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ADVISORY 2011-02

March 1, 2011

To: All County Boards of Elections

Re: Clarification on Restrictions of Candidacies for the General Election

Summary

1. A person whose candidacy was submitted to the voters at the primary election, but who was not nominated *may file* to become a candidate by nominating petition or by declaration of intent to be a write-in candidate at the general election held in the same year *only* for one of the following offices:
 - member of the state board of education,
 - member of a city, local, or exempted village board of education,
 - member of a governing board of an educational service center, or
 - Township trustee.
2. A person who filed for candidacy on the primary ballot, but whose candidacy was not submitted to the voters, either because the person's petitions were not certified or because the person withdrew as a candidate, *can be* a write-in candidate for the same office or some other office at the general election held in the same year.¹
3. This advisory partially supersedes Advisory 2007-08.

Discussion

Advisory 2007-08 was issued to advise boards of elections that write-in candidates at a general election were not affected by *Morrison v. Colley*, 467 F.3d 502 (6th Cir. 2006). The Advisory stated that a board of elections had to consider if the write-in candidacy was barred "by the prohibition in R.C. 3513.041 against a person running for multiple offices in the same election cycle/election year." The Advisory further interpreted the phrase "same election" in the second paragraph of R.C. 3513.041 to mean "the same election *cycle*/the same election *year*. ***"

Shortly thereafter, the Supreme Court of Ohio interpreted the phrase "same election" in R.C. 3513.254 in *State ex rel. Brinda v. Lorain Cty. Bd. of Elections*, 115 Ohio St.3d 299, 2007-Ohio-5228 (attached). The Court found that that the primary election and general election are separate

¹ If a person filed to be a candidate for nomination at the primary election but the person's petitions were not certified or the person withdrew as a candidate and no primary election was ultimately required, the person can still be a write-in candidate for the same office or some other office at the general election held in the same year.

elections, rather than two parts of the same election. In other words, “same election” does not mean “the same election cycle/the same election year” as noted in Advisory 2007-08. Accordingly, to the extent that the *Brinda* decision conflicts with Advisory 2007-08, the advisory is superseded.² However, this advisory does not supersede Advisory 2007-08 to the extent it states: (1) *Morrison* does require that an independent candidate in Ohio must truly be unaffiliated with a political party and that claim of non-affiliation must be made in good faith; and (2) R.C. 3513.041 *does not* require write-in candidates for the general election to be unaffiliated with a political party.

Additionally, the Ohio Supreme Court recently clarified the term “seek” as used in 3513.04. The Ohio Supreme Court held that because the word “seeks” is limited in the statute by the phrase “at a primary election” the Court found that “seek” must mean that the person attempting to become the party nominee actually be a choice that can be selected by voters at the primary election. *State ex rel. Knowlton v. Noble Cty. Bd. of Elections*, 126 Ohio St.3d 483, 2010-Ohio-4450 (attached).

Relevant Statutes

R.C. 3513.04 generally prevents persons who have unsuccessfully sought a party nomination³ at a primary election from running for the same or a different office at the following general election unless the person wants to run for office of member of a city, local, or exempted village board of education, office of member of a governing board of an educational service center, or office of township trustee.⁴ The statute provides in pertinent part:

No person who seeks party nomination for an office or position at a primary election by declaration of candidacy or by declaration of intent to be a write-in candidate * * * **shall be permitted** to become a candidate by nominating petition or by declaration of intent to be a write-in candidate **at the following general election for any office other than** the office of member of the state board of education, office of member of a city, local, or exempted village board of education, office of member of a governing board of an educational service center, or office of township trustee.

(Emphasis added.)

R.C. 3513.041 prohibits a person from being a write-in candidate if the person has already filed to be a candidate or has become a candidate for the same election. The statute provides in pertinent part:

² The *Brinda* interpretation of “same election” applies to all the statutes in R.C. Chapter 3513 that use the phrase “same election.”

³ While R.C. 3513.04 applies to any candidate whose candidacy was submitted to the voters at a primary election regardless of whether the candidate was successful, this portion of the Advisory only addresses those candidates who were not nominated.

⁴ The prohibition in R.C. 3513.041 does not apply to a person seeking to run as a write-in candidate for a federal office.

A board of elections shall not accept for filing the declaration of intent to be a write-in candidate of a person seeking to become a candidate if that person, for **the same election**, has already filed a declaration of candidacy, a declaration of intent to be a write-in candidate, or a nominating petition, or has become a candidate through party nomination at a primary election or by the filling of a vacancy under section 3513.30 or 3513.31 of the Revised Code* * *.

(Emphasis added.)

R.C. 3513.254 prohibits a board of elections from accepting a nominating petition of a person seeking to be a candidate for a city, local, or exempted village board of education if that person has already filed a declaration of candidacy to be a candidate for a municipal or township office at the same election. The statute provides in pertinent part:

(B) Nominating petitions shall be filed with the board of elections not later than four p.m. of the seventy-fifth day before the day of the general election * * *. A board of elections **shall not accept for filing** a nominating petition of a person if that person, **for the same election**, has already filed a declaration of candidacy, a declaration of intent to be a write-in candidate, or a nominating petition, or has become a candidate through party nomination at a primary election or by the filling of a vacancy under section 3513.30 or 3513.31 of the Revised Code for any other position as a member of a city, local, or exempted village board of education or position as a member of a governing board of an educational service center, or for a municipal or township office.

(Emphasis added.)

Conclusion

R.C. 3513.04 prohibits a person whose candidacy was submitted to the electors at a primary election from filing to become a candidate by nominating petition or by declaration of intent to be a write-in candidate at the general election held in the same year *unless* the person is seeking to be a candidate for the state board of education, a city, local, or exempted village board of education, a governing board of an educational service center, or township trustee. (See *State ex rel. Knowlton v. Noble Cty. Bd. of Elections*.)

In contrast, R.C. 3513.041 does not prohibit a person who filed a declaration of candidacy and petition or a declaration of intent to be a write-in candidate for the primary election, but whose candidacy was not submitted to the voters at the primary election, either because the person's petition or declaration of intent to be a write-in was rejected or because the person withdrew as a candidate, to be a write-in candidate for the same office or some other office at the general election held in the same year. (See *Brinda v. Lorain Cty. Bd. of Elections*.)

R.C. 3513.254 prohibits a board of elections from accepting the nominating petition of a person seeking to be a candidate for a city, local, or exempted village board of education if that person has already filed a declaration of candidacy to be a candidate for a municipal or township office at the same election. The primary and general elections *are not* the same election.

