

ORIGINAL

SUPREME COURT OF OHIO

STATE EX REL., GARY D. ZEIGLER,
STARK COUNTY TREASURER
6631 Candlestick Avenue, N.E.
North Canton, OH 44721

Relator

vs.

JAIME ALLBRITAIN
ACTING STARK COUNTY TREASURER
110 Central Plaza South, Suite 250
Canton, OH 44702

Respondent

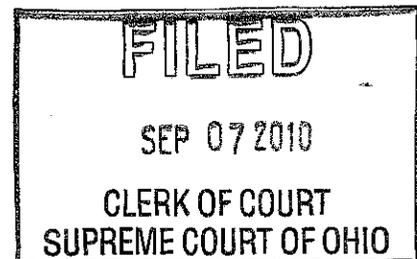
CASE NO.

10-1570

ORIGINAL COMPLAINT IN *QUO WARRANTO*

Richard D. Panza (No. 0011487)
E-mail RPanza@wickenslaw.com
Joseph E. Cirigliano, Esq. (No. 0007033)
E-mail jcirigliano@wickenslaw.com
Matthew W. Nakon (No. 0040497)
E-mail mnakon@wickenslaw.com
Wickens, Herzer, Panza, Cook & Batista Co.
35765 Chester Road
Avon, OH 44011-1262
(440) 930-8000 (Main)
(440) 930-8098 (Fax)

Attorneys For Relator, Gary D. Zeigler
Stark County Treasurer



NOW COMES Relator, Gary D. Zeigler, Stark County Treasurer ("Relator"), by and through counsel, pursuant to Ohio Const., Art. IV and O.R.C. Chapter 2733, and for his claim in *quo warranto* against Respondent, Jaime Allbritain, acting Stark County Treasurer ("Respondent") states as follows:

INTRODUCTION

1. This is an original action in *quo warranto* seeking a writ of *quo warranto* ordering the immediate ouster/removal of Respondent, Jaime Allbritain, acting Stark County Treasurer.

PARTIES AND JURISDICTION

2. Relator is the duly elected Treasurer of Stark County, Ohio.
3. On or about August 23, 2010, Respondent was designated by the Stark County Board of Commissioners as Treasurer of Stark County, Ohio and currently unlawfully occupies said office.
4. Relator brings this action in *quo warranto* pursuant to O.R.C. § 2733.06.
5. Relator has given security for costs as required under O.R.C. § 2733.06.
6. The Supreme Court of Ohio has original jurisdiction over this action pursuant to Ohio Const. Art. IV §2(B)(1)(a).

COUNT ONE

7. Relator incorporates by reference the allegations contained in the preceding paragraphs as if fully rewritten herein.

8. On or about November 4, 2008, Relator was duly elected to the Public Office of Treasurer for Stark County, Ohio.

9. Relator took the oaths required by statute and executed bond with security for the faithful discharge of the duties required of Relator by law, entered into the duties of the office, was legally possessed of the office, exercised the powers of the office, received the emoluments of office, enjoyed the immunities and privileges of office appertaining to the office, and continued to hold and enjoy the office from the time of Relator's election and induction into office until August 23, 2010, when Relator was unlawfully removed from office by the Stark County Board of County Commissioners.

10. During Relator's tenure as Treasurer, deputy treasurer Vincent Frustaci and at least one co-conspirator stole monies from the treasury exceeding \$2 million, without the knowledge of, negligence by, or fault of Relator. Deputy treasurer Frustaci has pled guilty to the theft. Relator has been investigated by both Federal and state authorities, and has never been accused of any wrongdoing or has any fault or malfeasance been imputed upon him.

11. Stark County, through its Board of County Commissioners, made demand upon Relator as the public official for whom Frustaci worked, claiming that Relator bears personal responsibility to turn over all monies paid into the County. Relator has not disputed that monies were stolen from the treasury. The County has not shared any information as to the amount of its current shortfall, if any exists.

12. When Relator was unable to turn over the demanded funds, the Stark County Board of Commissioners filed suit under Ohio Revised Code § 321.37, which is merely a suit to recover money, and has no association with removal of a public official. Upon institution of this suit, the Board of County Commissioners claimed right to terminate Relator pursuant to Ohio Revised Code § 321.38.

13. On August 23, 2010, the trial court held a hearing on the request of Relator to enjoin the Board of County Commissioners from terminating Relator due to the unconstitutionality of § 321.38. The trial court denied the provisional remedy and equitable relief.

