

Case No. 2024-1372

**Supreme Court
of the State of Ohio**

STATE OF OHIO *ex rel.* MARCELL STRBICH,

Relator,

v.

MONTGOMERY COUNTY BOARD OF ELECTIONS,

and

RHINE L. McLIN, BARBARA P. GORMAN, ERIK R. BLAINE,
and THOMAS A. ROUTSONG, Members, Montgomery County Board of Elections

Respondents.

Original Action in Mandamus

Expedited Election Matter Pursuant to S.Ct.Prac.R. 12.08

RELATOR'S REPLY BRIEF

Counsel for Relator Marcell Strbich

Curt C. Hartman (0064242)
THE LAW FIRM OF CURT C. HARTMAN
7394 Ridgepoint Drive, Suite 8
Cincinnati, Ohio 45230
(513) 379-2923
hartmanlawfirm@fuse.net

*Counsel for Respondents Montgomery
County Board of Elections and its Members*

Mathias H. Heck, Jr. (0014171)
Ward C. Barrentine (0074366)
Nathaniel S. Peterson (0095312)
MONTGOMERY COUNTY
PROSECUTOR'S OFFICE
301 West Third Street
P.O. Box 972
Dayton, Ohio 45422
(937) 496-7797
barrentinw@mcOhio.org
petersonn@mcOhio.org

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REPLY BRIEF

The core issue in this case arises from the undisputed failure of the MONTGOMERY COUNTY BOARD OF ELECTIONS and its members to comply with their legal duty under R.C. 3501.27(B): “[to] establish a program as prescribed by the secretary of state for the instruction of election officers in the rules, procedures, and law relating to elections.” Through *Directive 2024-09*, the Secretary of State directly prescribed that the instruction or training for precinct election officials and/or voting location managers for the forthcoming general election must include training “on unacceptable forms of photo ID, including photo IDs issued to non-citizens.” And through the *Verified Complaint ¶¶22-24*, the *McGill Affidavit ¶3*, and the *Shook Affidavit ¶3*, Relator MARCELL STRBICH has established the failure of the BOARD OF ELECTIONS to conduct such training on at least three separate occasions in advance of the forthcoming general election. Nothing the BOARD OF ELECTIONS has offered, in terms of evidence or argument, refutes its failure to provide such mandatory training.

This notwithstanding, in an effort to establish that “[t]he required training and compliance with Directive 2024-09 have already been performed,” *Respondents’ Brief, at 6*, the BOARD OF ELECTIONS relies exclusively upon the *Rezabek Affidavit*. However, a review of the *Rezabek Affidavit* actually confirms that the BOARD OF ELECTIONS failed to provide the mandated training with respect to unacceptable forms of photo identification cards, including those issued by the Ohio Bureau of Motor Vehicles.

Even accepting the *Rezabek Affidavit* at face value, the BOARD OF ELECTIONS now concedes that, at a minimum, all training it provided for precinct election officials during the day on September 25, 2024, and prior to that date, did not address the unacceptable forms of photo identification cards, including those for non-citizens, notwithstanding the mandate in *Directive*

2024-09.¹ And the *Rezabek Affidavit* also concedes that the training it provided on September 27, 2024, for voting location managers (who are also precinct election officials) similarly did not address the unacceptable form of photo identification cards, including those for non-citizens.²

Thus, there is no dispute that the BOARD OF ELECTIONS failed to provide the training specifically mandated by *Directive 2024-09* addressing the unacceptable use of photo identification cards as they relate to non-citizens during the course of the training conducted for precinct election officials and/or voting location managers on September 20, 25, and 27, 2024; and, to date, such training has not been provided to those election officials and/or voting location managers who attended such training (or training prior to those dates). For this reason alone, mandamus is warranted to ensure and compel the BOARD OF ELECTIONS to provide such training, at a minimum, for those precinct election officials and/or voting location managers who attended training on or prior to September 25 and 27, 2024, respectively.

In an effort to avoid acknowledging the deficiency in the training it provided, the BOARD OF ELECTIONS now claims that, at the end of the training season, it will transmit (but has not yet transmitted) some email “with the updated slides, training pieces and the training material on legally permissible photo IDS or unacceptable forms of photo ID for noncitizens.”

