

[Cite as *State ex rel. Litwinowicz v. Cuyahoga Cty. Bd. of Elections*, 2018-Ohio-1960.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 107086

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**CHRISTOPHER MICHAEL  
LITWINOWICZ, EX REL.**

RELATOR

vs.

**CUYAHOGA COUNTY ET, AL  
BOARD OF ELECTIONS**

RESPONDENT

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**JUDGMENT:**  
COMPLAINT DISMISSED

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Writ of Procedendo  
Order No. 517021

**RELEASE DATE:** May 14, 2018

## **FOR RELATOR**

Christopher Michael Litwinowicz, pro se  
21970 Morris Avenue  
Euclid, Ohio 44123

## **ATTORNEY FOR RESPONDENT**

Michael C. O'Malley  
Cuyahoga County Prosecutor  
1200 Ontario Street  
Justice Center, 9th Floor  
Cleveland, Ohio 44113

FRANK D. CELEBREZZE, JR., J.:

{¶1} Relator, Christopher Michael Litwinowicz, filed a complaint for writ of procedendo naming the Cuyahoga County Board of Elections (“BOE”) as respondent. The writ seeks to have a Cuyahoga County Common Pleas Court judge rule on objections to a magistrate’s decision.<sup>1</sup> The complaint also seeks to require the BOE to allow him to be a write-in candidate in the clerk of courts election in Euclid, Ohio. Finally, the complaint seeks to vacate the trial court’s determination that relator is a vexatious litigator. Because relator has failed to comply with procedural requirements, this court dismisses the complaint for writ of procedendo.

### **I. Factual and Procedural History**

{¶2} In Cuyahoga C.P. No. CV-17-888903, relator instituted an action on November 13, 2017, against the BOE seeking to be a write-in candidate in the upcoming election for the clerk of courts for the city of Euclid. The BOE answered and filed a counterclaim to have the court

declare relator a vexatious litigator. The counterclaim documented a series of cases instituted by relator against the BOE and others, which it alleged were frivolous. On February 6, 2018, the trial court, sua sponte, dismissed relator's complaint for failing to present any cognizable claim for relief. The court also set a dispositive motion schedule for the vexatious-litigator matter. The BOE filed a motion for summary judgment, which was unopposed. On April 9, 2018, the trial court declared relator a vexatious litigator. The next day, notice was sent to the clerk of the Ohio Supreme Court,<sup>2</sup> and notice was sent to relator the day after that. Relator then instituted this action on April 18, 2018.

## **II. Law and Analysis**

{¶3} Relator has failed to seek leave to institute an original action in this court. Therefore, the complaint for writ of procedendo must be dismissed.

{¶4} R.C. 2323.52 requires one deemed to be a vexatious litigator to seek leave of court before instituting an action in a court of appeals. R.C. 2323.52(D)(3). In fact, this court shall not entertain a filing where leave is not sought. *Baumgartner v. Duffy*, 121 Ohio St.3d 356, 2009-Ohio-1218, 904 N.E.2d 534 (holding that a court of appeals should have dismissed an original action filed without leave);<sup>3</sup> R.C. 2323.52(I).

{¶5} Based on the failure to seek leave, this court dismisses the complaint for writ of procedendo.

{¶6} Complaint dismissed.

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<sup>1</sup>Relator identifies an April 9, 2018 journal entry that was issued by the trial court, not a magistrate. A review of the docket of the lower case identified in the complaint indicates that no magistrate was involved.

<sup>2</sup> Relator's name is included on a list of vexatious litigators maintained by the Ohio Supreme Court. <http://www.supremecourt.ohio.gov/Clerk/vexatious/> (accessed May 7, 2018).

<sup>3</sup>Relator filed a notice of appeal attached to the complaint for writ of procedendo, the purpose of which is unclear. If relator was attempting to also appeal the trial court's determination as well as file a complaint for writ of procedendo, the failure to comply with R.C. 2323.52 similarly bars this court from considering the appeal. *State ex*

FRANK D. CELEBREZZE, JR., JUDGE

MARY EILEEN KILBANE, P.J., and  
SEAN C. GALLAGHER, J., CONCUR