

IN THE SUPREME COURT OF OHIO

MARIE J. NAUTH :
1053 Larkens Way :
Medina, Ohio 44256, :
and :
CONCERNED CITIZENS OF MEDINA CITY, :

VERIFIED COMPLAINT FOR
WRIT OF MANDAMUS
(Expedited Election Case Pursuant to
S.C.R.P. 12.08).

Relators,

v.

KEITH H. DIRHAM, DIRECTOR OF
FINANCE
CITY OF MEDINA, OHIO
132 North Elmwood Avenue
Medina, Ohio 44256

and

PAMELA B. MILLER, CHAIRWOMAN
JOHN V. WELKER, JR
LARRY G. CRAY
CHARLES E. CALVERT, MEMBERS
MEDINA COUNTY BOARD OF ELECTIONS
3800 Stonegate Drive, Suite C
Medina, Ohio 44256

Respondents.

Serve also:

OHIO ATTORNEY GENERAL DAVE YOST
SUSAN WALKER, CHIEF
EXECUTIVE AGENCIES SECTION
30 E. Broad St., 26th Floor
Columbus, OH 43215

Respondent.

RELATOR'S VERIFIED COMPLAINT IN MANDAMUS

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RELATOR'S COMPLAINT IN MANDAMUS

PRELIMINARY STATEMENT

1. Relators submitted referendum petitions to the City of Medina in response to the passage of Medina City Ordinance 112-19. The Medina County Board of Elections failed to certify a sufficient number of signatures on those petitions for Relators to have that referendum placed on the ballot. The Board of Elections found that the Relators were 44 signatures short. Next, Relators requested a hearing on this matter from the Board of Elections. No hearing was granted. Relators then attained sworn affidavits from 47 of the electors whose signatures were rejected, wherein the affiants verified their signatures. Next, Realtors filed a Protest (with the affidavits attached as an exhibit) to the Board of Elections and made multiple requests for a hearing on this matter to the Board of Elections and the City of Medina. As of the date of this filing, neither the City nor the Board formally responded and Relators have still not been granted a hearing. This constitutes an abuse of discretion by the Board and the City. Therefore, Relators seek a writ of mandamus in the name of the State of Ohio directing the City of Medina and Medina County Board of Elections to hold a hearing and validate the affiant's signatures.

PARTIES

2. Relator Marie J. Nauth is an elector of the City of Medina who signed the referendum petition referred to herein. She is also a member and representative of Concerned Citizens of Medina City.

3. Relator Concerned Citizens of Medina City is a group of Medina citizens, organized pursuant to R.C. 731.34, who are concerned about the well-being of the City of Medina. This group collected the signatures and affidavits which will be discussed herein.

4. Respondent City of Medina (hereinafter the "City") is an Ohio municipality, governed by its own municipal charter.

5. Respondent Keith H. Dirham is the Finance Director for the City of Medina. Under Ohio law, the Finance Director is responsible for receiving, administering, and submitting petitions to the County Board of Elections on behalf of the City.

6. Respondent, the Medina County Board of Elections (hereinafter the "Board of Elections" or "the Board") services Medina County in which the City is located. It is responsible for verifying petition signatures for municipal referendums in the City of Medina. Pamela B. Miller is the current Chairwoman of the Board. John V. Welker, Jr, Larry G. Cray, and Charles E. Calvert are the other Members of the Board.

JURISDICTION

7. This is an action for writ of mandamus, for which this Court enjoys original jurisdiction pursuant to Article IV, Section 2(B)(1)(b) of the Ohio Constitution and R.C. 2731.02.

FACTS OF THE CASE

8. The City of Medina passed Ordinance 112-19 (hereinafter the “ordinance”) into law on July 9, 2019. See Exhibit 1.

9. Relators submitted petitions to the City of Medina to have the ordinance held for referendum on July 31, 2019. See Exhibit 2.

10. The petitions have a circulator signature count of 1,173 signatures and a verified signature count of 1,199 signatures. See Exhibit 3.

11. The City of Medina submitted those petitions to the Medina County Board of Elections on August 12, 2019. See Exhibit 3.

12. Relators needed 983 signatures to achieve the goal of holding a referendum on the ordinance. See Exhibit 3.

13. The Board of Elections validated 939 signatures. See Exhibit 3.

14. Relator Concerned Citizens of Medina City submitted to the Board an Appeal / Request for Review of the order invalidating the signatures on October 18, 2019. See Exhibit 4.