If you have additional questions or concerns please feel free to direct them to your assigned Elections Counsel at (614) 466-2585 or by e-mail.

Sincerely,

A handwritten signature in blue ink that reads "Jon Husted". The signature is fluid and cursive, with the first name "Jon" and last name "Husted" clearly legible.

Jon Husted
Ohio Secretary of State

THE STATE EX REL. KNOWLTON V. NOBLE COUNTY BOARD
OF ELECTIONS ET AL.

[Cite as *State ex rel. Knowlton v. Noble Cty. Bd. of Elections*,
126 Ohio St.3d 483, 2010-Ohio-4450.]

*Sheriffs — Qualifications for office — Postsecondary-education requirement —
R.C. 311.01(B)(9) — Writ of prohibition to prevent certification of write-
in candidate denied.*

(No. 2010-1512 — Submitted September 16, 2010 — Decided
September 22, 2010.)

IN PROHIBITION AND MANDAMUS.

Per Curiam.

{¶ 1} This is an expedited election action for writs of prohibition and mandamus to prevent respondents, the Noble County Board of Elections and its members, from certifying Stephen S. Hannum’s write-in candidacy for the office of Noble County sheriff at the November 2, 2010 general election. Because the board of elections neither abused its discretion nor clearly disregarded R.C. 311.01(B)(9) or 3513.04 by certifying Hannum’s candidacy, we deny the writ of prohibition. We dismiss the mandamus claim for lack of jurisdiction.

Facts

Candidacy for Primary Election

{¶ 2} In May 2009, Stephen S. Hannum was appointed Noble County sheriff after Landon Smith resigned. Relator, Denny R. Knowlton Jr., a registered Democrat and Noble County resident, filed a protest pursuant to R.C. 3513.05 to prevent the board of elections and its members from placing Hannum’s name on the primary-election ballot. Knowlton claimed that Hannum did not meet the

qualifications in R.C. 311.01(B)(9) to be an eligible candidate for sheriff. Knowlton was the other candidate for the Democratic Party nomination for sheriff.

{¶ 3} At a hearing before the board of elections on Knowlton’s protest, Hannum admitted that he had not served as a peace officer at the rank of corporal or above for the period of time specified in R.C. 311.01(B)(9)(a). In attempting to satisfy the alternative postsecondary-education requirement in R.C. 311.01(B)(9)(b), Hannum submitted two uncertified copies of his academic record from Washington State Community College in Marietta, Ohio. The transcripts indicated that Hannum had earned a total of 92 credits, including three for a life-experience portfolio and the remaining 89 credits for life experience, with 29 of those credits for Ohio Peace Officer Training Academy (“OPOTA”) courses, which were designated as “OPOTA I,” “OPOTA II,” and “OPOTA III.” At the hearing, Hannum claimed that 72 credit hours at Washington State Community College were equivalent to two years of postsecondary education. At the conclusion of the hearing, the board denied Knowlton’s protest against Hannum’s candidacy.

Knowlton I

{¶ 4} Knowlton filed an expedited election action in this court for writs of mandamus and prohibition to prevent the board and its members from certifying Hannum’s candidacy for the Democratic Party nomination for Noble County sheriff and placing his name on the May 4, 2010 primary-election ballot.

{¶ 5} In *State ex rel. Knowlton v. Noble Cty. Bd. of Elections*, 125 Ohio St.3d 82, 2010-Ohio-1115, 926 N.E.2d 284 (“*Knowlton I*”), we granted the requested writ of prohibition to prevent Hannum’s candidacy at the primary election. We held that “the board and its members abused their discretion and clearly disregarded R.C. 311.01(B)(9) by denying Knowlton’s protest and

certifying Hannum's candidacy for sheriff at the May 4 primary election because Hannum did not satisfy any of the three categories in that subsection." Id. at ¶ 34.

{¶ 6} More specifically, we held that Hannum had failed to satisfy the postsecondary-education requirement of R.C. 311.01(B)(9)(b) because at least 29 credits had been earned for ineligible peace-officer training:

{¶ 7} "Notwithstanding the board's suggestions to the contrary, the evidence before the board at the protest hearing supports the conclusion that Hannum has double-counted credits earned for peace-officer training contrary to our decision in [*State ex rel.*] *Wellington [v. Mahoning Cty. Bd. of Elections*, 120 Ohio St.3d 198, 2008-Ohio-5510, 897 N.E.2d 641]. The OPOTA courses specified on the transcripts that Hannum submitted refer to courses he has taken at the Ohio Peace Officer Training Academy. In fact, the board and its members do not claim that "OPOTA" refers to anything other than academy courses. These courses are manifestly for 'peace officer training,' which, according to *Wellington*, 120 Ohio St.3d 198, 2008-Ohio-5510, 897 N.E.2d 641, at ¶ 30, do not constitute course credit that can satisfy the R.C. 311.01(B)(9)(b) postsecondary-education requirement.

{¶ 8} "Therefore, because 29 credits that Hannum earned were for peace-officer training, they could not be counted toward the postsecondary-education requirement of R.C. 311.01(B)(9)(b). Furthermore, any other 'life-experience' credits related to his job as a peace officer were also ineligible for credit under R.C. 311.01(B)(9)(b) because R.C. 311.01(B)(8) already accounts for Hannum's employment as a peace officer. A contrary holding would render R.C. 311.01(B)(9)(b) superfluous in these circumstances and would permit postsecondary-education credit even though it duplicates other distinct criteria in R.C. 311.01(B) for qualification as a candidate for sheriff. Thus, Hannum earned at most only 63 credits, which, by his own testimony at the protest hearing, is

insufficient to satisfy the postsecondary-education requirement of R.C. 311.01(B)(9)(b).” Id. at ¶ 32-33.

Candidacy for General Election

{¶ 9} On July 26, 2010, Hannum filed a declaration of intent to be a write-in candidate for Noble County sheriff. Knowlton asked the board of elections whether it had sought information from Hannum relating to his qualifications for his write-in candidacy, and the board then requested that Hannum “provide evidence of the qualifications he has acquired that were deemed lacking by the Supreme Court.”

{¶ 10} On August 13, 2010, Knowlton filed a protest with respondent Noble County Board of Elections against Hannum’s candidacy. Knowlton claimed that Hannum did not meet the postsecondary-education requirement of R.C. 311.01(B)(9)(b) and that R.C. 3513.04 barred his candidacy at the general election after he had unsuccessfully sought the Democratic Party nomination for the same office at the preceding primary election. In his protest, Knowlton claimed that it was filed pursuant to R.C. 3519.16.

