

IN THE SUPREME COURT OF OHIO

:STATE OF OHIO EX REL. NIEL J.
PETERSEN
6871 Greentree Place
Dayton, OH 45424

:STATE OF OHIO EX REL. MICHAEL
V. STEWART
1290 Dusty Lane
West Alexandria, OH 45381

Relators :

vs.

:HON. FRANK LAROSE
Ohio Secretary of State
22 Fourth Street
Columbus, Ohio 43215

Respondent :

CASE NO.

Original Action in Mandamus

Expedited Election Matter Under
S.C.Prac.R. 12.08

Peremptory Writ Requested

COMPLAINT IN ORIGINAL ACTION IN MANDAMUS

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Relator Pro Se

This action is brought in the name of the State of Ohio in relation to Relator Niel Petersen who avers as follows:

Nature of the Action and Jurisdiction

1. This is an original action in mandamus against Ohio Secretary of State Frank LaRose, pursuant to this Court's original jurisdiction under Article IV, Section 2(B)(1)(b) of the Ohio Constitution and Chapter 2731 of the Ohio Revised Code, both of which govern mandamus actions, as well as Article IV, Section 2(B)(1)(f), which gives the Court original jurisdiction "[i]n any cause on review as may be necessary to its complete determination."

2. This action seeks a writ of mandamus compelling Relators' inclusion on the ballot for the general election which is to be held on November 8, 2022. Because of the proximity of that election, Relators lack an adequate remedy in the ordinary course of law. See, e.g., *State ex rel. Columbia Res. Ltd. v. Lorain Cty. Bd. of Elections*, [111 Ohio St.3d 167, 2006](#)-Ohio-5019, 855 N.E.2d 815, ¶ 28.

3. Relators' action seeks an Order, Judgment, and/or Writ from this Court compelling Respondent Ohio Secretary of State Frank LaRose to instruct and direct all County Board of Elections to certify and add the Petersen/Stewart independent ticket to the November 8th, 2022 election for Ohio Governor.

4. Relators' action seeks an Order, Judgment, and/or Writ from this Court that Respondent Ohio Secretary of State Frank LaRose abused his power in implementing policies for signature verification. Relator contends that signature

verification policies are unreasonably vague, are maximally restrictive, and are ambiguously applied. The combination of Ohio laws and Secretary of State policies produce an unacceptable improper influence and conflict of interest for county board of election employees that are members of major political parties.

5. Relators' action seeks an Order, Judgement, and/or Writ finding the process for placing an unaffiliated candidate [independent candidate] on the general election ballot to be invidious and unconstitutional and a severe burden that protects no legitimate state interest.

6. Relator affirmatively alleges that he acted with the utmost diligence and that there has been no unreasonable delay or lapse of time in asserting his rights given that he commenced this action on the first business day following the discovery that his affiliation status was challenged. Relators also affirmatively allege that there is no prejudice against the Respondent. *See State ex rel. Polo v. Cuyahoga Cty. Bd. of Elections*, 74 Ohio St.3d 143, 145, 656 N.E.2d 1277 (1995).

Parties

7. Relator Niel Petersen is a qualified unaffiliated elector who has affiliated with some Republican Party candidates but not with the Republican party itself and considers himself to be unaffiliated with any political party. Relator Petersen resides at 6871 Greentree Place, Dayton, OH 45424. Relator Petersen was not certified to the General Election ballot as a candidate for the office of Governor of the State of Ohio.

8. Respondent Secretary of State Frank LaRose is the chief election officer of Ohio and has duties to “[i]ssue instructions by directives and advisories . . . to members of the [county boards of elections] as to the proper methods of conducting elections,” “[p]repare rules and instructions for the conduct of elections,” “[d]etermine and prescribe the forms of ballots,” and “[c]ompel the observance by election officers in the several counties of the requirements of the election laws.” R.C. 3501.05(B), (C), (G), and (M). The boards of elections must perform “duties as prescribed by law or the rules, directives, or advisories of the secretary of state.” R.C. 3501.11(P).

Allegations in Support of Claims

9. The relators will focus on Ohio unaffiliated candidate requirements that are imposed upon independent candidates. Such requirements are constitutionally suspect if they "unfairly or unnecessarily burden the 'availability of political opportunity.'" *Clements v. Fashing*, 457 U.S. 957, 964 (1982) (plurality opinion) (quoting *Lubin v. Panish*, 415 U.S. 709, 716 (1974)).

10. Relators assert that a combination of Ohio election laws operate in conjunction to produce impermissible barriers to constitutional rights and should be found unconstitutional.

11. The relators concede the State has traditionally had an interest in attempting to see that the election winner be the choice of a majority of its voters. But to grant the State power to keep all political independents off the primary ballot stifles the growth of independent candidates working to increase their strength from year to year. The primary election helps lesser-known candidates become known by virtue of qualifying for the ballot and their name being on the ballot and electors discovering that they have options. At any given point in time, Ohio's electors have been dominated by unaffiliated registrations. Considering these Ohio laws in their totality and how they are applied, this interest cannot reasonably justify the very severe restrictions on voting and associational rights with unaffiliated candidates. Ohio provides an unaffiliated ballot [an issues-only ballot] that does not place unaffiliated candidates [independents] on the ballot. Placing independent candidates on the unaffiliated ballot would allow independent voters the ability to associate with an unaffiliated candidate. Too often, the relator contends, we forget that affiliation is a type of association that is protected by the First Amendment of the U.S. Constitution. The ability to associate or affiliate with a specific candidate and not with a party is infringed upon and unreasonably burdensome. Ohio primary laws favor major party candidates when independent candidates cannot compete equally because their access is restricted. While the state of Ohio pays for the primary election for major

party candidates it does not pay for the unaffiliated candidates to collect signatures for candidacy petitions.

