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## STATEMENT OF FACTS

Respondent, David M. Lucas (“Lucas or Sheriff Lucas”), is unable to agree with, or to, Relator, Richard A. Flanagan, Jr.’s (“Flanagan or Mr. Flanagan”), statement of facts because it is substantially argumentative in nature. Therefore, pursuant to Lucas’ July 16, 2013, Evidence Submission, the following statement of facts is submitted:

1. On October 18, 2011, Belmont County Common Pleas Judge Jennifer L. Sargus, forwarded to the Belmont County Board of Elections (“Board”) Lucas’ verified candidate application along with a Journal Entry finding, pursuant to R.C. 311.01, that: “David M. Lucas is eligible to be a candidate for the Office of Sheriff of Belmont County, Ohio.” Lucas was seeking the Republican Party’s nomination for the office of Sheriff. (*Respondent’s Ex. O*).
2. On October 24, 2011, Belmont County Common Pleas Judge Jennifer L. Sargus, forwarded to the Board Flanagan’s verified candidate application of along with a Journal Entry finding, pursuant to R.C. 311.01, that: “Richard A. Flanagan, Jr. is eligible to be a candidate for the Office of Sheriff of Belmont County, Ohio.” Flanagan was seeking the Democrat Party’s nomination for the office of Sheriff. (*Respondent Ex. P*).
3. As part of his candidate application, Lucas submitted evidence that he became a full-time deputy sheriff with the Belmont County Sherriff’s Department on August 12, 1981; was promoted to Sergeant in January 1985 and promoted to Major on August 5, 2007. Lucas retired on October 31, 2007, but remained an active ‘Commissioned Special Deputy’ at all times relevant to this action. (*Respondent’s Ex. O*).
4. Lucas’ duties as a ‘Commissioned Special Deputy’ included firearm recertification and training, for up to eight (8) hours per day and active law enforcement service as a

member of the Belmont County Sheriff Department's Special Operations Branch. (*Respondent's Ex. A and E*).

5. Lucas's work history (excluding information on his status as a 'Commissioned Special Deputy') was published as part of a candidate profile within local newspapers as early as December 4, 2011. (*Respondent's Ex. D*).
6. On December 19, 2011, the Board unanimously voted to accept and certify all candidate applications received for the Primary Election set for March 6, 2012, including those of both Flanagan and Lucas. (*Respondent's Ex. H, I, J, K and L*).
7. On December 23, 2011, the Board received a "Notice of Protest" from then-Sheriff Fred Thompson (D) challenging Lucas' eligibility to run for the office of sheriff under R.C. §311.01(8)(a) and §311.01(9)(a), respectively. (*Respondent's Ex. Q*).
8. On January 24, 2012, the Board dismissed Sheriff Thompson's challenge on the grounds that R.C. §3513.05 only permits, "...a protest may only be filed by a person who is a member of the same political party as the petitions in question or that parties (sic) committee". As Sheriff Thompson was a Democrat, and Lucas a Republican, the Board determined Sheriff Thompson could not maintain the protest under R.C. 3513.05. (*Respondent Ex. S*).
9. The Board did not receive another challenge of any kind whatsoever to Lucas' qualification for the office of Sheriff until well after the November 6, 2012, General Election. (*Respondent's Ex. H, I, J, K and L*).
10. On March 6, 2012, Flanagan defeated Sheriff Thompson to secure the Democratic nomination for Belmont County Sheriff, and Lucas, who was running un-opposed, secured the Republican nomination.

11. At the General Election held November 6, 2012, Lucas (R), defeated Flanagan (D), 16,859 (55.26%) to 14,209 (45.74%). (*Respondent's Ex. H, I, J, K, L and T*).
12. On November 27, 2012, the Board held a meeting for the purpose of the 'Official Certification of the 2012 General Election.' By unanimous vote, the Board accepted the Official Results of the 2012 General Election, thereby certifying Lucas' election. (*Respondent's Ex. H, I, J, K, L and U*).
13. On December 6, 2012, Lucas received his certificate of election and commission signifying his election on November 6, 2012, from the Ohio Secretary of State. (*Respondent's Ex. V*).
14. On December 14, 2012, the Board received two (2) letters of protest relative to Lucas' qualifications filed, respectively, by Mark Landers (Relator's counsel of record) and Gary Landers. (*Respondent's Ex. W and X*).
15. On December 17, 2012, at its regular meeting, the Board addressed the two (2) letters of protest filed on December 14, 2012. The Board determined both protests were invalid and untimely, and directed the Board's Director to issue a written response to both protests so stating. (*Respondent's Ex. H, I, J, K, L, AA and BB*).
16. On December 28, 2012, the Board received a written request from Flanagan which was dated December 14, 2012. Therein, Flanagan demanded either an 'investigation' by the Board into Lucas' qualifications, or in the alternative, that the Board 'file a Writ of Quo Warranto.' The Board took no action upon Flanagan's written demand. (*Respondent's Ex. H, I, J, K, L and Y*).
17. Lucas took office on January 7, 2013. On that same date, the Ohio Attorney General's Office, Professional Standards Section, determined that Lucas was not required to update

his training as a peace officer, pursuant to O.A.C. 109:2-1-12, prior to taking office.  
(*Respondent's Ex. GG*).

18. On February 8, 2013, Flanagan filed this original action in quo warranto. (Relator's Original Complaint).
19. Flanagan's sole claim to entitlement to the office of Belmont County Sheriff is that he was, "...the only qualified candidate appearing on its November 6, 2012 general election." (Relator's Original Complaint, ¶39; Amended Complaint, ¶40).

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## ARGUMENT

### Proposition of Law No. 1:

This Honorable Court should affirm its holding in *State ex rel. Haff v. Pask*, 126 Ohio St. 633, 186 N.E. 809 (1933), paragraph three of the syllabus, which states: "Where the candidate receiving the highest number of votes is ineligible to election, the candidate receiving the next highest number of votes for the same office is not elected. Only the eligible candidate who receives the highest number of votes for the office for which he stands is elected to such office."

As this Court well knows, there is a two-part test in any quo warranto action. "To be entitled to the writ of quo warranto, the relator must establish that the office is being unlawfully held and exercised by respondent and that relator is entitled to the office." *State ex rel. Varnau v. Wenninger*, 131 Ohio St.3d 169, 2012-Ohio-224, \_\_\_ N.E.2d \_\_\_, ¶ 12, quoting *State ex rel. Zeigler v. Zumber*, 129 Ohio St.3d 240, 2011-Ohio-2939, 951 N.E.2d 405, ¶ 23. In his merit brief, Flanagan first addresses the second prong of the quo warranto test within his Proposition of Law No. 1. Accordingly, Lucas will likewise address the second prong first, i.e. Flanagan's entitlement to the office claimed, as this issue is truly the threshold matter now before the Court.

Flanagan's claim of entitlement is seductively simple. In fact, Flanagan lays out his *entire* argument on the subject in a mere two (2) sentences:

In this case, the Respondent is unlawfully holding and exercising the Office of Belmont County Sheriff because he did not possess the necessary qualifications for that office at the time he was elected by the Belmont County citizens. (Exhibit citation omitted). ***Relator is, in turn, entitled to the office of sheriff, by lawfully appearing on the November 6, 2012 ballot as the only duly qualified candidate.*** (Emphasis added).