{¶ 11} On August 24, the board of elections held a hearing on Knowlton’s protest against Hannum’s write-in candidacy. Hannum requested that Knowlton’s protest be denied because the protest erroneously referred to R.C. 3519.16 and thus failed to properly invoke the board’s authority. The board noted the objection but decided to allow the parties to address the merits of the protest and to decide the protest on the merits.

{¶ 12} At the hearing, Knowlton presented no witnesses but submitted uncertified copies of Hannum’s transcript from Washington State Community College dated January 26 and February 22, 2010. Knowlton also submitted a letter dated August 12, 2010, in which Michael D. Whitable, the registrar of the community college, stated that “the minimum of 90 credit hours at Washington State Community College would be equivalent to a two year post secondary

education.” The registrar, however, did not indicate whether these two years of postsecondary education were either the minimum required for the school or for the R.C. 311.01(B)(9)(b) postsecondary-education requirement.

{¶ 13} Hannum submitted both testimonial and documentary evidence. An August 18, 2010 college transcript established that by June 2010, Hannum had earned 14 credits in addition to the 92 credits he had previously earned that were considered by the court in *Knowlton I*, which represented a total of 106 credits earned by him at Washington State Community College. The 106 credits included the 29 credits for OPOTA courses that constituted peace-officer training and were held by the court in *Knowlton I* to be ineligible to be counted toward the postsecondary-education requirement of R.C. 311.01(B)(9)(b).

{¶ 14} In an August 19, 2010 letter from the college registrar to the board of elections, the registrar verified that Hannum was considered by the school to have completed the equivalent of two years of postsecondary education and that students at the school are required to carry a minimum of 12 credit hours per quarter to be considered full-time students:

{¶ 15} “Please be advised that Stephen S. Hannum is considered to have completed the equivalent of two years post-secondary education at Washington State Community College. Mr. Hannum has not completed an associate degree. Students must carry a minimum of 12 credit hours per quarter to be considered full-time.

{¶ 16} “Courses with the grade of L ‘Life Experience,’ are applicable towards a college degree just the same as if the course was graded with a letter of A, B, or C.

{¶ 17} “All degree programs offered at Washington State Community College are approved by the Ohio Board of Regents.”

{¶ 18} Hannum testified that if the 29 credits for OPOTA courses were deducted from his total of 106 credits earned from Washington State Community

College, he would still have 77 credits, which exceeds the 72 credit hours required for two years of postsecondary education. According to Hannum’s counsel in his argument before the board of elections at the protest hearing, this calculation of 72 hours is based on 12 hours per quarter to be a full-time student with three quarters per year for two years. Hannum further testified that the life-experience credits that he earned for criminal-justice courses came from his experiences before January 2007.

{¶ 19} At the conclusion of the hearing, the board of elections denied Knowlton’s protest. As detailed in a subsequent written decision, the board concluded that Hannum had met the educational requirements of R.C. 311.01(B)(9) to be an eligible sheriff’s candidate and that R.C. 3513.04 did not bar his write-in candidacy. More specifically, the board made the following pertinent findings:

{¶ 20} “3. Washington State Community College is a duly authorized and registered post secondary institution governed by the Ohio Board of Regents, and authorized to grant post secondary credit for degrees or elective course work.

{¶ 21} “4. Twelve credit hours per quarter is required to maintain full time student status, thus requiring 36 hours per year or 72 hours over the course of two years to qualify as two years of full time post secondary education.

{¶ 22} “5. All courses for grade or by portfolio were approved by an instructor and defined by course syllabus.

{¶ 23} “6. Excluding the 29 hours of OPOTA course work, Respondent has completed 77 hours of post secondary education as of June 16, 2010.

{¶ 24} “7. The Board further finds that §3513.04 ORC is interpreted by the Secretary of State’s Office to incorporate not only the initial petition for nomination in a primary but also the submission of the candidate’s name to the voters for a decision. This interpretation has been the standard interpretation of the Secretary of State for more than 23 years. The Board of Elections handbook

states that a candidate must run and lose a primary election before becoming ineligible to run as a write-in candidate in the general election, found in EL 24.

{¶ 25} “8. Respondent was not permitted to seek nomination on the primary ballot due to a lack of post secondary educational requirements, which has now been cured as of June 16, 2010.”

Knowlton II

{¶ 26} On August 27, Knowlton filed this action for writs of mandamus and prohibition to prevent the board and its members from certifying Hannum’s write-in candidacy for the office of Noble County sheriff at the November 2, 2010 general election. The board and its members filed an answer, and we granted Hannum’s motion to intervene. The parties submitted evidence and briefs pursuant to the accelerated schedule for expedited election cases in S.Ct.Prac.R. 10.9.

{¶ 27} This cause is now before the court for our consideration of the merits.

Legal Analysis

Mandamus

{¶ 28} Knowlton requests a writ of mandamus to compel the board of elections and its members to consider his protest in accordance with *Knowlton I* and to sustain the protest, thus preventing Hannum’s candidacy at the general election.

{¶ 29} This court lacks jurisdiction over complaints in mandamus if the allegations establish that the relator actually requests relief in the nature of a declaratory judgment and a prohibitory injunction. *State ex rel. Stewart v. Clinton Cty. Bd. of Elections*, 124 Ohio St.3d 584, 2010-Ohio-1176, 925 N.E.2d 601, ¶ 12. “We have applied this jurisdictional rule to expedited election cases by examining the complaint to determine whether it actually seeks to prevent, rather

than compel, official action.” *State ex rel. Evans v. Blackwell*, 111 Ohio St.3d 437, 2006-Ohio-5439, 857 N.E.2d 88, ¶ 20.

{¶ 30} Although some of the allegations and requests contained in Knowlton’s complaint are couched in terms of compelling affirmative duties, he actually seeks (1) a declaratory judgment that the board’s denial of his protest was erroneous and (2) a prohibitory injunction preventing Hannum from being a write-in candidate for sheriff at the general election.

{¶ 31} Therefore, as in *Knowlton I*, at ¶ 16, because Knowlton seeks relief in the nature of declaratory judgment and prohibitory injunction, we lack jurisdiction to consider his mandamus claim and dismiss it. See also *Stewart*, 124 Ohio St.3d 584, 2010-Ohio-1176, 925 N.E.2d 601, ¶ 14.

