

**IN THE COURT OF APPEALS  
ELEVENTH APPELLATE DISTRICT  
GEAUGA COUNTY, OHIO**

**CASE NO. 2021-G-0004**

State of Ohio ex rel. BRIAN M. AMES

Relator-Appellant.

vs.

GEAUGA COUNTY REPUBLICAN CENTRAL AND EXECUTIVE COMMITTEES et al.

Respondent-Appellee

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**ASSIGNMENTS OF ERROR AND BRIEF OF BRIAN M. AMES, RELATOR-APPELLANT**

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ORAL ARGUMENT REQUESTED

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## STATEMENT OF THE CASE

### **1. Nature of the Case.**

This case arises from the widespread misconception that the county central and executive committees (the “Committees”) created by the General Assembly by the enactment of R.C. 3517.03 are private *internal* structures of the political parties they serve, notwithstanding at least three decisions by the Supreme Court of the United States (the “SCOTUS”) and one by the Seventh District Court of Appeals (the “7<sup>th</sup> District”) holding that a state may not meddle unnecessarily in the *internal* mechanics of political parties. The issue before the Court is whether the Committees created by statute to promote free and fair elections, are governing bodies of political parties that may operate in secret and exclude all but a very few of the members of the party and all non members. There is little difference between such operation and that

Relator-Appellant Brian M. Ames (“Mr. Ames”) will prove that the Committees are in fact *external* intermediaries the State has created to serve public policy and that the Open Meetings Act applies to them at all times.

This case originates in the Geauga County Court of Common Pleas. It seeks the enforcement of R.C. 121.22, the Open Meetings Act, for the illegal conduct of a closed meeting by a county executive committee held for the purpose of recommending a qualified elector to the Ohio Secretary of State to be appointed to the county board of elections pursuant to R.C. 3501.07.

### **2. Procedural Posture**

On February 8, 2021, Relator-Appellant Brian M. Ames (“Mr. Ames”) filed his Verified Complaint in Mandamus, Declaratory Judgment, and Injunction for Enforcement of R.C. 121.22 (the “Complaint”) (T.d.2), Instructions for Service. (T.d.3), and Case Designation Sheet. (T.d.1).

The case was assigned to Judge Carolyn J. Paschke. (T.d.2) Discovery requests were attached to the Complaint including Requests for Admission and Requests for Production of Documents.

On February 9, 2021, Summons and Complaint Sent to Respondent Geauga County Central and Executive Committees (the “Committees”) (T.d.4) and Nancy B. McArthur (the “Chairman”) (T.d.5). On February 11, 2021, service of Summons and Complaint was perfected upon the Committees (T.d.6) and the Chairmant (T.d.7).

On March 12, 2021, the Committees and the Chairman (collectively “Respondents”) filed their Notice of Entry of Appearance of Nancy C. Schuster as Counsel. (T.d.8)

On March 12, 2021, Respondents served its responses to Relator's First Requests for Admission and filed notice of same. (T.d.9)

On March 12, 2021, Respondents served and filed their Motion for Extension of Time to Answer or otherwise Respond to Relator’s Complaint. (T.d.10). On March 13, 2021, Respondents served and filed Respondents' Motion for Relief from Possible Deemed Admissions. (T.d.11). On March 13, 2021, Respondents served and filed their Amended Motion for Extension of Time to Answer or otherwise Respond to Relator’s Complaint. (T.d.12). On March 19, 2021, the trial court issued an order granting that Respondents shall have until March 19, 2021 to answer/respond (T.d.18). On March 19, 2021, the trial court issued an order granting Respondents’ Motion for Relief from Possible Deemed Admissions. (T.d.20). On March 19, 2021, the trial court issued an order granting Respondents’ Amended Motion for Extension to Answer or Otherwise Respond to Relator’s Complaint. (T.d.22).

On March 19, 2021, the trial court issued an order reassigning the case to Judge David M Ondrey (T.d.24)

On March 19, 2021, Respondents served and filed Respondents' Motion to Dismiss. (T.d.26).  
On March 22, 2021, Mr. Ames filed Relator's Opposition to Respondents' Motion to Dismiss.  
(T.d.28)

### **3. Disposition of the Case in the Trial Court.**

On March 25, 2021, the trial court issued its order: Complaint Dismissed w/Prejudice for Failure to State a Claim. (T.d.30). On March 29, 2021, Mr. Ames filed his Notice of Appeal and Docketing Statement commencing Court of Appeals case no. 2021-G-0004. (T.d.32).

