

SUPREME COURT OF OHIO

State ex rel. White v. Koch

96 Ohio St. 3d 395 (Ohio 2002) · Decided October 2, 2002

SUMMARY

The Ohio Supreme Court dismissed as moot an appeal concerning extraordinary writs sought to prevent enforcement of a temporary restraining order involving taxpayer-funded mayoral mailings about Cleveland City Council salary increases. The court rejected exceptions for matters capable of repetition yet evading review and matters of great public or general interest.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Per curiam; Moyer, C.J.; Resnick, J.; F.E. Sweeney, J.; Pfeifer, J.; Cook, J.; Lundberg Stratton, J.; Douglas, J.
JURISDICTION	Ohio
DECIDED	October 2, 2002
DISPOSITION	dismissed
PROCEDURAL POSTURE	Appellants appealed the Cuyahoga County Court of Appeals' dismissal of their action seeking writs of mandamus and prohibition to prevent a common pleas judge from issuing or enforcing a temporary restraining order concerning the use of public funds for mayoral mailings.
STANDARD OF REVIEW	The court reviewed whether the extraordinary-writ appeal remained justiciable and whether an exception to mootness applied.
PRECEDENTIAL VALUE	Published, precedential opinion of the Supreme Court of Ohio
PARTIES	Michael White, Cara Watts, Jason Woods v. Judith Kilbane Koch

TOPICS

- mootness
- appellate procedure
- free speech
- first amendment
- election law

PRACTICE AREAS

- Appellate procedure
- Constitutional law
- Election law
- Remedies
- Municipal law

QUESTIONS PRESENTED

1. Whether the appeal from dismissal of the mandamus and prohibition action became moot after the election passed, the mayor left office, and the challenged ordinance was repealed.
2. Whether the appeal qualified for the capable-of-repetition-yet-evading-review exception to mootness.
3. Whether the appeal qualified for the great-public-or-general-interest exception to mootness.
4. Whether mandamus was a cognizable remedy to prevent enforcement of the temporary restraining order.

HOLDINGS

1. The appeal was moot because the election that the mailings sought to influence had passed, Mayor White was no longer in office and therefore could no longer use the mayor's office budget for comparable mailings, and the challenged ordinance had been repealed.
2. The capable-of-repetition-yet-evading-review exception did not apply because the challenged injunction was not necessarily too short-lived for appellate review and there was no reasonable expectation that White would again be subjected to a comparable restraining order.
3. The appeal did not present a sufficiently debatable constitutional question or matter of great public or general interest to warrant an exception to mootness.
4. To the extent appellants sought extraordinary relief in mandamus to prevent enforcement of the temporary restraining order, that claim was not cognizable in mandamus.

KEY QUOTATIONS

“When the election has passed, as it has here, the action for extraordinary relief or an appeal from a judgment in the extraordinary-writ action is moot.” (398)

“Accordingly, we dismiss this appeal as moot.” (399)

FACTUAL BACKGROUND

Cleveland's ordinances provided an automatic annual six-percent pay increase for city council members. Mayor Michael White opposed the increases and supported proposed legislation changing the compensation formula; shortly before the November 2001 election, his office prepared and mailed letters to Cleveland voters at taxpayer expense criticizing the raises and supporting the proposed ordinance. After council members sued, the common pleas court temporarily restrained the mayor and his staff from using taxpayer funds to communicate with the public about the council raises; by the time of the Supreme Court appeal, the election had passed, White had left office, and the challenged salary-increase ordinance had been repealed.

PROCEDURAL HISTORY

Fourteen Cleveland City Council members sued Mayor White and members of his staff in the Cuyahoga County Court of Common Pleas, seeking injunctive and monetary relief concerning taxpayer-funded mailings opposing the council's automatic pay raises. Judge Judith Kilbane Koch issued a temporary restraining order. Appellants then sought mandamus and prohibition in the court of appeals, which dismissed the action. The Supreme Court of Ohio stayed the temporary restraining order pending appeal and ultimately dismissed the appeal as moot.

DISPOSITION

dismissed

CASES CITED

- State ex rel. White v. Kilbane Koch, 94 Ohio St. 3d 1409, 759 N.E.2d 786 (2001)
- State ex rel. Hills Communities, Inc. v. Clermont Cty. Bd. of Elections, 91 Ohio St. 3d 465, 468, 746 N.E.2d 1115 (2001)
- State ex rel. Dispatch Printing Co. v. Loudon, 91 Ohio St. 3d 61, 64, 741 N.E.2d 517 (2001)
- State ex rel. Calvary v. Upper Arlington, 89 Ohio St. 3d 229, 231, 729 N.E.2d 1182 (2000)
- State ex rel. The Repository, Div. of Thompson Newspapers, Inc. v. Unger, 28 Ohio St. 3d 418, 28 OBR 472, 504 N.E.2d 37 (1986)
- Franchise Developers, Inc. v. Cincinnati, 30 Ohio St. 3d 28, 30 OBR 33, 505 N.E.2d 966 (1987)
- Danis Clarkco Landfill Co. v. Clark Cty. Solid Waste Mgt. Dist., 73 Ohio St. 3d 590, 598, 653 N.E.2d 646 (1995)
- Carter v. Las Cruces, 121 N.M. 580, 583, 915 P.2d 336 (1996)
- State ex rel. Cunningham v. Amer Cunningham Co., L.P.A., 94 Ohio St. 3d 323, 324, 762 N.E.2d 1012 (2002)
- State ex rel. Baldzicki v. Cuyahoga Cty. Bd. of Elections, 90 Ohio St. 3d 238, 242, 736 N.E.2d 893 (2000)
- Egan v. Natl. Distillers & Chem. Corp., 25 Ohio St. 3d 176, 25 OBR 243, 495 N.E.2d 904 (1986)