

IN THE SUPREME COURT OF OHIO

STATE OF OHIO *ex rel.*
TERPSEHORE P. MARAS
410 Superior Ave., Unit 14597
Cleveland, OH 44114

Relator,

-vs.-

FRANK LAROSE
In His Official Capacity as
Ohio Secretary of State
22 North Fourth Street, 16th Floor
Columbus, OH 43215

Respondent.

CASE NO.:

**VERIFIED PETITION
FOR WRIT OF MANDAMUS**

(Expedited Election Case
Under S.C.R.P. 12.08)

Relator Terpsehore P. Maras sets forth her Verified Petition for Writ of Mandamus against Respondent Frank LaRose in his official capacity as Ohio Secretary of State:

1. Relator Maras is a candidate, within the meaning of R.C. § 3501.01(H), in the Ohio 2022 General Election for the position of Ohio Secretary of State. Relator Maras is also a qualified elector under R.C. § 3501.01(N).

2. Relator Maras seeks a writ of mandamus compelling Respondent Secretary LaRose to allow Relator Maras to appoint election observers, within the meaning of R.C. § 3505.21, without joining in the appointment of such observers with four additional candidates. The requirement to join four additional candidates violates Relator Maras's right to equal protection because it only applies to candidates not affiliated with a political party and is discriminatory and infeasible as applied to Relator Maras as she is the only non-party affiliated candidate on the Ohio 2022 General Election ballot. She cannot garner the support of four other candidates.

3. Second, Relator Maras seeks a writ of mandamus compelling Respondent Secretary LaRose to comply with a separate paragraph of R.C. § 3505.21 which establishes an observer's power to *inspect* ballot counting at the polling place or board of elections from the time of closing the polls until counting is completed and final returns are certified and signed. Secretary LaRose is not in compliance with such requirement as he has authorized every county in the State of Ohio to use electronic vote automatic tabulating equipment which legally appointed observers cannot access and cannot meaningfully observe or inspect. Access to the internal processes of such equipment is necessary for any observer to "observe" or "inspect" the counting as provided for by R.C. § 3505.21. Secretary LaRose must provide access to inspect and observe the workings of such equipment.

Appointment of Observer by Non-Affiliated Candidate

4. R.C. § 3505.21 grants election observers the right to observe and inspect voting and counting during elections across the State of Ohio.

5. Observers serve an important state interest of deterring and detecting voter fraud, deterring voter intimidation, and safeguarding voter confidence. *Ohio Republican Party v. Brunner*, S.D. Ohio No. 2:08-CV-00913, 2008 WL 4445193, *4.

6. Under R.C. § 3505.21(B), at "any primary, special, or general election, any political party...may appoint to the board of elections or to any of the precincts in the county or city one person, a qualified elector, who shall serve as an observer for such party...during the casting of the ballots and during the counting of the ballots; provided that separate observers may be appointed to serve during the casting and during the counting of the ballots." (emphasis added).

7. If a non-affiliated candidate wants to appoint an election observer, he or she must join with four additional candidates. R.C. § 3505.21(B). Together, these five candidates must submit a

Notice of Appointment form to the Ohio Secretary of State containing the signatures of all five candidates. *Id.*

8. Under Ohio election law, “candidate” means “any qualified person certified in accordance with the provisions of the Revised Code for placement on the official ballot of a primary, general, or special election to be held in this state, or any qualified person who claims to be a write-in candidate, or who knowingly assents to being represented as a write-in candidate by another at either a primary, general, or special election to be held in this state.” R.C. § 3501.01(H).

9. Relator Maras is not affiliated with any political party.

10. Imposing near-impossible requirements for observers appointed by independent candidates versus those appointed by political parties negatively affects independent candidates and the voters who vote for them. Citizens who vote for independent candidates are functionally prohibited from receiving the benefit of observers appointed by the candidate they support. Allowing political parties to freely appoint observers while requiring independent candidates to satisfy difficult or impossible criteria denies independent candidates, and the electors who support them, equal protection of the law and associational rights under the Ohio and United States Constitutions. *Anderson v. Celebrezze*, 460 U.S. 780, 786, 103 S.Ct. 1564, 1568, 75 L.Ed.2d 547 (1983). This disparate treatment substantially burdens the fundamental right to vote and violates Relators’ right to equal protection of the law compared to other electors. *See League of Women Voters of Ohio v. Blackwell*, 432 F. Supp. 2d. 723, 727 (N.D. Ohio 2005).

11. The federal and Ohio Equal Protection Clauses are to be construed and analyzed identically. *Am. Assn. of Univ. Professors, Cent. State Univ. Chapter v. Cent. State Univ.*, 87 Ohio St.3d 55, 60 (1999).

