

1 [State ex rel.] Polo v. Cuyahoga County Board of Elections.  
2 [Cite as *State ex rel. Polo v. Cuyahoga Cty. Bd. of Elections* (1995), \_\_\_\_\_  
3 Ohio St. 3d \_\_\_\_\_.]  
4 *Elections -- Prohibition compelling Cuyahoga County Board of Elections*  
5 *to remove candidate's name, whose home is located in the city of*  
6 *Broadview Heights, from the November 7, 1995 North Royalton*  
7 *mayoral election ballot -- Writ granted, when.*  
8 (No. 95-2061--Submitted October 24, 1995--Decided November 9,  
9 1995.)

10 In Prohibition.

11 Lisa Uffman-Kirsch is a candidate for mayor of the city of North  
12 Royalton who is listed on the November 7, 1995 election ballot. Although  
13 Uffman-Kirsch's home is located in the city of Broadview Heights, her  
14 driveway and mailbox are located in North Royalton. Her mailing address  
15 is 3060 Wiltshire Road, North Royalton.

16 On September 18, 1995, relator, David M. Polo, a resident elector of  
17 North Royalton, filed a protest with respondent, Cuyahoga County Board of  
18 Elections, challenging the validity of Uffman-Kirsch's mayoral candidacy

1 due to her residential status. On September 19, the board held a hearing on  
2 Polo's protest.

3 At the hearing, Uffman-Kirsch admitted that her home is located in  
4 Broadview Heights, although the only street access to her home is through  
5 her driveway entrance in North Royalton. Her police, fire, and garbage  
6 services are provided by North Royalton. She has always been registered to  
7 vote in North Royalton and has never voted in Broadview Heights.  
8 According to the board registration manager, the only way the board  
9 classifies voting residence is by street address. In accordance with the  
10 board's policy, Uffman-Kirsch's voting residence was listed as North  
11 Royalton.

12 Uffman-Kirsch further admitted that her home had a Broadview  
13 Heights building permit and that she had paid Broadview Heights taxes on  
14 the property from approximately 1989 or 1990 until 1993. Richard Allar, an  
15 engineer for both North Royalton and Broadview Heights, confirmed that  
16 Uffman-Kirsch's home is located in Broadview Heights. At the conclusion  
17 of the hearing, the board denied Polo's protest.

1           On October 6, 1995, Polo instituted this expedited election case  
2 seeking a writ of prohibition to remove Uffman-Kirsch’s name from the  
3 November 7, 1995 election ballot for North Royalton. On October 18,  
4 1995, the board filed an answer and a motion for summary judgment.  
5 Uffman-Kirsch has filed a motion to intervene.

6

---

7           *Grendell & Marrer Co., L.P.A., Timothy J. Grendell and David H.*  
8 *Gunning II*, for relator.

9           *Stephanie Tubbs Jones*, Cuyahoga County Prosecuting Attorney,  
10 *Patrick J. Murphy and Michael P. Butler*, Assistant Prosecuting Attorneys,  
11 for respondent.

12

---

13           *Per Curiam.*

14

**Motion to Intervene**

15           As a preliminary matter, Uffman-Kirsch cites Civ.R. 24 in support of  
16 her motion to intervene. See S.Ct.Prac.R. X(2) (“All original actions shall  
17 proceed under the Ohio Rules of Civil Rules of Procedure, unless clearly  
18 inapplicable.”). Civ.R. 24 is generally liberally construed in favor of

1 intervention. See, e.g., *State ex rel. LTV Steel Co. v. Gwin* (1992), 64 Ohio  
2 St.3d 245, 247, 594 N.E.2d 616, 619. Nevertheless, Civ.R. 24(C) sets forth  
3 the following requirements for a motion to intervene:

4 “A person desiring to intervene shall serve a motion to intervene upon  
5 the parties as provided in Rule 5. *The motion shall state the grounds*  
6 *therefore and shall be accompanied by a pleading setting forth the claim or*  
7 *defense for which intervention is sought.* The same procedure shall be  
8 followed when a statute of this state gives a right to intervene.” (Emphasis  
9 added.)

10 Since Uffman-Kirsch’s motion is not accompanied by any pleading,  
11 her motion is denied. See *State ex rel. Youngstown v. Mahoning Cty. Bd. of*  
12 *Elections* (1995), 72 Ohio St.3d 69, 70, 647 N.E.2d 769, 771.

### 13 **Prohibition and Laches**

14 After the time for filing an answer or a motion to dismiss, we must  
15 determine whether a peremptory writ, alternative writ, or dismissal is  
16 appropriate. S.Ct.Prac.R. X(5). If it appears beyond doubt that Polo can  
17 prove no set of facts entitling him to extraordinary relief in prohibition,  
18 dismissal is warranted. *State ex rel. Edwards v. Toledo City School Dist.*

1 *Bd. of Edn.* (1995), 72 Ohio St.3d 106, 108, 647 N.E.2d 799, 802; Civ.R.  
2 12(B)(6).