12. “A number of facially valid election laws may operate in tandem to produce impermissible barriers to constitutional rights.” [Storer v. Brown, 415 U.S. 724, 737, 94 S.Ct. 1274, 39 L.Ed.2d 714 \(1974\)](#). Therefore, “a reviewing court must determine whether ‘the totality of the [state’s] restrictive laws taken as a whole imposes [an unconstitutional] burden on voting and associational rights.’ ” [McLaughlin, 65 F.3d at 1223](#) (quoting [Williams v. Rhodes, 393 U.S. 23, 34, 89 S.Ct. 5, 21 L.Ed.2d 24 \(1968\)](#)) (alterations in *McLaughlin*).

13. At issue is whether Ohio may permit unaffiliated candidates to conform to significantly greater requirements than major party candidates for a place on the general election ballot. See [Am. Party of Texas v. White, 415 U.S. 767, 788, 94 S.Ct. 1296, 39 L.Ed.2d 744 \(1974\)](#) (affirming that the First and Fourteenth Amendments and the Equal Protection Clause require “essentially an equal opportunity for ballot qualification”).

14. To resolve this question, a court must examine the regulations under the test established in [Anderson v. Celebrezze, 460 U.S. 780, 103 S.Ct. 1564, 75 L.Ed.2d 547 \(1983\)](#). Under *Anderson*, the court must weigh the character and magnitude of the injury to First and Fourteenth Amendment rights against the State interests justifying the statute’s restrictions, considering the extent to which the State’s

interests are necessary to burden the plaintiff's rights. See [Anderson, 460 U.S. at 789, 103 S.Ct. 1564](#). If the statute's restrictions are “severe,” they will be upheld only if they are narrowly drawn to advance a compelling interest. [Burdick v. Takushi, 504 U.S. 428, 434, 112 S.Ct. 2059, 119 L.Ed.2d 245 \(1992\)](#). If the restrictions are “reasonable” and “nondiscriminatory,” the State's important regulatory interests are generally sufficient to justify the statute.

15. Ballot access restrictions implicate important voting, associational, and expressive rights protected by the First and Fourteenth Amendments. [McLaughlin, 65 F.3d at 1221](#). “By limiting the opportunities of independent-minded voters to associate in the electoral arena to enhance their political effectiveness as a group, [ballot access] restrictions threaten to reduce diversity and competition in the marketplace of ideas.” [Anderson, 460 U.S. at 794, 103 S.Ct. 1564](#). Unaffiliated candidates enhance the political process by challenging the status quo and providing a voice for voters who feel unrepresented by the prevailing political parties.

16. Ohio restrictions limit the ability of unaffiliated candidates to impact the State's political landscape by running competitive campaigns. This is evidenced by the degree of success of unaffiliated candidates in comparison with party candidates. See [Storer, 415 U.S. at 742, 94 S.Ct. 1274](#) (noting that in determining the overall burden of a ballot access requirement, “[p]ast experience will be a helpful, if not always an unerring, guide: it will be one thing if independent candidates have qualified with some regularity and quite a different matter if they have not.”); [Fishbeck v. Hechler, 85 F.3d 162, 164–65 \(4th Cir.1996\)](#) (examining historical data

to determine the severity of burden on minor party candidates). While unaffiliated candidates have qualified for statewide contests, none within the last half century have had even a modicum of success.

17. The relator acknowledges that the qualitative differences between unaffiliated and party candidates may justify quantitative differences in their treatment. However, unaffiliated candidates' ballot access requirements should be “reasonable” and “similar in degree” to party candidates' requirements. [Wood v. Meadows, 207 F.3d 708, 712 \(4th Cir.2000\)](#). “Reasonable, nondiscriminatory restrictions” are those that “neither substantially disadvantage independents nor favor them.” The Fourth Circuit has recognized that because independent candidates are more responsive to emerging issues and less likely to wield long-term or widespread governmental control, “as between new (third) party candidacies and independent candidacies, independent candidacies must be accorded even more protection than third-party candidacies.” [Cromer v. South Carolina, 917 F.2d 819, 823 \(4th Cir.1990\)](#).

