

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, ex rel. JASON M.	:	CASE NO. 2018-0360
STEVENS,	:	
	:	Original Action in Mandamus
Relator,	:	
	:	Expedited Election Case pursuant to
-vs-	:	S.Ct.Prac.R. 12.08
	:	
FAIRFIELD COUNTY BOARD OF	:	
ELECTIONS,	:	
	:	
Respondent.	:	

RESPONDENT'S MERIT BRIEF

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Table of Contents

TABLE OF AUTHORITIES	iii
STATEMENT OF FACTS	1
LAW AND ARGUMENT	5
A. Relator has failed to show that Respondent engaged in fraud, corruption, abused its discretion, or acted in clear disregard of applicable legal provisions when it determined that Relator was not a member of the Democratic Party as the term is used in R.C. 3517.03 and R.C. 3513.05.	5
1. Relator acted in accordance with law and directives of the Ohio Secretary of State when it determined Relator was not a member of the Democratic Party as the term is used in R.C. 3517.03 and R.C. 3513.05.	5
2. Relator has not cited to any other provisions of law that indicate he is a member of the Democratic Party as the term is used in R.C. 3517.03 and R.C. 3513.05.	11
3. Respondent has not infringed on Relator’s constitutional rights to freedom of speech and political association.	13
4. Relator’s implication that Respondent’s decision was made to create an uncontested race for Board Chairman Paul Johnson is unfounded.	13
B. Relator’s Complaint is barred by the doctrine of laches.	14
C. Conclusion.	18
CERTIFICATE OF SERVICE	20

TABLE OF AUTHORITIES

Cases

<i>In re M.W.</i> , 133 Ohio St.3d 309, 2012-Ohio-4538, 978 N.E.2d 164	8
<i>Paschal v. Cuyahoga Cty. Bd. of Elections</i> , 74 Ohio St.3d 141, 656 N.E.2d 1276 (1995).....	16
<i>Rust v. Lucas Cty. Bd. of Elections</i> , 108 Ohio St.3d 139, 2005-Ohio-5795, 841 N.E.2d 766	5
<i>State ex rel Craig v. Scioto Bd. of Elections</i> , 117 Ohio St.3d 158, 2008-Ohio-706, 882 N.E.2d 435	16
<i>State ex rel. Chillicothe v. Ross Cty. Bd. of Elections</i> , 123 Ohio St.3d 439, 2009-Ohio-5523, 917 N.E. 2d 263	15
<i>State ex rel. Citizen Action for a Livable Montgomery v. Hamilton Cty. Bd. of Elections</i> , 115 Ohio St.3d 437, 2007-Ohio-5379, 875 N.E.2d 902	18
<i>State ex rel. Greene v. Montgomery Cty. Bd. of Elections</i> , 121 Ohio St.3d 631, 2009-Ohio-1716, 907 N.E.2d 300	5
<i>State ex rel. Owens v. Brunner, Secy. of State, et al.</i> , 125 Ohio St.3d 130, 2010-Ohio-1374, 926 N.E.2d 617	16
<i>State ex rel. Polo v. Cuyahoga Cty. Bd. of Elections</i> , 74 Ohio St.3d 143, 145, 656 N.E.2d 1277 (1995).....	15
<i>State ex rel. Repeal Lorain Cty. Permissive Sales Tax Committee v. Lorain Cty. Bd. of Elections</i> , 151 Ohio St.3d 247, 2017-Ohio-7648, 87 N.E.3d 1234	5
<i>State ex rel. Scott v. Franklin Cty. Bd. of Elections</i> , 139 Ohio St.3d 171, 2014-Ohio-1685, 10 N.E.2d 697	15, 16
<i>State ex rel. White v. Franklin Cty. Bd. of Elections</i> , 65 Ohio St.3d 45, 49, 600 N.E.2d 656 (1992).....	16

Statutes

R.C. 1.02.....	8
R.C. 3501.053	12
R.C. 3513.05	1, 5, 6, 7, 8, 10, 11, 13

R.C. 3513.191	11, 12
R.C. 3517.02	6
R.C. 3517.03	5, 6, 7, 11

Other Authorities

Ohio Secretary of State, <i>2018 Ohio Candidate Requirement Guide</i> , (July 2017) https://www.sos.state.oh.us/globalassets/publications/election/2018_crg_07.pdf (accessed March 18, 2018)	12
Ohio Secretary of State, <i>Election Official Manual</i> , (August 8, 2017) https://www.sos.state.oh.us/elections/elections-officials/rules/#manual (accessed March 19, 2018)	7
Secretary of State Directive 2015-34.....	15
Secretary of State Directive 2016-26.....	7, 10, 12
Secretary of State Directive 2017-12.....	9, 10
The Ohio Senate—132 General Assembly, <i>Senate District Map</i> , http://ohiosenate.gov/members/senate-district-map (accessed March 18, 2018)	1