Relator's Merit Brief, p. 7.

In other words, Flanagan argues that if Lucas is found 'unqualified' to hold the office of Sheriff pursuant to R.C. §311.01, then Flanagan, as the only 'qualified' candidate on the ballot,

and having finished second in the general election, must be declared the duly elected Sheriff of Belmont County, Ohio and the writ must issue to remove Lucas.

While succinct, Flanagan's argument is wrong as a matter of law.

Over the course of more than a century, this Honorable Court has consistently rejected a runner-up's claim of entitlement to office where the winner is subsequently declared ineligible for office. See *Renner v. Bennett*, 21 Ohio St. 431 (1897); *State ex rel. Sheets v. Speidel*, 62 Ohio St. 156, 56 N.E. 871 (1900); *Prentiss v. Dittmer*, 93 Ohio St. 314, 112 N.E. 1021 (1916) and *State ex rel. Halak v. Cebula*, 49 Ohio St.2d 291, 361 N.E.2d 244 (1977). This bright line rule of law is perhaps most clearly expressed in *State ex rel. Haff v. Pask*, 126 Ohio St. 633, 186 N.E. 809 (1933), paragraph three of the syllabus, where this Honorable Court held:

***Where the candidate receiving the highest number of votes is ineligible to election, the candidate receiving the next highest number of votes for the same office is not elected.*** Only the eligible candidate who receives the highest number of votes for the office for which he stands is elected to such office. (Emphasis added).

Like the case *sub judice*, the *Haff* Court faced a quo warranto challenge from the runner-up of a Sheriff's race in Sandusky County, Ohio. Relator, Haff, was the runner-up to Respondent, Psak, to become Sandusky County Sheriff in the general election of 1932. Psak defeated Haff 9,824 to 9,373. However, in the quo warranto action that followed, Haff asserted Psak was not eligible to hold the office under a former provision of the Ohio Constitution and claimed entitlement to the office based upon his runner-up status.<sup>1</sup> In rejecting his claim of entitlement to the office, the *Haff* Court said as follows:

This being the case (Psak was found ineligible), was Carl J. Haff, who received the next highest number of votes cast for sheriff of Sandusky county at

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<sup>1</sup> At paragraph one of the syllabus, the *Haff* Court held that (at that time), "Under Section 3, Article X, of the Constitution of Ohio, no person is eligible to the office of sheriff for more than four years in any period of six years." Because Psak had served a total of two years, four months and seven days preceding the election in November 1932, Haff claimed he could not complete the two year term without violating then Section 3, Article X.

the election of November, 1932, elected? We must answer this question in the negative. *This Court has heretofore held that a man who has in fact received a smaller number of votes than his opponent is not elected merely by reason of the ineligibility of the successful candidate.* (Citations omitted). (Emphasis added).

Thirty-three years earlier, in 1900, this Honorable Court addressed a similar and relatable matter in *State ex rel. Sheets v. Speidel*, 62 Ohio St.156, 56 N.E. 871 (1900). In *Sheets*, the winning candidate, E.W. Buvinger, died on election day, less than two (2) hours before the polls closed. The runner-up, J.B. Cover, claimed entitlement to the office of Clermont County Sheriff following Buvinger's death, despite his election day loss. At paragraph one of the syllabus, the *Sheets* Court held:

When the candidate for an office for whom a majority or plurality of votes was cast at the election dies on election day, and before the polls are closed, the candidate for the same office receiving the next highest number of votes is not thereby elected, *nor has he thereby acquired any right to be inducted into the said office.* (Emphasis added).

In so doing, the *Sheets* Court laid bare its reasoning as to why a runner-up can never be installed into an office the voters have otherwise denied him:

The claim of Cover that he has the right to be inducted into the office of sheriff of Clermont county has no foundation. *Whether Buvinger, the deceased candidate, was elected or not, Cover was not elected. No process of validating reasoning can make 3,802 votes to be more than 4,369 votes. Not merely a plurality, but a majority, of all the votes cast for sheriff on that election day were cast against Cover;* and it does not avail him that the majority of votes was cast, in good faith, for a man who had died during the election. The majority was not for Cover, and that is all he can make of it. (Emphasis added).

*State ex rel. Sheets v. Speidel*, 62 Ohio St. at 158-159.

Even after 113 years, the undeniable logic of this Court's reasoning thunders across the decades. In our democracy, elections matter. Individual votes matter. They matter as a reflection and expression of the will of the people. As applied to this case, it is undeniable that the majority of Belmont County voters cast their votes on November 6, 2012, in good faith,

against Mr. Flanagan. Despite his protests, despite his inability to deal with his defeat, there is no logic which can turn Mr. Flanagan's 14,209 votes into more than Sheriff Lucas' 16,859, 'and that is all he can make of it.' Regardless of Sheriff Lucas' status and/or eligibility under R.C. §311.01, Ohio law is quite clear: Richard A. Flanagan, Jr. lost a fairly contested election, and as a result, he can have no claim, whatsoever, to the office of Sheriff in Belmont County, Ohio for the term which commenced on January 7, 2013, whether through quo warranto or such other action as he may endeavor.

If Mr. Flanagan desires to be called "Sheriff" someday, he must earn that right at the ballot box. He must re-submit his name to the will of Belmont County voters, and he must prevail as against all others. Until he does so, Ohio law will not, and must not, afford him the right to take an office under judicial decree the voters of Belmont County expressly denied him.

**Proposition of Law No. II:**

**Because an election's runner-up is without a good faith claim to office, Flanagan lacks standing to commence and/or maintain an action in quo warranto under *State ex rel. Halak v. Cebula*, 49 Ohio St.2d 291, 361 N.E.2d 244 (1977).**

Standing determines whether a litigant is entitled to have a court determine the merits of the issues presented. *Moore v. Middletown*, 133 Ohio St.3d 55, 2012-Ohio-3897, 975 N.E.2d 977 (2012), ¶20, quoting *State ex rel. Teamsters Local Union No. 436 v. Cuyahoga Cty. Bd. of Commrs.*, 132 Ohio St.3d 47, 2012-Ohio-1861, 969 N.E.2d 224, ¶ 10, quoting *Ohio Contrs. Assn. v. Bicking*, 71 Ohio St.3d 318, 320, 643 N.E.2d 1088 (1994). Whether a party has established standing to bring an action before the court is a question of law, which this Court reviews de novo. *Cuyahoga Cty. Bd. of Commrs. v. State*, 112 Ohio St.3d 59, 2006-Ohio-6499, 858 N.E.2d 330, ¶ 23.

In *Clifton v. Blanchester*, 126 Ohio St.3d 1597, 2010-Ohio-4928, 935 N.E.2d 44, this

Honorable Court set forth Ohio's general law on standing:

It is well established that before an Ohio court can consider the merits of a legal claim, the person seeking relief must establish standing to sue." *State ex rel. Ohio Academy of Trial Lawyers v. Sheward* (1999), 86 Ohio St.3d 451, 469, 715 N.E.2d 1062. " 'Standing' is defined at its most basic as ' [a] party's right to make a legal claim or seek judicial enforcement of a duty or right.' " *Ohio Pyro, Inc. v. Ohio Dept. of Commerce*, 115 Ohio St.3d 375, 2007-Ohio-5024, 875 N.E.2d 550, ¶ 27, quoting Black's Law Dictionary (8th Ed.2004) 1442.