¹ In the *Rezabek Affidavit*, the Director of the BOARD OF ELECTIONS acknowledges MARCELL STRBICH’s attendance at training on September 25, 2024, *see Rezabek Affidavit* ¶¶5-6, and that it was only *after* that training was completed did the issue of the lack of training on photo identification cards for citizens versus non-citizens arise or any corrective action undertaken. *See Rezabek Affidavit* ¶¶8-11. It was only at a training later that night does Mr. Rizabek claim training on such issues was first provided to any precinct election officials. *See Rezabek Affidavit* ¶12. Thus, clearly, prior to that time and to date, *i.e.*, prior to the evening of September 25, the BOARD OF ELECTIONS never provided training to precinct election judges on photo identification cards for citizens versus non-citizens despite the mandate in *Directive 2024-09*.

² In the *Rezabek Affidavit*, the Director of the BOARD OF ELECTIONS identifies September 29, 2024, as the date when the BOARD OF ELECTIONS first provided training for voting location managers on photo identification cards for citizens versus non-citizens. *See Rezabek Affidavit* ¶12.

Respondents' Brief, at 4.³ But such remedial action has not actually been undertaken (such that the action taken can be evaluated as to whether it actually constitutes the requisite training mandated by *Directive 2024-09*) and, thus, the present claim for mandamus is not moot. Additionally, the BOARD OF ELECTIONS also claims that those precinct election officials and/or voting location managers who already received the deficient training will, at some time *in futuro*, receive an email with updated slides and training pieces. See *Rezabek Affidavit* ¶17. But, as even the BOARD OF ELECTIONS implicitly acknowledges, there is a clear distinction between receiving actual training on the issue (which such email will not provide) versus simply receiving training materials (assuming every precinct election official and/or voting location manager opens and reviews such email).⁴ See *Respondents' Brief*, at 5 (asserting that, because Relator received training prior to September 25, 2024, he will receive both “the training” and “the training material”).⁵

³ The BOARD OF ELECTIONS maintains that such a supplemental transmission is acceptable because “the reality that information can change through the training season before an election.” *Respondents' Brief*, at 5. Such a contention, though, fails to appreciate that the requirement to provide specific training to precinct election officials concerning “unacceptable forms of photo ID, including photo IDs issued to non-citizens,” was mandated by *Directive 2024-09* which issued on June 21, 2024. Thus, the failure on the part of the BOARD OF ELECTIONS is not something that simply arose during the course of on-going training but, instead, was required from the outset of such training sessions.

⁴ If any precinct election official and/or voting location managers either does not receive such an email or does not open and review such email before the general election, then he or she will certainly not have received the training mandated by *Directive 2024-09*. The BOARD OF ELECTIONS has clearly not planned for such contingency necessitated by its failure to comply *ab initio* with *Directive 2024-09*.

⁵ As the BOARD OF ELECTIONS even acknowledges a distinction between actually receiving training on unacceptable form of photo identification cards, including those for non-citizens, versus simply receiving training materials related thereto, the transmission of training materials via email falls woefully short of providing actual training on the unacceptable form of photo identification cards, including those for non-citizens, including, what type of ballot, if any, should be provided to those presenting unacceptable photo identification cards.

At the end of the day, the BOARD OF ELECTIONS has not complied with the mandate in *Directive 2024-09* concerning training precinct election judges on unacceptable forms of photo identification cards, including those for non-citizens. Accordingly, a writ of mandamus should issued directing the BOARD OF ELECTIONS and its members to comply with their legal duties under R.C. 3501.11(P), R.C. 3501.27(B), and *Directive 2024-09* and, in particular, to conduct training (and not simply provide additional training materials) for all of its precinct election officials for the forthcoming general election to be held on November 5, 2024, that specifically addresses non-citizen photo identification considerations or familiarization, including training that unacceptable forms of photo identification includes photo identification cards issued to non-citizens by the Ohio Bureau of Motor Vehicles, as well as how to process ballot requests by those seeking to vote. And, in light of the immediacy of the forthcoming general election and the continued deficiency by the BOARD OF ELECTION, this Court should retain jurisdiction to assess compliance by the BOARD OF ELECTION with any writ of mandamus that issues.

Respectfully submitted,

/s/ Curt C. Hartman

Curt C. Hartman

THE LAW FIRM OF CURT C. HARTMAN

7394 Ridgepoint Drive, Suite 8

Cincinnati, Ohio 45230

(513) 379-2923

hartmanlawfirm@fuse.net

Attorney for Relator Marcell Strbich

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing will be served upon the following counsel of record on the 7th day of October 2024, via email:

Nathaniel S. Peterson (petersonn@mcchio.org)

Ward C. Barrentine (barrentinw@mcchio.org)

/s/ Curt C. Hartman