18. Though the signature requirement is not an unconstitutional burden *per se*, see [Jenness, 403 U.S. at 442, 91 S.Ct. 1970](#), the requirement as applied in Ohio severely disadvantages a candidate who chooses to run without a party affiliation. There is no provision in [Ohio Revised code 3501.38](#) or [3501.39](#) or a process provided for by the Secretary of State that allows a timely challenge to the various signature verification determinations made by the county board of election officials. Unlike, Ohio’s absentee ballot voter law [Ohio Revised Code 3509.07](#), where notification is

given to a voter if a signature is a mismatch, giving the voter time to cure a potential mismatch. This unfairly burdens unaffiliated candidates that are made to wait in limbo for seventy-eight days while boards of election make their determination of the veracity of the signatures on their petitions drastically shortening their potential legal challenge and encumbering candidates with a smaller campaign staff with a massive undertaking. Giving the county boards of elections seventy-eight days to verify signatures and then only giving an unaffiliated candidate a very short window to protest the county boards of elections findings in court is a severe burden when hundreds of signatures have been rejected. The respondent abused his position as a major party candidate and incumbent officeholder to not make county boards of elections petition verification determinations available to the relators within a reasonable time frame. The respondent chose the most restrictive access to the verification determinations by not making any of the determinations by the county boards of elections available until the legal due date of seventy-eight days after the primary. Attached in **exhibit 1** are the certification forms with the date on which the certification form from each county board of elections certified the petition signatures for the relators' candidacies. Forty county boards of election made their determinations thirty days or more in advance of the July 18th, 2022 date of the Secretary of State's announcement on independents qualifying for the election. This is valuable time that a small campaign could have used to gather information and challenge the validity of the county boards of election determinations.

19. Conversely, those associating with major party candidates know their candidate will be on the ballot seventy-eight days earlier than an unaffiliated

candidate via the primary election that the independent candidate is barred by Ohio law from competing in.

20. That is seventy-eight days that unaffiliated supporting donors wait in anticipation to see if the unaffiliated candidate makes the general election ballot. It is a time when the uncertainty of being on the general election ballot greatly hinders the unaffiliated candidate's ability to raise funds for their campaigns and gain momentum. During that seventy-eight-day window for the unaffiliated candidate, major party donors are assured that their donations will help their candidate's General election campaign, whereas unaffiliated candidates can give no such assurances to their donors. Waiting the full seventy-eight days before election officials will start sharing information is unreasonably restrictive. Are we to believe the county boards of elections that have twenty signatures to validate take the same time in validating those signatures as a county that may have five hundred signatures to validate? Waiting the full seventy-eight days to communicate a determination on the candidacy petition when those determinations were made sooner is unnecessarily restrictive. With the fast pace that elections move, waiting seventy-eight days until you can legitimately start a general election campaign [when petitions are certified] is an eternity in political campaigns. If results of petition certification from each county were reported as they were verified then signature mismatches could be challenged sooner and the unaffiliated candidate would have substantially more time to address errors.

21. County boards of elections have from the time candidacy petitions were submitted on May 2nd, 2022 until July 5th, 2022 to submit to the Ohio Secretary of State's office is the procedure that we can gather from information made available to the relators on documents that have been provided to them. The Secretary of State then, relators assume, check the information provided by the county boards of elections for accuracy before submitting to the independent candidates the determination of whether they will be on the ballot or not on July 18th, 2022. This leaves an independent candidate only twelve days in which to make a legal challenge to signatures. A smaller independent campaign has far less time and resources than eighty-eight county boards of elections that are given two months of time to validate petition entries or reject them and the Secretary of State's office is given thirteen days to approve the accuracy of the boards of election. Relators contend that the respondent Secretary of State grossly abused his power in announcing relators had not made the general election ballot on July, 18th 2022 on the Secretary of State's website before relators' legal challenges were exhausted. [See exhibit 2 attached](#). This announcement unreasonably created a barrier to a campaign's ability to raise funds and secure volunteers to challenge the accuracy of the Secretary of State's determination of the validity of candidacy petitions.

22. Due to the lateness of receiving the determinations from the Secretary of State's office, it is impossible for the relator's campaign to comprehensively verify the accuracy of the Secretary of State's determination and contest all subjective determinations of county boards of elections. Relator's campaign has requested original signatures from County Boards of elections and is still awaiting their arrival

so relators can do their own analysis. Relators can find major flaws in determinations made by county boards of election which relators determined to be gross errors and a lack of procedures being followed that could ensure accuracy. Relators received an email on July 18th, 2022 from the Secretary of State's office **[exhibit 3]** stating that relators submitted an insufficient number of signatures. Later that same day relators requested a breakdown of valid signatures from each county **[exhibit 4]**. Later the next day (July 19th, 2022) relators modified their request to include the certification form that the Secretary of State used in determining a lack of signatures **[exhibit 5]**. Relators were emailed a [hyperlink](#) **[exhibit 7]** to a dropbox containing the requested information **[exhibit 6 - video]** from the Secretary of State's office. Relator's analysis found that:

- **[Exhibit 8]** that for Ashtabula County Board of Elections they submitted a certification form for Maras Terpesore for Secretary of State and not for Niel Petersen/Michael Stewart for Governor and Lt. Governor.
- **[Exhibit 1]** No times stamp on the counties of Allen, Carroll, Clermont, Erie, Hocking, Huron, Jackson, Lake, Logan, Miami, Ottawa, Paulding, Putnam, Scioto, Tuscarawas, Van Wert, Warren, and Wood which demonstrates inconsistency and lack of adherence to procedure.
- **[Exhibit 1]** No director's signature on the counties of Brown, Butler, Clark, Columbiana, Coshocton, Geauga, Guernsey, Hancock, Lucas, Montgomery, Muskingum, Pike, Portage, Richland. How can the relator be assured that the documents are genuine documents that the director of the county board of elections examined and verified these documents

with no signatures? This demonstrates inconsistency and lack of adherence to procedure.