*Clifton*, 131 Ohio St.3d 287, 2012-Ohio-780, 964 N.E.2d 414, ¶ 15.

Normally, to succeed in establishing standing, plaintiffs must show that they suffered (1) an injury that is (2) fairly traceable to the defendant's allegedly unlawful conduct, and (3) likely to be redressed by the requested relief. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-561, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992). These three factors, understood as injury, causation and redressability, comprise "the irreducible constitutional minimum of standing." *Id.* at 560, 112 S.Ct. 2130, 119 L.Ed.2d 351; *see also Moore v. Middletown*, 133 Ohio St.3d 55, 2012-Ohio-3897, 975 N.E.2d 977 (2012), ¶ 22.

However, standing within in the context of quo warranto has its own unique standard. This standard was first articulated in *State ex rel. Ethell v. Hendricks*, 165 Ohio St. 217, 135 N.E.2d 362 (1956), paragraph three of the syllabus, which states:

Section 2733.06<sup>2</sup>, Revised Code, empowers an individual, *claiming in good faith and upon reasonable grounds to be entitled to a public office* held and exercised by another, to expeditiously bring an action in quo warranto upon

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<sup>2</sup> R.C. §2733.06 states in its entirety: "A person claiming to be entitled to a public office unlawfully held and exercised by another may bring an action therefor by himself or an attorney at law, upon giving security for costs."

his own initiative in the name of the state, and Section 2733.08<sup>3</sup>, Revised Code, provides that in such an action 'judgment may be rendered upon the right of the defendant, and also on the right of the person averred to be so entitled, or only upon the right of the defendant, as justice requires. (Emphasis added).

This standard was thereafter applied in *State ex rel. Halak v. Cebula*, 50 Ohio App.2d 334, N.E.2d 744 (8<sup>th</sup> Dist. 1976), *aff'd State ex rel. Halak v. Cebula*, 49 Ohio St.2d 291, 361 N.E.2d 244 (1977). Factually, *Halak* involved the 1975 city councilman-at-large election in North Royalton, Ohio. "There were five candidates for three seats; respondent was elected and relator came in fourth." *State ex rel. Halak* at 291. Relator alleged respondent, who was one of the top three vote getters, was ineligible for office because of respondent's alleged failure to comply with then-existing campaign expenditure reporting requirements, which if true, would have disqualified respondent from seeking or holding office. As a result of his fourth place finish, and his claim that respondent was ineligible for election due to the alleged violation, relator claimed that he became one of the top three vote getters, and therefore, entitled to a writ of quo warranto for possession of the contested council seat.

Both the Eighth District, and this Honorable Court, disagreed and dismissed the action for lack of standing under R.C. §2733.06. In doing so, the Eighth District stated:

At early common law there was no civil action for quo warranto. Rather, it was a criminal or quasi-criminal proceeding which could be brought solely by the state. A private individual had no authority to commence such an action either in his own name or upon relation of the state. See generally, *Newman v. United States ex rel. Frizzell* (1915), 238 U.S. 537, 35 S.Ct. 881, 59 L.Ed. 1446. Though the writ has evolved to become a civil action, its invocation is still restricted to the state and a limited group of individuals. See *State ex rel. Lindley v. The Maccabees* (1924), 109 Ohio St. 454, 142 N.E. 888. The state interest must be maintained in all quo warranto actions. With exception of the state only those

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<sup>3</sup> R.C. §2733.08 states in pertinent part: "When an action in quo warranto is brought against a person for usurping an office, the petition shall set forth the name of the person claiming to be entitled to the office, with an averment of his right thereto. Judgment may be rendered upon the right of the defendant, and also on the right of the person averred to be so entitled, or only upon the right of the defendant, as justice requires."

individuals who claim 'to be entitled to a public office unlawfully held and exercised by another \* \* \*' are entitled to initiated an action in quo warranto. R.C. 2733.06.

It is, of course, well established that in order for a relator to recover a public office he must show not only that the office is unlawfully held, but also he is himself entitled to the office. *State ex rel. Heer v. Butterfield* (1915), 92 Ohio St. 428, 111 N.E. 279. At the same time the statute governing standing to commence this action does not require that the relator ultimately be able to recover the office, but only that he claims to be entitled to it. The Supreme Court, in *State ex rel. Ethell v. Hendricks* (1956), 165 Ohio St. 217, 135 N.E.2d 362, recognized the different standards to be applied in determining standing and the ultimate resolution of a quo warranto action when it held that in a proper case the court may find that a given relator is not entitled to an office, but nevertheless hold that a respondent is unlawfully usurping an office, and order that office vacated. ***Because of this possibility, the Supreme Court indicated that the test of the relator's right to bring the action was to be based upon whether he claimed 'in good faith to be entitled to a public office, held by another, \* \* \*'*** *State ex rel. Ethell v. Hendricks*, supra, at 225, 135 N.E.2d at 367 (Emphasis added).

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Under circumstances such as these - where there is no dispute as to the operative facts and where the controlling law requires a finding that the relator is not an individual entitled to an office even if it is declared to be vacant - ***we find that the relator has not presented a good faith claim of entitlement to the disputed office.*** (Emphasis added).

*State ex rel. Halak v. Cebula*, 50 Ohio App.2d at 336-337.

On review, this Honorable Court agreed. After first examining – and re-affirming - the holding in *State ex rel. Haff v. Pask*, supra, along with those cases cited above, the *Halak* Court concluded in summary fashion:

Under these cases, there are clearly no reasonable grounds for the relator's claim that he is entitled to the respondent's office (as the runner-up). A mere possibility of appointment does not constitute entitlement in any way. Accordingly, the Court of Appeals was correct in its dismissal of the complaint.

*State ex rel. Halak v. Cebula*, 49 Ohio St.2d at 293.

It should be noted that both *Halak* decisions are squarely within the progeny of *State ex rel. Haff v. Pask*, as this Honorable Court decided *Halak* based upon paragraph three of the syllabus in *Haff*, as quoted above.

Likewise, the operable facts of Flanagan's claim of entitlement to office in the case *sub judice* is identical those in *Halak*, given his claim is premised entirely upon his runner-up status. Because there are no facts under which he can claim entitlement to the office he seeks, Flanagan lacks standing to maintain the instant quo warranto action under this Court's decision in *Halak*.

Even if the office were declared vacant, Flanagan cannot claim entitlement through the possibility of appointment. Under R.C. §305.02(B), the county central committee of the political party of the last occupant of the office is charged with appointing a person to hold the office and to perform its duties until a successor is elected and has qualified. Here, Sheriff Lucas ran, won and took office on January 7, 2013, as a member of the Republican Party. As such, should he be removed, the Belmont County Republican Central Committee would become the lawfully designated appointing authority, which (it is safe to say) will not appoint Flanagan, as a Democrat, into the position.

In short, there is no reasonable possibility under Ohio law – either under a theory of runner-up status or appointment (were that sufficient) – that results in Flanagan ascending to the office of Sheriff of Belmont County, Ohio. There are no facts, or reasonable grounds, that Flanagan can present in good faith to this Honorable Court to ever demonstrate entitlement to the office of Belmont County Sheriff. As such, Mr. Flanagan is without the prerequisite standing to maintain this action in quo warranto, and this action should be dismissed accordingly.

