provided for persons without permanent addresses the opportunity to vote. The court observed that, pursuant to Advisory 2008-25 and R.C. 3503.02(I), if a person does not have a fixed place of habitation, the shelter or other place where the person intends to return shall be deemed his residence for purposes of voting. When voting provisionally such a person may state his or her actual residence location even if the actual residence location is not a building. Directive 2008-103. These provisions were enacted because of the effect that the address requirements imposed on the citizen's right to vote. These laws should apply not only right to vote but the entire voting process. What effect does it have if you can vote in the general election but are disqualified from participating in the petition process in selecting the candidate of your choosing?

NO ADEQUATE REMEDY AT LAW

There is a real and actual controversy between the parties. Relator has no adequate remedy at law other than this action for mandamus and other declaratory relief. Relator will suffer irreparable injury as a result of the acts of respondent complained of, in unlawfully and unreasonably applying to Relator an arbitrary presumption that they are not eligible electors

in Montgomery County, Ohio, and in direct consequence thereof denying the citizenry the right to vote for the choice of candidate and that injury will continue unless declared to be unlawful and enjoined by this Court.

CONCLUSION

The right to vote is the foundation of our democracy, yet onerous requirements and extensive administrative problems work to disenfranchise voters further compromising the rights of candidates to gain ballot access and voters to select the candidate of their choosing are both burdensome and unlawful. These barriers make it difficult for minor parties and independent candidates to gain access to the ballot. The clear goal is to freeze the status quo and diminish free speech and the democratic process. The political machines will do everything and anything to intimidate, entice and cajole opponents of their party controlled candidate to drop out of the race. Our Founding Fathers envisioned a country where successful citizens would leave their chosen professions and answer a call to serve their country in the Judiciary and legislature as a patriotic duty. The republic was supposed to be run by people of varied experiences and passions who joined together from a wide array of fields to solve problems. But somewhere along the way, the lust for money and power corrupted the process. And now the government is increasingly run by those who choose the blood sport of politics as a profession, where the only priority is to keep control at all cost. Election laws are built by and for the two parties that have taken turns running the state. The state has gone to extreme measures to keep independents and third-party candidates off the ballots. Application of the statutes and the respondent's failure to accurately count and validate signatures has resulted in irreparable harm to the Relator. The totality of the circumstances has made it nearly impossible for Relator to gain access to the ballot. If the court does not intervene the status quo will remain frozen and make it impossible for independent candidates to gain access to the ballot.

REQUEST FOR RELIEF

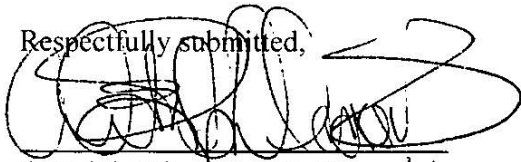
Wherefore, the Relator asks that this court:

(1) Grant mandamus and direct Respondent, Montgomery County Board of Elections to place Relator's name on the general election ballot of November 2, 2010 as an independent candidate for Juvenile Judge for Montgomery County Commons Pleas Court.

- (2) Declare as unconstitutional any election laws which impose extra-conditional qualifications upon political candidates and any other relief this Court finds just and proper.
- (3) Relator requests that the matter be set on the court's accelerated calendar Pursuant to App. R. 11.1 and as provided in O.R.C §3515.08.
- (4) Alternatively Relator requests that this court order the Montgomery County Board of elections to review the Relator's petitions and accurately count the signatures.

For the foregoing reasons, Relator respectfully request that his motion for Writ of Mandamus be granted.

Respectfully submitted,



C. Ralph Wilcoxson, II, Esq. 6/11/10
Sup Ct. 0061974
5385 Susan Drive
Dayton, Ohio 4545-3033
937-604-9582

CERTIFICATE OF SERVICE

The hereby certify that copies of this Complaint, for Writ of mandamus and supporting memorandum were mailed to Respondent, Steven P. Harshman Director Montgomery County Board of Elections at 451 w Third Street P.O. Box 8705 Dayton, Ohio 45481-8705 on June 10, 2010.