- **[Exhibit 1]** The counties of Allen, Highland, and Washington were submitted after the July 5th cutoff date for submission that appears on the form. Have other petitions on other campaigns not been certified due to not meeting the submission date? This demonstrates inconsistency and lack of adherence to procedure.
- **[Exhibit 9]** Relators will point out the absurdity of signature verification as it pertains to legibility. Can reasonable people be expected to determine the validity of the signatures in exhibit 9? Keep in mind these are supposed to be the directors of the county board of elections' signatures, the ones that approve signatures. Are these signatures legible? Relators contend they are not legible signatures. Can reasonable persons determine who these people are with a little work? Relators contend they could determine who the director is with a bit of research. Is it proper to determine signatures on a petition as being illegible if with research an address can be read and determined? Relators contend that the grounds to reject signatures due to illegibility cannot be considered valid when the people verifying the signatures cannot make legible signatures themselves. This sloppiness and inattention to detail undermine the integrity and credibility of the Secretary of State when signature verification is used as a determining factor to validate the will of electors.

- **[Exhibit 10]** Relators have been informed the procedures for coding petition signatures are in directive 2011-17. There are ten initial codes that are to be used if signatures are not valid. Relators have built a database that references the petition page and line number from the candidacy petitions documents submitted to the relators by the Secretary of State. The valid initial codes are CIR, DUP, ILL, NA, ND, NG, NR, OC, AND P. Relators have identified potential rejected entries with the codes of:

- 17 entries flagged NGS
- 13 entries flagged SIG
- 13 entries flagged as L
- 7 entries flagged as DATE
- 6 entries flagged as BLANK
- 6 entries flagged as W
- 5 entries flagged as CIO
- 5 entries flagged as BL
- 2 entries flagged as BD
- 2 entries flagged as G
- 2 entries flagged as C
- 2 entries flagged as NE
- 1 entry each flagged as VD, VR, VRA. X, WD, B, AR, EX, U, and IL

While some of these codes can be guessed at we cannot easily nor reasonably determine the meaning of each of these codes for the reasons they were rejected.

- **[Exhibit 11]** Relators contend that the 64 entries flagged as initial code "ILL" that the addresses can be determined. According to the Secretary of State directive, 2011-17 "ILL" Illegible only applies if both the address and signature are not discernable.
- Relators contend that the 488 signatures flagged as "NG" Non-Genuine are indeed genuine signatures that were witnessed by petition circulators and represent the will and the legal mark of the individuals that signed the petition. Petitions that do not match an original signature on file can be due to any number of reasons.
 - Collecting signatures on a clipboard when there is not a steady table available.
 - Lighting - many signatures are collected outdoors in the evening hours.
 - A person may have an injury that causes their signature to change.
 - Signatures change with age.
 - A younger person may experiment with many different styles of signatures until they find one they like.
 - The area where the signature is being written may be larger or smaller than the space of the original signature on file at the

county board of elections. This may crowd the signature and cause it to become illegible.

Relators believe that signature verification needs to follow a strict procedure for evaluation so that political biases against the candidate in question can be ruled out. Relators have shown evidence that procedures are not followed or enforced and that greatly impugns any confidence in the Secretary of State determining the will of petition signers. Conversely, petition gathers are held to higher standards of accuracy and detail than the county boards of elections that evaluate the petitions. In the [Supreme Court of Ohio. The STATE ex rel. CROWL, v. DELAWARE COUNTY BOARD OF ELECTIONS. No. 2015-1505.](#)

{¶ 10} *Boards of elections have a statutory duty to certify the validity of petitions. R.C. 3501.11(K). This court has long held that these county boards must confirm that signatures are genuine. State ex rel. Yiamouyiannis v. Taft, 65 Ohio St.3d 205, 209, 602 N.E.2d 644 (1992). The design of Form No. 3-R strongly suggests that the secretary's interpretation of R.C. 3501.11(K)—to which we accord great deference—obliges the boards to confirm the authenticity of signatures, but it does not impose on them the responsibility to enforce R.C. 3501.011 by policing petition signatures for nonconforming legal marks.* Relators agree with the court that local county boards of election have no responsibility in policing petition signatures for nonconforming signatures. Relators regret that the respondent abused his power in holding the results of the petition signature verification rather than releasing information as it became available. Had the results been made available sooner to the relators then the relators could seek out the authors of the contested signatures to

verify their intent by affidavit. In any respect, the respondent once again abused his power in not making original signatures on file at the local county boards of election available in a timely fashion so that they could be challenged in a timely manner.

- **[Exhibit 12]** is a link to a dropbox of the Secretary of State that contains all of the confirmation pages by the county boards of election and the signed candidacy petitions. We beg the court's indulgence in presenting data in this manner as uploading all of this data to the court's website would take an excessively long time and take quite a bit of space. If the court prefers that we upload this data to their website we the relators can accomplish this in somewhat of a timely manner.
- **[Exhibit 13]** is a document that references the database of petitions in the Secretary of State's dropbox. Page numbers are literal and line numbers are the numbers marked on the petition. This document gives an analysis through Friday, July 29th, 2022. Relators believe due to prior rulings on non-conforming signatures that all signatures marked with "NG" codes should be accepted. That all codes marked with "IL" but have legible addresses should be accepted. All non-conforming initial codes should be marked as valid. Relators contend that the bar of five-thousand signatures should be lowered to one-thousand valid signatures. Regardless relators believe they have five thousand valid signatures that should be accepted due to the various reasons listed in this writ.

