



Nathan Manning
State Senator
13th District
Senate Bill 22 Sponsor Testimony

Chair Rulli, Vice Chair Schuring, Ranking Member DeMora, and members of the Ohio Senate General Government Committee, thank you for allowing me the opportunity to provide sponsor testimony on Senate Bill 22. This bill would modify an aspect of existing code, and will serve to prevent unintended consequences of that law. Known as the “sore loser law,” ORC 3513.04 states that a candidate who appeared on the primary ballot for any position is ineligible to fill a ballot vacancy even for a different position on the November ballot. This bill was considered in the previous General Assembly as Senate Bill 53, which passed the Senate unanimously.

The need for this legislation became apparent in 2019 in my district when a sitting Mayor running for re-election resigned his position and effective candidacy days after winning the primary election unopposed. Due to the way that the law is currently written, five of the six candidates to fill the vacancy were disqualified because they had each appeared on the primary ballot for other positions. In light of the controversy that arose from this, the sole candidate left standing rescinded his candidacy.

A similar situation took place last year when a Judge, who successfully sought the nomination for a seat on the Ninth District Court of Appeals, attempted to fill a vacancy of another seat of the same court due to a retirement. The Summit County Board of Elections had a tie vote to certify the nomination, and required Secretary of State LaRose to cast the deciding vote. Soon after, an injunction was filed which eventually made its way to the Ohio Supreme Court. By the time the case was considered by the Supreme Court the election had taken place and the appeal was dismissed on mootness grounds.

I have included with my testimony opinions from Secretary of State LaRose and the then-Lorain County Prosecutor whose interpretations of this statute conflict with one another. Following many conversations with those who were affected, it became clear that the current language is in need of modification to avoid this situation from repeating itself.

The bill eliminates restrictions with respect to ballot vacancies for local offices, meaning that the party or committee could choose the former candidate’s primary opponent, another unsuccessful primary candidate, or even a person who won the nomination for a different office but is willing to withdraw from that race in order to fill the ballot vacancy.

Qualified individuals should not be precluded from consideration for arbitrary reasons. This section of code creates unnecessary confusion and could eliminate the most experienced candidates from filling a ballot vacancy. This legislation passed out of the Ohio Senate Local Government and Elections Committee and the Chamber with unanimous votes.

Chair Rulli, Vice Chair Schuring, Ranking Member DeMora, thank you again for allowing me to deliver testimony on Senate Bill 22. I’d be glad to answer questions at this time.



Via Electronic Mail

September 2, 2022

Lance E. Reed, Director
Pete Zeigler, Deputy Director
Summit County Board of Elections
470 Grant Street
Akron, OH 44311

Re: Tie Vote Regarding the Candidacy of Jill Flagg Lanzinger

Dear Director Reed and Deputy Director Zeigler:

At a meeting of the Summit County Board of Elections held on August 22, 2022, the Summit County Board of Elections considered the certification of Jill Flagg Lanzinger (“the Candidate”) as a candidate for the Ninth District Court of Appeals resulting from a recent withdrawal of candidate Lynne Callahan for the term commencing February 11, 2023.

In the May 3, 2022 Primary Election, the Candidate successfully sought party nomination for judge of the Ninth District Court of Appeals, term commencing February 9, 2023. The Candidate withdrew from that race before the party central committee selected her as a candidate for the term commencing February 11, 2023. Member Bryan C. Williams moved to certify the Candidate. The vote resulted in a two-to-two tie vote with members Williams and Ray L. Weber voting to certify, and members William D. Rich and Marco S. Sommerville voting not to certify. The Board timely submitted the matter in controversy to my office, to decide the question pursuant to R.C. 3501.11(X).

This matter is governed by R.C. 3513.04, which states in relevant part:

... 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, including a nominating petition filed under section 3517.012 of the Revised Code, by declaration of intent to be a write-in candidate, or by filling a vacancy under section 3513.31 of the Revised Code at the following general election for any office...¹

Courts, including the Ohio Supreme Court, have reviewed this law over the years and found that its language is straightforward, mandatory, and constitutional.² Likewise, the Supreme Court

¹ The statute makes exceptions to this prohibition for “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,” none of which apply here.

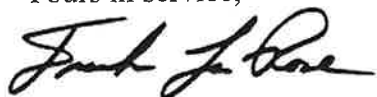
² See *State ex rel. Purdy v. Clermont Cty. Bd. of Elections*, 77 Ohio St.3d 338 (1997); *State ex rel. Brown v. Ashtabula County Bd. of Elections*, 142 Ohio St. 3d 370 (finding that the statute prohibiting a candidate who was unsuccessful

has noted that R.C. 3513.04 applies to “unsuccessful” candidates, and for that reason, frequently refers to the law as the “so-called sore loser provision.”³ Additionally, various Ohio Attorneys General have issued Opinions finding that such candidates are prohibited from running in the general election if they unsuccessfully ran for another office in the preceding primary election.⁴

In the matter before me, the Candidate sought a party nomination for an office or position at the May 3, 2022 Primary Election by declaration of candidacy, was successful in doing so, and subsequently was selected to fill a vacancy on the ballot for another office after timely withdrawing as a candidate for that seat. R.C. 3513.04 and years of case law interpreting that statute’s language prohibit an *unsuccessful* candidate from becoming a candidate at the general election by filling a vacancy on the ballot for “any” office that is not one of the express exceptions in the statute.

For these reasons, I uphold the law and precedent as it currently stands, break the tie and vote in favor of certifying Jill Flagg Lanzinger as a candidate for Ninth District Court of Appeals judge (term commencing February 11, 2023) in the November 8, 2022 General Election.