This is true even given the permissive content of R.C. §2733.08. The Court is asked to recall that this is an election-based quo warranto action, rather than an appointment-based case as

was *State ex rel. Ethell v. Henricks, supra*. This election-based matter is far different than the appointment-based matter the Court reviewed in *Hendricks*. *Hendricks* dealt with the appointment of a police chief following a civil service promotional examination that was administered contrary to law. In that instance, it was appropriate to reach the merits as the new chief's entitlement to office was dependent upon the lawfulness of the promotional examination. Once the underlying test was deemed unlawful, then the appointed chief lost any claim to legitimacy as the office holder.

Here, however, Sheriff Lucas' entitlement to office is unquestionably the result of a lawful general election. There were no recounts, or timely protests, relative to the conduct of the election prior to the Board's certification of the results. Here, both the Belmont County Court of Common Pleas (even if only in an administrative rather than judicial role), as well as the Board, properly vetted Sheriff Lucas' candidate application. The contents of Sheriff Lucas' candidate application were published as early as December 4, 2011, and therefore, the contents were widely known within Belmont County nearly a year before the 2012 general election. *Respondent's Ex. D*. Yet, as noted within Respondent's Motion for Judgment on the Pleadings, Mr. Flanagan had 244 days between the Primary Election and the General Election – during which time Mr. Flanagan did nothing to challenge Sheriff Lucas' qualification under R.C. §311.01(B). Flanagan failed to file a protest, or seek judicial intervention through either a writ of mandamus or writ of prohibition against the Board.

Thus, because of the review process associated with Sheriff Lucas' candidate application; because of the lack of timely protest from Mr. Flanagan; because of Sheriff Lucas' distinguished twenty-seven (27) year law enforcement career with the Belmont County Sheriff's Department; and because he is utterly without reasonable grounds to put forth a good faith claim to the office,

Mr. Flanagan's complaint in quo warranto should be dismissed for lack of standing, in accord with this Court's holding in *Halak*.

**Proposition of Law No. III:**

**Lucas was qualified to be a candidate for the office of Sheriff pursuant to R.C. §311.01(B).**

Though the case law presented above clearly warrants the outright dismissal of this action, out of an abundance of caution, Sheriff Lucas will address his qualifications under R.C. §311.01(B).

Initially, and for the sake of brevity, Lucas incorporates the arguments, both legal and factual, set forth within his Motion for Judgment on the Pleadings as if fully re-written herein. Beyond those positions, however, there are additional arguments this Honorable Court need consider in the event it reaches the merits.

Principal among these is the ultimate irony this case presents. While Mr. Flanagan asserts that he is 'unqualified' under R.C. §311.01(B) for a lack of service, the reality is that Sheriff Lucas defeated Mr. Flanagan at the polls, in no small part, because of his *superior* length of service and experience with the Belmont County Sheriff's Department relative to Flanagan. Even a cursory review of Sheriff Lucas' candidate application establishes his unbroken line of service with the Sheriff's Department from 1981 through fall 2011 (and up through 2012). This history, as noted in his Statement of Facts above, establishes that Lucas became a full-time Deputy Sheriff with the Belmont County Sherriff's Office on August 12, 1981; was promoted to Sergeant in January 1985 and promoted to Major on August 5, 2007. Lucas retired on October 31, 2007, but remained an active 'Commissioned Special Deputy' with training and supervision responsibilities relative to firearms use and proficiency, along with active law enforcement

service through membership in the Department's Special Operations Branch. *Respondent's Ex. E*, ¶ 7-13 and Ex. O.

In contrast, Mr. Flanagan's candidate application reveals that he has fourteen (14) fewer years of law enforcement experience than Lucas, starting as he did on November 11, 1995, with the Village of Bellaire Police Department. *Respondent's Ex. P*. Moreover, Mr. Flanagan's candidate application also reveals that he has never worked for the Belmont County Sheriff's Department, or for any other county sheriff's department, during his law enforcement career. *Id*. While this is not alleged to render Mr. Flanagan ineligible to seek the office of sheriff under R.C. §311.01(B), it does establish an understanding of the underlying basis for the decision Belmont County voters made to place their trust in Sheriff Lucas' vastly superior experience and work history when they cast their ballots.

In short, under any reasonable, rationale view, building upon a twenty-six (26) year law enforcement career (at the time of his candidacy) with the Belmont County Sheriff's Department, David Lucas was exceedingly well qualified to assume command as Sheriff.

**A. Statutory Rules of Construction:**

Despite this overt reality, Flanagan would have this Honorable Court remove a duly elected, highly qualified office holder under a narrow, hyper-technical reading of the statute, which is contra to this Court's previous interpretations. This Honorable Court has previously found that, "R.C. §311.01(B) limits both the right to be a candidate for sheriff and the right to hold the office. *State ex rel. Altieri v. Trumbull Co. Bd. of Elections*, 65 Ohio St.3d 164, 165 602 N.E.2d 613 (1992). As a result, this Court has mandated that the statute must be given a 'liberal construction,' which the *Altieri* Court explained as meaning:

Words limiting the right of a person to hold office are to be given a liberal construction in favor of those seeking to hold office, in order that the public may have the benefit of choice from all those who are in fact and in law qualified.

*State ex rel. Altieri v. Trumbull Co. Bd. of Elections*, 65 Ohio St.3d at 164, quoting *State ex rel. Schenck v. Shattuck*, 1 Ohio St.3d 272, 439 N.E.2d 891 (1982)(quoting the Supreme Court of Georgia in *Gazan v. Heery*, 183 Ga. 30, 42, 187 S.E. 371, 378 (1936)).

This Court has also recognized the more general rule that statutes authorizing the removal of an incumbent from public office are quasi-penal in nature and should be strictly construed. See *State ex rel Ragozine v. Shaker*, 96 Ohio St.3d 201, 2002-Ohio-3992, 772 N.E.2d 1192, ¶ 15. "Ohio law disfavors the removal of duly elected officials." *In re Removal of Sites*, 170 Ohio App.3d 272, 2006-Ohio-6996, 866 N.E.2d 1119, ¶ 16. Thus, "[a]n elective public official should not be removed except for clearly substantial reasons and conclusions that his further presence in office would be harmful to the public welfare." *State ex rel Corrigan v. Hensel* (1965), 2 Ohio St.2d 96, 100, 31 O.O.2d 144, 206 N.E.2d 563; *Sites* at ¶ 16.

Obviously, the merits of this matter would turn upon the Court's construction of R.C. §311.01(B). When engaging in statutory construction, this Court has said:

"We must first look to the plain language of the statute itself to determine the legislative intent." (Citations omitted) "We apply a statute as it is written when its meaning is unambiguous and definite." (Citations omitted).

{¶ 19} "However, where a statute is found to be subject to various interpretations, a court called upon to interpret its provisions may invoke rules of statutory construction in order to arrive at legislative intent." (Citations omitted). "The primary rule in statutory construction is to give effect to the legislature's intention." (Citation omitted).

*Summerville v. City of Forest Park*, 128 Ohio St.3d 221, ¶18-19, 2010-Ohio-6280, \_\_\_ N.E.2d \_\_\_\_ (2010).

