

SUPREME COURT OF OHIO

State ex rel. Phillips v. Lorain County Board of Elections

93 Ohio St. 3d 535 (Ohio 2001) · Decided October 23, 2001

SUMMARY

The Ohio Supreme Court considered a challenge to the certification of Thomas L. Wearsch as a candidate for Avon city council based on incorrect term-ending dates appearing on his nominating petitions. The court dismissed the mandamus claim for lack of jurisdiction and denied prohibition, holding that the petition substantially complied with R.C. 3513.261 because the candidate designated a full term and the additional term-ending dates were surplusage. The court also held that the election board’s handling of the protest hearing did not invalidate the petition.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Moyer, C.J.; Douglas, J.; Resnick, J.; F.E. Sweeney, J.; Pfeifer, J.; Cook, J.; Lundberg Stratton, J.
JURISDICTION	Ohio
DECIDED	October 23, 2001
DISPOSITION	other
PROCEDURAL POSTURE	Original action seeking writs of mandamus and prohibition to prevent the Lorain County Board of Elections from placing Thomas L. Wearsch on the ballot and counting votes for him after the board denied Phillips's protest against Wearsch's nominating petition.
STANDARD OF REVIEW	For prohibition, the relator had to establish that the board exercised judicial or quasi-judicial power, that the exercise was unauthorized by law, and that denial of the writ would cause injury without an adequate ordinary legal remedy. Because the board had exercised quasi-judicial power and Phillips lacked an adequate remedy, he also had to show fraud, corruption, abuse of discretion, or clear disregard of applicable legal provisions.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of Ohio; precedential.
PARTIES	Gerald W. Phillips v. Lorain County Board of Elections

TOPICS

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QUESTIONS PRESENTED

1. Whether Phillips's mandamus claim stated a cognizable claim when the relief sought was to prohibit Wearsch's candidacy and ballot placement.
2. Whether the board abused its discretion or clearly disregarded R.C. 3513.261 by accepting Wearsch's petition despite the incorrect term-ending dates.
3. Whether the board's alleged failure to promptly set the protest hearing under R.C. 3513.263 invalidated the petition or entitled Phillips to prohibition.

HOLDINGS

1. A complaint seeking a declaratory judgment or prohibitory injunctive relief does not state a cause of action in mandamus and must be dismissed for lack of jurisdiction.
2. R.C. 3513.261 requires only substantial compliance with the form of a nominating petition and statement of candidacy. When a candidate designates a full-term candidacy, the candidate need not provide a term-ending date; an incorrect additional date is surplusage that does not invalidate the petition when it does not mislead petition signers.
3. The timing requirements of R.C. 3513.263 are designed to require prompt action by election officials; failure to act within the statutory time does not itself invalidate an otherwise valid petition or validate an invalid one.

KEY QUOTATIONS

“An examination of this statute .shows that in no place is a candidate required to set forth the date of the commencement of his term. It is only required that the candidate specify whether he is running for a full term or an unexpired term and if it is an unexpired term then he must set forth not the date of the commencement of the term but rather the date when such term ends.” (at 539-540)

“The inclusion in the present case of the date of the commencement of the terms constituted a mere surplusage which in no way affected the validity of the petitions.” (at 540)

“The mere failure of the board to declare the petition void within the statutory time does not render the petition valid since the statute does not state that the petition shall be valid if not declared void by the board within the time named in the statute” (at 541)

FACTUAL BACKGROUND

Thomas L. Wearsch filed a nominating petition for Avon city council at-large, using five part-petitions. Although the forms consistently designated a full-term candidacy, they included inconsistent term-ending dates, including December 31, 2001, rather than the December 31, 2003 ending date for the three available full-term seats.

Phillips protested the petition, asserting that the errors violated R.C. 3513.261 and that the board failed to promptly set a protest hearing; the board denied the protest and certified Wearsch for the ballot.

PROCEDURAL HISTORY

Phillips filed a protest under R.C. 3513.263 challenging Wearsch's nominating petition based on inconsistent and allegedly incorrect term-ending dates. The board denied the protest and reaffirmed Wearsch's certification and ballot placement. Phillips then filed an expedited original action in the Supreme Court of Ohio seeking mandamus and prohibition; the court dismissed the mandamus claim and denied prohibition.

DISPOSITION

other

CASES CITED

- State ex rel. Grendell v. Davidson, 86 Ohio St. 3d 629, 634, 716 N.E.2d 704, 710 (1999)
- State ex rel. Youngstown v. Mahoning Cty. Bd. of Elections, 72 Ohio St. 3d 69, 70-71, 647 N.E.2d 769, 771 (1995)
- State ex rel. Baldzicki v. Cuyahoga Cty. Bd. of Elections, 90 Ohio St. 3d 238, 241, 736 N.E.2d 893, 895 (2000)
- State ex rel. Baur v. Medina Cty. Bd. of Elections, 90 Ohio St. 3d 165, 166, 736 N.E.2d 1, 2 (2000)
- State ex rel. Citizens for Responsible Taxation v. Scioto Cty. Bd. of Elections, 65 Ohio St. 3d 167, 169, 602 N.E.2d 615, 617 (1992)
- State ex rel. Osborn v. Fairfield Cty. Bd. of Elections, 65 Ohio St. 3d 194, 196-197, 602 N.E.2d 636, 638 (1992)
- State ex rel. Clinard v. Greene Cty. Bd. of Elections, 51 Ohio St. 3d 87, 554 N.E.2d 895 (1990)
- State ex rel. Calhoun v. Scioto Cty. Bd. of Elections, 36 Ohio St. 3d 164, 522 N.E.2d 49 (1988)
- State ex rel. McGinley v. Bliss, 149 Ohio St. 329, 37 O.O. 21, 78 N.E.2d 715 (1948)
- State ex rel. Cooker Restaurant Corp. v. Montgomery Cty. Bd. of Elections, 80 Ohio St. 3d 302, 308, 686 N.E.2d 238, 243 (1997)
- State ex rel. Hanna v. Milburn, 170 Ohio St. 9, 9 O.O.2d 332, 161 N.E.2d 891 (1959)
- State ex rel. Wiethe v. Hamilton Cty. Bd. of Elections, 98 Ohio App. 89, 57 O.O. 181, 128 N.E.2d 121 (1954)
- State ex rel. Svete v. Geauga Cty. Bd. of Elections, 4 Ohio St. 2d 16, 17, 33 O.O.2d 139, 140, 212 N.E.2d 420, 421 (1965)
- State ex rel. Hinkle v. Franklin Cty. Bd. of Elections, 62 Ohio St. 3d 145, 150, 580 N.E.2d 767, 771 (1991)
- State ex rel. Ruehlmann v. Luken, 65 Ohio St. 3d 1, 3, 598 N.E.2d 1149, 1151 (1992)
- Stern v. Cuyahoga Cty. Bd. of Elections, 14 Ohio St. 2d 175, 180, 43 O.O.2d 286, 289, 237 N.E.2d 313, 317 (1968)