23. Additionally, the unaffiliated candidate is not assured of an equitable process for the verification of signatures. As the Secretary of State, the Respondent possesses the authority and duty to “issue instructions by directives...to members of the boards [of elections] as to the proper methods of conducting elections.” Ohio Rev. Code § 3501.05(B). The process of signature verification is fraught with inconsistency and ambiguity between Ohio’s county boards of election. Major party officeholders oversee the local county boards of elections in Ohio. Ohio’s local county boards of elections, as a whole, have not consistently applied specific procedures that are in place to ensure that scrutiny during the signature verification process is equitably applied. Whereas [1.2% of mismatched signatures on absentee ballots were rejected during the 2020 General Election \[exhibit 14\]](#), the relators had nearly ten times that amount [10%] of signatures rejected for his candidacy petition signatures. Frank Patrick Cunnane an independent candidate for Governor had [3,483 signatures rejected out of 9,376 signatures gathered](#). [A 37% rejection rate].

24. Furthermore, when performed by professionals in criminal cases or legal proceedings, signature verification can take hours. But Ohio election employees, with very little or no training, are expected to do the same job in a few seconds and then never inform the petition signer that their signature was rejected because it did not look like the original on file. When election officials are correct, they help ensure the integrity of Ohio’s election laws. When the election officials are wrong they deprive a signer of the freedom to associate with a candidate of their choice, a right protected by the first amendment of the U.S. Constitution.

25. Signature verification at one time was how banks determined if checks were forged and it is reasonable to conclude this is why courts persist in arguing that signature verification is still a valid methodology. As recently as thirty years ago, most banks compared signatures on nearly all checks presented for payment. Checks were presented to the branch of the account where the signature was compared to the signature on file for the holder of that account.

26. This process, which came to be known as signature verification, was the sole methodology used to verify that the account holder had authorized the payment.

27. Once verified, checks were stored in the back rooms of those branches until they were sent back to the account holders at the end of each month with a statement of the account activity for that month. This process worked well for virtually all banks as checks were primarily used in business-to-business transactions. During the late 1970s, consumers discovered the convenience of using checks to meet their financial obligations, and check volume grew through the 1980s and into the 1990s. The banks responded to this growth in the number of accounts as well as the volume of checks presented for payment by centralizing the signature verification, storage, and statement rendition functions in one processing center. Centralized, banks began to enhance the new processes by implementing new computer applications to improve the operating efficiency of the processing center's staff. Banks derived economies of scale from centralizing common functions, improving processes through new technologies, and developing the proficiencies of

staff experts in specialized functions. This is particularly true for the signature verification function where expertise came only through experience.

28. As the average volume of checks increased and the average value of the check decreased, banks discovered that it was cost prohibitive to compare signatures on every check presented for payment. As a consequence, banks looked to new processes that would help them to minimize expenses while focusing on the checks that posed the greatest risk. Banks centralized the signature verification function into the back office and developed new procedures to thwart forgers, such as asking for a state-issued photo identification card or two other valid acceptable forms of identification. While signature verification evolved in the banking industry where very few checks are verified by their signatures, the Secretary of State has no financial incentive to comprehend and realize such innovations. Today, many banks use proactive means to prevent forgeries by asking for personal information and contact information. Today, to secure accounts online when you sign up you may be asked a series of questions. These answers to these questions must align during transactions or the transaction is prohibited. Additionally, the account holder may be texted a notification about a transaction. These methods are cheap, efficient, and eliminate ambiguity.

29. Realtors assert that the verification of petitions is unnecessarily vague and ambiguous. Relators contend that such verification and ambiguity could easily be remedied in a number of cheap and efficient ways. 1) Simply asking verification questions at the time of registration would allow the board of election officials to

later positively identify electors over the phone through their answers. This could be crucial in having an effective way to contact and confirm whether they signed the petition in question. Having petition gatherers collect a state identification number, the last four digits of a signer's social security number, an email address, and phone number in addition to the signer's current postal address would greatly enhance security, reduce ambiguity, and reduce the time needed to verify those approving of a candidate's candidacy. 2) With today's technology an app could easily be used to collect all this data, an electronic signature, a photo of the front and back of a state-issued identification card, and a short video of the petition signer saying they want the candidate or issue to be on the ballot. The mobile phone application could even pull and confirm whether a signer is a registered voter from a state database. It is not that the process can't be made much more accurate and less onerous for independent candidates, it is that there is no political will by the major parties to do so.

30. Relators assert that instead of choosing the least onerous and least restrictive methodology to determine the desire of an elector to see a candidate on a ballot the law unfairly discriminates against minor party candidates and unaffiliated candidates by allowing ambiguity, complexity, and inefficiency to persist.