Rules

S.Ct.Prac.R. 12.08.....	17
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STATEMENT OF FACTS

Jason Stevens (hereinafter “Relator”) presented a Declaration of Candidacy for State Central Committee of the Ohio Democratic Party for the Ohio 20th Senate District (hereinafter “State Central Committee”) for certification to the Fairfield County Board of Elections (hereinafter “Respondent”) on January 23, 2018. Resp. Ex. 6. The Ohio 20th Senate District is composed of multiple counties, including Fairfield County, Muskingum County, Pickaway County, Hocking County, Perry County, Morgan County, and Guernsey County. The Ohio Senate—132 General Assembly, *Senate District Map*, <http://ohiosenate.gov/members/senate-district-map> (accessed March 18, 2018). As Fairfield County is the most populous county in the Ohio 20th Senate District, Relator is required to file his Declaration of Candidacy with the Respondent, as provided in R.C. 3513.05.

Per Relator’s Declaration of Candidacy and voter registration, Relator is a resident of Muskingum County. Rel. Ex. A. In order to be a qualified candidate for the State Central Committee seat in the 20th Senate District, Relator was required to solicit no fewer than five signatures of qualified electors residing in the same district and who were registered with the Ohio Democratic Party, pursuant to R.C. 3513.05. To meet this requirement, Relator submitted two part-petitions with thirteen signatures. Resp. Ex. 5a and 5b. Relator circulated one of the petitions that had eight signatures and Donald Fisher Sr. circulated the other part-petition that had five signatures. *Id.*

As all of the signators on both part-petitions were from Muskingum County, Respondent requested the Muskingum County Board of Elections check the validity of the signatures to ensure that all signators were members of the Democratic Party and that their voter registration corresponded with their addresses on the petition. Resp. Ex. 3. Of the thirteen signatures, ten were found to be valid. Resp. Ex. 3.

In addition to having the Muskingum County Board of Elections check the validity of the signatures on the petitions, the Respondent checked the voting history of both the Relator and Mr. Fisher Sr. since he was a circulator, to ensure that both were members of the Democratic Party. Resp. Ex. 3. Respondent completed this review by running a query through the Ohio Secretary of State's online "State of Ohio Voter Query" system. Resp. Ex. 3 and 7.

In reviewing the voting information for Relator from the Secretary of State's Voter Query search, the Respondent noted that under "Party Affiliation," there was no party listed. Resp. Ex. 3 and 7. Further, in reviewing Relator's previous voting history, Respondent noted that the last partisan primary that Relator had voted in was 2008. Resp. Ex. 3 and 7.

As the Relator had not voted in a partisan primary in either 2017 or 2016, Respondent followed its previously observed practice of not certifying the Relator's petition due to not being affiliated with the Democratic Party. Resp. Ex. 3. This decision was made at the February 15, 2018 meeting where Respondent met to consider all petitions filed prior

to 4:00 p.m. on February 8, 2018, for certification to the May 8, 2018 primary. Resp. Ex. 1 and 3.

Prior to discussing Relator's petition certification, Paul Johnson, a Board Member for the Fairfield County Board of Elections, recused himself from the meeting as he is a candidate for the same seat as Relator. Resp. Ex. 1 and 3. The remaining members of the Board unanimously decided to not certify Relator's petition in a 3–0 vote. Resp. Ex. 1. At that meeting, three other petitions for both the Fairfield County Republican Central Committee and the Fairfield County Democratic Central Committee were rejected due to the candidates not being affiliated with their stated party of candidacy. Resp. Ex. 1.

Respondent notified Relator of its decision in a letter dated February 22, 2018. Resp. Ex. 3. Relator purportedly received this notice of the Respondent's denial on February 26, 2018. Rel. Ex. A. On February 27, 2018, Relator's counsel emailed a letter to the Respondent requesting reconsideration of its denial of Relator's Declaration of Candidacy. Resp. Ex. 3. In order to discuss the letter with its legal counsel and consider other outstanding Board business, Respondent rescheduled its regularly scheduled meeting from March 7, 2018, to March 5, 2018, at 4:00 p.m. Resp. Ex. 3.

