

SUPREME COURT OF OHIO

State ex rel. Combs v. Greene Cty. Bd. of Elections

2019-Ohio-4110 (Ohio 2019) · No. 2019-1234 · Decided October 4, 2019

SUMMARY

The Supreme Court of Ohio denied a writ of mandamus sought by L. Stephen Combs to compel the Greene County Board of Elections to verify signatures on his nominating petition and certify him for the ballot. The court held that Ohio Revised Code 3501.38(E)(1) requires a circulator to state the number of signatures on each individual petition paper, and that Combs’s statement of the total signatures across all part-petitions did not strictly comply. The court also rejected arguments based on substantial compliance, the secretary of state’s form, lack of fraud, and an alleged reconsideration hearing.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Per Curiam; Maureen O'Connor, C.J.; Judith L. French, J.; Terrence O. Fischer, J.; Patrick F. DeWine, J.; Michael P. Donnelly, J.; Melody J. Stewart, J.; Patrick J. Kennedy, J.
JURISDICTION	Ohio
DECIDED	October 4, 2019
DOCKET	2019-1234
DISPOSITION	writ_denied
PROCEDURAL POSTURE	Original action in mandamus seeking to compel the Greene County Board of Elections to verify signatures on a nominating petition and certify Combs's name for the November 5, 2019 general-election ballot.
STANDARD OF REVIEW	A relator seeking mandamus must establish by clear and convincing evidence a clear legal right to the requested relief, a clear legal duty on the respondent's part, and the absence of an adequate remedy in the ordinary course of law. The court evaluated whether Combs met that burden and whether the board's factual account was overcome by clear and convincing evidence.
PRECEDENTIAL VALUE	published

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether Combs had a clear legal right to have his petition signatures verified and, if sufficient, have his name placed on the ballot despite stating the total number of signatures on each part-petition.
2. Whether R.C. 3501.38(E)(1) requires the circulator to indicate the number of signatures on each individual petition paper or part-petition.
3. Whether substantial compliance, absence of fraud, or compliance with Secretary of State Form No. 3-R excused Combs's failure to strictly comply with R.C. 3501.38(E)(1).
4. Whether Combs established by clear and convincing evidence that the board held a reconsideration hearing and violated a notice duty.
5. Whether the board had a legal duty to hold a reconsideration hearing.

HOLDINGS

1. A relator seeking to compel election officials to verify petition signatures and place a candidate on the ballot must prove by clear and convincing evidence a clear legal right to the relief, a clear legal duty to provide it, and the absence of an adequate remedy in the ordinary course of law.
2. R.C. 3501.38(E)(1) requires a circulator to indicate on each individual petition paper or part-petition the number of signatures contained on that paper, not the total number of signatures on the entire petition.
3. Candidates must strictly comply with R.C. 3501.38(E)(1); substantial compliance with the form requirements of R.C. 3513.261 does not excuse noncompliance with the separate signature-count requirement.
4. The absence of fraud does not excuse failure to comply strictly with R.C. 3501.38(E)(1), and stating the total number of signatures on each part-petition does not establish a clear legal right to ballot access.
5. Combs did not prove by clear and convincing evidence that the board held a reconsideration hearing, and the board had no legal duty to hold such a hearing.

KEY QUOTATIONS

“And “R.C. 3501.38(E) demands strict compliance.”” (§ 8)

“Since R.C. 3501.38(E)(1) is clear, no interpretation is warranted, and the question of deference is moot. The secretary lacks the authority to change the statute’s requirements.” (§ 14)

“Because Combs has not established a clear legal right to the relief he seeks or a clear legal duty on the part of the board to provide it, we deny the writ.” (§ 20)

FACTUAL BACKGROUND

Combs submitted three part-petitions containing 13, 11, and 20 signatures. On each part-petition, he declared under penalty of election falsification that the petition contained 44 signatures, the total across all three part-petitions, rather than the number of signatures on that particular petition paper. The board rejected the petition without verifying the signatures. Combs also claimed that the board held a reconsideration hearing without notifying him, but the board's minutes and deputy director's affidavit indicated that no hearing occurred.

PROCEDURAL HISTORY

Combs submitted a three-part nominating petition for Xenia Township Trustee. The Greene County Board of Elections rejected the petition because each part-petition stated that it contained 44 signatures, rather than stating the number of signatures on that individual part-petition, and it did not complete signature verification. Combs sought reconsideration and then filed this original mandamus action in the Supreme Court of Ohio. The court denied the writ.

DISPOSITION

writ_denied

CASES CITED

- State ex rel. Davis v. Summit Cty. Bd. of Elections, 137 Ohio St.3d 222, 2013-Ohio-4616, 998 N.E.2d 1093, ¶ 12
- State ex rel. Finkbeiner v. Lucas Cty. Bd. of Elections, 122 Ohio St.3d 462, 2009-Ohio-3657, 912 N.E.2d 573, ¶ 18
- Ohio Renal Assn. v. Kidney Dialysis Patient Protection Amendment Commt., 154 Ohio St.3d 86, 2018-Ohio-3220, 111 N.E.3d 1139, ¶¶ 8, 24
- 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. Linnabary v. Husted, 138 Ohio St.3d 535, 2014-Ohio-1417, 8 N.E.3d 940, ¶ 31
- State ex rel. Simonetti v. Summit Cty. Bd. of Elections, 151 Ohio St.3d 50, 2017-Ohio-8115, 85 N.E.3d 728, ¶ 26
- State ex rel. Crawl v. Delaware Cty. Bd. of Elections, 144 Ohio St.3d 346, 2015-Ohio-4097, 43 N.E.3d 406, ¶ 10
- Ohio Manufacturers' Assn. v. Ohioans for Drug Price Relief Act, 149 Ohio St.3d 250, 2016-Ohio-5377, 74 N.E.3d 399, ¶ 44
- State ex rel. Loss v. Lucas Cty. Bd. of Elections, 29 Ohio St.2d 233, 234, 281 N.E.2d 186 (1972)
- Disciplinary Counsel v. Jackson, 81 Ohio St.3d 308, 311, 691 N.E.2d 262 (1998)