Prohibition

{¶ 32} Knowlton also requests a writ of prohibition to prevent the board of elections and its members from certifying Hannum’s write-in candidacy for the office of Noble County sheriff at the November 2, 2010 general election. To be entitled to the writ, Knowlton must establish that (1) the board of elections and its members are about to exercise quasi-judicial power, (2) the exercise of that power is unauthorized by law, and (3) denying the writ will result in injury for which no other adequate remedy exists in the ordinary course of law. *State ex rel. Eshleman v. Fornshell*, 125 Ohio St.3d 1, 2010-Ohio-1175, 925 N.E.2d 609, ¶ 11.

{¶ 33} Knowlton established the first and third requirements for the writ because the board of elections exercised quasi-judicial authority by denying his protest after a hearing that included sworn testimony, and he lacks an adequate remedy in the ordinary course of law given the proximity of the November 2 general election. *Id.* at ¶ 12.

{¶ 34} For the remaining requirement, Knowlton asserted in his complaint that the board of elections abused its discretion and clearly disregarded applicable law by denying his protest and certifying Knowlton’s candidacy as a write-in

candidate for sheriff. *State ex rel. Tremmel v. Erie Cty. Bd. of Elections*, 123 Ohio St.3d 452, 2009-Ohio-5773, 917 N.E.2d 792, ¶ 15. “An abuse of discretion implies an unreasonable, arbitrary, or unconscionable attitude.” *State ex rel. Cooker Restaurant Corp. v. Montgomery Cty. Bd. of Elections* (1997), 80 Ohio St.3d 302, 305, 686 N.E.2d 238.

Protest

{¶ 35} As a preliminary matter, Hannum asserts that the writs should be denied because, by citing an inapplicable statute in his protest challenging Hannum’s write-in candidacy for sheriff, Knowlton failed to properly invoke the board’s authority to rule on his protest.

{¶ 36} In his protest, Knowlton cited R.C. 3519.16, which sets forth the protest procedure for statewide initiative and referendum petitions. We have “consistently recognized that R.C. Chapter 3519 applies only to statewide initiative and referendum petitions.” *State ex rel. Sinay v. Soddors* (1997), 80 Ohio St.3d 224, 228, 685 N.E.2d 754; *State ex rel. Citizen Action for Livable Montgomery v. Hamilton Cty. Bd. of Elections*, 115 Ohio St.3d 437, 2007-Ohio-5379, 875 N.E.2d 902, ¶ 50. Protests against write-in candidacies are instead governed by R.C. 3513.041.

{¶ 37} Nevertheless, because there is no dispute that Knowlton otherwise met the requirements of R.C. 3513.041 to submit a written protest against Hannum’s write-in candidacy, the board of elections did not err in determining that Knowlton’s mistaken citation concerning the statutory authority for his protest did not divest the board of authority to address and rule on the merits of the protest.

R.C. 311.01(B)(9)(b) Postsecondary-Education Requirement

{¶ 38} Knowlton first claims, as he did in his protest, that Hannum’s write-in candidacy should have been rejected for the same reason that his primary-election candidacy was rejected by this court in *Knowlton I* – Hannum

failed to meet the requirements of R.C. 311.01(B)(9) to be an eligible candidate for sheriff. The dispositive issue is whether Hannum satisfied the postsecondary-education requirement of R.C. 311.01(B)(9)(b), which requires a person who does not meet the supervisory-experience requirement of R.C. 311.01(B)(9)(a) to have “completed satisfactorily at least two years of post-secondary education or the equivalent in semester or quarter hours in a college or university authorized to confer degrees by the Ohio board of regents or the comparable agency of another state in which the college or university is located or in a school that holds a certificate of registration issued by the state board of career colleges and schools under Chapter 3332. of the Revised Code.”

{¶ 39} At the protest hearing, Hannum presented evidence that he had earned 106 credits at Washington State Community College. Based on *Knowlton I*, 29 of Hannum’s 106 credits could not be counted toward the postsecondary-education requirement of R.C. 311.01(B)(9)(b) because they were for peace-officer training. *Knowlton I*, 125 Ohio St.3d 82, 2010-Ohio-1115, 926 N.E.2d 284, ¶ 32-33; *Wellington*, 120 Ohio St.3d 198, 2008-Ohio-5510, 897 N.E.2d 641, ¶ 30. Without these credits, Hannum earned 77 credits at the community college.

{¶ 40} Knowlton asserts that based on the letter from the college’s registrar he presented at the protest hearing, a minimum of 90 credit hours was required for the credits to be equivalent to two years of postsecondary education, and Hannum’s total of 77 credits thus was insufficient to meet the R.C. 311.01(B)(9)(b) requirement.

{¶ 41} Knowlton’s claim, however, ignores the same registrar’s statement that students at the community college must carry a minimum of 12 credit hours per quarter to be considered full-time students and that Hannum was considered by the college to have completed the equivalent of two years of postsecondary education at the school. Furthermore, Hannum testified that his total of 77 credits that could be counted towards the R.C. 311.01(B)(9)(b) postsecondary-education

requirement exceeds the 72 hours he testified were needed for the two years specified by the statute.

{¶ 42} The board of elections concluded that Hannum satisfied the educational requirements of R.C. 311.01(B)(9)(b) because “[t]welve credit hours per quarter is required to maintain full time status, thus requiring 36 hours per year or 72 hours over the course of two years to qualify as two years of full time post secondary education.” In *Knowlton I*, at ¶ 6, 33, we accepted without discussion Hannum’s comparable testimony at the previous board hearing that “72 credit hours at Washington State Community College were equivalent to two years of postsecondary education.”

{¶ 43} Seventy-seven hours exceeds the 72 hours that the board of elections found were necessary to constitute two years of postsecondary education. The board of elections thus credited Hannum’s evidence from the registrar and Hannum over Knowlton’s letter from the same registrar. Based on the testimonial and documentary evidence submitted at the protest hearing, the board could reasonably do so. And given the arguably conflicting evidence before the board, the court will not substitute its judgment for that of the board. See *State ex rel. Ross v. Crawford Cty. Bd. of Elections*, 125 Ohio St.3d 438, 2010-Ohio-2167, 928 N.E.2d 1082, ¶ 41; *State ex rel. Toledo Blade Co. v. Seneca Cty. Bd. of Commrs.*, 120 Ohio St.3d 372, 2008-Ohio-6253, 899 N.E.2d 961, ¶ 29 (absent evidence to the contrary, public boards and their members are presumed to have properly performed their duties).

