

[Cite as *Parks v. Stronger Berger*, 2019-Ohio-967.]

MICHAEL R. PARKS	Case No. 2018-01294PQ
Requester	Special Master Jeffery W. Clark
v.	<u>RECOMMENDATION TO DISMISS</u>
STRONGER BERGER, STRONGER COMMUNITY PAC	<u>WITHOUT PREJUDICE AS CASE</u>
Respondent	<u>OF FIRST IMPRESSION</u>

{¶1} On August 11, 2018, requester Michael Parks made a public records request of the treasurer for respondent Stronger Berger, Stronger Community PAC (SB PAC) for

- Copy of all invoices received and/or paid by the PAC.
- Copy of any meeting minutes.
- Copy of all bank statements.

(Complaint at 9.) On August 28, 2018, the treasurer responded that SB PAC was closed and no longer exists, and that the PAC was not a “public office” subject to the Ohio Public Records Act. (Complaint at 23.) On September 14, 2018, Parks filed a complaint under R.C. 2743.75 alleging denial of access to public records by SB PAC in violation of R.C. 149.43(B). Following unsuccessful mediation, SB PAC filed a motion to dismiss (Response) on November 19, 2018. On December 14, 2018, the special master accepted an additional pleading from Parks for filing (Reply).

{¶2} On review of the pleadings and attachments, the special master will *sua sponte* address whether this action constitutes a case of first impression that should be dismissed without prejudice. R.C. 2743.75(C)(2) provides:

“If the allegedly aggrieved person files a complaint under this section and the court of claims determines that the complaint constitutes a case of first impression that involves an issue of substantial public interest, the court shall dismiss the complaint without prejudice and direct the allegedly aggrieved person

to commence a mandamus action in the court of appeals with appropriate jurisdiction as provided in division (C)(1) of section 149.43 of the Revised Code.”

A case of first impression is one that “presents an entirely novel question for the decision of the court, and cannot be governed by any existing precedent.” *Black’s Law Dictionary* 635 (6th Ed. 1990). While there is no statutory definition or case law test for this concept, the Ohio Supreme Court has referred to the following public records cases as constituting cases of first impression:

- Whether dashcam video is exempt as a confidential law enforcement investigatory record. *State ex rel. Cincinnati Enquirer v. Ohio Dept. of Pub. Safety*, 148 Ohio St.3d 433, 2016-Ohio-7987, 71 N.E.3d 258, ¶ 54.
- Application of gubernatorial executive privilege as an exception. *State ex rel. Dann v. Taft*, 109 Ohio St.3d 364, 2006-Ohio-1825, 848 N.E.2d 472, ¶ 2.
- Application of the federal privacy rule of HIPAA to municipal lead citations. *State ex rel. Cincinnati Enquirer v. Daniels*, 108 Ohio St.3d 518, 2006-Ohio-1215, 844 N.E.2d 1181, ¶ 32.
- Whether completed juror questionnaires meet the definition of “records.” *State ex rel. Beacon Journal Publ’g Co. v. Bond*, 98 Ohio St.3d 146, 2002-Ohio-7117, 781 N.E.2d 180, ¶ 7.
- Whether a 24-day delay violates the requirement to provide accident reports “promptly.” *State ex rel. Wadd v. Cleveland*, 81 Ohio St.3d 50, 53-55, 689 N.E.2d 25 (1998)
- A case requiring analysis of the interplay between the Public Records Act, the Open Meetings Act, and a county record-keeping statute. *White v. Clinton Cty. Bd. of Commrs.*, 77 Ohio St.3d 1267, 1268, 675 N.E.2d 471 (1997).
- Whether an internal state agency investigation is a “law enforcement matter of a criminal, quasi-criminal or administrative nature.” *State ex rel. Polovischak v. Mayfield*, 50 Ohio St.3d 51, 52, 552 N.E.2d 635 (1990).

Whether a particular matter constitutes a case of first impression is informed by these decisions, but they do not set a bright line for future determinations.

{¶3} Here, Parks asserts that SB PAC is a “public office” as defined in R.C. 149.011(A). (Complaint at 2.) While not alleging that SB PAC was the “functional equivalent of a public office,” Parks did assert three of the four factors considered in *State ex rel. Oriana House, Inc. v. Montgomery*, 110 Ohio St.3d 456, 2006-Ohio-4854, 854 N.E.2d 193, ¶ 22. (Complaint at 3.) SB PAC recognized and addressed the issue of functional equivalence in its response. (Response at 5-10.) The case before this court thus requires a determination of whether a political action committee governed by and allegedly in compliance with R.C. Chapter 3517 is a public office or the functional equivalent of a public office. With regard to relevant precedent, Ohio courts have only reviewed the status of county party central committees as a “public *body*” under R.C. 121.22(B)(1), see *Jones v. Geauga Cty. Republican Party Cent. Comm.*, 2017-Ohio-2930, 82 N.E.3d 16, and cases cited therein. The parties cite no precedent regarding the status of a Chapter 3517 political action committee (or any analogous entity) as a “public *office*” or the functional equivalent of a public office.

{¶4} I find that this case presents an entirely novel question for the decision of the court, and cannot be governed by any existing precedent. Determination of the question presented requires analysis of the interplay between the Public Records Act, the record-keeping and disclosure provisions of R.C. Chapter 3517, and, due to the request for “all meeting minutes,” the Open Meetings Act. Under the particular facts and circumstances of this matter, I recommend the court find that the claim presented constitutes a case of first impression.

{¶5} R.C. 2743.75(C)(2) further requires that the case “involves an issue of substantial public interest.” This phrase is not defined in Ohio statutes or case law. The analogous standard of “public or great general interest” found in Article IV, Section 2(B)(2)(e) of the Ohio Constitution distinguishes “questions of public or great general

interest” from “questions of interest primarily to the parties.” *Williamson v. Rubich*, 171 Ohio St. 253, 254, 168 N.E.2d 876 (1960). Questions of public or great general interest invoke the Supreme Court’s role “to clarify rules of law.” *Wells Fargo Bank, N.A. v. Burd*, Slip Opinion No. 2018-Ohio-3891, ¶ 14 (Kennedy, J., dissenting); S. Ct. Prac. R. 5.02(A)(3).

{¶6} The case before the court involves a political action committee formed to support a ballot issue that would allow Berger Health System to change its ownership structure. (Response at 2.) The court may take judicial notice of public interest in the sources, amounts, and organizational relationships between campaign contributors and the beneficiaries of ballot initiatives. There are 26 public hospitals and health systems in Ohio.<sup>1</sup> Moreover, formation of PACs to support ballot issues or influence policy makers is not limited to public health offices. I find that this case involves more than questions of interest primarily to the parties involved. Resolution of the legal issues presented in this case would have the broad effect of clarifying the status of political action committees, and access to their records under the Public Records Act.

{¶7} I therefore recommend that the complaint be dismissed without prejudice pursuant to R.C. 2743.75(C)(2).

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JEFFERY W. CLARK  
Special Master

Filed January 4, 2019  
Sent to S.C. Reporter 3/20/19

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<sup>1</sup> <https://www.ohiohospitals.org/Ohio-Hospitals/Member-Hospitals.aspx>. Accessed December 28, 2018.