In this matter, Flanagan asserts Sheriff Lucas failed to meet the qualification requirements found in R.C. §311.01(B)(8) and R.C. §311.01 (B)(9), as of the “Qualification Date,” which was December 7, 2011.<sup>4</sup>

Sheriff Lucas disagrees and asserts his qualification under R.C. §311.01(B)(8)(a) and R.C. §311.01 (B)(9)(a), respectively. Toward this end, R.C. §311.01(B)(8)(a) states:

(8) The person meets at least one of the following conditions:

(a) **Has obtained or held**, within the four-year period ending immediately prior to the qualification date, a valid basic peace officer certificate of training issued by the Ohio peace officer training commission or has been issued a certificate of training pursuant to section 5503.05 of the Revised Code, **and**, within the four-year period ending immediately prior to the qualification date, has been employed as an appointee pursuant to section 5503.01 of the Revised Code or as a full-time peace officer as defined in section 109.71 of the Revised Code performing duties related to the enforcement of statutes, ordinances, or codes; (Emphasis added).

Thereafter, R.C. §311.01 (B)(9)(a) states:

9) The person meets at least one of the following conditions:

(a) **Has at least two years of supervisory experience as a peace officer at the rank of corporal or above**, or has been appointed pursuant to section 5503.01 of the Revised Code and served at the rank of sergeant or above, **in the five-year period ending immediately prior to the qualification date**. (Emphasis added).

**B. R.C. §311.01 (B)(9):**

Taking R.C. §311.01(B)(9)(a) first, Sheriff Lucas had ‘at least two (2) years of supervisory experience as a peace officer at the rank of corporal or above’ in the five-year period ending immediately prior to the qualification date, or December 7, 2011. The Court will note that the statute uses the term ‘supervisory experience’ rather than ‘supervisory employment,’ a distinction this Honorable Court first raised in *State ex rel. Altieri, supra*.

R.C. 311.01(B)(9) requires five-years' full-time law enforcement experience, not full-time law enforcement employment. For example, an otherwise qualified law

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<sup>4</sup> As established by R.C. §311.01(H)(1).

enforcement officer who is a full-time volunteer might qualify under the statute. Similarly, a candidate with a combination of full-time employment and full-time volunteer experience might qualify. Under *Schenck*, supra, a liberal rule ought to apply to this requirement. Hence, the respondent clearly did not abuse its discretion or disregard the statute when it focused on the distinction between experience and employment.

*State ex rel. Altieri v. Trumbull Co. Bd. of Elections*, 65 Ohio St.3d at 166, 602 N.E.2d at 615.

Obviously, R.C. §311.01(B)(9) has been amended since the Court's decision in *Altieri* in 1992. However, the construction concept remains valid. Here, Sheriff Lucas was promoted from road deputy to full-time sergeant in January, 1985, and then promoted again to Major in August, 2007. The five (5) year period R.C. §311.01(B)(9)(a) speaks of runs from December 7, 2011, (the "Qualification Date") back to December 6, 2006. Forgetting the additional supervisory time accumulated as a range instructor from 2007 through 2011 (which is discussed below), Sheriff Lucas had already accumulated twenty-three (23) years, nine (9) months of supervisory *experience* above the rank of corporal at the time he 'retired' on October 31, 2007.

Notwithstanding the supervisory experience accumulated *within* the five (5) year period, under a liberal construction of R.C. §311.01(B)(9)(a), bootstrapping would appear permitted, appropriate and warranted. The statute simply says that a candidate qualifies who "*Has* at least two years of supervisory experience as a peace officer at the rank of corporal or above ... *in* the five-year period ending immediately prior to the qualification date..." (Emphasis added). The word 'has' is defined as the present, third person singular of the word 'have.' Merriam-Webster, *On-Line Dictionary*, (2013), <http://www.merriam-webster.com/dictionary/has?show=0&t=1376237435>, (accessed Aug. 11, 2013). The word 'have' is defined as a transitive verb meaning, "to hold or maintain as a possession, privilege, or

entitlement.” Merriam-Webster, *On-Line Dictionary*, (2013), <http://www.merriam-webster.com/dictionary/have?show=0&t=1376237786>, (accessed Aug. 11, 2013).

Sheriff Lucas held, or already possessed, well-over twenty-two (22) years of experience at the beginning of that five (5) year period on December 6, 2006, and thereafter earned another year and ten months *within* the five (5) year period. Given the plain meaning of the words used in R.C. §311.01(B)(9)(a), the directive to employ a liberal construction, and Sheriff Lucas’ long history of supervisory experience above the rank of corporal, there can be little doubt that he qualifies under the statute.

**C. R.C. §311.01(B)(8)(a):**

The same holds true relative to Sheriff Lucas’ qualification under R.C. §311.01(B)(8)(a). Sheriff Lucas’ work history reflects an unbroken line of service with the Belmont County Sheriff’s Department from August 1981 through the Fall 2011 (and beyond). While it is true that Sheriff Lucas ‘retired’ on October 31, 2007, it is absolutely incorrect to say that he left law enforcement as a result of his ‘retirement.’ Sheriff Lucas’ role within the Department simply evolved as he transitioned into a Commissioned Special Deputy.

As a special deputy, Sheriff Lucas had two (2) primary roles – range instructor and sniper/tactical consultant as a member of the Belmont County Sheriff’s Department Special Operations Branch.

Respondent’s Exhibit B provides the Court with records from May 9, 2007, (prior to Lucas’ retirement) through to June 13, 2012. These records include Lucas’ signature as a supervising, certifying range instructor and include records from 2007, 2008, 2009, 2010, 2011 and 2012. In that capacity, Lucas worked full-time,<sup>5</sup> eight (8) hour days and was among those

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<sup>5</sup> As the Court is aware, R.C. §311.01 does not define the term “full-time.”

who supervised firearm requalification certification for the Sheriff's Department. As set forth in his Affidavit, Lucas was paid the sum of \$595.10 for Range Instruction services rendered in May 2010. *Respondent's Ex. E.*

Likewise, as his Affidavit establishes, Lucas remained an active member of the Belmont County Sheriff Department's Special Operations Branch. This elite unit is more popularly known as Belmont County's S.W.A.T. unit, with tactical law enforcement deployment responsibilities on a county-wide basis 24/7/365 days a year. Lucas helped found the unit in 1994 and was its first commanding officer. Following his 'retirement' in October 2007, Lucas remained an active team member, serving as a sniper, weapons trainer as well as providing tactical support to the unit's commanders.

As a Special Operations Branch team member from October 2007-2012, Lucas was an active participant with the team's training and law-enforcement missions. As his Affidavit makes clear, Lucas continued to provide pistol, shotgun, sub-machine gun, select fire rifle and long rifle training and certification to team members October 2007, as he was the only Ohio Police Officer Training Academy (OPOTA) certified instructor on those weapons during that time period. In fact, he remains the only certified long rifle instructor within the Belmont County Sheriff's Department to this day.

