

Case No. 2023-0630

**Supreme Court
of the State of Ohio**

STATE OF OHIO *ex rel.* ONE PERSON ONE VOTE, *et al.*,

Relators,

v.

FRANK LAROSE, in his official capacity as Ohio Secretary of State,

Respondent.

Original Action in Mandamus

BRIEF OF AMICUS CURIAE JOSEPH PLATT

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INTRODUCTION AND INTEREST OF *AMICUS CURIAE*

Amicus JOSEPH PLATT, a resident and elector in Hamilton County, tenders this *Amicus Brief* in order to ensure the advancement and protection of the constitutional principle of limited government, including the principle that all governmental institutions – including this Court – have only such power and authority which the people have expressly granted. With respect to this Court, its jurisdiction “originates in the Ohio Constitution”, *Farmers State Bank v. Sponaugle*, 157 Ohio St. 3d 151, 133 N.E.3d 470, 2019-Ohio-2518 ¶40 (DeWine, J., concurring in judgment), and, thus, such jurisdiction “is fixed by the Constitution of the state.” *Foraker v. Perry Tp. Rural School Dist.*, 130 Ohio St. 243, 245, 199 N.E. 74 (1935); accord *State v. Kassay*, 126 Ohio St. 177, 179, 184 N.E. 521 (1932)(“the Supreme Court of this state has its jurisdiction fully defined by the Constitution”).

Yet, instead of appreciating the true and limited nature of actions seeking extraordinary writs, Relators now call upon this Court to exceed its constitutional authority and, instead, to act as though it may function as a roving commission so as to prevent or prohibit any and all alleged *ultra vires* conduct by governmental officials. Because this Court, like all governmental bodies or institutions, has been limited by the people as to the specific power and authority it possesses, Amicus JOSEPH PLATT seeks to ensure this Court does not exceed its limited constitutional jurisdiction so as to assume a power it does not possess albeit under the mistaken guise of acting in mandamus. In so doing, Mr. PLATT seeks to promote and advance constitutional government and the fundamental principle that governmental institutions, including this Court, have limited and constrained power and authority.

ARGUMENT

Proposition of Law: When relators seek to prevent governmental action, the relief sought is injunctive in nature and, thus, beyond the jurisdiction of the Ohio Supreme Court acting in mandamus.

This original action in mandamus can and should readily be dismissed because Relators do not seek and have failed to establish by clear and convincing evidence at least one of the *sine qua non* elements necessary for issuance of the requested extraordinary writ of mandamus, *viz.*, that the Respondent has a clear legal duty to perform the requested act. Thus, this Court lacks jurisdiction to provide the requested relief and dismissal is mandated. Other than a general reference as to the standard for issuance of mandamus, Relators make but a single, conclusory assertion within the entirety of *Relators' Merit Brief* as to the supposed clear legal duty on the part of the Ohio Secretary of State upon which they seek mandamus. *See Relators' Merit Brief, at 17* (asserting "duty to provide the requested relief because he is the state's chief election officer...and is charged with determining and prescribing 'the forms of ballots...required by law' and compelling 'the observance by election officers in the several counties of the requirements of the election laws'").

"Where a petition which is labeled an 'action in mandamus' but its allegations, in effect, seek an injunctive remedy to restrain and enjoin the respondents rather than to compel respondents to perform a clear legal duty, such a petition does not state a cause of action in mandamus but states a cause of action in injunction, and, since this court does not have original jurisdiction in injunction, such a petition must be dismissed." *State ex rel. Pressley v. Indus. Comm'n*, 11 Ohio St. 2d 141, 150, 228 N.E.2d 631 (1967); *see* Ohio Const., art. IV, sec. 2(B). Thus, "if the allegations of a complaint for a writ of mandamus indicate that the real objects sought are a declaratory judgment and a prohibitory injunction, the complaint does not state a

cause of action in mandamus and must be dismissed for want of jurisdiction.” *State ex rel Grendell v. Davidson*, 86 Ohio St.3d 629, 634, 716 N.E.2d 704 (1999).