{¶ 44} Moreover, Knowlton has not established that the board of elections abused its discretion by failing to discount Hannum’s other life-experience credits because these credits either were for peace-officer training or related to his job as a peace officer. To be sure, some of Hannum’s testimony at the protest hearing relied at least in part on his experience as a police officer. But Hannum further testified that substantially all of his life experiences that formed the basis for his

college credit occurred prior to January 2007 and that he did not get separate credit for criminal-justice courses related to his peace-officer training. Therefore, under these circumstances, Hannum’s life-experience credits – other than those for the OPOTA courses that we ruled ineligible in *Knowlton I* – would not duplicate his training that already accounted for his peace-officer employment in R.C. 311.01(B)(8)(b)¹ because it either predated the three-year period specified in R.C. 311.01(B)(8)(b) or did not represent credit for peace-officer training.

{¶ 45} Therefore, the board and its members neither abused their discretion nor clearly disregarded R.C. 311.01(B)(9) by denying Knowlton’s protest and certifying Hannum’s write-in candidacy for sheriff at the November 2 general election.

R.C. 3513.04

{¶ 46} Knowlton also claims that Hannum’s write-in candidacy should have been rejected by the board for an additional reason – that R.C. 3513.04 barred Hannum’s candidacy at the general election following his unsuccessful attempt to become a party nominee for the same office at the preceding primary election.

{¶ 47} R.C. 3513.04 generally prevents persons who have unsuccessfully sought a party nomination at a primary election from running for the same or a different office at the following general election:

{¶ 48} “*No person who seeks party nomination for an office or position at a primary election by declaration of candidacy or by declaration of intent to be a write-in candidate and no person who is a first choice for president of candidates seeking election as delegates and alternates to the national conventions of the different major political parties who are chosen by direct vote of the electors as*

1. R.C. 311.01(B)(8)(b) requires that the person seeking to be a candidate for sheriff have “been employed for at least the last three years prior to the qualification date as a full-time law enforcement officer.”

provided in this chapter *shall be permitted to become a candidate by nominating petition or by declaration of intent to be a write-in candidate at the following general election for any office* other than the office of member of the state board of education, office of a member of a city, local, or exempted village board of education, office of member of a governing board of an educational service center, or office of township trustee.” (Emphasis added.)

{¶ 49} In construing this statute, “our paramount concern is the legislative intent” in enacting it. *State ex rel. Steele v. Morrissey*, 103 Ohio St.3d 355, 2004-Ohio-4960, 815 N.E.2d 1107, ¶ 21. To discern this intent, we must “read words and phrases in context according to the rules of grammar and common usage.” *State ex rel. Lee v. Karnes*, 103 Ohio St.3d 559, 2004-Ohio-5718, 817 N.E.2d 76, ¶ 23.

{¶ 50} In this regard, the applicable language of R.C. 3513.04 is somewhat ambiguous. “Seek” means “to try to acquire or gain: aim at” and “to make an attempt: TRY.” Webster’s Third New International Dictionary (1986) 2055. By filing his declaration of candidacy for the primary election, Hannum was manifestly seeking to be the Democratic Party nominee for Noble County sheriff. But the word “seeks” is limited in the statute by the phrase “at a primary election,” which seems to require that the person attempting to become the party nominee actually be a choice that can be selected by voters at the primary election.

{¶ 51} This interpretation of R.C. 3513.04 is consistent with the preeminent purpose of the statute. “The purpose of Section 3513.04, Revised Code, clearly is to prevent a disappointed party candidate who has failed to be selected as a nominee in the primary from again trying to be placed on the elective ballot by entering the arena as an independent candidate.” *State ex rel. Gottlieb v. Sulligan* (1963), 175 Ohio St. 238, 241, 24 O.O.2d 383, 193 N.E.2d 270. In *State ex rel. Brinda v. Lorain Cty. Bd. of Elections*, 115 Ohio St.3d 299,

2007-Ohio-5228, 874 N.E.2d 1205, ¶ 26, we stated that “R.C. 3513.04, the so-called sore-loser provision, * * * generally bars *a person losing in a partisan primary election* from participating as a candidate for [the same or] another office in the succeeding general election.” (Emphasis added.) Because Hannum was ruled ineligible in *Knowlton I* to be a candidate for the Democratic Party nomination for Noble County sheriff at the primary election, he did not *lose* in that election.

{¶ 52} This interpretation is also supported by case law. In *State ex rel. Sweet v. Hancock Cty. Bd. of Elections* (Oct. 25, 1993), Hancock App. No. 5-93-43, 1993 WL 429838, the Third District Court of Appeals denied a writ of prohibition to prevent the independent candidacy of a person running for the office of city council at the November 2003 general election when she had previously been disqualified by the same court from being a Republican Party candidate for city council at the preceding primary election. The court of appeals adopted the view of then-Secretary of State Bob Taft that R.C. 3513.04 did not bar the person’s independent candidacy because the term “seeks” in the statute was ambiguous and should be construed to apply only to those persons who had been on the primary-election ballot and had lost rather than to those persons whose candidacies had been rejected by a court due to a defect in their petitions:

{¶ 53} “ ‘The public policy behind R.C. 3513.04 is to prevent a person who has lost an election for a party nomination from subsequently running as an independent candidate for either the same office or another office. Statutes of this nature protect the integrity of the primary election process. * * * The purpose of a primary election is to allow those voters affiliated with a political party to nominate their candidate for the general election. * * * [T]he prohibition is not triggered where a person merely files a declaration of candidacy, but the petition is rejected for insufficient signatures, or other fatal defects. In that instance, the individual whose candidacy is invalid is not a choice for the party voters who

must select their candidate for the general election.’ ” Id. at *3; see also *State ex rel. Ernst v. Brunner*, 145 Ohio Misc.2d 73, 2007-Ohio-7265, 882 N.E.2d 990, ¶ 19-26 (holding that R.C. 3513.04 is ambiguous and construing it not to bar city council candidates who had run for party nominations in primary election from being candidates in general election for new, nonpartisan city council).

{¶ 54} Finally, the board’s decision that R.C. 3513.04 does not bar Hannum’s independent candidacy for sheriff “is also consistent with our duty to liberally construe words limiting the right of a person to hold office in favor of those seeking to hold office so that the public may have the benefit of choice from all qualified persons.” See *State ex rel. Reese v. Cuyahoga Cty. Bd. of Elections*, 115 Ohio St.3d 126, 2007-Ohio-4588, 873 N.E.2d 1251, ¶ 34; see also *Brinda*, 115 Ohio St.3d 299, 2007-Ohio-5228, 874 N.E.2d 1205, ¶ 33.