On March 5, 2018, at 4:00 p.m., the Respondent called its regular March meeting to order and asked for public comments, per the Board's procedure for regular business meetings. Relator's counsel presented affidavits in support of the letter for reconsideration he submitted to the Respondent. Resp. Ex. 3. The Respondent accepted these

affidavits and moved via roll call vote to move into executive session for the purposes of discussing imminent litigation. Resp. Ex. 2 and 3. Prior to moving into executive session, Board Member and Chair Paul Johnson recused himself from the executive session as the imminent litigation was in regards to Relator's letter of reconsideration. Resp. Ex. 2 and 3. Michael Oatney was named Acting Chair due to Board Member Johnson's recusal. Resp. Ex. 2.

The Board met in executive session and returned to the regular meeting via roll call vote. Resp. Ex. 2 and 3. Upon returning the meeting, Acting Chair Oatney stated on the record that no decisions were made during the executive session and asked if the Board wanted to make any motions regarding any matters currently before it. The Board declined to make any motions and moved into another executive session to discuss personnel matters. Resp. Ex. 2 and 3. At that time, Respondent's legal counsel and Relator, Relator's legal counsel and General Counsel for the Ohio Democratic Party Zachary West left the meeting. Relator's counsel confirmed that since Respondent had not moved to hear his request for reconsideration that the Respondent was not going to take any subsequent action on it.

On March 8, 2018, Relator filed his Complaint for Writ of Mandamus against Respondent, and Respondent was served with Relator's Complaint on March 12, 2018.

LAW AND ARGUMENT

- A. *Relator has failed to show that Respondent engaged in fraud and/or corruption, abused its discretion, or acted in clear disregard of applicable legal provisions when it determined that Relator was not a member of the Democratic Party as the term is used in R.C. 3517.03 and R.C. 3513.05.*

Relator seeks a writ of mandamus to compel Respondent to place his name on the May 8, 2018 ballot as a candidate for the Democratic Party State Central Committee. “To be entitled to a writ of mandamus, a relator must establish, by clear and convincing evidence, (1) a clear legal right to the requested relief, (2) a clear legal duty on the part of the respondent to provide the requested relief, and (3) the lack of an adequate remedy in the ordinary course of the law.” *State ex rel. Repeal Lorain Cty. Permissive Sales Tax Committee v. Lorain Cty. Bd. of Elections*, 151 Ohio St.3d 247, 2017-Ohio-7648, 87 N.E.3d 1234, ¶ 9. In order to “establish the requisite legal right and legal duty, [Relator] ‘must prove that the board of elections engaged in fraud, corruption, abuse of discretion, or clear disregard of statutes or other pertinent law.’ ” *State ex rel. Greene v. Montgomery Cty. Bd. of Elections*, 121 Ohio St.3d 631, 2009-Ohio-1716, 907 N.E.2d 300, ¶ 11, quoting *Rust v. Lucas Cty. Bd. of Elections*, 108 Ohio St.3d 139, 2005-Ohio-5795, 841 N.E.2d 766, ¶ 8.

1. *Relator acted in accordance with law and directives of the Ohio Secretary of State when it determined Relator was not a member of the Democratic Party as the term is used in R.C. 3517.03 and R.C. 3513.05.*

Though the major political parties in this state are not direct organs of government, the members of the parties’ controlling committees, otherwise known as state central committees, are elected through the formal official election process: “Their names shall

be placed upon the official ballot, and * * * the persons receiving the highest number of votes for committeepersons shall be the members of those controlling committees.” R.C. 3517.02. Therefore, a county board of elections must administer the election of state central committeepersons in accordance with laws of Ohio and the directives of the Ohio Secretary of State.

A candidate for state central committee is required to be a member of that political party. R.C. 3517.03 provides that “[a]ll the members of [state central] committees shall be members of the party * * *.” Moreover, in direct relation to the qualification of a candidate for the ballot, R.C. 3513.05 specifies the necessity of party membership:

If a declaration of candidacy is one for election as a member of the state central committee or the county central committee of a political party, the petition shall be signed by five qualified electors of the district, county, ward, township, or precinct within which electors may vote for such candidate. The electors signing such petition shall be members of the same political party as the political *party of which the candidate is a member*.