### **STATEMENT OF FACTS**

Respondent Geauga County Republican Central Committee (“Central Committee”) is a county central committee consisting of one member from each election precinct in the county created by R.C. 3517.03.

Respondent Geauga County Republican Executive Committee<sup>1</sup> (“Executive Committee”) is the executive committee elected by the Central Committee pursuant to the mandate of R.C. 3517.03.

Respondent Nancy B. McArthur (“Ms. McArthur”) is the duly elected chairman of both the Central Committee and the Executive Committee (collectively “Committees”).

The General Assembly has empowered the Executive Committee to make and file a recommendation with the Ohio Secretary of State (“SOS”) for the appointment of a qualified elector to fill the vacancy of a Republican member of the Geauga County Board of Elections (“BOE”) by enacting R.C. 3501.07. The SOS provides Form 306 on which the recommendation must be reported.

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<sup>1</sup> The members of the Central Committee are also members of the Executive Committee.

On February 6, 2021 at about 10:00am, the Committees held a meeting (“Meeting”) at the Heritage Marketplace Event Center (“Event Center”) located at 15848 Nauvoo Rd, Middlefield, OH 44062. The purpose of the Meeting was to select a qualified elector, pursuant to R.C. 3501.07, to fill the vacancy of a Republican member of the BOE resulting from the expiration of term of Joan A. Windnagel on March 1, 2021.

The Meeting was conducted by statutorily created public bodies for the purpose of performing a statutory function, therefore R.C. 121.22, the Open Meetings Act, applies to the Meeting. The making of a recommendation pursuant to R.C. 3501.07 is official business of the Committees.

Mr. Ames and several others who had entered the Event Center were denied access to the Meeting, notwithstanding Mr. Ames having informed Ms. McArthur that it was required by law to be an open meeting. Mr. Ames made a video recording of his attempt to attend the Meeting and Ms. McArthur denying him entrance. Among those excluded was Kathy L. Johnson, a resident of Geauga County and member of the Republican Party who has served as Republican Precinct Election Official for the Geauga County Board of Elections as recently as November 3, 2020.

The conduct of the Meeting was in violation of R.C. 121.22, the Open Meetings Act.

### **LAW AND ARGUMENT**

#### **1. Standard of Review**

The proper standard of review is de novo. “An order granting a Civ.R. 12(B)(6) motion to dismiss is subject to de novo review.” *Jochum v. State ex rel. Mentor*, 2020-Ohio-4191 at ¶27 quoting *Perrysburg Twp. v. Rossford*, 103 Ohio St.3d 79, 2004-Ohio-4362, ¶5.

A motion to dismiss for failure to state a claim is procedural and tests whether the complaint is sufficient. *State ex rel. Hanson v. Guernsey Cty. Bd. of Commrs.*, 65 Ohio St.3d 545, 548, 605 N.E.2d 378 (1992). A trial court may not rely on allegations or evidence outside the complaint, but can only review the complaint and dismiss the case if it appears beyond a doubt that the plaintiff can prove no set of facts entitling it to recover. *State ex rel. Fuqua v. Alexander*, 79 Ohio St.3d 206, 207, 680 N.E.2d 985 (1997). The court must presume that all factual allegations in the complaint are true and make all reasonable inferences in favor of the non-movant. *Mitchell v. Lawson Milk Co.*, 40 Ohio St.3d 190, 192, 532 N.E.2d 753 (1988). However, a court should not accept as true any unsupported legal conclusions in the complaint. *Eichenberger v. Petree*, 76 Ohio App.3d 779, 782, 603 N.E.2d 366 (10th Dist.1992); *Morrow v. Reminger & Reminger Co. LPA*, 183 Ohio App.3d 40, 2009-Ohio-2665, 915 N.E.2d 696, ¶ 7 (10th Dist.).

## **FIRST ASSIGNMENT OF ERROR**

**The trial court erred by granting Respondents' Motion to Dismiss. (T.d.30)**

## **ISSUE PRESENTED FOR REVIEW AND ARGUMENT**

1. Are the county central and executive committees created by R.C. 3517.03 external intermediaries between the state and a county political party or internal structures imposed upon the party?

The General Assembly has created county central and executive committees (“County Committees”) by enacting R.C. 3517.03 which states in pertinent parts:

The controlling committees of each major political party or organization shall be \* \* \* a county central committee consisting of one member from each election precinct in the county, or of one member from each ward in each city and from each township in the county, as the outgoing committee determines \* \* \*.

