

ORIGINAL

IN THE SUPREME COURT OF OHIO

The STATE OF OHIO ex rel. KELLY BENSMAN)	
)	On Appeal from the Lucas County
)	Court of Appeals, Sixth Appellate
Relator/Appellant)	District
)	
-vs-)	Lucas County Court of Appeals
)	Case No. L-08-1211
)	
THE LUCAS COUNTY BOARD OF ELECTIONS)	09-2035
)	
Respondent/Appellee)	

NOTICE OF APPELLANT, The STATE OF OHIO ex rel. KELLY BENSMAN

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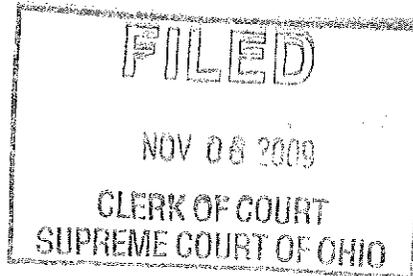
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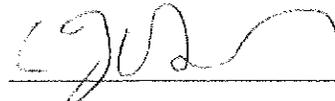


NOTICE OF APPELLANT, The STATE OF OHIO ex rel. KELLY BENSMAN

Appellant, the State of Ohio ex rel. Kelly Bensman, hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Lucas County Court of Appeals, Sixth Appellate District, entered in State of Ohio ex rel. Kelly Bensman v. Lucas County Board of Elections, Court of Appeals Case No. L-08-1211, on October 22, 2009.

This is an Appeal of right from a case that originated in the court of appeals and invokes the appellate jurisdiction of the Supreme Court. This case further raises a substantial constitutional question, and is a case of public or great general interest.

Respectfully Submitted,

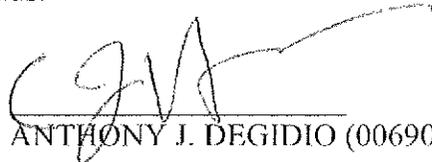


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PROOF OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing Notice of Appeal was served via ordinary U.S. Mail, postage prepaid, this 6th day of November, 2009, upon John A. Borell, Assistant Prosecuting Attorney, 700 Adams Street, Suite 250, Toledo, OH 43623, Phone: (410) 213-2001, Fax: (419) 213-20111, Email: JABorell@co.lucas.oh.us.



ANTHONY J. DEGIDIO (0069064)

FILED
COURT OF APPEALS
2009 OCT 22 P 2:43

COMMON PLEAS COURT
BERNIE QUILTER
CLERK OF COURTS

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

The State of Ohio, ex rel. Kelly Bensman

Court of Appeals No. L-08-1211

Relator

v.

The Lucas County Board of Elections

DECISION AND JUDGMENT

Respondent

Decided:

* * * * *

OCT 22 2009

This matter is before the court on a motion filed by relator, Kelly Bensman, in which relator asks this court to order respondent, the Lucas County Board of Elections ("Board"), to hire a forensic expert to recover emails which relator alleges were deleted by the Board. In support, relator argues that the allegedly deleted emails are part of a public records request initiated by relator on July 8, 2008. Relator also states in her motion that she intends to rely on information obtained from the forensic examination in order to amend her complaint in mandamus to include claims of spoliation of evidence

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and destruction of public documents pursuant to R.C. 149.351. On October 8, 2009, the Board filed a motion for additional time to respond to relator's request.

On August 31, 2009, a hearing was held in this mandamus action, at which both parties represented to this court that the documents requested by relator in her complaint were those listed in our order issued on July 13, 2009, with the exception of 843 emails which arguably were subject to the attorney-client privilege. On September 21, 2009, this court issued a decision in which, after conducting an in camera review, we classified 158 of those disputed emails as not exempt from disclosure. On October 7, 2009, in response to the parties' joint request for additional time, this court issued a decision setting forth the schedule for completion of all discovery in this case. We further stated that "[n]o further extensions of time will be granted."

On consideration of the foregoing we find that, if granted, relator's request for a forensic expert has the potential to prolong indefinitely the proceedings in a case that has included multiple delays and requests for additional time over the past year. In addition, any claim that relator may bring pursuant to R.C. 149.351 is not the proper subject of this mandamus action. See *State ex rel. Woods v. Navarre*, 6th Dist. No. L-06-1292, 2009-Ohio-3217, ¶ 21; R.C. 149.351(B). Accordingly, relator's motion is denied. The Board's motion for additional time to respond has therefore become moot and is also denied.

It is so ordered.

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State ex rel. Bensman v.
The Lucas Bd. of Elections
C.A. No. L-08-1211

Mark L. Pictrykowski, J.

Arlene Singer, J.

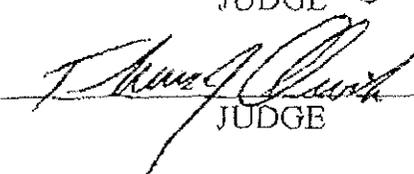
Thomas J. Osowik, J.
CONCUR.



JUDGE



JUDGE



JUDGE

FAXED