(Emphasis added.) R.C. 3513.05, sixth paragraph.

The question presented in this case is whether Respondent engaged in fraud and/or corruption, abused its discretion, or acted in clear disregard of applicable legal provisions when it determined that Relator was not a member of the Democratic Party as the term is used in R.C. 3517.03 and R.C. 3513.05. Respondent’s determination on this matter was in accordance with R.C. Title 35 and the directives of the Ohio Secretary of State, and is therefore entirely proper.

Membership in a political party is not expressly defined in either R.C. 3517.03 or the sixth paragraph of R.C. 3513.05. Indeed, Relator concedes “the absences of an express definition of party membership for state central committee candidates * * *.” Relator’s Merit Brief, p. 9. Nonetheless, the Ohio Secretary of State has explained, “For purposes of Ohio election law, an individual affiliates with a political party *by voting in that party’s primary election.*” (Emphasis added.) Secretary of State Directive 2016-26, p. 13-1 of EOM.¹ The Secretary has further instructed boards of elections to determine party membership as follows: “An elector is considered to be a member of a political party if he or she voted in that party’s primary election within the preceding two calendar years, or if he or she did not vote in any other party’s primary election within the preceding two calendar years.” *Id.*, p. 13-2 of EOM.

This instruction is clearly derived from paragraph seven of R.C. 3513.05:

For purposes of signing or circulating a petition of candidacy for party nomination or election, an elector is considered to be a member of a political party if the elector voted in that party’s primary election within the preceding two calendar years, or if the elector did not vote in any other party’s primary election within the preceding two calendar years.

¹ The permanent directives of the Ohio Secretary of State have been compiled by the Secretary of State into the Election Official Manual (“EOM”). Though citations in this brief are to specific permanent directives, these directives can all be found in the EOM, and references are made to EOM page numbers. Ohio Secretary of State, *Election Official Manual*, (August 8, 2017) <https://www.sos.state.oh.us/elections/elections-officials/rules/#manual> (accessed March 19, 2018).

Based upon these definitions of membership, a candidate may be considered a member of a party if he or she meets two requirements: (1) he or she must have voted in that party's primary election within the preceding two calendar years; and (2) he or she must not have voted in any other party's primary election within the preceding two calendar years. Relator does not satisfy both prongs of this requirement and is therefore not eligible to be placed on the ballot as a candidate for state central committee.

Relator appears to agree that the seventh paragraph R.C. 3513.05 sets forth a relevant definition of party membership for this case. Relator's Merit Brief, p. 9. But Relator reads the elements in the disjunctive. According to Relator, a person may be a member of a political party if (1) he or she voted in that party's primary election within the preceding two calendar years; or if (2) he or she did not vote in any other party's primary election within the preceding two calendar years. This reading of the definition of party membership is highly flawed.

Initially, it is important to note that the statute's use of the word "or" between the two clauses at issue here is of little consequence. " 'And' may be read 'or,' and 'or' may be read 'and' if the sense requires it." R.C. 1.02(F). In this situation, the interpretation of "and" is required to prevent absurd results. *In re M.W.*, 133 Ohio St.3d 309, 2012-Ohio-4538, 978 N.E.2d 164, ¶ 70 (holding that proper statutory construction forbids "reading statutes in a manner that leads to absurd results or that defeats the purpose for which the statute was passed").

To accept Relator's disjunctive reading that party membership could be established by either prong of the definition alone would permit the following scenario: Elector votes in the primary of Party A in 2016. Elector then votes in the primary of Party B in 2017. Yet, Elector could still claim to be a member of Party A, because she voted in Party A's primary election within the preceding two calendar years (i.e., 2016). Indeed, the elector could also claim to be a member of Party B for the same reason. This scenario is only prevented by reading the requirements of party membership in the conjunctive and requiring that to be a member of Party A the elector voted in Party A's primary election within the preceding two calendar years and did not vote in any other party's primary election within the preceding two calendar years.

This scenario adduced by reading the membership requirements in the disjunctive defies common sense and defies the directives of the Ohio Secretary of State. The Secretary has provided the following scenario: "Voted R in 2016 primary. Voted D or R in 2015 partisan primary. Elector's affiliation is R." Secretary of State Directive 2017-12, p. 3-73 of EOM. The only way the Secretary's example could hold true is by interpreting the two clauses of the definition of party membership as requirements.

