

SUPREME COURT OF OHIO

State ex rel. Brubaker v. Lawrence Cty. Bd. of Elections

2022-Ohio-1087 (Ohio 2022) · No. 2022-0255 · Decided March 31, 2022

SUMMARY

The Supreme Court of Ohio denied Ray Brubaker’s request for a writ of mandamus compelling the Lawrence County Board of Elections to place a local liquor option on the May 3, 2022 primary-election ballot. The court held that R.C. 4301.33(A) required strict compliance with the requirement to submit an affidavit concerning notice to affected liquor-permit holders and the provision of the permit-holder list to petition signers, even when no affected permit holders existed.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Per Curiam; Maureen O'Connor, Chief Justice; Maureen O'Connor; Maureen E. Kennedy; William M. Fischer; Michael P. Donnelly; Melody J. Stewart; Jennifer Brunner; Pat DeWine
JURISDICTION	Ohio
DECIDED	March 31, 2022
DOCKET	2022-0255
DISPOSITION	writ_denied
PROCEDURAL POSTURE	Original action in mandamus seeking to compel the Lawrence County Board of Elections to place a local liquor-sales option on the May 3, 2022 primary-election ballot.
STANDARD OF REVIEW	To obtain a writ of mandamus, the relator must establish by clear and convincing evidence a clear legal right to the requested relief, a clear legal duty on the respondent to provide it, and the absence of an adequate remedy in the ordinary course of law. The court examines whether the board engaged in fraud or corruption, abused its discretion, or acted in clear disregard of applicable law.
PRECEDENTIAL VALUE	Published opinion; precedential under Ohio law
PARTIES	Ray Brubaker v. Lawrence County Board of Elections

TOPICS

election law

election administration

statutory interpretation

plain meaning rule

remedies

PRACTICE AREAS

Election law

Mandamus

Statutory interpretation

Administrative law

QUESTIONS PRESENTED

1. Whether the board abused its discretion or acted contrary to law by rejecting the liquor-option petition because Brubaker failed to submit the affidavit required by R.C. 4301.33(A).
2. Whether the Division of Liquor Control's letter stating that there were no affected permit holders could substitute for the statutory affidavit.
3. Whether Brubaker's efforts constituted substantial compliance with R.C. 4301.33(A).
4. Whether the statutory affidavit requirement could be excused because there were no affected permit holders to notify.

HOLDINGS

1. R.C. 4301.33(A) requires a petitioner to submit both the list of affected liquor-permit holders or agencies and an affidavit certifying compliance with the notice and petition-list requirements; the Division's letter could not substitute for the affidavit.
2. Strict compliance, rather than substantial compliance, is required because R.C. 4301.33(A) does not expressly authorize substantial compliance and uses the mandatory term 'shall.'
3. The absence of affected permit holders did not excuse submission of the affidavit. The petitioner could comply by attesting that there were no affected permit holders to notify and that the list showing none was provided to petition signers.
4. Brubaker was not entitled to a writ of mandamus because he failed to establish a clear legal right to ballot placement or a clear legal duty on the board to place the proposal on the ballot.

KEY QUOTATIONS

“it is well-settled that ‘election laws are mandatory and require strict compliance and that substantial compliance is acceptable only when an election provision expressly states that it is.’” (¶ 13)

“Thus, the plain language of the statute contemplates circumstances in which there are no affected permit holders.” (¶ 15)

FACTUAL BACKGROUND

Brubaker sought to place a local liquor option permitting Sunday liquor sales in the Hanging Rock precinct on the May 3, 2022 primary-election ballot. The Division of Liquor Control notified him that no affected liquor-permit holders existed in the precinct. Brubaker submitted part-petitions and attempted to provide the Division's letter, but he did not submit the Form No. 5-N affidavit certifying compliance with the statutory notice and list requirements. The Lawrence County Board of Elections rejected the petition.

PROCEDURAL HISTORY

Brubaker submitted part-petitions containing approximately 40 signatures but did not submit the affidavit required by R.C. 4301.33(A). The board rejected the petition and notified Brubaker that the proposal would not appear on the ballot. Brubaker then filed an expedited mandamus complaint in the Supreme Court of Ohio, which ordered the board to answer and denied the writ after reviewing the parties' affidavits and exhibits.

DISPOSITION

writ_denied

CASES CITED

- State ex rel. Linnabary v. Husted, 138 Ohio St.3d 535, 2014-Ohio-1417, 8 N.E.3d 940, ¶ 13
- State ex rel. West v. LaRose, 161 Ohio St.3d 192, 2020-Ohio-4380, 161 N.E.3d 631, ¶ 15
- State ex rel. Tam O'Shanter Co. v. Stark Cty. Bd. of Elections, 151 Ohio St.3d 134, 2017-Ohio-8167, 86 N.E.3d 332, ¶ 16
- State ex rel. Grady v. State Emp. Relations Bd., 78 Ohio St.3d 181, 183, 677 N.E.2d 343 (1997)
- State ex rel. Maras v. LaRose, 2022-Ohio-866, ¶ 23
- State ex rel. Comm. for the Referendum of Lorain Ordinance No. 77-01 v. Lorain Cty. Bd. of Elections, 96 Ohio St.3d 308, 2002-Ohio-4194, 774 N.E.2d 239, ¶ 49
- State ex rel. Ohio Democratic Party v. Blackwell, 111 Ohio St.3d 246, 2006-Ohio-5202, 855 N.E.2d 1188, ¶ 15
- Ohio Civ. Rights Comm. v. Countrywide Home Loans, Inc., 99 Ohio St.3d 522, 2003-Ohio-4358, 794 N.E.2d 56, ¶ 4
- Dorrian v. Scioto Conservancy Dist., 27 Ohio St.2d 102, 271 N.E.2d 834 (1971), paragraph one of the syllabus
- State ex rel. Weller v. Tuscarawas Cty. Bd. of Elections, 158 Ohio St.3d 266, 2019-Ohio-4300, 141 N.E.3d 157, ¶ 10

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