

IN THE SUPREME COURT OF OHIO

STATE OF OHIO)	
EX REL. Ohio Democratic Party, et al)	
)	CASE NO. 2020-0388
)	
RELATORS)	
)	
)	
v.)	
)	
Frank LaRose)	
)	
RESPONDENT)	

ORIGINAL ACTION IN PROHIBITION

EXPEDITED ELECTION CASE

**AMICUS CURIAE BRIEF OF GERALD W. PHILLIPS AND THE OHIO
CITIZENS FOR HONESTY INTEGRITY AND OPENNESS IN
GOVERNMENT LTD. IN SUPPORT OF THE RESPONDENT**

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Statement of Case

The issue presented in this case involves the legal authority of the Secretary of State to change the date of the primary election. Extend voting deadlines, and to change voting procedures based on the change of the primary election. This case involves purely a legal issue, the factual matters are not in dispute

Statement of Facts

The Relators has submitted its evidence on 3-23-20, A thru A-33 which Amicus Curiae incorporates herein to authenticity but disputes as to the relevancy of the issues Amicus Curiae believes to be at issue. The following are the ones most pertinent to the Amicus Curiae arguments:

1. A-1; Secretary of State's Directive 2020-06;
2. A-2: Governor Dewine's Executive Order 2020-01D ;
3. A-12: 3-17-20 Journal Entry, Jill Reardon et al vs. Frank LaRose, Franklin CP. Case No. 20-CV-00215 (March 17,2020);
4. A-14: Dr. Amy Acton's March 16, 2020 order closing polling locations for March 17, 2020;

Propositions of Law

I. This Court lacks subject matter jurisdiction over the Relators request for a Writ of Prohibition, since although labeled as such, it is in “essence” a declaratory judgment action seeking injunctive relief, *State ex rel Youngstown vs. Mahoning Cty. Bd. of Elections* (1995) 72 OS 369, 370.

It is a clearly and well established principle of law established by this Court that if the allegation of a Complaint for a Writ of Prohibition indicates that the “real objects sought are a declaratory judgment and a prohibitory injunction: the complaint does **not**

state a cause of action in prohibition, and must be dismissed for want of jurisdiction, *State ex rel Youngstown vs. Mahoning Cty. Bd. of Elections* (1995) 72 OS 369, 370, *State ex rel Governor vs. Taft* (1994) 71 OS 3rd 1, 3, *State ex rel Walker vs. Bowling Green* (1994) 69 OS 3rd 391, 392.

What the Relators are really seeking is a declaration by this Court that the Respondent Secretary of State's action relative to Directive No. 2020-06 was the illegal unlawful usurpation of the legislative power of the state legislature in setting the date of the primary election and seeking a prohibitory injunction to prevent the 6-2-20 primary election: Complaint Par. 2: **“Relators seek an Order, Judgment, and/or Writ from this Court to prevent the action taken by Respondent setting the date of Ohio’s 2020 presidential primary election”**. Relators real object is a declaration by this Court of the illegal and unlawful use of legislative powers by the Respondent Secretary of State and enjoining such unlawful and illegal use of legislative powers, a prohibitory injunction. Writ of Prohibition must be denied for lack of subject matter jurisdiction.

II. This Court lacks subject matter jurisdiction over the Relators request for a Writ of Prohibition, since the Respondent was not exercising judicial or quasi-judicial powers in setting the primary election date, but was unlawfully and illegally assuming the legislative powers of the state legislature, *State ex rel Knowlton vs. Noble County Board of Elections* (2010) 125 OS 3rd 82, Par. 17

To be entitled to a writ of prohibition, one must establish the following three (3) elements: 1) the exercise of judicial or quasi-judicial powers; 2) the exercise of such powers are unauthorized by law; and 3) no adequate remedy in the ordinary course of law

for the alleged harm or injury, *State ex rel Knowlton vs. Noble County Board of Elections* (2010) 125 OS 3rd 82, Par. 17.