{¶ 55} Therefore, the board of elections and its members did not abuse their discretion or clearly disregard R.C. 3513.04 by denying Knowlton’s protest and certifying Hannum’s write-in candidacy for sheriff at the November 2 general election.

Conclusion

{¶ 56} Based on the foregoing, Knowlton has not established his entitlement to the requested extraordinary relief. Therefore, we deny the writ of prohibition to prevent the board and its members from certifying Stephen S. Hannum as a write-in candidate for Noble County sheriff at the November 2, 2010 general election. We also dismiss Knowlton’s mandamus claim for lack of jurisdiction.

Judgment accordingly.

PFEIFER, ACTING C.J., and MCMONAGLE, LUNDBERG STRATTON, O’CONNOR, O’DONNELL, LANZINGER, and CUPP, JJ., concur.

CHRISTINE T. MCMONAGLE, J., of the Eighth Appellate District, sitting for BROWN, C.J.

SUPREME COURT OF OHIO

McTigue & McGinnis, L.L.C., Mark A. McGinnis, Donald J. McTigue,
and J. Corey Colombo, for relator.

Clifford N. Sickler, Noble County Prosecuting Attorney, and Anthony E.
Palmer, Special Counsel, for respondents.

Gottlieb, Johnston, Beam & Dal Ponte, P.L.L., Philip S. Phillips, and
James R. Krischak, for intervening respondent.

THE STATE EX REL. BRINDA V. LORAIN COUNTY
BOARD OF ELECTIONS.

[Cite as *State ex rel. Brinda v. Lorain Cty. Bd. of Elections*,
115 Ohio St.3d 299, 2007-Ohio-5228.]

*Writ of mandamus sought to compel board of elections to place name of
candidate for board of education on the November 6, 2007 election ballot
— Writ granted.*

(No. 2007-1697 — Submitted September 27, 2007 — Decided October 2, 2007.)

IN MANDAMUS.

Per Curiam.

{¶ 1} This is an expedited election action for a writ of mandamus to compel a board of elections to accept a nominating petition from a candidate for a seat on a board of education. Because the board abused its discretion and clearly disregarded the plain language of R.C. 3513.254 by refusing to accept the nominating petition, we grant the writ.

{¶ 2} Relator, Holly C. Brinda, is a resident of the city of Elyria and is a member of the Board of Education of the Elyria School District. Brinda filed a declaration of candidacy for her party's nomination to run for mayor of Elyria in the May 2007 primary election. She lost the primary election and therefore did not obtain the party nomination to run in the November 6, 2007 general election as a candidate for mayor.

{¶ 3} On August 22, 2007, Brinda attempted to file her nominating petition to run for reelection as a member of the Board of Education of the Elyria School District in the November 6, 2007 general election. Respondent, Lorain County Board of Elections, refused to accept Brinda's nominating petition for

filing. Brinda has not filed to run for any state or local office in 2007 other than for the offices of mayor and school board member.

{¶ 4} The board of elections determined that Brinda could not be a candidate for the school board at the November 6, 2007 general election because she had unsuccessfully sought the party nomination for mayor at the May 2007 primary election. Before making its determination, the elections board sought and received an opinion from the secretary of state of Ohio, who concluded that an unsuccessful candidate for municipal office in the primary election could not file a nominating petition to be a school board candidate at the succeeding general election.

{¶ 5} At an August 30, 2007 meeting, the board of elections affirmed its decision to refuse to accept Brinda's nominating petition for reelection to the school board. The board did not certify her as a candidate for school board at its August 30 meeting.

{¶ 6} On September 12, Brinda filed this expedited election action for a writ of mandamus to compel the board of elections to accept her nominating petition to become a candidate for member of the school board, and if her petition meets the requirements, to place her name on the November 6, 2007 general election ballot. The board of elections submitted an answer, and the parties filed briefs and evidence pursuant to the accelerated schedule provided by S.Ct.Prac.R. X(9).

{¶ 7} This cause is now before us on the merits.

Laches

{¶ 8} The elections board asserts that this election case is barred by laches because Brinda delayed in filing this mandamus action 21 days after the board refused to file her nominating petition to be a candidate for school board member.

{¶ 9} “We have consistently required relators in election cases to act with the utmost diligence.” *Blankenship v. Blackwell*, 103 Ohio St.3d 567, 2004-Ohio-5596, 817 N.E.2d 382, ¶ 19. “If relators do not exercise the required diligence, laches may bar the action for extraordinary relief in an election-related matter.” *State ex rel. Choices for South-Western City Schools v. Anthony*, 108 Ohio St.3d 1, 2005-Ohio-5362, 840 N.E.2d 582, ¶ 20. “The elements of laches are (1) unreasonable delay or lapse of time in asserting a right, (2) absence of an excuse for the delay, (3) knowledge, actual or constructive, of the injury or wrong, and (4) prejudice to the other party.” *State ex rel. Polo v. Cuyahoga Cty. Bd. of Elections* (1995), 74 Ohio St.3d 143, 145, 656 N.E.2d 1277.

{¶ 10} Brinda knew about the elections board’s refusal to file her nominating petition on August 22 but waited 21 days to file this expedited election case challenging the board’s decision. Although some of this delay might be reasonably attributable to Brinda’s attempts to persuade the board to reconsider its decision and her attempts to secure legal counsel, she still delayed 12 days from the date the board refused to certify her school board candidacy before filing this case. See, e.g., *State ex rel. Landis v. Morrow Cty. Bd. of Elections* (2000), 88 Ohio St.3d 187, 189, 724 N.E.2d 775, citing *Paschal v. Cuyahoga Cty. Bd. of Elections* (1995), 74 Ohio St.3d 141, 656 N.E.2d 1276 (“we have held that a delay as brief as *nine days* can preclude our consideration of the merits of an expedited election case” [emphasis sic]).