All the members of such committees shall be members of the party and shall be elected for terms of either two or four years, as determined by party rules, by direct vote at the primary held in an even-numbered year. \* \* \*



Each major party controlling committee shall elect an executive committee that shall have the powers granted to it by the party controlling committee, and provided to it by law. \* \* \*

By enacting R.C. 3501.07, the General Assembly has provided to the executive committees the power to make and file a recommendation with the secretary of state for the appointment of a qualified elector the county board of elections. R.C. 3501.07 which states in pertinent parts:

At a meeting held not more than sixty nor less than fifteen days before the expiration date of the term of office of a member of the board of elections, or within fifteen days after a vacancy occurs in the board, the county executive committee of the major political party entitled to the appointment may make and file a recommendation with the secretary of state for the appointment of a qualified elector. The secretary of state shall appoint such elector, unless the secretary of state has reason to believe that the elector would not be a competent member of such board. In such cases the secretary of state shall so state in writing to the chairperson of such county executive committee, with the reasons therefor, and such committee may either recommend another elector or may apply for a writ of mandamus to the supreme court to compel the secretary of state to appoint the elector so recommended. In such action the burden of proof to show the qualifications of the person so recommended shall be on the committee making the recommendation. If no such recommendation is made, the secretary of state shall make the appointment.

The subject meeting of February 6, 2021 was held to exercise that power granted to the Executive Committee.

In 1989 the SCOTUS considered the constitutionality of sections of the California Elections Code that dictated the organization and composition of parties' governing bodies, holding them to be invalid. *Eu v. San Francisco County Democratic Central Comm.*, 489 U.S. 214, 109 S.Ct. 1013, 1025, 103 L.Ed.2d 271 (1989). “*Held*: The challenged California election laws are invalid, since they burden the First Amendment rights of political parties and their members without serving a compelling state interest.” Pp. 489 U. S. 222-233.

It is undisputed that the county executive committees are creatures of statute. The SCOTUS has determined that the county executive committees cannot be internal party structures. *Id.* at 229-233.

b) The restrictions on the organization and composition of the official governing bodies of political parties, the limits on the term of office for state central committee chairs, and the requirement that such chairs rotate between residents of northern and southern California cannot be upheld. These laws directly burden the associational rights of a party and its members by limiting the party's discretion in how to organize itself, conduct its affairs, and select its leaders. Moreover, the laws do not serve a compelling state interest. A State cannot justify regulating a party's internal affairs without showing that such regulation is necessary to ensure that elections are orderly, fair, and honest, and California has made no such showing. The State's claim that it has a compelling interest in the democratic management of internal party affairs is without merit, since this is not a case where intervention is necessary to prevent the derogation of party adherents' civil rights, and since the State has no interest in protecting the party's integrity against the party itself. Nor are the restrictions justified by the State's claim that limiting the term of the state central committee chair and requiring that the chair rotate between northern and southern California help to prevent regional friction from reaching a critical mass, since a State cannot substitute its judgment for that of the party as to the desirability of a particular party structure.

The SCOTUS has held that "a State cannot substitute its judgment for that of the party as to the desirability of a particular internal party structure, any more than it can tell a party that its proposed communication to party members is unwise". *Id.* That decision is controlling. Therefore, the General Assembly does not possess constitutional authority to impose a particular internal structure upon a political party and have not argued that the state has a compelling interest in doing so. However, it may create intermediaries necessary to further public policy and, indeed, it has done so by the enactment of certain statutes.

The creation of County Committees, if construed to be internal structures of major political parties, would necessarily constitute an intrusion into the internal affairs of those political parties by the state that the SCOTUS held to be unconstitutional in *Eu*. It must be presumed that the

General Assembly intended its enactment of R.C. 3517.03 to be in compliance with the constitutions of the state and of the United States. R.C. 1.47(A). If a statute can be interpreted two ways — one of which is constitutional and the other unconstitutional — a court must choose the constitutional interpretation. The creation of the County Committees by the enactment of R.C. 3517.03 must therefore be properly interpreted as the provision of an external intermediary body between the state and the major political parties in the respective counties.

The 7<sup>th</sup> District has opined in the following:

Certainly, in a system founded in the concept of free elections and public access, the choice to defend Star Chamber-styled politics, with its Tammany Hall implications, is unsupportable. R.C. 3517.03 merely attempts to leave the power in political parties with the members, and to avoid the eventual and natural public perception, however inaccurate, of the party as an autocratic kingdom, with its propensity for favoritism. The state's clear and compelling interest in maintaining party *member* control of the party's *leadership* by requiring some form of democratic election is reasonable. *State ex rel. Durkin v. Mahoning County Board of Elections*, 115 Ohio App.3d 180 (1996).<sup>2</sup>

The County Committees were created by statute to serve public policy and are therefore subject to other enactments of the General Assembly. These include R.C. 3517.02 that provides for the choosing of members at primary elections, R.C. 3517.04 that prescribes the conduct of the organizational meetings, and R.C. 3517.05 that establishes the term of a county central committee and the manner in which vacancies therein are filled. Being created by statute to serve public policy, the County Committees are subject to R.C. 121.22, the Open Meetings Act, at all times.