Furthermore, Relator's claim that he can be a member of a political party by simply not voting for a different political party in the previous two years defies the Secretary of State's directives regarding the "look-back period" for party affiliation. Per the directions of the Secretary, "[e]ach board of elections must enter voting history and update party

affiliation following each primary election.” Secretary of State Directive 2016-26, p. 13-2 of EOM. The Secretary further directs that “each board of elections must program its county voter registration system to reflect party affiliation” using specific examples. Secretary of State Directive 2017-12, p. 3-73 of EOM. These examples indicate that if a voter does not vote in a partisan primary for the current year and did not vote in a partisan primary for the preceding two years, that elector is “unaffiliated.” *Id.*, p. 3-74 of EOM.

This look-back period is necessarily based on provision in the seventh paragraph of R.C. 3513.05 that “an elector is considered to be a member of a political party if the elector voted in that party’s primary election within the preceding two calendar years[.]” Relator’s argument, however, is that only one of two requirements is necessary to be considered a party member—in his case that an elector did not vote in the other party’s primary in the preceding two years. Relator’s view is not a view held by the Secretary of State.

Indeed, if Relator’s view is accepted, and an elector can be a member of a party by voting in that party’s primary election within the preceding two calendar years; or not voting in any other party’s primary election within the preceding two calendar years, the look-back period cannot exist, and no elector can ever become “unaffiliated.” According to Relator’s argument, if an elector votes in a primary for Party A, then he becomes a member of Party A by virtue of having voted in Party A’s primary within the preceding two calendar years and remains a member of that Party A indefinitely by virtue of not

voting in any other party's primary. If that elector then votes in a party primary for Party B, that elector becomes a member of Party B by virtue of having voted in Party B's primary within the preceding two calendar years and remains a member of that Party B thence forward (until he switches back to Party A) by virtue of not voting in any other party's primary. "Unaffiliated" is no longer an option.

The correct view is the view taken by the Secretary of State. An elector becomes a member of a political party by voting in that party's primary and remains a member until the elector goes two years without voting or votes in another party's primary. This position relies on a reading of the definition of party membership where an elector is a member of a party if he or she voted in that party's primary election within the preceding two calendar years and did not vote in any other party's primary election within the preceding two calendar years. Relator does not meet this standard, as Relator did not vote in a partisan primary in 2016 or 2017.

2. *Relator has not cited to any other provisions of law that indicate he is a member of the Democratic Party as the term is used in R.C. 3517.03 and R.C. 3513.05.*

Relator points this Court to several other statutes, many of which do not have any bearing on this issue. For example, Relator cites R.C. 3513.191(A), which provides that "[n]o person shall be a candidate for nomination or election at a party primary if the person voted as a member of a different political party at any primary election within the current year and the immediately preceding two calendar years." This is certainly not contrary to the understanding that party membership requires both the affirmative act of

voting in one of that party's two preceding primaries, and the negative act of not voting in a different party's two preceding primaries.

Relator also cites to R.C. 3513.191(B). This statute provides certain exceptions to R.C. 3513.191(A) for candidates for nomination of any political party at a party primary. This statute is wholly inapplicable to the case at bar, as Relator seeks election to the state central committee at a primary, and he is not a candidate for the nomination of a party. According to the Secretary of State, "[b]ecause central committee members are elected, rather than nominated, at the primary election, the exceptions contained R.C. 3513.191(B) do not apply." Secretary of State Directive 2016-26, p. 13-13 of EOM.

Relator also offers to this Court the Secretary of State's 2018 Ohio Candidate Requirement Guide. The Secretary of State is empowered to "issue instructions as to the proper method of conducting elections to members of the boards of elections by permanent or temporary directives." R.C. 3501.053(A). But the Ohio Candidate Requirement Guide is not a directive of the Secretary. Indeed, it indicates of itself that "[t]his guide is only a brief summary and not a complete digest of laws." Ohio Secretary of State, *2018 Ohio Candidate Requirement Guide*, (July 2017) https://www.sos.state.oh.us/globalassets/publications/election/2018_crg_07.pdf (accessed March 18, 2018).

Relator also cites to the Ohio Democratic Party's Constitution and By-Laws. These documents do not inform the issue in this case. As noted above, the Democratic Party is not an official organ of state government. It may define its membership as it sees fit.

Regardless of how it may choose to define its membership, Respondent is bound by the definition of party membership found in statutory authority and the directives of the Secretary of State to determine if Relator is a member of the Democratic party entitled to be placed on the ballot in accordance with R.C. 3513.05.