In the present case Relators cannot prove and have admitted that the Respondent exercise of powers pursuant to Directive No. 2020-06 violates the state legislature's **legislative powers** under ORC Section 3501.01(E)(2) [See Relator's Complaint Par. 7, and 13-16]. As such, Relators cannot establish as a matter of law that the Respondent was exercising judicial or quasi-judicial powers no matter how hard it tries to confuse and mislead this Court or spin it. The Respondent unlawfully and illegally exercise **legislative powers** solely and exclusively delegated to the state legislature. Writ of Prohibition must be denied for lack of subject matter jurisdiction.

III. A Writ of Prohibition cannot be granted to circumvent an appeal in the ordinary course of law, *State ex rel Knowlton vs. Noble County Board of Elections* (2010) 125 OS 3rd 82, Par. 17.

To be entitled to a writ of prohibition, one must establish the following three (3) elements: 1) the exercise of judicial or quasi-judicial powers; 2) the exercise of such powers are unauthorized by law; and 3) no adequate remedy in the ordinary course of law for the alleged harm or injury, *State ex rel Knowlton vs. Noble County Board of Elections* (2010) 125 OS 3rd 82, Par. 17.

As is evident by Exhibit A-12, Relators are really attempting to get a second bite of the apple, their first attempt to get a declaratory judgment and prohibitory injunction failed, and instead of appealing it and they sought a Writ of Prohibition in this Court. Relators cannot invoke this Court's jurisdiction over this second attempt, and bypass the appeal process, they have an adequate remedy in the ordinary course of law.

IV. Relators have failed to properly bring a cause of action for a Writ of Mandamus¹, *State ex rel Comm't for the Charter Amendment Petition v. Avon (1998) 81 OS 3rd 590.*

In order to be entitled to a Writ of Mandamus, the Relators must established the following three (3) elements, *State ex rel Comm't for the Charter Amendment Petition v. Avon (1998) 81 OS 3rd 590*: 1) The Relators have the clear legal right to relief sought; 2) The Respondent is under a clear legal mandatory duty to perform the requested relief, which mandatory duty they have failed to perform; and 3) The Relators have no clear adequate remedy in the ordinary course of the law.

In the present case Relators cannot prove and have admitted that the Respondent exercise of powers pursuant to Directive No. 2020-06 violates the state legislature's **legislative powers** under ORC Section 3501.01(E)(2) [See Relator's Complaint Par. 7, and 13-16]. As such, Relators cannot establish as a matter of law that the Respondent has any duty under the law to set and establish the primary election date, no matter how hard it tries to confuse and mislead this Court. The Respondent unlawfully and illegally exercise **legislative powers** solely and exclusively delegated to the state legislature. Any Writ of Mandamus must be denied for lack of subject matter jurisdiction. The failure to establish the second element, mandatory duty enjoined by law upon the Respondent. The proper party would be the state legislature, the Senate and House of Representatives, to compel them to set and establish a primary election date, although this Court could possibly compel them to set and establish a primary date, it could not control such

¹ Court cannot relabel complaint from a Writ of Prohibition to a Writ of Mandamus, due to the lack of such necessary parties with the mandatory duty enjoined by law

discretion, absence an abuse of discretion. Relators have totally failed to proper plead a Mandamus Action or join the necessary parties to compel such mandatory duty.

Conclusion

Amicus Curiae Gerald W. Phillips (“Phillips”), a candidate at the Primary Election, and Ohio Citizens for Honesty Integrity and Openness in Government Ltd, an organization promoting fair honest elections in Ohio (“Ohio Citizens”), request this Court to dismiss the Relators Writ of Prohibition for lack of subject matter jurisdiction as argued above.

Respectfully Submitted,

/s/ Gerald W. Phillips
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Proof of Service

A copy of the Amicus Brief has been served this 25th day of March 2020 by email to Counsels of Record as is indicated in the above caption.

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