

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, ex rel.
DANA SKAGGS, et al.,

Relators,

vs.

JENNIFER L. BRUNNER
SECRETARY OF THE STATE OF
OHIO, et al.,

Respondents.

Case No. _____

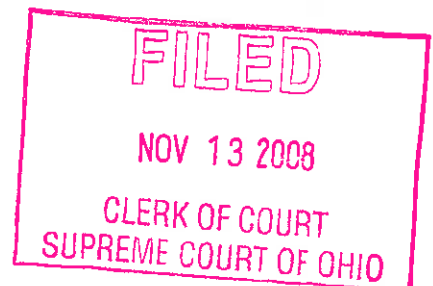
08-2206

ORIGINAL ACTION IN
MANDAMUS

RELATORS' MOTION FOR EXPEDITED CONSIDERATION

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MEMORANDUM IN SUPPORT

The instant action seeks mandamus relief compelling Respondents to comply with the mandatory requirements of R.C. 3505.181 and R.C. 3505.183(B)(1)(a), which prescribe the requirements for consideration of provisional ballots. As set forth in the Affidavit of Mathew M. Damschroder, filed contemporaneously herewith, provisional ballots currently pending before the Franklin County Board of Elections may be decisive in one or more of three undecided races. It is thus essential that all provisional ballots complying with Ohio law are properly counted and that those ballots which do not comply with the mandatory statutory requirements be excluded.

Yet, as further set forth in the Complaint and accompanying affidavit, the Secretary of State seeks to avoid this very result. Since the November 4, 2008 election, the Secretary of State has directed that the Franklin County Board of Elections consider and count the provisional ballots in a manner flatly inconsistent with Chapter 3505 and, as well, the Secretary of State's own prior directives. Neither this Court nor the public should countenance such post-election gamesmanship.

Section 9 of Supreme Court Rule X sets forth an expedited schedule for consideration of election matters given "the necessity of a prompt disposition of an original action relating to a pending election" and in order to afford "the Supreme Court adequate time for full consideration of the case." The Rule provides:

Because of the necessity of a prompt disposition of an original action relating to a pending election, and in order to give the Supreme Court adequate time for full consideration of the case, *if the action is filed within 90 days prior to the election*, the respondent shall file a response to the complaint within five days after service of the summons. Unless otherwise ordered by the Supreme Court, relator shall file any evidence and a merit brief in support of the complaint within three days after the filing of the response or, if no response is filed, within three days after the response was due. Respondent shall file any evidence and a merit

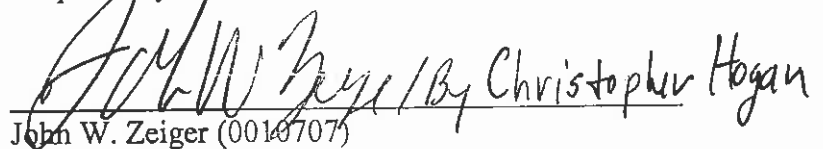
brief within three days after the filing of relator's merit brief, and relator may file a reply brief within three days after the filing of respondent's merit brief. Motions to dismiss and for judgment on the pleadings may not be filed in expedited election cases. The parties shall serve the response, evidence, and merit briefs on the date of filing by personal service, facsimile transmission, or e-mail.

[Emphasis added.]

Although this action is being filed "after" an election, the very concerns underlying Section 9 of Supreme Court Rule X are present here. Indeed, they are even more pronounced given the necessity to complete the tabulation of all votes, including provisional votes by November 25, 2008, which is the statutory date for certification of the election results.

Accordingly, time is of the essence to prevent irreparable harm.¹ Expedited consideration of this matter is therefore requested so that this Court will have the opportunity to consider and resolve this dispute and permit the Franklin County Board of Elections to determine the validity of each provisional ballot, complete the counting of all votes, and certify the election results by November 25, 2008.

Respectfully submitted,

 By Christopher Hogan

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¹ Consistent with the instant request, Relators have, separate and apart from the ordinary service of process by this Court, provided, both by hand delivery and electronic service, copies of the complaint and all related papers upon Respondents.

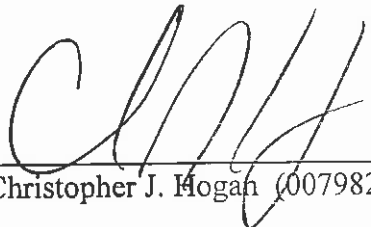
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing has been served this 13th day of November, 2008, via hand delivery and email, upon the following:

The Honorable Nancy H. Rogers
Attorney General
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