As part of his membership within the Special Operations Branch, in addition to multiple training exercises, Lucas deployed in Spring 2011 to a possible barricaded gun-man callout on Blaine-Barton Road in Belmont County as a Sniper/Counter Sniper. This activity alone constitutes 'duties related to the enforcement of statutes, ordinances or codes,' as contemplated under R.C. §311.01(B)(8)(a). Thereafter, in summer 2012, he was again used as a

Sniper/Counter Sniper in the security detail for Vice President Biden and Republican Presidential Candidate Mitt Romney when they visited Belmont County.

Flanagan, of course, denies that any of this service qualifies Lucas under R.C. §311.01(B)(8)(a). However, if the Court reaches the merits, and accepts Flanagan's narrow/hyper-technical interpretation of R.C. §311.01(B)(8)(a), the following scenario would result.

Assume there exists Candidate No. 1, with Sheriff Lucas' exact qualifications and experience who retired on the day before the commencement of the four (4) year period which culminates on the Qualification Date. Now consider Candidate No. 2, with the exact same qualifications as Sheriff Lucas, but who retired five (5) days after the Qualification Date period began and worked for eight (8) hours on each of those days. Assume there are no other differences other than Candidate Number 2 worked for five (5) additional days within the four (4) year qualification period.

Under Flanagan's interpretation of R.C. §311.01(B)(8)(a), Candidate No. 2 would be able to claim that he worked full-time (a forty (40) hour week) *within* the four (4) years prior to the qualification date, and Candidate No. 2 would be a qualified candidate under Flanagan's interpretation of R.C. §311.01(B)(8)(a). Meanwhile, Candidate No. 1, who worked just one (1) week less than Candidate No. 2, but held the exact same level of experience and work history, would be declared ineligible under Flanagan's interpretation. Such a result is absurd on its face as it relates to a candidate's true qualifications to be sheriff, and it demonstrates the logical fallacy within Flanagan's argument, as it is illogical to find the General Assembly's intended to arbitrarily disqualify otherwise identical candidates on the basis of a single forty-hour work week.

The better view of R.C. §311.01(B)(8)(a) is to give effect to the predicate language. This view is consistent with the rule of statutory construction which requires a court to give effect to the words used in the statute. *Bernardini v. Conneaut Area City School Dist. Bd. of Edn.*, 58 Ohio St.2d 1, 4, 387 N.E.2d 1222 (1979). Again, the applicable language is as follows:

(8) The person meets at least one of the following conditions:

(a) *Has obtained or held*, ... and, within the four-year period ending immediately prior to the qualification date, has been employed as an appointee pursuant to section 5503.01 of the Revised Code or as a full-time peace officer as defined in section 109.71 of the Revised Code performing duties related to the enforcement of statutes, ordinances, or codes; (Emphasis added).

The statute uses ‘Has obtained *or* held’ as a predicate to the remaining provisions of §311.01(B)(8)(a). Given that the General Assembly’s used the conjunctive term, ‘or’, it is logical to find that the General Assembly intended to provide two (2) paths for a candidate to satisfy R.C. §311.01(B)(8)(a). As a result, the first path is read as ‘Has obtained.’ This path, when read in conjunction with the remaining language of the statute, grants a potential candidate the *opportunity to secure* the necessary full-time experience within the four (4) years prior to the Qualification Date. This is, of course, is Flanagan’s only interpretation of the statute.

However, there is also an undeniable second path, which says, ‘Has...held.’ As shown above, both of these terms operate in a past tense. This path allows a candidate to have *previously secured* the necessary full-time employment outside of the four (4) years prior to the qualification date. This interpretation would eliminate the logical inconsistency set forth in the hypothetical above. Note, too, this interpretation does not eliminate the ‘full-time employment’ requirement within R.C. §311.01(B)(8)(a), but simply provides an opportunity for more experienced peace officers to qualify, thereby harmonizing the statute’s language.

Toward this end, it is patently absurd to construe the statute so as to suggest that the General Assembly desired to penalize, and/or exclude, a candidate with the supervisory and work history of a candidate like Sheriff Lucas simply because the vast *majority* of his supervisory experience was accumulated prior to an arbitrary time designation. Instead, as the *Altieri* decision suggests, the more reasonable construction is to read all of R.C. §311.01 as a rational means to exclude only those individuals whose record and experience in law enforcement has not adequately prepared them for the responsibilities that the office of Sheriff encompasses.

**D. Special Deputy as “Peace Officer”:**

Exclusion of Sheriff Lucas is even more absurd when the Court considers Sheriff Lucas’ status from November 1, 2007, through to his taking office on January 7, 2013. During that period, Sheriff Lucas was a Commissioned Special Deputy Sheriff. A special deputy sheriff is a ‘peace officer’ as defined in R.C. §109.71, which is required under both R.C. §311.01(B)(8)(a) and R.C. §311.01(B)(9)(a).

A special deputy sheriff is, in all respects, the equivalent under Ohio law to a ‘regular deputy sheriff.’ The Ohio Attorney General has spoken as to the nature of a special deputy sheriff in 1998 Ohio Atty.Gen.Ops. No. 1998-93. There, it was said:

[A] deputy sheriff appointed by the county sheriff pursuant to R.C. 311.04(B)(1) may be either a regular deputy sheriff or a special deputy sheriff. 1992 Op. Att’y Gen. No. 92-024 at 2-83; 1991 Op. Att’y Gen. No. 91-037 at 2-199. A special deputy sheriff serves on terms that are different from those on which a regular deputy sheriff serves. "For example, his duties may be limited, he may be employed only intermittently as needed, or he may serve without compensation." 1989 Op. Att’y Gen. No. 89-071 at 2-326; *accord State ex rel. Geyer v. Griffin*, 80 Ohio App. 447, 457, 76 N.E.2d 294, 300 (Allen County 1946); 1991 Op. Att’y Gen. No. 91-037 at 2-199; 1968 Op. Att’y Gen. No. 68-112 at 2-160 and 2-161. 1977 Op. Att’y Gen. No. 77-027 at 2-102 states that all requirements for regular deputy sheriffs apply to special deputy sheriffs:

The term "special" relates not to an individual's qualification as a deputy but to the nature of his assignment as a deputy and to the fact that his commission and powers may be limited consistent with such assignment. Once he meets the general requirements of a deputy the special deputy may be required by the sheriff to perform any or all of the duties required of regular deputies. In law, the special deputy thus appointed and approved is deemed a "deputy;" there is no distinction. Nor should there be any distinction made for purposes of R.C. 311.04 and R.C. 325.17. I must conclude that a special deputy sheriff is a "deputy" within the purview of R.C. 311.04 and R.C. 325.17 [appointment of deputy sheriffs].

1989 Op. Att'y Gen. No. 89-071 at 2-327. (Original citation).

As such, at all times relevant, Sheriff Lucas met the same general requirements as any regular deputy within the Belmont County Sheriff's Department; he was a 'peace officer;' he held twenty-six (26) years of full-time employment experience; and nearly twenty-four (24) years of supervisory experience at the rank of Sergeant or above -- yet, in his desperate attempt to claim office, Flanagan asserts the R.C. §311.11(B) strips all that away from him, rendering him "unqualified" and ineligible for office.

Though this case should never reach the merits due to Flanagan's lack of standing, in the event the Court entertains a review of the merits, there is ample support for the decision the Belmont County Court of Common Pleas and the Board made in finding Sheriff Lucas as qualified to both be a candidate for and to hold the office of Sheriff of Belmont County, Ohio.