Yours in service,



Frank LaRose
Ohio Secretary of State

cc: William D. Rich, Chair of Summit County Board of Elections
Marco S. Sommerville, Member of Summit County Board of Elections
Bryan C. Williams, Member of Summit County Board of Elections
Ray L. Weber, Member of Summit County Board of Elections

in a primary common pleas court election from seeking a county court judicial seat at the general election was constitutional); *State ex rel. Brinda v. Lorain County Board of Elections*, 115 Ohio St. 3d 299, 2007-Ohio-5228.

³ *State ex rel. Brinda v. Lorain County Board of Elections*, 115 Ohio St. 3d 299, 2007-Ohio-5228.

⁴ See 1958 OAG 2479; 1960 OAG 1787; 1963 OAG 478; and 1993 OAG 052.



DENNIS P. WILL

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June 4, 2019

Paul Adams, Director
Lorain County Board of Elections
padams@loraincountyelections.com

Re: R.C. 3513.04
Our File No. 19-128

Dear Mr. Adams:

You have inquired whether candidates who ran for office in the primary may run for another office in the immediately following general election.

The third paragraph of Section 3513.04 of the Revised Code 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...who are chosen by direct vote of the electors as provided in this chapter shall be permitted to become a candidate by nominating petition or by filling a vacancy under section 3513.31 of the Revised Code (Central Committee) 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."

Previously, the statute only precluded candidates through nominating petition. In a 2006 opinion the Attorney General stated that a candidate could fill a vacancy in office through the method provided in Section 3513.31. However, following that opinion, the statute was amended twice effective June 21, 2013 and again effective February 5, 2014, and now specifically adds an additional prohibition barring a person who appeared on a primary ballot from filling a vacancy **at the following general election.**

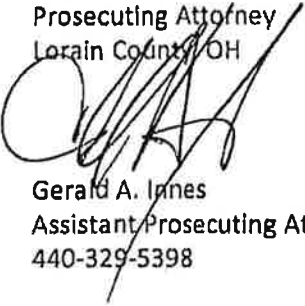
Although this statute is commonly referred to as a "sore loser" statute, it prevents anyone who has appeared on the ballot in the primary from running in November whether or not their candidacy was successful.

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It is the conclusion and opinion of this office that candidates who filed declaration of candidacy or declaration of Intent to be a write-in candidate in the primary are not permitted to appear on the November ballot as a candidate for office other than the one for which they may have been the successful nominee.

Very truly yours,

DENNIS P. WILL
Prosecuting Attorney
Lorain County, OH

A handwritten signature in black ink, appearing to read "Gerald A. Innes", is written over the typed name and title of the Assistant Prosecuting Attorney.

Gerald A. Innes
Assistant Prosecuting Attorney
440-329-5398

GAI/jld

cc: Anthony Giardini

Another constitutional argument against the Ohio “sore loser statute” ORC Section 3513.04, is that it attempts to unconstitutionally entertain a “purely political question”, a matter of interest of an purely “internal affair” of a political party, and there is no state governmental or public interest in the replacement of a partisan party successful candidate at the primary election who withdraws pursuant to ORC Section 3513.31. A pure political question arises from the “internal affairs” of a political party in replacing a vacancy in precinct committee positions and amending the by laws, and a court has no jurisdiction over such matters, *Jones vs. Geauga County Party Central Committee* (2017) 2017-Ohio-2930, Par. 32, 34, and 35. But a party central committee is engaged in state government or public interest matters and action when it fills a vacancy pursuant to the statute, such as ORC Section 3513.31, and thus a court has jurisdiction over such matters and such matters are not political questions, *State ex rel Hayes vs. Jennings* (1962) 173 OS 370 373-374.

X. Requirements for the Successful Primary Candidates

ORC Section 3513.052 contains provisions prohibiting candidacy for more than one office at a time. ORC 3513.052 (A)(5) (a combination of two or more municipal offices or positions). Also, ORC Section 3513.052 (G) and (H) (2) provides for the timely withdrawal from the first office or position to prevent a violation and disqualification under this prohibition of more than one office at a time, ORC Section 3513.052. *State ex rel O'Donnell vs. Cuyahoga County Board of Elections* (2000) 136 O App 3rd 584 (holding that the candidate did not violate ORC Section 3513.052 prohibition of more than one candidacy at the same time, when he first filed a petition with the Board of Election for a position for judge on the Court of Appeals for the Eighth District, and he circulated a petition for judge for the Common Pleas Court for Cuyahoga County, before he filed the common pleas court petition with the Board of Elections, he withdrew the Court of Appeals petition from and with the Board of Elections).

The Successful Primary Candidates must withdraw their candidacy for the general election with the Lorain County Board of Elections prior to the commencement of the 6-25-19 LCC meeting, in order to be considered and nominated for the replacement mayoral office position due to the mayoral vacancy resulting from the withdrawal of Ritenauer pursuant to ORC Section 3513.31. Once timely withdrawn, pursuant to ORC Section 3513.052 (G) and (H) (2) then the Successful Primary Candidates can be considered eligible and not have violated or be deemed disqualified under ORC Section 3513.052. Upon the election of the replacement for the mayoral vacancy due to the withdrawal of Ritenauer pursuant to ORC Section 3513.31, then any of the Successful Primary Candidates who failed to get the nomination and appointment can be considered and nominated to their prior offices and positions which became vacant upon their above withdrawal pursuant to ORC Section 3513.052 (G) and (H) (2). Another LCC meeting can be held for the temporary vacancy while being considered and nominated for the vacancy in the mayor office due to the withdrawal of Ritenauer pursuant to ORC Section 3513.31.