

SUPREME COURT OF OHIO

State ex rel. Husted v. Brunner

123 Ohio St. 3d 288, 2009-Ohio-5327 (Ohio 2009) · No. 2009-1707 · Decided October 6, 2009

SUMMARY

The Supreme Court of Ohio granted a writ of mandamus requiring the Montgomery County Board of Elections to treat Jon A. Husted as a Montgomery County resident and maintain his voter registration. The court held that election officials had canceled his registration without following the statutorily prescribed procedures. It also concluded that the secretary of state clearly disregarded applicable law by finding, based on clear and convincing evidence, that Husted was not a Montgomery County resident.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Per curiam; Chief Justice Moyer; Justice Lundberg Stratton; Justice O'Connor; Justice O'Donnell; Justice Cupp; Justice Lanzinger; Justice Pfeifer
JURISDICTION	Ohio
DECIDED	October 6, 2009
DOCKET	2009-1707
DISPOSITION	writ_granted
PROCEDURAL POSTURE	Expedited original action in mandamus challenging the secretary of state's tie-breaking determination that Husted was no longer a resident of Montgomery County and was ineligible to vote there.
STANDARD OF REVIEW	In an extraordinary action challenging decisions of the secretary of state or a board of elections, whether the officials engaged in fraud, corruption, or abuse of discretion, or acted in clear disregard of applicable legal provisions. Mandamus also requires a clear legal right, a clear legal duty, and no adequate remedy in the ordinary course of law.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of Ohio; precedential.
PARTIES	State ex rel. Jon A. Husted v. Jennifer L. Brunner, Secretary of State, Montgomery County Board of Elections

TOPICS

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QUESTIONS PRESENTED

1. Whether mandamus was available to challenge the secretary of state's tie-breaking decision concerning Husted's voter-registration residency.
2. Whether the board of elections and secretary of state could cancel Husted's existing voter registration without following one of the specific statutory procedures governing cancellation.
3. Whether clear and convincing evidence established that Husted was no longer a Montgomery County resident for election purposes.
4. Whether the secretary of state could treat the statutory presumption concerning the residence of a married person's family as the exclusive factor in determining Husted's voting residence.

HOLDINGS

1. Mandamus was an appropriate remedy because Husted had a clear legal right to relief, the respondents had a corresponding legal duty, and the impending election left him without an adequate remedy in the ordinary course of law.
2. An elector's voter registration may not be canceled except through one of the procedures specifically authorized by R.C. 3503.21, R.C. 3501.05(Q), R.C. 3503.19(C)(2), or R.C. 3503.24(C).
3. Husted remained a Montgomery County resident for election purposes because his fixed habitation and intent to return were in Montgomery County, and his presence in Franklin County was temporary and primarily attributable to his state legislative employment.

KEY QUOTATIONS

“The registration of a registered elector shall not be canceled except as provided in this section, division (Q) of section 3501.05 of the Revised Code, division (C)(2) of section 3503.19 of the Revised Code, or division (C) of section 3503.24 of the Revised Code.” (¶ 12)

“Furthermore, the general rule is that unless there is language allowing substantial compliance, election statutes are mandatory and must be strictly complied with.” (¶ 15)

“Therefore, we grant a writ of mandamus to compel the Montgomery County Board of Elections to find that Jon A. Husted is a resident of Montgomery County for election purposes and to maintain his name on the poll books as a properly registered Montgomery County elector for all purposes.” (¶ 35)

FACTUAL BACKGROUND

Jon A. Husted had lived in the Dayton area for approximately 24 years, including 14 years at his Kettering home in Montgomery County, and represented Montgomery County in the Ohio House and Senate. After marrying, Husted divided his time between Montgomery County and Franklin County, where his wife and daughter lived, but testified that his presence in Franklin County was due primarily to his legislative employment and that he intended to return to his Kettering home after completing public service. The board of elections investigated his residency, deadlocked twice, and the secretary of state concluded that clear and convincing evidence showed he was no longer a Montgomery County resident.

PROCEDURAL HISTORY

A nonprofit corporation and a Montgomery County elector requested that the Montgomery County Board of Elections investigate Husted's residency and voting eligibility. The board held a hearing and twice deadlocked, after which the secretary of state broke the tie and determined that Husted was not a Montgomery County resident. Husted filed an expedited mandamus action; the Supreme Court of Ohio granted the writ and ordered the board to treat him as a Montgomery County resident and maintain his name on the poll books.

DISPOSITION

writ_granted

REMAND INSTRUCTIONS

The Montgomery County Board of Elections was ordered to find that Jon A. Husted is a resident of Montgomery County for election purposes and to maintain his name on the poll books as a properly registered Montgomery County elector for all purposes.

CASES CITED

- State ex rel. Husted v. Brunner, 123 Ohio St. 3d 119, 2009-Ohio-4805, 914 N.E.2d 397
- State ex rel. Heffelfinger v. Brunner, 116 Ohio St. 3d 172, 2007-Ohio-5838, 876 N.E.2d 1231, ¶ 13
- State ex rel. Greene v. Montgomery Cty. Bd. of Elections, 121 Ohio St. 3d 631, 2009-Ohio-1716, 907 N.E.2d 300, ¶ 10
- Whitman v. Hamilton Cty. Bd. of Elections, 97 Ohio St. 3d 216, 2002-Ohio-5923, 778 N.E.2d 32, ¶¶ 11-12
- State ex rel. Herman v. Klopfleisch, 72 Ohio St. 3d 581, 583, 651 N.E.2d 995 (1995)
- State ex rel. Babcock v. Perkins, 165 Ohio St. 185, 187, 59 Ohio Op. 258, 134 N.E.2d 839 (1956)
- State ex rel. Ditmars v. McSweeney, 94 Ohio St. 3d 472, 476, 764 N.E.2d 971 (2002)
- Cross v. Ledford, 161 Ohio St. 469, 53 Ohio Op. 361, 120 N.E.2d 118 (1954)
- State ex rel. Klink v. Eyrich, 157 Ohio St. 338, 344, 47 Ohio Op. 198, 105 N.E.2d 399 (1952)
- State ex rel. Stine v. Brown Cty. Bd. of Elections, 101 Ohio St. 3d 252, 2004-Ohio-771, 804 N.E.2d 415, ¶ 15
- State ex rel. Duncan v. Portage Cty. Bd. of Elections, 115 Ohio St. 3d 405, 2007-Ohio-5346, 875 N.E.2d 578, ¶ 11
- Bell v. Marinko, 367 F.3d 588, 593 (6th Cir. 2004)
- State ex rel. Lakes v. Young, 161 Ohio St. 341, 53 Ohio Op. 249, 119 N.E.2d 279 (1954)

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