{¶ 11} Nevertheless, we generally require a showing of prejudice before we apply laches to bar a consideration of the merits of an election case. See, e.g., *State ex rel. Ascani v. Stark Cty. Bd. of Elections* (1998), 83 Ohio St.3d 490, 493, 700 N.E.2d 1234. “Normally, this prejudice in expedited election cases occurs because relators’ delay prejudices respondents by making the case an expedited election case under S.Ct.Prac.R. X(9), which restricts respondents’ time to prepare and defend against relators’ claims, or impairs boards of elections’ ability

to prepare, print, and distribute appropriate ballots because of the expiration of the time for providing absentee ballots.” *State ex rel. Willke v. Taft*, 107 Ohio St.3d 1, 2005-Ohio-5303, 836 N.E.2d 536, ¶ 18.

{¶ 12} Any filing delay by Brinda did not result in this matter becoming an expedited election case under S.Ct.Prac.R. X(9), which provides an accelerated schedule for a response, evidence, and briefs when the original action relating to a pending election is filed within 90 days before the election. Even if Brinda had filed this action within a week of the board’s first rejecting her nominating petition in late August, this case would still have been an expedited election case under S.Ct.Prac.R. X(9). Therefore, the elections board’s ability to prepare and defend against Brinda’s mandamus claim has not been compromised. In fact, the board does not assert any prejudice to its ability to defend here.

{¶ 13} Nor did Brinda’s purported delay cause the absentee-ballot deadline to pass before this case was filed and fully briefed. *State ex rel. Steele v. Morrissey*, 103 Ohio St.3d 355, 2004-Ohio-4960, 815 N.E.2d 1107, ¶ 14 (holding that laches did not bar consideration of the merits of expedited election case when briefing had been completed in the case before the passage of the absentee-ballot deadline); R.C. 3509.01 (absentee ballots “shall be printed and ready for use on the thirty-fifth day before the day of the election”). By contrast, the majority of the cases in which we have held that laches barred an election claim have involved the passage of the statutory absentee-ballot deadline. See, generally, *Mason City School Dist. v. Warren Cty. Bd. of Elections*, 107 Ohio St.3d 373, 2005-Ohio-5363, 840 N.E.2d 147, ¶ 20, and cases cited therein. Although the absentee-ballot deadline will have passed by the time that our decision in this case is announced, that date would have likely passed even if Brinda had filed this case within a week of the date that the board of elections reaffirmed its decision not to accept her nominating petition. “This is thus a case in which the statutory time limits would have expired even ‘under the best of circumstances.’ ” *Choices for*

South-Western City Schools, 108 Ohio St.3d 1, 2005-Ohio-5362, 840 N.E.2d 582, ¶ 28, quoting *State ex rel. Squire v. Taft* (1994), 69 Ohio St.3d 365, 369, 632 N.E.2d 883.

{¶ 14} Finally, there is no evidence that Brinda’s delay in filing was intentionally done to obtain a strategic advantage. Cf. *State ex rel. Ryant Comm. v. Lorain Cty. Bd. of Elections* (1999), 86 Ohio St.3d 107, 113, 712 N.E.2d 696 (writ in expedited election case barred by laches because of relators’ delay and acts of gamesmanship).

{¶ 15} Therefore, under these circumstances, we hold that laches does not bar our consideration of the merits of this expedited election case. See, e.g., *State ex rel. Becker v. Eastlake* (2001), 93 Ohio St.3d 502, 505, 756 N.E.2d 1228 (“the fundamental tenet of judicial review in Ohio is that courts should decide cases on their merits”).

Mandamus

{¶ 16} To be entitled to the requested writ of mandamus, Brinda must establish a clear legal right to have the board of elections accept her nominating petition for filing, a corresponding clear legal duty on the part of the board to file her nominating petition, and the lack of an adequate remedy in the ordinary course of law. See, e.g., *State ex rel. Allen v. Warren Cty. Bd. of Elections*, 115 Ohio St.3d 186, 2007-Ohio-4752, 874 N.E.2d 507, ¶ 8. As the board of elections concedes, given the proximity of the November 6 election, Brinda lacks an adequate remedy in the ordinary course of law. *State ex rel. Gemienhardt v. Delaware Cty. Bd. of Elections*, 109 Ohio St.3d 212, 2006-Ohio-1666, 846 N.E.2d 1223, ¶ 29.

{¶ 17} For the remaining requirements, Brinda “must prove that the board of elections engaged in fraud, corruption, abuse of discretion, or clear disregard of statutes or other pertinent law.” *Rust v. Lucas Cty. Bd. of Elections*, 108 Ohio St.3d 139, 2005-Ohio-5795, 841 N.E.2d 766, ¶ 8.

{¶ 18} Brinda asserts that the board of elections abused its discretion and clearly disregarded applicable law by refusing to accept her nominating petition for filing even though she satisfied all of the applicable statutory requirements.

{¶ 19} R.C. 3513.254, which governs nominations of candidates for local boards of education, prohibits a board of elections from accepting a nominating petition of a person seeking to be a candidate for a city, local, or exempted village board of education if that person has already filed a declaration of candidacy to be a candidate for a municipal or township office at the same election:

{¶ 20} “(B) Nominating petitions shall be filed with the board of elections not later than four p.m. of the seventy-fifth day before the day of the general election * * *. *A board of elections shall not accept for filing a nominating petition of a person if that person, for the same election, has already filed a declaration of candidacy, a declaration of intent to be a write-in candidate, or a nominating petition, or has become a candidate through party nomination at a primary election or by the filling of a vacancy under section 3513.30 or 3513.31 of the Revised Code for any other position as a member of a city, local, or exempted village board of education or position as a member of a governing board of an educational service center, or for a municipal or township office.*” (Emphasis added.)

{¶ 21} The board’s refusal to accept Brinda’s nominating petition was based on its interpretation, as well as the secretary of state’s interpretation, of R.C. 3513.254 and 3513.261, which contains comparable language. See R.C. 3513.261 (“The secretary of state or a board of elections shall not accept for filing a nominating petition of a person seeking to become a candidate if that person, for the same election, has already filed a declaration of candidacy”). Insofar as R.C. 3513.261 might conflict with R.C. 3513.254 for the pertinent language, R.C. 3513.254 — the more specific provision applicable here — controls. “Where statutes conflict, the more specific provision controls over the more general

provision” *State ex rel. Wellington v. Kobly*, 112 Ohio St.3d 195, 2006-Ohio-6571, 858 N.E.2d 798, ¶ 25, citing R.C. 1.51.