Although the Geauga County Republican Party (the “Party”) has acquiesced<sup>3</sup> to the external County Committees acting in its internal matters, the County Committees remain public bodies

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<sup>2</sup> Donald R. Ford, Joseph E. Mahoney, and Robert A. Nader, JJ., of the Eleventh Appellate District, sitting by assignment.

<sup>3</sup> Acquiesce: a person’s tacit or passive acceptance; implied consent to an act. Black’s Law Dictionary, Eleventh Edition, page 39.

at all times. Since the Party could create within a constitution private bodies with the same membership as the County Committees and then conduct their internal matters in private meetings of those bodies, any hardship the Party may endure do to the conduct of its internal in open meetings comes of its own choosing.

The county central and executive committees created by R.C. 3517.03 are external intermediaries between the state and a county political party rather than internal structures imposed upon the party. Therefore, the trial court's order must be reversed and the matter remanded for further proceedings.

#### **ISSUE PRESENTED FOR REVIEW AND ARGUMENT**

2. Did the General Assembly by the enactment of R.C. 3501.07 confer upon a county executive committee more than the making and filing of a recommendation with the secretary of state for the appointment of a qualified elector to fill a vacancy in the respective county board of elections?

Respondents attempt to distinguish R.C. 3501.07 from R.C. 305.02 by arguing that, while the latter confers upon a county central committee the power of appointing persons to fill vacancies in certain county offices, the former confers upon a county executive committee nothing more than the right to recommend a qualified elector to fill a vacancy in the respective county board of elections to the secretary of state "who retains the ultimate sovereign 'police power' to fill Board of Elections vacancies by appointment." Their attempt fails because R.C. 3501.07 also imposes on the SOS a duty to appoint such elector or state in writing his reasons why he has not done so and provides that the county executive committee may apply for a writ of mandamus to the supreme court to compel the secretary of state to appoint the elector so recommended. R.C. 3501.07 states in pertinent parts:

At a meeting held not more than sixty nor less than fifteen days before the expiration date of the term of office of a member of the board of elections, or

within fifteen days after a vacancy occurs in the board, the county executive committee of the major political party entitled to the appointment may make and file a recommendation with the secretary of state for the appointment of a qualified elector. The secretary of state shall appoint such elector, unless the secretary of state has reason to believe that the elector would not be a competent member of such board. In such cases the secretary of state shall so state in writing to the chairperson of such county executive committee, with the reasons therefor, and such committee may either recommend another elector or may apply for a writ of mandamus to the supreme court to compel the secretary of state to appoint the elector so recommended. In such action the burden of proof to show the qualifications of the person so recommended shall be on the committee making the recommendation. If no such recommendation is made, the secretary of state shall make the appointment.

As demonstrated in the events surrounding the appointment Donald Varian to the Summit County Board of Elections for the four-year term beginning March 1, 2008 as detailed in *State ex rel. Summit Cty. Republican Party Executive Commt. v. Brunner*, 118 Ohio St.3d 515, 2008-Ohio-2824.

Any person may make a recommendation to the SOS. The SOS may indeed appoint an elector recommend by any person to the board elections. This is precisely what occurred when Wayne Jones, a member of the board of elections and the finance chairman of the Summit County Democratic Party, recommended that Donald Varian be appointed to fill the Republican vacancy on the Summit County Board of Elections and the SOS, after twice rejecting Republican Party Executive Committee's recommendation, appointed the elector recommended by Democrat Wayne Jones. *Summit ¶¶4-13*. It was through Republican Party Executive Committee's application to the supreme court for a writ of mandamus that a writ issued compelling the SOS to appoint the elector it had recommended, Brian K. Daley. Wayne Jones had no right to apply for such a writ to enforce his recommendation. Therefore, it is not the recommendation that is determinative of the rights conferred upon a county executive committee but the right to proceed in mandamus to compel the appointment of the recommended elector when rejected by the SOS.

The General Assembly by the enactment of R.C. 3501.07 conferred upon a county executive committee more than the making and filing of a recommendation with the secretary of state for the appointment of a qualified elector to fill a vacancy in the respective county board of elections. Therefore, the trial court's order must be reversed and the matter remanded for further proceedings.