31. Without detailed signature verification procedures that have been strictly adhered to that are equitably applied among all candidates there exists the potential for a tremendous conflict of interest for employees of the local board of elections that are members of major parties in verifying unaffiliated candidate signatures. The

relators have to question “Is the same scrutiny applied to major party candidates as to unaffiliated candidates?” This is especially true if the county board of elections employee would view the unaffiliated candidate as the spoiler for their candidate - seeing the ballot approval of a competitor preventing a win for their endorsed candidate. In many instances, the county board of election employees are members of County or State Central Committees that have voted to endorse their major party candidates against which the unaffiliated candidate is running. Without strictly controlled procedures in place, these employees are improperly and impermissibly influenced.

32. [A statute is unconstitutionally vague, in violation of the First Amendment](#), if (1) persons of common intelligence must necessarily guess at its meaning and differ as to its application, (2) if it does not give a person of ordinary intelligence fair notice of conformity with the statute's requirements, or (3) if it encourages arbitrary and erratic enforcement by public officials. [Grayned v. City of Rockford \(1972\)](#)

33. The relator asserts that [Ohio Revised Code 3501.39](#) and [Ohio Revised Code 3501.38](#) are unconstitutionally vague as they do not provide an unambiguous procedure for verifying signatures and do not specifically mention signature verification as a means to reject a candidacy petition.

34. Lastly, an unaffiliated candidate is required to collect five thousand valid signatures to be considered a viable candidate which, is five times the amount of signatures required by major party candidates to become a viable candidate. There are two principal justifications that a board of election and legislators typically utilize for the disparity between the unaffiliated and major party petition requirements.

35. The first is that imposing higher signature requirements on unaffiliated candidates will prevent ballot clutter. The relators acknowledge that ballot clutter is a bonafide state interest but must be applied in a manner to actually reduce ballot clutter and that ballot clutter must be defined or it is an ambiguous and subjective term.

36. The second rationale is concerned with voter confusion. It is typically asserted that because unaffiliated candidates' beliefs are not widely known and cannot be determined from a name on the ballot, these candidates should show more support than new party candidates to obtain ballot access. Political parties and legislators have reasoned that voters can glean important information about a candidate simply by knowing their party affiliation. When State Central Committees of major parties no longer perform important functions such as adopting their own platform this is no longer the case. When a state-specific platform is not adopted it is impossible to determine what the State party stands for. As well, as technology has progressed it has become easier for an independent's message to become viral and become widely disseminated.

37. Political parties, especially major parties whose platforms are widely disseminated, may “represent dependable philosophies, [enabling] voters to make more consistent and rational choices.” *Cromer*, 917 F.2d at 833 (Wilkinson, J., dissenting). See also *Tashjian v. Republican Party of Connecticut*, 479 U.S. 208, 220, 107 S.Ct. 544, 93 L.Ed.2d 514 (1986) (“To the extent that party labels provide a shorthand designation of the views of party candidates on matters of public concern, the identification of candidates with particular parties plays a role in the process by which voters inform themselves for the exercise of the franchise.”). However, this is not always the case, especially for parties such as the Ohio Republican Party which has not adopted a state-based platform for many years - nor held a State Convention. While Ohioans know what the Republican National Committee stands for, because of the platform they have adopted, Ohioans don’t know what the State party stands for when it comes to issues specific to Ohio. And, when current officeholders embrace the policies of the opposition party and are not held accountable by their party leaders, this reduces an elector's ability to automatically align with a party and leaves them not knowing what beliefs the party may embrace. This is especially true at the state level when it involves the governor adopting policies not traditionally aligning with the party and when the state has not adopted a state-specific platform.

38. For instance, a voter obtains no helpful information if a major party fails to disseminate what it stands for or it is hard to determine what the party stands for because of confusing messaging or actions. Likewise, even if a voter vaguely associates the “Republican” party due to the belief they represent small government,

more liberty, free markets, and low taxes, the Ohio Republican party has not put such beliefs into action, their messaging for the party, nor held their candidates accountable to such standards. Unless an Ohio Republican Party Candidate is a candidate for Congress the party name gives little indication of a candidate's stance on key state issues of specific concern to that voter when the state party has no platform of its own.

39. Moreover, major party affiliation does not effectively advance a state interest in the dissemination of a candidate's beliefs because there can be strong disagreements between candidates and party leaders within a party on policy, beliefs, and issues. This becomes even more evident when there is no platform for the political party, state political convention to convey party stances, or demonstrable means of a party holding its candidates accountable to a platform they actively promote. Though the five thousand signature requirement for independent candidates may cause a tiny fraction of voters to ascertain an unaffiliated candidate's beliefs, the requirement provides no benefit to a large majority of the electorate, who still may be confused by the candidate's unaffiliated status. If the State's goal is to ensure that a candidate has a modicum of support for their platform then that would be a different petition altogether rather than just a petition to determine association for candidacy. Relators contend that many voters will sign a petition not knowing what beliefs a candidate holds because they believe that spirited competition produces better officeholders. Relators contend that many Ohio voters enjoy more choices not less.

40. Is ballot clutter a legitimate problem caused by independents? Relator agrees that too many candidate choices on the ballot could lead to clutter and confusion but the source of ballot clutter in Ohio's contemporary history has come from major parties, not from Independents. During the 2012 Ohio Presidential Republican primary election, for example, there were six presidential candidates. There were seven candidates, only one of which was an independent candidate in the 2012 general election for President. Major and minor parties have clearly been a source of ballot clutter in Ohio, not independent candidates.