15. No response was given to the Appeal / Request for Review.

16. On November 18, 2019, Relators submitted a Protest to the Medina County Board of Elections, noticing the City of Medina Director of Finance. The Protest included and referred to an exhibit made up of 47 affidavits. Each affidavit contained a sworn statement and photo identification of an elector of the City of Media, whose signature

were invalidated during the review of the petitions for referendum. Each affidavit contained a sworn statement that the affiant had signed the petitions submitted on July 31, 2019, that they intended to sign the petition, and they wanted their signature to be counted. See Exhibit 5.

17. Relators needed 44 additional signatures to certify their referendum petition for the ballot.

18. If the signatures of the 47 affiants were to be counted, this would be sufficient to certify the petitions for the ballot.

19. Relators exhausted all administrative remedies.

20. Relators assert upon information and belief that Ohio statutory law provides no explicit administrative remedy for review of petition signatures in the context of a municipal ordinance referendum effort. Therefore:

- a. Relators submitted formal requests for a hearing on this matter. See Exhibit 4.
- b. Relators submitted a formal protest to the City and the Board. See Exhibit 5.
- c. Relators made numerous requests to the City, the Board, the Medina County Prosecutor, and the Ohio Secretary of State to have the signatures reviewed again. See, e.g., Exhibits 6.

21. The affiants have a right to have their signatures counted, given that they provided undisputed evidence of their signature's validity.

22. Relators have a constitutional right to a hearing on this matter.

23. The Medina County Board of Elections deprived the affiants of their constitutional rights to have their signatures counted by refusing to recount the signatures in light of the Relators' Protest.

24. The City of Medina Director of Finance deprived Relators of their constitutional rights by refusing to resubmit the petitions in light of the Protest filed with the Board of Elections—for which he was duly noticed.

25. The Medina County Board of Elections and the City of Medina Director of Finance deprived the Relators of their constitutional rights to have a hearing on the disqualification of the signatures on the petitions they submitted.

26. Despite the absence of explicit statutory guidance, the City and the Board, on their own, are required to provide Equal Protection and Due Process rights that at least reach a minimum constitutional standard. In other words, the City and the Board cannot simply ignore the constitutional rights of the signatories, using the absence of explicit statutory guidance as an excuse. This is precisely what the City and the Board have done.

27. The Board of Elections and the City are obliged by precedent, as cited in the Memorandum below, to review the petitions again, certifying the signatures for which affidavits have been submitted verifying their authenticity.

MEMORANDUM IN SUPPORT

COUNT 1: FAILURE TO PROVIDE DUE PROCESS

The Medina County Board of Elections and the City of Medina must provide Relators with a properly-noticed hearing, where testimony and evidence may be submitted regarding the petition signatures. Absence of specific statutory guidance is not an excuse for an administrative agency's failure to provide Due Process. *State ex rel. Ormet Corp. v. Industrial Comm. of Ohio*, 54 Ohio St.3d 102, 561 N.E.2d 920 (1990); *Ward v. Village of Monroeville, Ohio*, 409 U.S. 57 (1972).

a. This Court May Review This Matter

There is no "inherit" right to appeal an agency decision. However, there are certain actions this Court may take irrespective of a constitutional or statutory right of appeal. These exceptions tend to overshadow the general rule, as there are only rare circumstances in which administrative actions lack any aspects which are reviewable by the court.

For example, under R.C. 2731, this Court may issue a writ of mandamus where no statutory right of appeal is available to correct an abuse of discretion by an administrative body. *State ex rel. Mager v. State Teachers Retirement System of Ohio*, 123 Ohio St. 3d 195;

2009-Ohio-4908; 915 N.E.2d 320, paragraph 11; *State ex rel. Jacquemin v. Union Cty. Bd. of Elections*, 147 Ohio St.3d 467, 2016-Ohio-5880, 67 N.E.3d 759, paragraph 9; *State ex rel. Pipoly v. State Teachers Retirement Sys.*, 95 Ohio St.3d 327, 2002-Ohio-2219, 767 N.E.2d 719, paragraph 14. In fact, even where a statute specifically precludes review of an administrative order, courts may still review it for abuse of discretion. See *State ex rel. Davis v. Indus. Comm. of Ohio*, 58 Ohio App. 325, 16 N.E.2d 556 (1937).

Second, this Court could opt to issue a declaratory judgment. Availability of other remedies does not preclude an action for declaratory judgment where the action involves a real controversy between adverse parties which is justiciable in character, and that speedy relief is necessary to the preservation of rights which might otherwise be impaired or lost. *Amer. Life & Acc. Ins. Co. of Ky. v. Jones*, 152 Ohio St. 287, 89 N.E.2d 301 (1949).