12. The right to vote is a precious and fundamental right. *Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 670, 86 S.Ct. 1079, 16 L.Ed.2d 169 (1966). “Other rights, even the most basic, are illusory if the right to vote is undermined.” *Wesberry v. Sanders*, 376 U.S. 1, 17, 84 S.Ct. 526, 11 L.Ed.2d 481 (1964); see also *Yick Wo v. Hopkins*, 118 U.S. 356, 370, 6 S.Ct. 1064, 30 L.Ed. 220 (1886) (finding that the right to vote is “preservative of all rights”). “ ‘The right to vote is protected in more than the initial allocation of the franchise. Equal protection applies as well to the manner of its exercise.’ ” *League of Women Voters v. Brunner*, 548 F.3d 463, 477 (6th Cir. 2008) (quoting *Bush v. Gore*, 531 U.S. 98, 104, 121 S.Ct. 525, 148 L.Ed.2d 388 (2000)). “[A] citizen has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction.” *Dunn v. Blumstein*, 405 U.S. 330, 336, 92 S.Ct. 995, 31 L.Ed.2d 274 (1972). “Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person's vote over that of another.” *Bush*, 531 U.S. at 104–05, 121 S.Ct. 525; see also *Wesberry*, 376 U.S. at 17, 84 S.Ct. 526 (“Our Constitution leaves no room for classification of people in a way that unnecessarily abridges [the right to vote.]”).

13. Allowing certified independent candidates to appoint observers on their own behalf will not lead to a flood of appointed observers.

14. Under Ohio law, an independent candidate running for state-wide office must collect no less than five thousand signatures on his or her nominating petition to receive certification as a candidate. R.C. § 3513.257(A).

15. To appear on the ballot, Relator Maras put forth extraordinary effort and garnered the support of thousands of people across the State of Ohio. Her candidacy was certified by this Court. *State ex rel. Maras v. LaRose*, 2022-Ohio-3295, ¶ 30.

16. Relator Maras contacted at least eight other candidates to get at least four other candidates to join her to appoint observers and was unsuccessful.

17. The State of Ohio has no substantial interest in requiring certified independent candidates to join with four other candidates to appoint an election observer. The burden imposed on Relator Maras as a candidate and elector is severe, as observers are foundational in preventing voter fraud and intimidation. *Supra*.

18. For the foregoing reasons, R.C. § 3505.21 imposes unconstitutional restrictions on Relator Maras's ability to appoint election observers.

*The Ability of an Observer to Observe and Inspect
the Counting of Votes*

19. Observers preserve the integrity of our election system.

20. Acknowledging the importance of observers, R.C. § 3505.21 allows properly certified observers to proceed “in and about the applicable polling place during the casting of the ballots and shall be permitted to watch every proceeding of the precinct election officials from the time of the opening until the closing of the polls.”

21. *Ohio Revised Code* § 3505.21 also provides that observers may “inspect the counting of all ballots in the polling place or board of elections from the time of the closing of the polls until the counting is completed and the final returns are certified and signed.”

22. Ohio Election Manual Section 1.08(5) “Observers”, reflects Ohio law:

The role of observers is limited to observing the proceedings of an election. Accordingly, while observers are permitted to watch and inspect, observers are never permitted to handle any election materials.

Observers are permitted to move freely about the polling location or any area where ballots are being cast, processed, counted, or recounted at a board of elections office, as applicable, to the extent that they do not engage in any prohibited activity. A board may deny an observer access to parts of its office where ballots are not being cast, processed, counted, or recounted.³⁴

Footnote 34: Observers at a precinct are permitted to “watch every proceeding of the precinct election officials from the time of the opening until the closing of the polls.” Observers are also permitted to “inspect the counting of all ballots in the polling location or board of elections from the time of the closing of the polls until the counting is completed and the final returns are certified and signed.” R.C. 3505.21.

23. Ohio Election Manual Section 1.08(6) further states that “observers are permitted to...gather information about the process”.

24. According to Ohio’s Secretary of State, every county in the State of Ohio uses automatic tabulating equipment to administer their elections manufactured by and purchased or leased from private companies. These companies include Election Systems & Software, Hart, Dominion, and others.¹

25. To date, no certified election observers have been permitted to sufficiently observe or inspect these voting and counting machines.

26. Black’s Law Dictionary defines an “inspection” as a “careful examination of something.” INSPECTION, Black's Law Dictionary (11th ed. 2019).