{¶ 22} In construing R.C. 3513.254, “our paramount concern is the legislative intent in enacting the statute.” *Steele*, 103 Ohio St.3d 355, 2004-Ohio-4960, 815 N.E.2d 1107, at ¶ 21. “To discern this intent, we first consider the statutory language, reading words and phrases in context and construing them in accordance with rules of grammar and common usage.” *Choices for South-Western City Schools*, 108 Ohio St.3d 1, 2005-Ohio-5362, 840 N.E.2d 582, at ¶ 40.

{¶ 23} The plain language of R.C. 3513.254 does not justify the elections board’s refusal to accept Brinda’s timely-filed nominating petition to be a candidate for the city school board at the November 6, 2007 general election. The statute bars a candidate who has filed a declaration of candidacy “for the same election.” Brinda filed a declaration of candidacy for mayor for the May 2007 primary election, which is different from the November 6, 2007 general election for which she filed her nominating petition to be reelected to the school board.

{¶ 24} The board of elections claims that although the General Assembly used the phrase “for the same election” in R.C. 3513.254, it actually intended the phrase to mean “for the same election year” or “for the same election cycle.” But we cannot add words to the statute. *State ex rel. Lee v. Karnes*, 103 Ohio St.3d 559, 2004-Ohio-5718, 817 N.E.2d 76, ¶ 25, quoting *State v. Hughes* (1999), 86 Ohio St.3d 424, 427, 715 N.E.2d 540 (“ ‘In construing a statute, we may not add or delete words’ ”).

{¶ 25} Because R.C. 3513.254 is unambiguous, we must apply it rather than construe it. *State ex rel. Canales-Flores v. Lucas Cty. Bd. of Elections*, 108 Ohio St.3d 129, 2005-Ohio-5642, 841 N.E.2d 757, ¶ 28; see, also, *BedRoc Ltd., L.L.C. v. United States* (2004), 541 U.S. 176, 183, 124 S.Ct. 1587, 158 L.Ed.2d 338 (“our inquiry begins with the statutory text, and ends there as well if the text

is unambiguous”). “[N]o resort to * * * an examination of the legislative history is warranted.” *Canales-Flores*, 108 Ohio St.3d 129, 2005-Ohio-5642, 841 N.E.2d 757, at ¶ 28.

{¶ 26} In fact, if the General Assembly had intended to bar persons who had unsuccessfully sought party nomination for a municipal office at a primary election from being candidates for another office at the succeeding general election, it would have done so with appropriate language. *Id.* at ¶ 34. The General Assembly has used appropriate language in R.C. 3513.04, the so-called sore-loser provision, which generally bars a person losing in a partisan primary election from participating as a candidate for another office in the succeeding general election, except for certain candidates — like Brinda — who run for a board of education at the general election:

{¶ 27} “No person who seeks party nomination for an office or position at a primary election by declaration of candidacy * * * shall be permitted to become a candidate by nominating petition * * * at the following general election for any office other than the office of member of the state board of education, office of member of a city, local, or exempted village board of education, office of member of a governing board of an educational service center, or office of township trustee.” (Emphasis added.) Cf. *State ex rel. Purdy v. Clermont Cty. Bd. of Elections* (1997), 77 Ohio St.3d 338, 673 N.E.2d 1351, in which we construed a previous, broader version of R.C. 3513.04.

{¶ 28} Notwithstanding the board’s argument, there is nothing in the legislative history of R.C. 3513.04, 3513.254, or 3513.261 that indicates, either expressly or impliedly, that the General Assembly has repealed that portion of R.C. 3513.04 permitting an unsuccessful primary election candidate for a different office from being a candidate for a board of education at the succeeding general election. In fact, the General Assembly last amended R.C. 3513.04 in May 2006, which is after it last amended R.C. 3513.254. Cf. R.C. 1.52(A) (“If

statutes enacted at the same or different sessions of the legislature are irreconcilable, the statute latest in date of enactment prevails”). More important, these provisions are reconcilable: R.C. 3513.254 and 3513.261 bar certain candidacies at the same election, and R.C. 3513.04 bars certain candidacies at a succeeding general election.

{¶ 29} Moreover, as Brinda contends, the board’s construction of R.C. 3513.254, in addition to ignoring plain language, would render superfluous the statute’s prohibition against someone who “has become a candidate through party nomination at a primary election” from being a candidate for a school board at the same election.

{¶ 30} We need not defer to the secretary of state’s interpretation because it is unreasonable and fails to apply the plain language of R.C. 3513.254. Cf. *Whitman v. Hamilton Cty. Bd. of Elections*, 97 Ohio St.3d 216, 2002-Ohio-5923, 778 N.E.2d 32, ¶ 22 (acknowledging this court’s “duty to defer to the Secretary of State’s interpretation of election law if it is subject to two different, but equally reasonable, interpretations”). Adopting the secretary of state’s interpretation of R.C. 3513.254 would result “ ‘not [in] a construction of [the] statute, but, in effect, an enlargement of it by the court, so that what was omitted * * * may be included within its scope.’ ” *Lamie v. United States Trustee* (2004), 540 U.S. 526, 538, 124 S.Ct. 1023, 157 L.Ed.2d 1024, quoting *Iselin v. United States* (1926), 270 U.S. 245, 251, 46 S.Ct. 248, 70 L.Ed. 566.

{¶ 31} Therefore, the board of elections abused its discretion and clearly disregarded applicable law by refusing to accept Brinda’s nominating petition for filing.

Conclusion

{¶ 32} Based on the foregoing, Brinda has established her entitlement to the requested extraordinary relief in mandamus. Therefore, we grant a writ of mandamus to compel the board of elections to accept her nominating petition to

be a candidate for member of the Elyria School District Board of Education and, if her petition meets other applicable requirements, to place her name on the November 6, 2007 general election ballot.

{¶ 33} This result is “also consistent with our duty to liberally construe words limiting the right of a person to hold office in favor of those seeking to hold office so that the public may have the benefit of choice from all qualified persons.” *Reese v. Cuyahoga Cty. Bd. of Elections*, 115 Ohio St.3d 126, 2007-Ohio-4588, 873 N.E.2d 1251, ¶ 34.

Writ granted.

MOYER, C.J., and PFEIFER, LUNDBERG STRATTON, O’CONNOR, O’DONNELL, LANZINGER, and CUPP, JJ., concur.

Michael R. Gareau & Associates Co., L.P.A., David M. Gareau, Michael R. Gareau, Michael R. Gareau Jr., and Elizabeth Stehlik, for relator.

Dennis P. Will, Lorain County Prosecuting Attorney, and Gerald A. Innes and Matthew A. Mishak, Assistant Prosecuting Attorneys, for respondent.
