NO. 22-420

In the Supreme Court of the United States

IN RE OHIO EX. REL. TERPSEHORE P. MARAS,

Petitioner.

On Petition for an Extraordinary Writ of Mandamus to the Supreme Court of Ohio

SUPPLEMENTAL BRIEF OF PETITIONER

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DECEMBER 19, 2022 *COUNSEL FOR PETITIONER*

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As per Sup. Ct. R. 16.8, Petitioner files this supplemental brief to call attention to intervening events not available at the time of the filing of the initial petition.

Independent candidate for Ohio Secretary of State Terpsehore P. Maras ("Petitioner Maras") moved, under Supreme Court Rule 21, for expedited consideration of the petition for a writ of certiorari to review the October 28, 2022 Ohio Supreme Court judgment captioned: *State ex rel. Maras v. LaRose*, No. 2022-Ohio-3852. Such motion was not heard by the Court and the 2022 election took place without the relief sought by Petitioner Maras.

On December 5, 2022, Respondent Ohio Secretary of State Frank LaRose opposed the petition by arguing it was "frivolous" and "moot." Because this matter is neither "frivolous" nor "moot," Petitioner Maras asks this Court to decide whether Ohio law freely and easily allowing Republican and Democratic Parties'

election observers in any Ohio precinct or board of elections while requiring that statewide Independent candidates overcome the significant hurdle of first obtaining consent from four other candidates before being allowed to appoint election observers violates the Equal Protection Clause of the 14th Amendment of the Constitution of the United States.

Petitioner Maras was a general-election candidate for Ohio Secretary of State who filed an expedited election mandamus action directly in the Ohio Supreme Court arguing *Ohio Revised Code* ("O.R.C.) § 3505.21—which provides a statutory process for appointing election observers, imposes unconstitutional restrictions on her ability to appoint election observers. Petitioner Maras asserts the disparate treatment between non-affiliated candidates and party-affiliated candidates violates the Equal Protection Clause of the United States Constitution because it makes appointing election observers practically impossible for a non-affiliated candidate, thus infringing on the fundamental right to vote. The Ohio Supreme Court applied the rational basis test and found "O.R.C. 3505.21(B) is rationally related to a legitimate government interest and is therefore constitutional under the Equal Protection Clause." *State ex rel. Maras v. LaRose*, 2022-Ohio-3852, ¶ 17. This ruling remains before this Court and was not rendered moot by way of the election—nothing in Respondent's opposition suggests otherwise.

ARGUMENT

Respondent has opposed the Petition by arguing the Petition is "frivolous" and "moot" yet provides no evidence that the next Ohio independent candidate seeking poll observers will meet a different result or that respondent will no longer enforce the constitutionally infirm statute in question.[1] The one-page waiver letter filed with the Court does not satisfy the Respondent's "heavy burden" regarding its mootness argument. *See e.g.*, *Friends of Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.*, 528 U.S. 167, 189 (2000) ("The 'heavy burden of persua[ding]' the court that the challenged conduct cannot reasonably be expected to start up again lies with the party asserting mootness."); *Los Angeles Cty. v. Davis*, 440 U.S. 625, 631 (1979) (same). *See also Storer v. Brown*, 415 U.S. 724, 737, n.8 (1974) ("The 1972 election is long over, and no effective relief can be provided to the candidates or voters, but this case is not moot, since the issues properly presented, and their effects on independent candidacies, will persist as the California

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[1] Citing *Brockington v. Rhodes*, 396 U.S. 41, 43 (1969), Petitioner Maras previously suggested in her November 2, 2022 Motion to Expedite that this matter may become moot if a decision were not rendered prior to the November 8, 2022 general election. This was not a waiver of existing law nor was it any sort of putative concession—it was merely an argument as to why the matter should be expedited. More to the point, the Court never ruled on the motion so the argument set forth in petitioner's prior motion was not actually litigated and has no impact. *See c.f.*, *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 329 (1976) ("In both the offensive and defensive use situations, the party against whom estoppel is asserted has litigated and lost in an earlier action.") (emphasis added).

statutes are applied in future elections. This is, therefore, a case where the controversy is 'capable of repetition, yet evading review.'").

Petitioner Maras respectfully does not consider this matter "moot" and does not believe spending money to address an unconstitutional statute an act of frivolity—it is one of the most serious forms of legal action that can be taken by a litigant. The fact that the 2022 Ohio Secretary of State election is over does not mean Petitioner Maras—who will likely run again for office as an Ohio independent, is herself without remedy. By suggesting this matter is now moot, Respondent apparently conflates initial standing with mootness. *See Friends of Earth, Inc.*, *supra*, 528 U.S. at 190 (recognizing that "if mootness were simply 'standing set in a time frame,' the exception to mootness that arises when the defendant's allegedly unlawful activity is 'capable of repetition, yet evading review,' could not exist."). *See also Fed. Election Com'n v. Wisc. Right to Life*, 551 U.S. 449, 462 (2007) ("The exception applies where "(1) the challenged action is in its duration too short to be fully litigated prior to cessation or expiration, and (2) there is a reasonable expectation that the same complaining party will be subject to the same action again.") (citation omitted).

By way of her Petition, the Court was asked to address a constitutionally infirm election statute mere days before an election. As shown by the fact the Court did not hear her Motion to Expedite, the challenged action was "in its duration too short to be fully litigated" before the Ohio election so the pernicious barriers to independent poll observers has gone unchecked. This result will happen in Ohio year after year unless this Court grants the petition and addresses this constitutionally unfair barrier to independent candidates and

their electors. In other words, this matter is not moot notwithstanding respondent's glib suggestion to the contrary.

Respectfully submitted,

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