

SUPREME COURT OF OHIO

State ex rel. Richards v. Stark Cty. Bd. of Elections

145 Ohio St. 3d 211, 2015-Ohio-3658 (Ohio 2015) · No. 2015-1297 · Decided September 9, 2015

SUMMARY

The Supreme Court of Ohio denied a writ of prohibition seeking to prevent Francis H. Cicchinelli Jr. from appearing on the November 2015 ballot as an independent candidate for mayor of Massillon. The court held that the protesters failed to present clear and convincing evidence that Cicchinelli’s declaration of independent candidacy was not made in good faith, and that the Secretary of State did not abuse his discretion or disregard applicable law.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Maureen O'Connor, Chief Justice; Paul E. Pfeifer, Justice; Terence O'Donnell, Justice; Evelyn Lundberg Stratton Lanzinger, Justice; William M. Kennedy, Justice; Judith L. French, Justice; Patrick F. O'Neill, Justice
JURISDICTION	Ohio
DECIDED	September 9, 2015
DOCKET	2015-1297
DISPOSITION	writ_denied
PROCEDURAL POSTURE	Relators sought an expedited writ of prohibition preventing the Ohio Secretary of State and the Stark County Board of Elections from placing Francis H. Cicchinelli Jr.'s name on the November 2015 ballot as an independent candidate for mayor of Massillon.
STANDARD OF REVIEW	In an extraordinary-writ action challenging the Secretary of State's election decision, relators had to establish fraud, corruption, abuse of discretion, or clear disregard of applicable law. In the underlying candidacy protest, they bore the burden of proving by clear and convincing evidence that Cicchinelli's declaration of independent status was not made in good faith.
PRECEDENTIAL VALUE	Published Ohio Supreme Court opinion; precedential
PARTIES	Robert L. Richards, Melvin T. Schartiger v. Stark County Board of Elections, Jon Husted, Ohio Secretary of State

TOPICS

election law

ballot access

election administration

remedies

PRACTICE AREAS

Election law

Administrative law

Extraordinary writs

QUESTIONS PRESENTED

1. Whether the Secretary of State abused his discretion or clearly disregarded applicable law by certifying Cicchinelli as an independent candidate despite his prior Democratic affiliation and testimony concerning when he became independent.
2. Whether the protesters presented clear and convincing evidence that Cicchinelli's declaration of independent candidacy was not made in good faith.
3. Whether the Secretary of State applied the wrong legal standard by referring to the good faith of Cicchinelli's disaffiliation from the Democratic Party.

HOLDINGS

1. A candidate seeking to run as an independent under R.C. 3513.257 must declare independent status in good faith; the statute does not necessarily require affirmative steps to disaffiliate from a political party.
2. The protesters failed to prove by clear and convincing evidence that Cicchinelli's declaration of independent candidacy was not made in good faith.
3. The Secretary of State did not abuse his discretion or clearly disregard applicable law by breaking the board's tie in favor of certifying Cicchinelli's independent candidacy.

KEY QUOTATIONS

“Implicit in the submission of these documents is the candidate’s declaration that he or she is independent; that declaration must be made in good faith.” (¶ 3)

“Ambiguous responses to ambiguous questions cannot constitute clear and convincing evidence.” (¶ 12)

FACTUAL BACKGROUND

Francis H. Cicchinelli Jr. had a long history as a Democratic candidate and officeholder, including fourteen years on the Massillon City Council and six terms as the city's Democratic mayor. He began circulating petitions to run for mayor as an independent and filed his candidacy papers on May 4, 2015, one day before voting a nonpartisan ballot in the primary. After protesters challenged his independent status, the Stark County Board of Elections deadlocked and the Secretary of State certified his candidacy.

PROCEDURAL HISTORY

Cicchinelli filed a statement of independent candidacy and nominating petitions on May 4, 2015. After a protest hearing, the Stark County Board of Elections deadlocked two-to-two, and Secretary of State Husted broke the tie

in favor of certifying Cicchinelli's candidacy. Richards and Schartiger then filed an original prohibition action in the Supreme Court of Ohio; Cicchinelli intervened, and 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
- Morrison v. Colley, 467 F.3d 503 (6th Cir. 2006)
- State ex rel. Monroe v. Mahoning Cty. Bd. of Elections, 137 Ohio St. 3d 62, 2013-Ohio-4490, 997 N.E.2d 524
- State ex rel. Lucas Cty. Republican Party Executive Commt. v. Brunner, 125 Ohio St. 3d 427, 2010-Ohio-1873, 928 N.E.2d 1072
- State ex rel. Coughlin v. Summit Cty. Bd. of Elections, 136 Ohio St. 3d 371, 2013-Ohio-3867, 995 N.E.2d 1194