- The amount of time spent verifying independent candidate petitions is unreasonable.
- The amount of time it takes to communicate a determination of acceptance of petitions is unreasonable and unnecessarily restrictive.
- The ambiguity with which signatures are rejected is unreasonable.
- The amount of petitions required by an independent candidate beyond a major party candidate is unreasonable.

41. Given the magnitude of the disparity and the lack of any historical evidence of a competitive unaffiliated candidate's campaign for statewide offices, the burden on unaffiliated candidates, the relators feel is unreasonable and discriminatory.

42. The difference in the State's ballot access requirements when considered in combination with other state factors is sufficiently severe to warrant strict scrutiny. See [McLaughlin, 65 F.3d at 1221](#) (analyzing ballot access restrictions for minor parties under strict scrutiny because their political participation was “extremely difficult” and the burden on candidates was “undoubtedly severe”).

43. Do the challenged restrictions in combination unfairly or unnecessarily burden ‘the availability of political opportunity.’ ” [Clements v. Fashing, 457 U.S. ----, ----, 102 S.Ct. 2836, 2844, 73 L.Ed.2d 508 \(1982\)](#) (plurality opinion), quoting [Lubin v. Panish, supra, 415 U.S., at 716, 94 S.Ct., at 1320](#). The relator believes they do.

44. If the State has open to it a less drastic way of satisfying its legitimate interests, it may not choose a legislative scheme that broadly stifles the exercise of fundamental personal liberties.” [Kusper v. Pontikes, 414 U.S. 51, 59, 94 S.Ct. 303, 308, 38 L.Ed.2d 260 \(1973\)](#). The relators contend that the State has open to it much less drastic and restrictive ways to satisfy its legitimate interests that do not stifle competition and still maintain security and integrity.

Background

45. Under the Ohio election laws, an independent seeking a ballot position in statewide elections must obtain petitions signed by qualified electors totaling 5,000. These signed petitions are required to be submitted the day before the primary election of the election year. Then, the Secretary of State can make

independent candidates wait in limbo until July, 18 (78 days later) until they verify the signatures of petition signatures. The verification process is ambiguous and vague. These imposed statutory provisions provide an independent candidate two and a half months spent in limbo (not knowing if they will be on the ballot or not) and impermissibly weakens a candidate's ability to be competitive and hinder their ability to raise funds.

46. The State of Ohio has in prior court cases failed to demonstrate any "compelling interest" which justifies imposing such heavy burdens (5,000 signatures) on the right to vote and to associate with an independent candidate and depriving unaffiliated candidates of the ability to participate in the primary.

47. In Ohio, for major party candidates, there are two phases of elections. The first, arguably the more important, is the primary elections. This is where party members select the candidate they want to represent the party in the general election. Independents are barred from this process. If the state was truly concerned with too many independent candidates on the ballot then allowing independent candidates to compete in the primary would more easily satisfy this goal.

48. As a result of the U.S. Constitution never specifying how state election processes should be carried out, the two political parties have determined their own procedures over time. These procedures do not protect the right of minority parties or that of the unaffiliated candidate.

49. Direct Primaries were introduced in Ohio in 1906 during the

Progressive Era in the early 20th century. This first phase of elections was actually first introduced to weaken the power of the political bosses of the major parties and make the process more democratic.

50. However, over the years both the two major political parties have passed laws that make it nearly impossible for anyone not a member of their respective party to participate in the primaries.

51. Today, in most states only those registered with either the Republican or Democratic party [major parties] can vote to send a candidate to the general election. The winner of the general election then becomes a representative for everyone.

52. The primary is a taxpayer-funded process, not a political party-funded process. It is reasonable to believe that unless there is a compelling state interest to be preserved, minority party candidates and independents should participate in the process equally. The separate processes that are currently provided are invidious and prevent substantive and meaningful competition on the ballot which benefits all voters.

53. The State has traditionally asserted that the following interests are served by the restrictions it imposes. It claims that the State may validly promote a two-party system to encourage compromise and political stability. In [Anderson v. Celebrezze](#) Justice Stevens commented, “*The fact is, however, that the Ohio*

system does not merely favor a "two-party system"; it favors two particular parties — the Republicans and the Democrats — and in effect tends to give them a complete monopoly. There is, of course, no reason why two parties should retain a permanent monopoly on the right to have people vote for or against them. Competition in ideas and governmental policies is at the core of our electoral process and of the First Amendment freedoms. Independent candidates struggling for their place must have substantially the same time and opportunity to organize in order to meet reasonable requirements for ballot positions."

54. The state of Ohio has traditionally made a variety of other arguments to support its very restrictive election laws throughout the years. The state has pointed out, for example, that if three or more parties are on the ballot, it is possible that no one party would obtain 50% of the vote, and the runner-up might have been preferred to the plurality winner by a majority of the voters. The State has also argued that its requirement of a party structure and an organized primary insures that those who disagree with the major parties and their policies "will be given a choice of leadership as well as issues" since any leader who attempts to capitalize on the disaffection of such a group is forced to submit to a primary in which other, possibly more attractive, leaders can raise the same issues and compete for the allegiance of the disaffected group in a more productive manner. But while this goal may be desirable, Ohio's system cannot achieve it. Since the principal policies of the major parties change to some extent from year to year, and since the identity of the likely major party nominees may not be known until shortly before the election, this disaffected "group" will rarely if ever

be a cohesive or identifiable group until a few months before the election. Thus, Ohio's burdensome procedures, requiring extensive organization and other election activities, operate to prevent such a group from ever being competitive on the ballot and the Ohio system thus denies the "disaffected" not only a choice of leadership but a choice on the issues as well.