Whether or not statutes grant power to the courts to review a particular administrative act, the guarantee of Due Process permits the courts to review matters concerning Due Process and other constitutional issues. See, e.g., *Meyer v. Parr*, 69 Ohio App. 344, 37 N.E.2d 637 (1941).

Furthermore, the Ohio Supreme Court maintains: 1) such revisory jurisdiction of administrative proceedings as may be conferred by law (see, Section 2(B)(2)(d), Article V, Ohio Constitution; see, e.g., *Rankin-Thoman, Inc. v. Caldwell*, 42 Ohio St.2d 436, 329 N.E.2d 686 (1975)) and 2) legislative authorization where conferred by law (see, e.g., *Goodyear*

Synthetic Rubber Corp. v. Woldman, 159 Ohio St. 58, 110 N.E.2d 778 (1953)). Such statutory authority can be found in R.C. 2731.

b. The Right To Referendum And To Have Signatures Counted

This Court may issue a writ of mandamus because Respondent's have abused their discretion. To prove an abuse of discretion, Relator must establish that the Respondents' decisions were unreasonable, arbitrary, or unconscionable. See *State ex rel. Schachter v. Ohio Pub. Emps. Retirement Bd.*, 121 Ohio St.3d 526, 2009-Ohio-1704, 905 N.E.2d 1210, paragraph 25. Respondents' decisions were unreasonable, arbitrary, and unconscionable because they flatly ignore the fundamental constitutional rights of Relators to have a hearing on decisions which directly and adversely affect them.

Under the Ohio Constitution, municipalities have "authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws." Ohio Constitution, Article XVIII, Section 3.

The Ohio Constitution also extends that same authority to the people acting in their sovereign capacity: "The initiative and referendum powers are hereby reserved to the people of each municipality on all questions which such municipalities may now or hereafter be authorized by law to control by legislative action." Ohio Constitution, Article II, Section 1f. "A referendum is a proposal which allows the people to directly repeal a

law which has already been enacted by the legislature.” *State ex rel. Todd v. Felger*, 7th Dist. Columbiana No. 06 CO 38, 2007-Ohio-731, paragraph 3.

Article VII, Section VII-I of the City of Medina Charter incorporates state standards for referendums, saying, “Ordinances and other measures may be proposed by initiative petition and adopted by election and ordinances and other measures adopted by the Council shall be subject to referendum, to the extent and in the manner now or hereafter provided by the Constitution, the laws of Ohio, or this Charter.”

Under R.C. 731.29, municipal ordinance referendums are governed as follows,

Any ordinance or other measure passed by the legislative authority of a municipal corporation shall be subject to the referendum . . . When a petition, signed by ten per cent of the number of electors who voted for governor at the most recent general election for the office of governor in the municipal corporation, is filed with the city auditor or village clerk within thirty days after any ordinance or other measure is filed with the mayor or passed by the legislative authority of a village . . . such auditor or clerk shall, after ten days, and not later than four p.m. of the ninetieth day before the day of election, transmit a certified copy of the text of the ordinance or measure to the board of elections. The auditor or clerk shall transmit the petition to the board together with the certified copy of the ordinance or measure. The board shall examine all signatures on the petition to determine the number of electors of the municipal corporation who signed the petition. The board shall return the petition to the auditor or clerk within ten days after receiving it, together with a statement attesting to the number of such electors who signed the petition.

R.C. 731.31 guides a county board of elections’ examination of signatures, saying, “in determining the validity of any such petition, all signatures which are found to be irregular shall be rejected . . . [The] signatures upon such petitions shall be prima facie

presumed to be in all respects sufficient.” Specific guidance is offered by the Ohio Secretary of State’s Directives, most recently updated October 7, 2019.

When a board of elections examines signatures for the ballot, it is an adjudicative act of a state agency. Therefore, it is not valid unless an opportunity for a hearing is afforded in accordance with R.C. 119. The examination of signatures made by the Board is an adjudication under R.C. 119.01(D) because this examination is a determination by the highest or ultimate authority of an agency of the rights of the signatories to have their votes counted on a petition for referendum. This examination requires an exercise of personal judgment upon the propriety of the act being done, namely the signing of a petition.

Regardless of whether examination of signatures is ministerial or adjudicative, mandamus may be used to compel performance. *Odita v. State Dept. of Human Servs.*, 88 Ohio App.3d 82 (citing *State ex rel. Armstrong v. Davey*, 130 Ohio St. 160 (1935)).