3. *Respondent has not infringed on Relator's constitutional rights to freedom of speech and political association.*

Relator argues that he has a constitutional right to be considered a member of the Democratic Party. Respondent has not made any determination regarding Relator's membership for the broad purposes of associating with the Democratic Party. Respondent's determination of membership is only in the narrow context of R.C. 3513.05. Relator may associate with, support, encourage, or fund the Democratic Party in any legal way he may choose to do so. No constitutional right has been unduly burdened.

4. *Relator's implication that Respondent's decision was made to create an uncontested race for Board Chairman Paul Johnson is unfounded.*

Relator mentions at several points throughout his Complaint and Brief the fact that Fairfield County Board of Elections Chairman Paul Johnson is the only other individual who filed a petition to run for the seat on the central committee that Relator seeks. Because Mr. Johnson met the requirements to be a candidate, his name was approved for the ballot. Other than Mr. Johnson and Relator, no other person sought the position. Therefore, Mr. Johnson's name will be the only name to appear on the ballot. Respondent must note two important details about this situation: First, Mr. Johnson properly recused

himself from consideration of his own petition and Relator's petition. The Board minutes from February 15, 2018, show that Mr. Johnson abstained from voting on his own petition and that Mr. Johnson abstained from voting on Relator's petition. Resp. Ex. 1. The Board minutes from March 5, 2018, likewise show that Mr. Johnson recused himself from the executive session regarding imminent litigation relating to Relator's candidacy. Resp. Ex. 2 and 3.

Second, to the extent that Relator implies that Relator was singled out by the Board's determination that he was not a member of the Democratic Party entitled to run for state central committee, Respondent must highlight its decision that three other individuals, of both major political parties, were also determined not to be members of their respective parties entitled to run for county central committee in the relevant primary election. Resp. Ex. 1.

The facts in this case indicate that Respondent properly and evenhandedly applied the applicable law to all persons seeking to be candidates in the upcoming primary election.

B. Relator's Complaint is barred by the doctrine of laches.

Additionally, Respondent requests this Court dismiss Relator's Complaint for Mandamus due to laches as the Complaint was not timely filed. In order for the Respondent to successfully assert the affirmative defense of laches, the following elements must be established: "(1) unreasonable delay or lapse of time in asserting a right, (2) absence of

an excuse for the delay, (3) knowledge, actual or constructive, of an injury or wrong, and (4) prejudice to the other party.” *State ex rel. Polo v. Cuyahoga Cty. Bd. of Elections*, 74 Ohio St.3d 143, 145, 656 N.E.2d 1277 (1995). Relators in election cases must act with the utmost diligence due to the time constraints of expedited elections cases. *State ex rel. Chillicothe v. Ross Cty. Bd. of Elections*, 123 Ohio St.3d 439, 2009-Ohio-5523, 917 N.E. 2d 263.

Relator avers, in his second affidavit, that he received Respondent’s notification that his petition was not certified to be placed on the May 8, 2018 ballot on February 26, 2018. Rel. Ex. A. He further swears that he directed his legal counsel to request reconsideration to the Respondent of its denial of his candidacy on February 27, 2018. Rel. Ex. A.

Per Ohio Secretary of State Directive 2015-34, p. 12-15 of EOM, a county board of elections is not required to hear a reconsideration request from a candidate regarding a denial from the board. Further, there is no requirement under the Ohio Revised Code that a county board of elections hear a request for reconsideration regarding a denial of a petition. If a county board of elections so chooses to hear a reconsideration, then it must conduct the hearing in a similar manner to an election protest and elicit testimony and evidence via a noticed hearing. *State ex rel. Scott v. Franklin Cty. Bd. of Elections*, 139 Ohio St.3d 171, 2014-Ohio-1685, 10 N.E.2d 697.