27. Gone are the days when an observer could meaningfully inspect the counting of votes by walking around and watching poll workers tally and mark. As is apparent to all in-person voters in Ohio, the voting is now done by machine and the task of counting has likewise been mechanized.

28. An army of observers merely watching an automatic tabulating machine could not inspect nor determine the processes taking place within that black box. Watching the ballots go in the machine and the watching the ballots come out is the extent of inspection afforded to certified observers. The situation is akin to a counting room with a locked door where workers from private

¹ https://www.ohiosos.gov/globalassets/elections/maps/votingsystembyvendor_june_8_2022.pdf

companies take the ballots in, supposedly count them, and return to the onlookers outside with assurances that nothing untoward took place within the confines of the locked counting room.

29. In the 12 counties with Direct Recording Electronic (DRE) machines even the casting of ballots is unobservable because there is no paper ballot. See footnote 1.

30. Voting and counting technology has advanced dramatically over the past twenty years; however, the State of Ohio, and specifically Secretary LaRose, failed to equip observers with the ability to perform their critical functions under Ohio law.

31. Observers must be allowed to observe and inspect vote counting. This counting takes place within automatic tabulating machines using software within the machines. Observers must be allowed to inspect (i.e. carefully examine) this software, including its source code, in its entirety, as it solely comprises the process of “the counting of the votes.”

32. The recent arrest of Eugene Yu CEO of Konnech Corporation for stealing poll worker data and storing it in the People’s Republic of China shows how vulnerable our elections processes are. Furthermore, Ohio Secretary of State Frank LaRose recently identified a “...crisis of confidence..” in our election processes.² However, rather than address concerns about election fraud he pivoted to rare stories of voter fraud. Opaque voting and counting methods performed by machines running uninspected computer code is a primary cause of mistrust of election results and the basis for claims of election fraud. Distrust in elections can end were Ohio law followed to the letter.

33. The United States Supreme Court has found that “the right to vote is protected in more than the initial allocation of the franchise. Equal protection applies as well to the manner of its exercise.” *Bush v. Gore*, 531 U.S. 98, 104-5 (2000). One part of electors exercising their right to vote is transparency in counting votes. Under Ohio law, electors of any party, or no party, must be able

² <https://www.pressreader.com/usa/the-columbus-dispatch/20221006/281492165209602>

to observe and inspect vote counting processes under state and federal equal protection and associational rights.

WHEREFORE, Relator Maras requests this Court issue a peremptory writ of mandamus or an alternate writ under R.C. Chapter 2731 requiring the Ohio Secretary of State to comply with Ohio and federal law regarding equal protection and Ohio law regarding the ability to inspect the counting of votes. Specifically, Relator Maras requests this Court:

- a. Deem R.C. § 3505.21 unconstitutional for violation of the equal protection clauses of the United States and Ohio constitutions to the extent that it prevents certified non-party affiliated candidates from appointing election observers of their own accord.
- b. Order that election observers certified under R.C. § 3505.21 be provided with copies of all software, code, and hardware installed on any automatic tabulating machine in use in the precinct in which an observer is appointed so that the software may be meaningfully inspected. This software must be open or unlocked to the extent where such observers may inspect to the source code level or, alternatively, order poll workers to tally the votes.

Respectfully submitted,

/s/Warner Mendenhall

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VERIFICATION AFFIDAVIT AND JURAT OF
TERPSEHORE P. MARAS

I, Terpsehore P. Maras, having been duly sworn, do swear and affirm:

1. I am over the age of eighteen years and have personal knowledge of the facts outlined in the attached Verified Petition for Writ of Mandamus.
2. I am a qualified elector in the State of Ohio and I reside at 50 Public Square, Apt. 1432, Cleveland, Cuyahoga County, OH 44113.
3. I have reviewed the attached Verified Petition for Writ of Mandamus and verify that the facts therein are true and correct.

FURTHER AFFIANT SAYETH NAUGHT

Terpsehore P. Maras

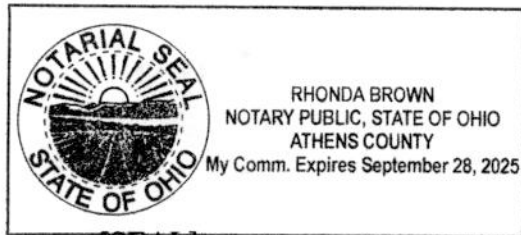
TERPSEHORE P. MARAS

STATE OF OHIO)
)
COUNTY OF ~~SUMMIT~~)
 Athens

Sworn and affirmed and subscribed before me by Terpsehore P. Maras this 12 day of October, 2022.

Rhonda Brown

NOTARY PUBLIC



[SEAL]