

**IN THE SUPREME COURT OF OHIO**

**STATE EX REL. TANYA CONRATH**

6541 Old US Route 33

Athens, OH 45701

**Relator,**

-v-

**OHIO SECRETARY OF STATE FRANK LAROSE**

22 North Fourth Street, 16<sup>th</sup> Floor

Columbus, Ohio 43214

**ATHENS COUNTY BOARD OF ELECTIONS**

15 S. Court St., #130

Athens, OH 45701

**MEIGS COUNTY BOARD OF ELECTIONS**

113 E. Memorial Dr., Suite A

Pomeroy, OH 45769

**MORGAN COUNTY BOARD OF ELECTIONS**

155 E. Main St. Room 157

McConnelsville, OH 43756

**WASHINGTON COUNTY BOARD OF ELECTIONS**

204 Davis Avenue

Suite B

Marietta, OH 45750

**Respondents.**

**Case No.**

**Original Action in Mandamus**

**Expedited Election Matter Under  
S.Ct.Prac.R. 12.08**

**Peremptory Writ Requested**

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**VERIFIED COMPLAINT FOR WRIT OF MANDAMUS**

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This action is brought in the name of the State of Ohio on relation of Relator Tanya Conrath, who avers as follows:

**NATURE OF THE ACTION AND JURISDICTION**

1. This is an original action in mandamus against Ohio Secretary of State Frank LaRose, the Athens County Board of Elections, the Meigs County Board of Elections, the Washington County Board of Elections, and the Morgan County Board of Elections commenced pursuant to the Court’s original jurisdiction under Article IV, Section 2(B)(1)(b) of the Ohio Constitution and Chapter 2731 of the Ohio Revised Code, both of which govern mandamus actions, as well as Article IV, Section 2(B)(1)(f), which gives the Court original jurisdiction “[i]n any cause on review as may be necessary to its complete determination.”

2. Relator’s action seeks an Order, Judgment, and/or Writ from the Court compelling Respondents to place Relator Conrath on the November 8, 2022 general election ballot as the nominee of the Democratic Party in the 94th District Ohio House of Representatives election.

3. Relator affirmatively alleges that she has acted with the utmost diligence and that there has been no unreasonable delay or lapse of time in asserting her rights given that that she commenced the action within three days following the Secretary of State’s issuance of his Tie Vote decision. Relator also affirmatively alleges that there is no prejudice to the Respondents. *See State ex rel. Polo v. Cuyahoga Cty. Bd. of Elections*, 74 Ohio St.3d 143, 145, 656 N.E.2d 1277 (1995).

**PARTIES**

4. Relator Tanya Conrath is a qualified elector who affiliates with the Democratic Party and resides at 6541 Old US Route 33, Athens, Ohio 45701, which is in State Representative District 94 for the November 8, 2022 general election. Relator Conrath has been

selected by the Democratic Party to be its candidate for the 94th District of the Ohio House at the November 8, 2022 general election.

5. Respondent Secretary of State Frank LaRose is the chief elections officer of Ohio and among his duties is the responsibility to decide tie votes submitted to his office from the county Boards of Elections. R.C. 3501.11(X)

6. Respondents Athens County Board of Elections, Meigs County Board of Elections, Morgan County Board of Elections, and Washington County Board of Elections are the duly established and acting election authorities for conducting elections in their respective counties for candidates for the 94th District of the Ohio House of Representatives. Athens County is the most populous county of the 94<sup>th</sup> House District.

#### **STATEMENT OF FACTS**

7. Rhyan Goodman ran for State Representative in District 94 in the Democratic Party primary election that was held on August 2, 2022.

8. In the August 2, 2022 primary Mr. Goodman ran unopposed and unofficial results from the night of the election indicated that all votes in his race were cast in his favor.

9. Pursuant to R.C. 3513.30(D), on August 8, 2022 Mr. Goodman filed with the Athens County Board of Elections, the most populous county of the legislative district, a Notice of Withdrawal of his candidacy. This date was after all ballots were cast, but prior to the official certification of the election. A true and accurate copy of the Notice of Withdrawal is attached hereto as Exhibit A.