The right of Medina electors to vote by signing a municipal ordinance referendum petition arises from Article VII, Section VII-I of the City of Medina Charter and R.C. 731.29. Implicit in that right is the right of electors to have their signature actually counted when undisputed evidence of authenticity is provided (discussed in detail below). The Constitutional principles of Due Process and Equal Protection would forbid any government agency from depriving an elector of their right to sign these petitions without notice and a hearing. To do so would be an abuse of discretion.

“Due Process” means that citizens cannot be deprived of their rights without a properly-noticed hearing. This is guaranteed by the 14th Amendment to the U.S. Constitution and Article 1, Section 16 of the Ohio Constitution. Due Process is a fundamental right and a traditionally respected, foundational pillar to American and Ohioan jurisprudence and governance.

Procedural Due Process is essentially based on the concept of "fundamental fairness."¹ The United States Supreme Court held that due process is violated "if a practice or rule offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental". *Snyder v. Massachusetts*, 291 U.S. 97, 105 (1934). Procedural due process constitutes the right to a reasonable notice of hearing and a reasonable opportunity to be heard. *Goldberg v. Kelly*, 397 U.S. 254, 267 (1970); *State ex rel. LTV Steel Co. v. Industrial Comm. of Ohio*, 102 Ohio App.3d 100, 103-04 (10th Dist.1995); *State ex rel. Finley v. Dusty Drilling Co.*, 2 Ohio App.3d 323, 325 (10th Dist.1981).

Here, Relators requested a hearing from the Board of Elections on the rejection of their petition signatures. The City and the Board of Elections abused their discretion by failing to provide that hearing opportunity. By doing so, they have deprived Relators of their constitutional right to Due Process. Administrative agencies are not excused from minimal constitutional requirements due to the absence of specific statutory guidance.

¹ For a comprehensive discussion of this issue, see: Glicksman, Robert L.; Levy, Richard E. (2010). *Administrative Law: Agency Action in Legal Context*. 9781599416106: Foundation Press.

COUNT TWO: FAILURE TO CERTIFY SIGNATURES DESPITE
UNDISPUTED EVIDENCE OF THEIR AUTHENTICITY

Under the Constitution of the United States, the Constitution of the State of Ohio, and the Charter of the City of Medina, the City of Medina Director of Finance must resubmit the petitions discussed above, with the Protest filed by Relators, to the Medina County Board of Elections. The Board must then recount those signatures, and certify the signatures of the electors who submitted affidavits, verifying their signatures.

R.C. 3501.011(C) provides that an elector's "legal mark" for the purposes of signing elections documents, "shall be considered to be the mark of that elector as it appears on the elector's voter registration record."

However, this does not necessarily require exact matching signatures between the petition and the elector's voter registration, especially if evidence is produced showing the signature is genuine. In fact, "if undisputed evidence shows a nonmatching signature to be genuine, then the board must count the signature even if it does not match the elector's legal mark on the voter-registration record" *State ex rel. Crowl v. Delaware Cty. Bd. of Elections*, 144 Ohio St.3d 346 (O'Connor, C.J., concurring); *State ex rel. Burroughs v. Summit Cty. Bd. of Elections*, 145 Ohio St.3d 220. The authenticity of the affidavits is, as of the date of this filing, not "disputed" by any party.

The Ohio Supreme Court "has long held" that the Board of Election's job is to merely "confirm that signatures are genuine." *Id.* (citing, *State ex rel. Yiamouyiannis v. Taft*, 65 Ohio St.3d 205, 209, 602 N.E.2d 644 (1992)). There is no particular parameters limiting

the Board in terms of how they determine that signatures are genuine. Also, in *Crowl*, the Court cited *State ex rel. Scott v. Franklin Cty. Bd. of Elections*, 139 Ohio St.3d 171, 2014-Ohio-1685, 10 N.E.3d 697, paragraph 19, as an example where the Court had directed the Board to count non-matching signatures because the Board had strong evidence they were valid.

In concurrence, Justice O’Conner opined, “Our decision in *Scott* was an effort to make [petitioner appearances at Board meetings] meaningful . . . if undisputed evidence shows a nonmatching signature to be genuine, then the board must count that signature even if it does not match the elector’s legal mark on the voter-registration record.”