3 In order to obtain a writ of prohibition, Polo must establish that (1)  
4 the board is about to exercise judicial or quasi-judicial power, (2) the  
5 exercise of that power is unauthorized by law, and (3) denying the writ will  
6 result in injury for which no other adequate remedy exists in the ordinary  
7 course of the law. *Goldstein v. Christensen* (1994), 70 Ohio St.3d 232, 234-  
8 235, 638 N.E.2d 541, 543.

9 The board asserts that laches bars Polo's action for an extraordinary  
10 writ. The elements of laches are (1) unreasonable delay or lapse of time in  
11 asserting a right, (2) absence of an excuse for the delay, (3) knowledge,  
12 actual or constructive, of the injury or wrong, and (4) prejudice to the other  
13 party. *State ex rel. Meyers v. Columbus* (1995), 71 Ohio St.3d 603, 605,  
14 646 N.E.2d 173, 174. Prejudice is not inferred from a mere lapse of time.  
15 *State ex rel. Chavis v. Sycamore City School Dist. Bd. of Edn.* (1994), 71  
16 Ohio St.3d 26, 35, 641 N.E.2d 188, 196.

17 On September 8, 1995, Uffman-Kirsch filed a petition seeking to be  
18 placed on the November 7 ballot as a candidate for mayor of North

1 Royalton. Ten days later, on September 18, Polo filed his protest with the  
2 board against Uffman-Kirsch's candidacy. The board denied his protest on  
3 September 19. Seventeen days after the board's protest decision, on  
4 October 6, Polo filed this prohibition action. On October 13, the board  
5 issued absentee ballots for the November 7 North Royalton election.

6 Extreme diligence and the promptest of action are required in election  
7 cases. *State ex rel. White v. Franklin Cty. Bd. of Elections* (1992), 65 Ohio  
8 St.3d 45, 49, 600 N.E.2d 656, 659. The court has routinely dismissed  
9 complaints or otherwise denied extraordinary relief in election cases due to  
10 laches. *Id.*, 65 Ohio St.3d at 48, 600 N.E.2d at 659; *State ex rel. Weldon v.*  
11 *Franklin Cty. Bd. of Elections* (1964), 176 Ohio St. 92, 26 O.O.2d 438, 197  
12 N.E.2d 802 (dismissal of prohibition complaints to prevent putting  
13 candidates' names in voting machines and counting absentee ballots when  
14 complaints filed thirty-three days after protests decided); *State ex rel. Peirce*  
15 *v. Stark Cty. Bd. of Elections* (1958), 168 Ohio St. 249, 6 O.O.2d 339, 153  
16 N.E.2d 393 (writ of prohibition to remove nominee from ballot denied  
17 because complaint filed after period for replacing nominee for general  
18 election); *Pierce v. Brushart* (1950), 153 Ohio St. 372, 378, 41 O.O. 398,

1 401, 92 N.E.2d 4, 7, construing former G.C. 4785-92 (“[W]here a protest is  
2 not filed with the board of elections before the required day prior to the  
3 election, it is too late to be effective and the board of elections may  
4 disregard it as it did in the instant case.”).

5 The board asserts that Polo was guilty of laches in filing this  
6 prohibition action seventeen days after the board denied his protest. Polo  
7 seems to assert that any delay was justified because, according to his  
8 allegations, a record of the board’s protest hearing was not made available  
9 to him until October 2. However, Polo’s counsel was present at the  
10 September 19 hearing. There is no indication that Polo needed to wait for a  
11 hearing transcript prior to seeking a writ of prohibition. The delay was also  
12 prejudicial because by the time any expedited briefing schedule that we  
13 could have ordered would have been completed in this case, the board of  
14 elections could not have made changes in the absentee ballots, which have  
15 already been mailed. *White, supra*, 65 Ohio St.3d at 49, 600 N.E.2d at 659;  
16 but, cf., *State ex rel. Squire v. Taft* (1994), 69 Ohio St.3d 365, 369, 632  
17 N.E.2d 883, 886 (laches inapplicable where relator did not file statutory  
18 protest until twelve days after declaration of candidacy and petition were

1 filed and did not file mandamus action until fourteen days after denial of  
2 protest because statutory time limits would have been exceeded even under  
3 the best of circumstances).

4 For the foregoing reasons, even assuming, *arguendo*, that Polo's  
5 objection to Uffman-Kirsch's residency possesses merit, he is not entitled to  
6 extraordinary relief in prohibition because of laches. Accordingly, the writ  
7 is denied.

8 *Writ denied.*

9 MOYER, C.J., DOUGLAS, WRIGHT, RESNICK, F.E. SWEENEY, PFEIFER  
10 and COOK, JJ., CONCUR.

11