“To discern the real objects of an action, [a court] must examine the complaint ‘to see whether it actually seeks to prevent, rather than to compel, official action.’” *State ex rel. Ohio Civ. Serv. Employees Assn., AFSCME, Local 11, AFL-CIO v. State Emp. Relations Bd.*, 104 Ohio St.3d 122, 818 N.E.2d 688, 2004-Ohio-6363 ¶40 (Lunberg Stratton, J., dissenting)(quoting *State ex rel. Cunningham v. Amer Cunningham Co., L.P.A.*, 94 Ohio St.3d 323, 324, 762 N.E.2d 1012 (2002)(quoting *State ex rel. Stamps v. Montgomery Cty. Automatic Data Processing Bd.*, 42 Ohio St.3d 164, 166, 538 N.E.2d 105 (1989))); accord *State ex rel. Evans v. Blackwell*, 111 Ohio St.3d 437, 857 N.E.2d 88, 2006-Ohio-5439 ¶20 (in applying this rule to mandamus actions in expedited election cases, the Court “examin[es] the complaint to determine whether it actually seeks to prevent, rather than compel, official action”). For “[a] writ of mandamus compels action or commands the performance of a duty, while a decree of injunction ordinarily restrains or forbids the performance of a specified act.” *State ex rel. Smith v. Indus. Comm’n*, 139 Ohio St. 303, 39 N.E.2d 838 (1942)(syllabus ¶2).

In analyzing a complaint in order to ascertain the actual nature of the relief sought and whether the jurisdiction of this Court was properly invoked, this Court in *State ex rel. Ethics First-You Decide Ohio PAC v. DeWine*, 147 Ohio St. 3d 373, 66 N.E.3d 689, 2016-Ohio-3144, clarified the requisite analysis:

What distinguishes a proper mandamus complaint from an improper one is *not* whether the relator is seeking declaratory judgment as part of the complaint but whether the complaint seeks to prevent or compel official action. This distinction is critical: a prohibitory injunction qualifies as an alternative remedy at law that will defeat a request for mandamus, but a mandatory injunction does not. Therefore, if a complaint seeks to *prevent* action, then it is injunctive in nature, and the court has no jurisdiction; if it seeks to *compel* action, then the court does have jurisdiction to provide relief in mandamus.

Id. ¶10 (emphases in original and internal citations omitted). Thus, in ascertaining whether a proper mandamus action is actually sought, a court must look beyond language in the complaint that may be couched in the nature of seeking affirmative action and, instead, must ascertain whether a relator is actually seeking to prevent action by a public official. If it is the latter (even if that which relator is seeking to prevent is illegal), relief must be by way of prohibitory injunction, not mandamus. *See State ex rel. Forsyth v. Brigner*, 86 Ohio St.3d 71, 72, 711 N.E.2d 684, 1999-Ohio-83 (“claim for a writ of mandamus to prohibit Judge Brigner from enforcing his order is, in fact, a request for a prohibitory injunction, which the court of appeals lacked jurisdiction to grant”).

An examination of the *Verified Complaint* clearly reveals that the relief sought by Relators is actually “to prevent action”, *i.e.*, to not proceed with the special election set for August 8, 2023. As set forth in the prayer for relief, Relators clearly seek to prevent that election:

Relators respectfully request that this Court...issue a peremptory writ of mandamus directing Respondent Secretary LaRose to remove the Amendment from the August 8, 2023, ballot and further directing the Secretary to rescind Directive 2023-07 and instruct the county election officials under his authority not to proceed with the special election on that amendment.

Verified Complaint, prayer for relief (A); see also Relators’ Merit Brief, at 17 (arguing mandamus relief is appropriate because Respondent Secretary LaRose has failed to act to “prevent the illegal election”). While such language may be couched as seeking an order directing the Secretary of State “to remove” an issue from the ballot at the forthcoming election, “to rescind” a directive relating to that election, and “to instruct” the boards of elections related thereto, all such requested actions by Relators are clearly targeted and directed to the conclusory declaration within the prayer for relief, *i.e.*, “not to proceed with the special election” on August

8, 2023. The *Verified Complaint* clearly seeks to prevent official action of the conducting of the special election on August 8, 2023, and, thus, is not proper in prohibition.

To be entitled to a writ of mandamus, “a relator must carry the burden of establishing that...the respondent has a clear legal duty to perform the requested act.” *State ex rel. Van Gundy v. Indus. Comm’n*, 111 Ohio St.3d 395, 856 N.E.2d 951, 2006-Ohio-5854 ¶13. But as a review of the *Verified Complaint* confirms, Relators have not set forth or established a “clear” legal duty on the part of the Secretary of State but, instead, are seeking to prevent official action. Needless to say, Relators have not met their burden of establishing entitlement to a writ of mandamus. And as the relief they actually seek is in the nature of a prohibitory injunction, this Court lacks jurisdiction and, accordingly, dismissal is required.

Respectfully submitted,

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I hereby certify that a copy of the foregoing will be served upon the following via e-mail on the 22nd day of May 2023:

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