As there is no statutory requirement for the Respondent to hear Relator’s request for reconsideration, Relator acted with unreasonable delay by filing this Complaint eleven days after being notified by the Respondent of its denial of his petition. In *Paschal*

v. Cuyahoga Cty. Bd. of Elections, 74 Ohio St.3d 141, 656 N.E.2d 1276 (1995), this Court denied a writ of mandamus in an expedited elections case because the relators waited nine days to file their complaint. The Court declined to even hear the substantive issues of the complaint by noting that “extreme diligence and the promptest of actions are required in election cases.” *Id.* at 1277 citing *State ex rel. White v. Franklin Cty. Bd. of Elections*, 65 Ohio St.3d 45, 49, 600 N.E.2d 656 (1992). This Court summarily dismissed the complaint in *Pascal*, holding that by waiting nine days to file their complaint, relators did not act with the “requisite diligence” required to prosecute their complaint in an expedited elections case. *Id.* Submitting a request for reconsideration to a county board of elections is not the equivalent of filing in a court and cannot be treated as such. *Scott* at ¶ 12 (“Laches applies to litigants who sit on their rights and fail to seek timely relief in some appropriate court.”).

In this case, Relator, by waiting eleven days to file his Complaint for Mandamus, has failed to act with “extreme diligence and promptest of actions.” While this Court has previously excused litigants’ delays in filing expedited elections cases to obtain legal counsel or to obtain needed election records, neither situation is at issue here. *State ex rel Craig v. Scioto Bd. of Elections*, 117 Ohio St.3d 158, 2008-Ohio-706, 882 N.E.2d 435, and *State ex rel. Owens v. Brunner, Secy. of State, et al.*, 125 Ohio St.3d 130, 2010-Ohio-1374, 926 N.E.2d 617. Therefore, there is no legitimate excuse for Relator’s delay in filing his Complaint for Mandamus.

Further, if this Court allows Relator's Complaint to move forward at this late date, it has the potential to impose great costs and delays on the seven counties that comprise the Ohio 20th Senate District if those counties are forced to reprint ballots so close to the May 8th primary. Per the Uniform and Overseas Citizens Absentee Voting Act ("UOCAVA") and the instructions from the Ohio Secretary of State, absentee ballots must be sent to all overseas and military voters no later than March 24, 2018. See attached 2018 Ohio Elections Calendar. In order to meet this requirement, ballots must be printed by March 22, 2018. Resp. Ex. 9.

Due to the current filing deadlines of this action, the impacted counties that make up the 20th Ohio Senate District are going to be prevented from meeting their necessary print date of March 22nd. Since Respondent was served on March 12, 2018, per S.Ct.Prac.R. 12.08, Respondent had until March 17, 2018, to file its Answer. Respondent filed its Answer on March 16, 2018. Relator filed his Merit Brief on the same day, March 16th. Respondent's Merit Brief is due March 19, 2018.

Once Respondent files its brief and serves it electronically, Relator's Reply Brief will be due by March 22, 2018, the same day that ballots must be printed in order to comply with UOCAVA. Therefore, the counties in the 20th Ohio Senate District are in a no-win situation as they are forced to decide if they should proceed to print their current ballots as currently certified (i.e., without Relator on the ballot) to comply with UOCAVA and the Secretary of State or wait until the absolute last date for sending proofs to the

Integrated Voting System of April 2, 2018, to prevent the possibility of needing to have their ballots reprinted and not comply with the UOCAVA and the Secretary of State deadlines altogether.

As an example of what some of these county boards of elections are currently facing, Muskingum County estimated that if they are forced to re-print their ballots after the April 2, 2018 print date, they will incur a cost of \$19,000.00. Resp. Ex. 9. The other counties would be facing a similar, or greater, cost and burden if forced to reprint ballots at this late date. Resp. Ex. 8.

For all of the foregoing reasons, Respondent respectfully requests that this Court dismiss Relator's Complaint for laches.

C. *Conclusion.*

Relator has not proven that Respondent engaged in fraud and/or corruption, abuse of discretion, or clear disregard of statutes or other pertinent law, and thus is not entitled to a writ of mandamus. Even if Relator could make the requisite showing for a writ to issue, Relator's claims are barred by the doctrine of laches due to his untimeliness in presenting his claims to this Court. Furthermore, Relator's request for attorneys' fees and expenses must be denied as there is no indication that Respondent acted in bad faith. *State ex rel. Citizen Action for a Livable Montgomery v. Hamilton Cty. Bd. of Elections*, 115 Ohio St.3d 437, 2007-Ohio-5379, 875 N.E.2d 902, ¶ 55. Therefore, based on the foregoing, the

Fairfield County Board of Elections, Respondent herein, respectfully requests that this Honorable Court dismiss Relator's Complaint.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to S.Ct.Prac.R. 12.08(C), a copy of the forgoing Respondent's Merit Brief was sent to counsel to Relator via email on the 19th day of March at the following email addresses:

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