**ISSUE PRESENTED FOR REVIEW AND ARGUMENT**

3. Is the appointment of a qualified elector to fill a vacancy in a county board of elections an internal affair of a county political party?

R.C. 3501.07 states in pertinent parts:

At a meeting held not more than sixty nor less than fifteen days before the expiration date of the term of office of a member of the board of elections, or within fifteen days after a vacancy occurs in the board, the county executive committee of the major political party entitled to the appointment may make and file a recommendation with the secretary of state for the appointment of a qualified elector. The secretary of state shall appoint such elector, unless the secretary of state has reason to believe that the elector would not be a competent member of such board. In such cases the secretary of state shall so state in writing to the chairperson of such county executive committee, with the reasons therefor, and such committee may either recommend another elector or may apply for a writ of mandamus to the supreme court to compel the secretary of state to appoint the elector so recommended. In such action the burden of proof to show the qualifications of the person so recommended shall be on the committee making the recommendation. If no such recommendation is made, the secretary of state shall make the appointment.

Neither the SOS nor a county board of elections are internal to a county political party.

Therefore, the appointment of a qualified elector to fill a vacancy in a county board of elections is not an internal affair of a county political party. The trial court's order must be reversed and the matter remanded for further proceedings.

**ISSUE PRESENTED FOR REVIEW AND ARGUMENT**

4. Is this Court's ruling in *Jones v. Geauga Cty Republican Party Cent. Commt.*, 2017-Ohio-2930 applicable to this case?

The question in *Jones* was the application of Ohio's Open Meetings Act to a central committee meeting to amend its internal bylaws and appoint new members. *Jones* at ¶35. Since this case alleges neither the amendment of bylaws, nor the appointment of new members, nor appointments to fill vacancies in county offices, *Jones* is inapposite and must be disregarded.

#### **ISSUE PRESENTED FOR REVIEW AND ARGUMENT**

5. Is the Sixth Circuit's ruling in *Banchy v. Republican Party of Hamilton County* (6th Cir. 1990), 898 F.2d 1192 applicable to this case?

The question in *Banchy* was "whether the election of political party officers is arguably state action under 42 U.S.C. § 1983 for the purpose of an award of attorneys' fees." *Banchy* 898 F.2d 1193. The plaintiffs, four newly elected Republican precinct executives, filed suit alleging that the Republican Party of Hamilton County, Ohio, and various officials of the party had denied them the right to participate in the election of their respective ward chairmen and thereby violated section 1983. *Id.* After the filing of the suit, the defendants agreed to hold new elections for ward chairmen. *Id.* The plaintiffs then moved for the award of attorneys' fees pursuant to 42 U.S.C. § 1988 claiming that their lawsuit was the catalyst for the Republican Party's action. *Id.* The District Court denied relief finding that the Republican Party's actions did not constitute state action which the Sixth Circuit affirmed. *Id.*

Since this case concerns neither state action, the election of ward chairmen, nor the award of attorney fees, *Banchy* is inapposite and must be disregarded.

#### **CONCLUSION**

The trial court erred by granting Respondents' Motion to Dismiss. The county central and executive committees created by R.C. 3517.03 are external intermediaries between the state and a county political party rather than internal structures imposed upon the party. The General

Assembly by the enactment of R.C. 3501.07 conferred upon a county executive committee more than the making and filing of a recommendation with the secretary of state for the appointment of a qualified elector to fill a vacancy in the respective county board of elections. The appointment of a qualified elector to fill a vacancy in a county board of elections is not an internal affair of a county political party, therefore, this Court's ruling in *Jones v. Geauga Cty Republican Party Cent. Commt.*, 2017-Ohio-2930 is not applicable to this case. Since this case concerns neither state action, the election of ward chairmen, nor the award of attorney fees, the Sixth Circuit's ruling in *Banchy v. Republican Party of Hamilton County* (6th Cir. 1990), 898 F.2d 1192 is not applicable to this case.

As creatures of statute to serve public policy, the County Committees are subject to R.C. 121.22, the Open Meetings Act at all times. The exclusion of the public from Respondent's meeting held on February 6, 2021 at about 10:00am violated the Open Meetings Act. Therefore, the trial court's order must be reversed and the matter remanded for proceedings on the merits of the case.

Respectfully Submitted,



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Brian M. Ames  
Relator-Appellant



**PROOF OF SERVICE**

I hereby certify that on the 26<sup>th</sup> day of April, 2021 a true copy of the foregoing was, in accordance with Civ.R. 5(B)(2)(f), sent by electronic mail to:

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