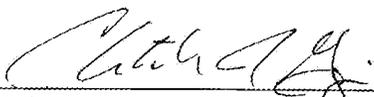
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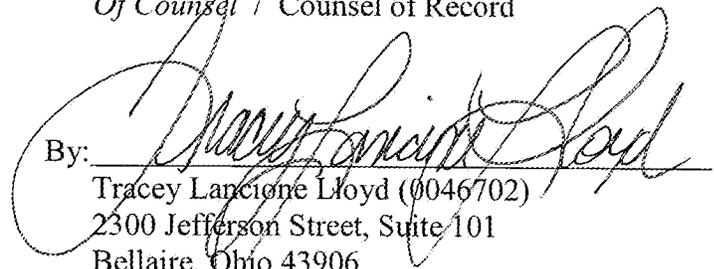
CONCLUSION

Based on the foregoing, Lucas respectfully states there are no facts or circumstances under which this Honorable Court can elevate Flanagan from the runner-up in the 2012 general election to the office of Sheriff of Belmont County, Ohio as a matter of law. As such, Lucas respectfully requests this Honorable Court grant Respondent's Motion for Judgment on the Pleadings and dismiss this matter, as Flanagan lacks the requisite standing under R.C. §2733.06 to initiate or maintain this action. In the alternative, Lucas requests this Honorable Court find that Lucas's extensive work history and experience, coupled with the required liberal construction of R.C. §311.01(B), more than adequately qualifies him to hold the office to which the voters of Belmont County entrusted him.

Respectfully submitted,

LANCIONE, LLOYD & HOFFMAN  
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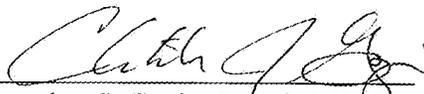
*Counsel for Respondent, David M. Lucas*

PROOF OF SERVICE

I hereby certify that a true copy of Respondent's Merit Brief was served via electronic mail upon Relator's Counsel of Record, Mark E. Landers, Esq., at *mark.landens.esq.@gmail.com*, pursuant to S.Ct.Prac.R. 3.11(B), on this 13th day of August, 2013.

Respectfully submitted,

**LANCIONE, LLOYD & HOFFMAN  
LAW OFFICE CO. L.P.A.**

By:   
Christopher J. Gagin, Esq. (0062820)  
*Of Counsel - Counsel of Record*

APPENDIX

LANCIONE, LLOYD  
& HOFFMAN  
LAW OFFICE CO.,  
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## **311.04 Deputy sheriffs.**

(A) As used in this section, "felony" has the same meaning as in section 109.511 of the Revised Code.

(B)

(1) Subject to division (C) of this section, the sheriff may appoint, in writing, one or more deputies. At the time of the appointment, the sheriff shall file the writing upon which the appointment is made with the clerk of the court of common pleas, and the clerk of the court shall enter it upon the journal of the court. The sheriff shall pay the clerk's fees for the filing and journal entry of the writing. In cases of emergency, the sheriff may request of the sheriff of another county the aid of qualified deputies serving in those other counties of the state, and, if the consent of the sheriff of that other county is received, the deputies while so assigned shall be considered to be the deputies of the sheriff of the county requesting aid. No judge of a county court or mayor shall be appointed a deputy.

(2) Notwithstanding section 2335.33 of the Revised Code, the sheriff shall retain the fee charged pursuant to division (B) of section 311.37 of the Revised Code for the purpose of training deputies appointed pursuant to this section.

(C)

(1) The sheriff shall not appoint a person as a deputy sheriff pursuant to division (B) (1) of this section on a permanent basis, on a temporary basis, for a probationary term, or on other than a permanent basis if the person previously has been convicted of or has pleaded guilty to a felony.

(2)

(a) The sheriff shall terminate the employment of a deputy sheriff appointed under division (B)(1) of this section if the deputy sheriff does either of the following:

(i) Pleads guilty to a felony;

(ii) Pleads guilty to a misdemeanor pursuant to a negotiated plea agreement as provided in division (D) of section 2929.43 of the Revised Code in which the deputy sheriff agrees to surrender the certificate awarded to the deputy sheriff under section 109.77 of the Revised Code.

(b) The sheriff shall suspend from employment any deputy sheriff appointed under division (B)(1) of this section if the deputy sheriff is convicted, after trial, of a felony. If the deputy sheriff files an appeal from that conviction and the conviction is upheld by the highest court to which the appeal is taken or if the deputy sheriff does not file

a timely appeal, the sheriff shall terminate the employment of that deputy sheriff. If the deputy sheriff files an appeal that results in that deputy sheriff's acquittal of the felony or conviction of a misdemeanor, or in the dismissal of the felony charge against the deputy sheriff, the sheriff shall reinstate that deputy sheriff. A deputy sheriff who is reinstated under division (C)(2)(b) of this section shall not receive any back pay unless that deputy sheriff's conviction of the felony was reversed on appeal, or the felony charge was dismissed, because the court found insufficient evidence to convict the deputy sheriff of the felony.

(3) Division (C) of this section does not apply regarding an offense that was committed prior to January 1, 1997.

(4) The suspension from employment, or the termination of the employment, of a deputy sheriff under division (C)(2) of this section shall be in accordance with Chapter 119. of the Revised Code.

Effective Date: 01-01-2004

### **325.17 Appointing and hiring employees - compensation - bond.**

The officers mentioned in section 325.27 of the Revised Code may appoint and employ the necessary deputies, assistants, clerks, bookkeepers, or other employees for their respective offices, shall fix the compensation of those employees and discharge them, and shall file certificates of that action with the county auditor. The employees' compensation shall not exceed, in the aggregate, for each office, the amount fixed by the board of county commissioners for that office. When so fixed, the compensation of each such deputy, assistant, bookkeeper, clerk, and other employee shall be paid biweekly from the county treasury, upon the warrant of the county auditor. The amount of the biweekly payment shall be adjusted so that the total amount paid out to an employee over a period of one year is equal to the amount the employee would receive if the employee were paid semimonthly.

Each of the officers mentioned in section 325.27 of the Revised Code may require such of the officer's employees as the officer considers proper to give bond to the state, in an amount to be fixed by the officer, with sureties approved by the officer, conditioned for the faithful performance of their official duties. The bond, with the approval of the officer endorsed on it, shall be deposited with the county treasurer and kept in the treasurer's office.

From moneys appropriated for their offices, the officers mentioned in section 325.27 of the Revised Code may contract for the services of fiscal and management consultants to aid them in the execution of their powers and duties.

Effective Date: 11-07-1975; 08-17-2006

## **2733.06 Usurpation of office.**

A person claiming to be entitled to a public office unlawfully held and exercised by another may bring an action therefor by himself or an attorney at law, upon giving security for costs.

Effective Date: 10-01-1953

## **2733.08 Petition against person for usurpation of office.**

When an action in quo warranto is brought against a person for usurping an office, the petition shall set forth the name of the person claiming to be entitled to the office, with an averment of his right thereto. Judgment may be rendered upon the right of the defendant, and also on the right of the person averred to be so entitled, or only upon the right of the defendant, as justice requires.

All persons who claim to be entitled to the same office or franchise may be made defendants in one action, to try their respective rights to such office or franchise.