Here, the City and the Board have undisputed evidence that the signatures are genuine. The affidavits provide not only signatures, but photo identification that the electors intended their signatures to be counted. With this evidence in-hand, the jurisdictions are obliged to count these signatures. By refusing to consider this evidence, Respondents have abused their discretion.

REQUIREMENTS FOR MANDAMUS RELIEF MET

In order to be entitled to a writ of mandamus, relator must establish by clear and convincing evidence: a) that they have a clear legal right to the requested relief and that the state agency has a corresponding legal duty to provide it, and b) relator possesses no adequate remedy in the ordinary course of the law. *State ex rel. Seikbert v. Wilkinson*, 69 Ohio St.3d 489, 490, 633 N.E.2d 1128, 1129 (1994).

a. Relator's Clear Legal Right to Relief Requested / Respondents' Corresponding Duty to Provide Accommodations of those Rights

Here, Relators have a clear legal right to a hearing on this matter. The Board's decision was an adjudication, which is not valid unless a hearing is available for those adversely affected by the decision. These administrative rules effectuate constitutional Due Process and Equal Protection guaranteed under the U.S. and Ohio Constitutions.

Here, Relators also have a clear legal right to have signatures counted where undisputed evidence of their authenticity is provided by affidavit pursuant to the precedents cited above. That undisputed evidence has been submitted to Respondents by affidavits from the signatories themselves. Until a party disputes the authenticity of these affidavits, the affidavits comprise undisputed evidence of authenticity.

Here, Relators have a clear legal right to mandamus because the Respondents' actions constitute an abuse of discretion. Respondents' actions are unreasonable, arbitrary, and capricious because they flatly deny Relator fundamental rights and rights afforded by this Court's precedents.

b. No Adequate Remedy in the Ordinary Course of Law

No statutory appeal is available because the Ohio Revised Code does not provide one explicitly. Relators have exhausted any conceivable appeal by filing a Protest and requesting a hearing in multiple instances. No formal response has been provided, leaving Relators with no option but to seek relief in this Court.

REQUEST FOR EXPEDITED REVIEW

Due to the proximity of the election, Relators request an expedited review of this matter, pursuant to S.C.R.P 12.08. This action is filed 274 days prior to the November 3, 2020 general election. R.C. 731.29 requires that the certified referendum be submitted to the Board of Elections “not later than four p.m. of the ninetieth day before the day of election.” This means this referendum must be certified and submitted by August 5, 2020.

Relators have no plain or adequate remedy at law to correct the unlawful, unreasonable and/or arbitrary acts and abuses of discretion committed by the Respondents. Expedited review is necessary for a timely decision to allow placement of the referendum of Medina Ordinance 119-12 on the ballot in time for the election. Relators turned in their petitions within the statutorily required time frame and have acted promptly in their multiple attempts to remedy this matter at the administrative level.

PRAYER FOR RELIEF

a. Relators seeks a writ of mandamus in the name of the State, directing the City of Medina Director of Finance to re-submit the above-referenced referendum petitions to the Medina County Board of Elections, along with the Protest filed by Relators on November 19, 2019 (which contains the above-referenced affidavits).

b. Relators seeks a writ of mandamus in the name of the State, directing the Medina County Board of Elections to re-examine the signatures on the above-referenced petition submitted by Concerned Citizens of Medina City on July 31, 2019.

c. Relators seeks a writ of mandamus in the name of the State, directing the Medina County Board of Elections to certify the signatures of qualified electors who have proven by undisputed sworn affidavit, that they did sign the petition and that they intended their signatures to be counted.

d. Failing the above three requests, Relators seeks a writ of mandamus in the name of the State, directing the Medina County Board of Elections to hold the hearing on this matter requested by the Relators.

e. Such other and further relief as the Court deems just and proper.

Respectfully submitted,

/s/ Joshua J. Brown

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Counsel for Relators

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City of Medina, :
Medina County Board of Elections, et. al., :
 :
 :
Respondents. :

APPENDIX TO
RELATOR’S VERIFIED COMPLAINT IN MANDAMUS

- Affidavit of Relator, Marie J. Nauth
- Exhibit 1, City of Medina, Certified Copy of Passed Ordinance 112-19.
- Exhibit 2, Receipt for Relator’s Petition for Referendum
- Exhibit 3, Results of Board of Election’s Petition Review
- Exhibit 4, Appeal / Request for Review of Order Invalidating Signatures
- Exhibit 5, Affidavits of Electors / Signatories
- Exhibit 6, Receipt of Request for Hearing from Medina County Board of Elections
- Exhibit 7, Request for Hearing