10. The statutory deadline for a political party to certify the name of a replacement candidate for the November 8, 2022 general election pursuant to R.C. 3513.31(B) was 4:00 p.m., August 15, 2022, the 86th day before the day of the general election. Pursuant to R.C. 3505.32, the four Respondent County Boards of Elections were prohibited from beginning the official

canvas until August 13, 2022 and required to begin it by August 17, 2022. The Athens County Board of Elections was not able to move its official certification date, which it would have implicated 15 other counties. This practical reality was discussed and acknowledged by the Athens County Board of Elections members at its August 17, 2022 meeting.

11. On August 14, 2022 following Mr. Goodman's withdrawal of his candidacy, and pursuant to R.C. 3513.31, a district committee made up of the chairpersons and secretaries of all the counties included within House District 94 (Athens, Meigs, Morgan, and Washington) formed the District Committee and met to select a candidate who would replace Mr. Goodman.

12. With the impending August 15, 2022 statutory deadline approaching, the District Committee voted and completed Form 289 to name Relator, Tanya Conrath, as the replacement candidate for Rhyan Goodman on August 14<sup>th</sup>, 2022. Form 289 was filled out with the Athens County Board of Elections at 10:36 am on August 15<sup>th</sup>, 2022. Relator Conrath signed and accepted the District Committee's nomination. A true and accurate copy of the Form 289 is attached hereto as Exhibit B.

13. August 17, 2022 the Athens County Board of Elections met to consider placement of Relator Conrath on the ballot for the general election. All members of the Board agreed that Relator Conrath and the Central Committee had properly and timely filed the replacement candidate forms. This meeting ended in a tie vote that was sent to Secretary LaRose. A true and accurate copy of the No Vote Statement and the Yes Vote Statement provided by board members are respectively attached hereto as Exhibit C and Exhibit D.

14. The Athens County Board of Elections completed the official certification of the August 2, 2022 primary election on August 19, 2022. A true and accurate copy of the certified election results are attached hereto as Exhibit E.

15. On September 13, 2022 Secretary LaRose broke the tie in favor of prohibiting

Relator Conrath from being placed on the ballot for the November 8, 2022 general election. A true and accurate copy of the Tie Vote decision is attached hereto as Exhibit F.

16. The holding paragraph of the tie vote decision states the following:

In this case, Rhyan Goodman submitted his withdrawal from the race for the 94th House District prior to the official canvass and certification of official results of the August 2, 2022 Primary Election. As such, Rhyan Goodman was not the official nominee and party candidate at the time of his withdrawal. The Athens County Democratic Party's district committee could not replace him prior to the official certification of the August 2, 2022 Primary Election results. Moreover, the Board did not reschedule its official canvass

17. Secretary of State LaRose's Tie Vote decision is silent regarding the relevant precedent that provides direction on the interpretation of R.C. 3513.31 and provides no precedent of his own to support his decision.

### **ALLEGATIONS IN SUPPORT OF CLAIM**

18. R.C. 3513.31(B) is the controlling statute to replace a candidate when a candidate at a primary election who becomes the nominee of a party and then withdraws. It provides that:

If a person nominated in a primary election as a party candidate for election at the next general election, whose candidacy is to be submitted to the electors of a district comprised of more than one county but less than all of the counties of the state, withdraws as that candidate or is disqualified as that candidate under section 3513.052 of the Revised Code, the vacancy in the party nomination so created may be filled by a district committee of the major political party that made the nomination at the primary election, if the committee's chairperson and secretary certify the name of the person selected to fill the vacancy by the time specified in this division, at a meeting called for that purpose. ... The chairperson and secretary of the meeting shall certify in writing and under oath to the board of elections of the most populous county in the district, not later than four p.m. of the eighty-sixth day before the day of the general election, the name of the person selected to fill the vacancy. The certification must be accompanied by the written acceptance of the nomination by the person whose name is certified.

19. There is no language in R.C. 3513.31 that provides that a political party must wait

until after official certification to meet and select a replacement candidate after the sole candidate at the primary withdraws following the casting of all ballots in the primary election. Analogous case law, where R.C. 3513.31 was central to the issue, establishes that a political party can meet and make the selection in anticipation of the vacancy in the nomination becoming effective upon official certification. *State ex. Rel. Barth v. Hamilton County Bd. of Elections*, 65 Ohio St. 3d 219.

20. Boards of elections have a statutory duty to certify the votes cast for a candidate at a primary election when the candidate withdraws after the election, including when the withdrawal is before official certification. *State ex rel. White v. Franklin County Bd. of Elections*, 65 Ohio St. 3d 5.