55. Finally, Ohio has traditionally claimed that its highly restrictive provisions are justified because without them a large number of independents might qualify for the ballot, and the voters would then be confronted with a choice so confusing that the Populus will/could be frustrated. But the experience of many States, including that of Ohio prior to 1948, demonstrates that no more than a handful of parties attempt to qualify for ballot positions even when a very low number of signatures, such as 1% of the electorate, was required. It is true that the existence of multitudinous fragmentary groups might justify some regulatory control but in Ohio, at the present time this danger seems to be only "theoretically imaginable." No such remote danger can justify the immediate and crippling impact on the basic constitutional rights involved in this matter.

56. The right to associate with an unaffiliated candidate for the advancement of political goals means little if the independent candidate can be kept off the election ballot or be so severely hampered that they cannot run a competitive campaign. By denying independent candidates a level playing field and an opportunity to participate in the primary by which the Governor is selected, and making them wait two and a half months in limbo to verify their signatures, the State has eliminated the basic ability to be competitive. This deprives Ohioans of much of the substance, if not the form, of their protected

rights. An election campaign is a means of disseminating ideas as well as attaining political office. . . . Overbroad restrictions on ballot access jeopardize this form of political expression.

57. It is clear, then, that the two and a half months of time spent in limbo while county boards of elections verify signatures places a particularly undue burden on independent candidates. A burden that falls unequally on independent candidates impinges by its very nature, on associational choices protected by the First Amendment. During these two and a half months [78 days] major party candidates enjoyed a high-profile primary process that helped to provide certainty that they would be on the November ballot, they get name recognition for winning the primary, they gain political momentum, and donors are more apt to donate to candidates that are confirmed to be on the ballot. The primary itself discriminates against those candidates and — of particular importance — against those voters whose political preferences lie outside the existing political parties.

Clements v. Fashing, supra, at 964-965 (plurality opinion). By limiting the opportunities of independent-minded voters to associate in a common electoral arena to enhance their political effectiveness as a group, the restrictions reduce diversity and competition in the marketplace of political ideas. Historically political figures outside the two major parties have been fertile sources of new ideas and new programs; many of their challenges to the status quo have in time made their way into the political mainstream. [*Illinois Elections Bd. v. Socialist Workers Party*, 440 U.S., at 186](#); [*Sweezy v. New Hampshire*, 354 U.S. 234, 250-251](#) (1957) (opinion of Warren, C. J.). In short, the primary values protected by the First Amendment — "a profound national commitment to the principle

that debate on public issues should be uninhibited, robust, and wide-open," [*New York Times Co. v. Sullivan*, 376 U.S. 254, 270](#) (1964) — are served when election campaigns are not monopolized by the existing political parties.

Claims for Relief

Count 1: The averments of paragraphs 1 through 57 above are restated as if fully rewritten herein.

Count 2: Relators Petersen and Stewart and independent candidates are entitled to primary ballot access. That Ohio election laws that prevent independent candidates from primary participation, we pray, will be ruled unconstitutional by this court.

Count 3: Relators Petersen and Stewart and independent statewide candidates of the 2022 election year are entitled to a reduced requirement of one thousand valid petition signatures for their candidacy petition because the five-thousand signature requirement is invidiously discriminatory when combined with other election laws and procedures referenced in this writ and because the requirement serves no legitimate state interest.

Count 4: Relators Peterson and Stewart and other independent candidates that secured one thousand valid signatures are entitled to the November 8th, 2022 general election access and are entitled to be placed on the ballot.

Count 5: Ohio's process for signature verification is ambiguously vague and the Secretary of State has abused his power in not providing strict procedures that prevent multiple interpretations, different applications of scrutiny, and a process that does not ameliorate the concerns of conflicts of interest of board of election employees that serve on County and State Central Committees. Relators contend

the respondent has abused his power by not providing specific procedures that ensure equitable scrutiny of candidacy petitions among candidates. That the laws and procedures that govern verification are unconstitutionally vague. That the methodology for determining and verifying the will of the elector is unnecessarily complex, inaccurate, and lends itself to allowing conflicts of interests that can potentially benefit major parties. Relators ask the methodology, laws, and procedures will be struck down by this court.

Count 6: Relators have no adequate remedy at law because of the proximity of the November 8, 2022, general election and because appropriate relief may be obtained only through a writ of mandamus.

Prayer for Relief

WHEREFORE, Relator prays the Court grants all of the following:

- (1) Issue an Order, Judgment, and/or Writ of Mandamus ordering Secretary of State Frank LaRose to satisfy, with respect, the Claims for Relief of the Relator in a timely and expeditious manner to not disenfranchise independent voters of the 2022 Ohio general election;
- (2) Grant a Peremptory Writ of Mandamus ordering the relief set forth above after the filing of the Answers to the Complaint;
- (3) Assess the costs of this action against the Secretary of State; and
- (4) Award compensation for at least 200 hours of legal research and development for this action and such other relief as may be appropriate.

Respectfully Submitted,

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