

SUPREME COURT OF OHIO

State ex rel. Painter v. Brunner

127 Ohio St. 3d 463, 2010-Ohio-6461 (2010) · No. 2010-2205 · Decided December 29, 2010

SUMMARY

The Supreme Court of Ohio granted motions to intervene, issued an alternative writ of mandamus, established an expedited briefing schedule, and temporarily stayed the opening of provisional-ballot envelopes. It dismissed the complaint seeking a writ of prohibition. The concurring opinion discussed whether qualified voters' provisional ballots cast in the wrong precinct due to poll-worker error should be counted and raised concerns regarding federal-court proceedings and jurisdictional priority.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Pfeifer; Lundberg Stratton; O'Connor; O'Donnell; Lanzinger; Cupp; Brown, C.J.
JURISDICTION	Ohio
DECIDED	December 29, 2010
DOCKET	2010-2205
DISPOSITION	other
PROCEDURAL POSTURE	Original action in mandamus and prohibition seeking extraordinary relief concerning provisional ballots cast in the wrong precinct and a motion for temporary injunctive relief.
STANDARD OF REVIEW	At the procedural stage addressed by the concurring opinion, dismissal of an original action under S.Ct.Prac.R. 10.5 was proper only if, presuming the truth of the complaint's material factual allegations and drawing reasonable inferences in relators' favor, it was beyond doubt that relators were not entitled to extraordinary relief.
PRECEDENTIAL VALUE	Published Ohio Supreme Court interlocutory order; the substantive constitutional discussion appears in a separate concurrence and is not a majority merits holding.
PARTIES	John W. Painter, John Williams, other relators v. Jennifer Brunner, Secretary of State, Hamilton County Board of Elections

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QUESTIONS PRESENTED

1. Whether the court should grant an alternative writ of mandamus and permit expedited presentation of evidence and briefing concerning the 849 provisional ballots.
2. Whether respondents should be temporarily restrained from opening the provisional-ballot envelopes pending further order.
3. Whether the motions of Tracie Hunter, the Northeast Ohio Coalition for the Homeless, and the Ohio Democratic Party to intervene as respondents should be granted.
4. Whether the complaint seeking a writ of prohibition should be dismissed.

HOLDINGS

1. The court granted an alternative writ of mandamus sua sponte and established an expedited schedule for the parties to submit evidence and briefs.
2. Respondents and persons acting on their behalf were stayed from opening the provisional-ballot envelopes pending further order of the court.
3. Tracie Hunter, the Northeast Ohio Coalition for the Homeless, and the Ohio Democratic Party were permitted to intervene as respondents.
4. The complaint seeking a writ of prohibition was dismissed.

KEY QUOTATIONS

“It is ordered, sua sponte, that an alternative writ of mandamus is granted, and the following briefing schedule is set for the presentation of evidence and filing of briefs pursuant to S.Ct.Prac.R. 10.6:” (¶ 2)

“respondents and their agents, servants, employees, attorneys, and other persons acting on their behalf are hereby stayed from opening the provisional ballot envelopes pending further order of the court.” (¶ 5)

“It is further ordered that the complaint for a writ of prohibition is dismissed.” (¶ 6)

FACTUAL BACKGROUND

John Williams and Tracie Hunter were competing candidates for judge of the Hamilton County Court of Common Pleas, Juvenile Division, separated by 23 votes out of nearly 230,000. The Hamilton County Board of Elections had not counted 849 provisional ballots because the voters appeared to have voted in the wrong precinct. The record alleged that many voters arrived at the correct multiprecinct voting location but were directed by poll workers to the wrong table or otherwise given ballots for the wrong precinct.

PROCEDURAL HISTORY

Relators filed an original complaint for writs of mandamus and prohibition and sought temporary injunctive relief. The Supreme Court of Ohio granted motions by Tracie Hunter, the Northeast Ohio Coalition for the Homeless, and the Ohio Democratic Party to intervene as respondents; granted an alternative writ of mandamus and established an expedited briefing schedule; stayed the opening of 849 provisional-ballot envelopes; and dismissed the prohibition claim. The order did not resolve the merits of the mandamus claim.

DISPOSITION

other

CASES CITED

- State ex rel. Duke Energy Ohio, Inc. v. Hamilton Cty. Court of Common Pleas, 126 Ohio St. 3d 41, 2010-Ohio-2450, 930 N.E.2d 299, ¶ 13
- Northeast Ohio Coalition for the Homeless v. Brunner, S.D. Ohio (E.D.) No. C2-06-896
- Hunter v. Hamilton Cty. Bd. of Elections, S.D. Ohio (W.D.) No. 1:10-cv-820, 2010 WL 4878957

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