21. While a withdrawal before official certification ends the personal candidacy of a candidate who withdraws after the primary, the candidacy retains legal vitality for purposes of the right of a political party to select a replacement candidate. *State ex rel. White v. Franklin County Bd. of Elections*, 65 Ohio St. 3d 5.

22. All ballots to be counted must be cast by the date of the primary or mailed by the day before and received within 10 days after. The official certification of votes cast at the primary election relates back in time to the date of the primary. This is a ministerial function that by necessity cannot be completed until after the election and the deadline for mailed ballots to be returned. But it does not change results; it confirms the results.

23. Election officials have a duty to place on the ballot a candidate selected by a political party in accordance with R.C. 3513.31 when the selection is made after the withdrawal of the prior candidate including when made before official certification.



## CLAIMS FOR RELIEF

**COUNT 1: Respondents have a clear legal duty to place Relator Tanya Conrath on the November 8, 2022 general election ballot as a candidate for the Democratic Party Nominee for 94th District of the Ohio House, and Relator Conrath has a legal right to the same.**

24. Each and every allegation contained above is incorporated as if fully rewritten herein.

25. To be entitled to a writ of mandamus, a relator must establish, by clear and convincing evidence, (1) a clear legal right to the requested relief, (2) a clear legal duty on the part of the respondents to provide it, and (3) the lack of an adequate remedy in the ordinary course of the law. *See, e.g., State ex rel. Grumbles v. Delaware Cty. Bd. of Elections*, 165 Ohio St.3d 552, 2021-Ohio-3132, 180 N.E.3d 1099, ¶ 8.

26. When reviewing the decisions of the Ohio Secretary of State and county boards of elections, the standard is whether the Secretary and/or boards engaged in fraud or corruption, abused their discretion, or acted in clear disregard of applicable legal provisions. *Id.*

27. Relator Conrath and the District Committee fully complied with R.C. 3513.31 in the selection of Relator as the replacement candidate for the Democratic Party for the 94<sup>th</sup> District for State Representative at the November 8, 2022 general election.

28. Respondent LaRose's Tie Vote decision that disallows Relator Conrath a place on the ballot for the November 8, 2022 general election is an abuse of discretion and/or in clear disregard of applicable law.

29. Respondents have a clear legal duty to place Relator Conrath's name on the November 8, 2022 general election ballot as the candidate of the Democratic Party for State Representative of the 94<sup>th</sup> District.

30. Relator Conrath has a corresponding clear legal right to have her name placed on

the November 8, 2022 general election ballot as the candidate of the Democratic Party for State Representative of the 94<sup>th</sup> District.

31. Relator Conrath lacks an adequate remedy in the ordinary course of the law due to the proximity of the November 8, 2022 general election.

**PRAYER FOR RELIEF**

WHEREFORE, Relator respectfully prays the Court to grant the following relief:

A. Issue an Order, Judgment and/or Writ of Mandamus ordering Respondents to place Relator Conrath's name on the November 8, 2022 general election ballot as the candidate of the Democratic Party for State Representative of the 94<sup>th</sup> District.

B. Grant a Peremptory Writ of Mandamus ordering the relief set forth above after the Answers to the complaint;

C. Assess the costs of the action against the Secretary of State; and

D. Award such other relief as may be appropriate.

Respectfully submitted,

Donald J. McTigue (0022849)

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## CERTIFICATE OF SERVICE

I hereby certify that the foregoing Verified Complaint was sent via email the 16<sup>th</sup> day of September, 2022 to the following:

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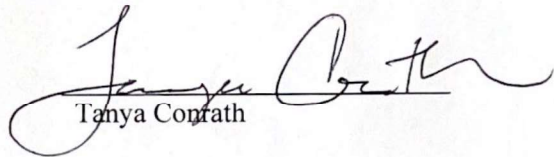
Nicole Coil, ncoil@wcgov.org  
*Counsel for Respondent Washington County Board of Elections*

/s/ Donald J. McTigue  
Donald J. McTigue (0022849)


**VERIFICATION**

Athens County  
/s  
State of Ohio

I, Tanya Conrath, Relator, having been duly sworn and cautioned according to law, declare that I am over the age of eighteen years and am competent to testify as to the factual allegations set forth above in the Complaint, that I have read the allegations and referenced exhibits, and that such allegations are true and accurate based on my personal knowledge.

  
Tanya Conrath

Sworn to and subscribed before me, a Notary Public in and for the State of Ohio, on  
September 16, 2022.

  
Notary Public