14. On August 23, 2010, the Board of County Commissioners terminated Relator pursuant to their purported authority under § 321.38, and over the constitutional objections of Relator. The Board of County Commissioners terminated Relator with the express statement that he was not culpable in any criminal activity, and that he did not commit any act of malfeasance, at which time they appointed the Respondent as acting County Treasurer.

15. The Stark County Board of County Commissioners removed Relator from office, purporting to act under authority of Ohio Revised Code § 321.38, which is unconstitutional pursuant to Article II, Section 38 of the Ohio State Constitution, and pursuant to the Ohio Supreme Court's decision in *State ex rel. Hoel v. Brown*, 105 Ohio St. 479 (1922).

16. From and after Relator's election as County Treasurer, Relator never resigned, abandoned, or forfeited the office. The above-mentioned office has never been abolished and Relator has never been removed or displaced from office by the judgment of any court.

17. On or about August 23, 2010, at the above-mentioned office, Respondent, well knowing the true, lawful and rightful occupant of the office of County Treasurer to be Relator, unlawfully usurped the office, and entered into the exercise of all of the powers and duties of the office, by accepting appointment to the office which became vacant unlawfully. By this unlawful usurpation, Respondent possesses the office, and the emoluments, immunities, and privileges appertaining to the office, contrary to the provisions of the Ohio Revised Code and the Ohio Constitution, and against the right of the Relator.

18. Respondent, from on or about August 23, 2010, has unlawfully held the office of Stark County Treasurer, and since that date has unlawfully exercised the powers, and received the emoluments of office, and continues to do so.

19. Relator claims entitlement to the office of Stark County Treasurer. At all times relevant, Relator is, and was, competent and qualified to hold said office.

20. Relator is entitled to a writ of *quo warranto* ousting/removing Respondent from the office of Stark County Treasurer and restoring and reinstating Relator to said office.

21. The Affidavit of Gary Zeigler setting forth and supporting the facts set forth herein is attached hereto as Exhibit A.

WHEREFORE, Relator respectfully requests:

- a. Respondent Jaime Allbritain be barred from exercising the functions of the office of County Treasurer of Stark County, Ohio, and be removed/ousted from said office;
- b. Relator Gary D. Zeigler be declared entitled to possession of the office of County Treasurer of Stark County, Ohio and be reinstated to said office;
- c. An award of costs of suit, including attorney fees; and

- d. Such other and further relief as the Court deems just, equitable or in accordance with law.

Respectfully submitted,



Richard D. Panza (No. 0011487)

E-mail RPanza@wickenslaw.com

Joseph E. Cirigliano, Esq. (No. 0007033)

E-mail jcirigliano@wickenslaw.com

Matthew W. Nakon (No. 0040497)

E-mail mnakon@wickenslaw.com

WICKENS, HERZER, PANZA, COOK & BATISTA CO.

35765 Chester Road

Avon, OH 44011-1262

(440) 930-8000 (Main)

(440) 930-8098 (Fax)

ATTORNEYS FOR RELATOR, GARY D. ZEIGLER,
STARK COUNTY TREASURER

SUPREME COURT OF OHIO

STATE EX REL., GARY D. ZEIGLER,
STARK COUNTY TREASURER
6631 Candlestick Avenue, N.E.
North Canton, OH 44721

CASE NO.

Relator

vs.

JAIME ALLBRITAIN
ACTING STARK COUNTY TREASURER
110 Central Plaza South, Suite 250
Canton, OH 44702

Respondent

* * * *

AFFIDAVIT OF GARY D. ZEIGLER

Richard D. Panza (No. 0011487)
E-mail RPanza@wickenslaw.com
Joseph E. Cirigliano, Esq. (No. 0007033)
E-mail jcirigliano@wickenslaw.com
Matthew W. Nakon (No. 0040497)
E-mail mnakon@wickenslaw.com
Wickens, Herzer, Panza, Cook & Batista Co.
35765 Chester Road
Avon, OH 44011-1262
(440) 930-8000 (Main)
(440) 930-8098 (Fax)

Attorneys For Relator, Gary D. Zeigler
Stark County Treasurer

STATE OF OHIO
COUNTY OF LORAIN

} SS:

NOW COMES Relator, Gary D. Zeigler ("Relator"), being duly sworn according to law, and hereby states as follows:

1. I am the Relator in this action.
2. I have personal knowledge of the facts stated in the Original Complaint in *Quo Warranto* and am competent to testify if called as a witness.
3. This is an original action in *quo warranto* seeking a writ of *quo warranto* ordering the immediate ouster/removal of Respondent, Jaime Allbritain, acting Stark County Treasurer.
4. Relator is the duly elected Treasurer of Stark County, Ohio.
5. On or about August 23, 2010, Respondent was designated by the Stark County Board of Commissioners as Treasurer of Stark County, Ohio and currently unlawfully occupies said office.
6. Relator brings this action in *quo warranto* pursuant to O.R.C. § 2733.06.
7. Relator has given security for costs as required under O.R.C. § 2733.06.
8. On or about November 4, 2008, Relator was duly elected to the Public Office of Treasurer for Stark County, Ohio.
9. Relator took the oaths required by statute and executed bond with security for the faithful discharge of the duties required of Relator by law, entered into the duties of the office, was legally possessed of the office, exercised the powers of the office, received the emoluments of office, enjoyed the immunities and privileges of office appertaining to the office,

and continued to hold and enjoy the office from the time of Relator's election and induction into office until August 23, 2010, when Relator was unlawfully removed from office by the Stark County Board of County Commissioners.

10. During Relator's tenure as Treasurer, deputy treasurer Vincent Frustaci and at least one co-conspirator stole monies from the treasury exceeding \$2 million, without the knowledge of, negligence by, or fault of Relator. Deputy treasurer Frustaci has pled guilty to the theft. Relator has been investigated by both federal and state authorities, and has never been accused of any wrongdoing or has any fault or malfeasance been imputed upon him.

11. Stark County, through its Board of County Commissioners, made demand upon Relator as the public official for whom Frustaci worked, claiming that Relator bears personal responsibility to turn over all monies paid into the County. Relator has not disputed that monies were stolen from the treasury. The County has not shared any information as to the amount of its current shortfall, if any exists.

12. When Relator was unable to turn over the demanded funds, the Stark County Board of Commissioners filed suit under Ohio Revised Code § 321.37, which is merely a suit to recover money, and has no association with removal of a public official. Upon institution of this suit, the Board of County Commissioners claimed a right to terminate Relator pursuant to Ohio Revised Code § 321.38.

13. On August 23, 2010, the trial court held a hearing on the request of Relator to enjoin the Board of County Commissioners from terminating Relator due to the unconstitutionality of § 321.38. The trial court denied the provisional remedy and equitable relief.

14. On August 23, 2010, the Board of County Commissioners terminated Relator pursuant to their purported authority under § 321.38, and over the constitutional objections of Relator. The Board of County Commissioners terminated Relator with the express statement that he was not culpable in any criminal activity, and that he did not commit any act of malfeasance, at which time they appointed the Respondent as acting County Treasurer.

15. The Stark County Board of County Commissioners removed Relator from office, purporting to act under authority of Ohio Revised Code § 321.38.

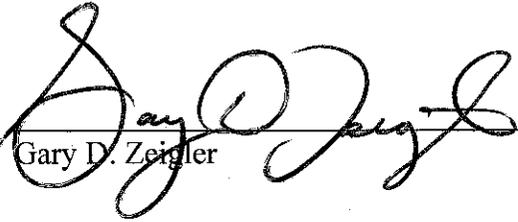
16. From and after Relator's election as County Treasurer, Relator never resigned, abandoned, or forfeited the office. The above-mentioned office has never been abolished and Relator has never been removed or displaced from office by the judgment of any court.

17. On or about August 23, 2010, at the above-mentioned office, Respondent, well knowing the true, lawful and rightful occupant of the office of County Treasurer to be Relator, unlawfully usurped the office, and entered into the exercise of all of the powers and duties of the office, by accepting appointment to the office which became vacant unlawfully. By this unlawful usurpation, Respondent possesses the office, and the emoluments, immunities, and privileges appertaining to the office, contrary to the provisions of the Ohio Revised Code and the Ohio Constitution, and against the right of the Relator.

18. Respondent, from on or about August 23, 2010, has unlawfully held the office of Stark County Treasurer, and since that date has unlawfully exercised the powers, and received the emoluments of office, and continues to do so.

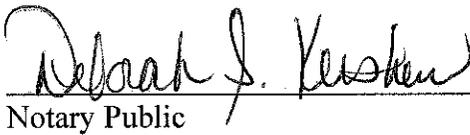
19. Relator claims entitlement to the office of Stark County Treasurer. At all times relevant, Relator is, and was, competent and qualified to hold said office.

Further affiant sayeth naught.



Gary D. Zeigler

Sworn to before me and subscribed in my presence this 2nd day of September, 2010.



Notary Public

DEBORAH S. KERSHAW
Notary Public - State of Ohio
My Commission Expires 08/24/2014