Effective Date: 10-01-1953

## **3513.05 Deadline for filing declaration of candidacy.**

Each person desiring to become a candidate for a party nomination or for election to an office or position to be voted for at a primary election, except persons desiring to become joint candidates for the offices of governor and lieutenant governor and except as otherwise provided in section 3513.051 of the Revised Code, shall, not later than four p.m. of the ninetieth day before the day of the primary election, file a declaration of candidacy and petition and pay the fees required under divisions (A) and (B) of section 3513.10 of the Revised Code. The declaration of candidacy and all separate petition papers shall be filed at the same time as one instrument. When the offices are to be voted for at a primary election, persons desiring to become joint candidates for the offices of governor and lieutenant governor shall, not later than four p.m. of the ninetieth day before the day of the primary election, comply with section 3513.04 of the Revised Code. The prospective joint candidates' declaration of candidacy and all separate petition papers of candidacies shall be filed at the same time as one instrument. The secretary of state or a board of elections shall not accept for filing a declaration of candidacy and petition of a person seeking to become a candidate if that person, for the same election, has already filed a declaration of candidacy or a declaration of intent to be a write-in candidate, or has become a candidate by the filling of a vacancy under section 3513.30 of the Revised Code for any federal, state, or county office, if the declaration of candidacy is for a state or county office, or for any municipal or township office, if the declaration of candidacy is for a municipal or township office.

If the declaration of candidacy declares a candidacy which is to be submitted to electors throughout the entire state, the petition, including a petition for joint candidates for the offices of governor and lieutenant governor, shall be signed by at least one thousand qualified electors who are members of the same political party as the candidate or joint candidates, and the declaration of candidacy and petition shall be filed with the secretary of state; provided that the secretary of state shall not accept or file any such petition appearing on its face to contain signatures of more than three thousand electors.

Except as otherwise provided in this paragraph, if the declaration of candidacy is of one that is to be submitted only to electors within a district, political subdivision, or portion thereof, the petition shall be signed by not less than fifty qualified electors who are members of the same political party as the political party of which the candidate is a member. If the declaration of candidacy is for party nomination as a candidate for member of the legislative authority of a municipal corporation elected by ward, the petition shall be signed by not less than twenty-five qualified electors who are members of the political party of which the candidate is a member.

No such petition, except the petition for a candidacy that is to be submitted to

electors throughout the entire state, shall be accepted for filing if it appears to contain on its face signatures of more than three times the minimum number of signatures. When a petition of a candidate has been accepted for filing by a board of elections, the petition shall not be deemed invalid if, upon verification of signatures contained in the petition, the board of elections finds the number of signatures accepted exceeds three times the minimum number of signatures required. A board of elections may discontinue verifying signatures on petitions when the number of verified signatures equals the minimum required number of qualified signatures.

If the declaration of candidacy declares a candidacy for party nomination or for election as a candidate of an intermediate or minor party, the minimum number of signatures on such petition is one-half the minimum number provided in this section, except that, when the candidacy is one for election as a member of the state central committee or the county central committee of a political party, the minimum number shall be the same for an intermediate or minor party as for a major party.

If a declaration of candidacy is one for election as a member of the state central committee or the county central committee of a political party, the petition shall be signed by five qualified electors of the district, county, ward, township, or precinct within which electors may vote for such candidate. The electors signing such petition shall be members of the same political party as the political party of which the candidate is a member.

For purposes of signing or circulating a petition of candidacy for party nomination or election, an elector is considered to be a member of a political party if the elector voted in that party's primary election within the preceding two calendar years, or if the elector did not vote in any other party's primary election within the preceding two calendar years.

If the declaration of candidacy is of one that is to be submitted only to electors within a county, or within a district or subdivision or part thereof smaller than a county, the petition shall be filed with the board of elections of the county. If the declaration of candidacy is of one that is to be submitted only to electors of a district or subdivision or part thereof that is situated in more than one county, the petition shall be filed with the board of elections of the county within which the major portion of the population thereof, as ascertained by the next preceding federal census, is located.

A petition shall consist of separate petition papers, each of which shall contain signatures of electors of only one county. Petitions or separate petition papers containing signatures of electors of more than one county shall not thereby be declared invalid. In case petitions or separate petition papers containing signatures of electors of more than one county are filed, the board shall determine the county from which the majority of signatures came, and only signatures from such county shall be

counted. Signatures from any other county shall be invalid.

Each separate petition paper shall be circulated by one person only, who shall be the candidate or a joint candidate or a member of the same political party as the candidate or joint candidates, and each separate petition paper shall be governed by the rules set forth in section 3501.38 of the Revised Code.

The secretary of state shall promptly transmit to each board such separate petition papers of each petition accompanying a declaration of candidacy filed with the secretary of state as purport to contain signatures of electors of the county of such board. The board of the most populous county of a district shall promptly transmit to each board within such district such separate petition papers of each petition accompanying a declaration of candidacy filed with it as purport to contain signatures of electors of the county of each such board. The board of a county within which the major portion of the population of a subdivision, situated in more than one county, is located, shall promptly transmit to the board of each other county within which a portion of such subdivision is located such separate petition papers of each petition accompanying a declaration of candidacy filed with it as purport to contain signatures of electors of the portion of such subdivision in the county of each such board.

All petition papers so transmitted to a board and all petitions accompanying declarations of candidacy filed with a board shall, under proper regulations, be open to public inspection until four p.m. of the eightieth day before the day of the next primary election. Each board shall, not later than the seventy-eighth day before the day of that primary election, examine and determine the validity or invalidity of the signatures on the petition papers so transmitted to or filed with it and shall return to the secretary of state all petition papers transmitted to it by the secretary of state, together with its certification of its determination as to the validity or invalidity of signatures thereon, and shall return to each other board all petition papers transmitted to it by such board, together with its certification of its determination as to the validity or invalidity of the signatures thereon. All other matters affecting the validity or invalidity of such petition papers shall be determined by the secretary of state or the board with whom such petition papers were filed.

Protests against the candidacy of any person filing a declaration of candidacy for party nomination or for election to an office or position, as provided in this section, may be filed by any qualified elector who is a member of the same political party as the candidate and who is eligible to vote at the primary election for the candidate whose declaration of candidacy the elector objects to, or by the controlling committee of that political party. The protest shall be in writing, and shall be filed not later than four p.m. of the seventy-fourth day before the day of the primary election. The protest shall be filed with the election officials with whom the declaration of candidacy and petition was filed. Upon the filing of the protest, the election officials with whom it is filed shall promptly fix the time for hearing it, and shall forthwith mail

notice of the filing of the protest and the time fixed for hearing to the person whose candidacy is so protested. They shall also forthwith mail notice of the time fixed for such hearing to the person who filed the protest. At the time fixed, such election officials shall hear the protest and determine the validity or invalidity of the declaration of candidacy and petition. If they find that such candidate is not an elector of the state, district, county, or political subdivision in which the candidate seeks a party nomination or election to an office or position, or has not fully complied with this chapter, the candidate's declaration of candidacy and petition shall be determined to be invalid and shall be rejected; otherwise, it shall be determined to be valid. That determination shall be final.

A protest against the candidacy of any persons filing a declaration of candidacy for joint party nomination to the offices of governor and lieutenant governor shall be filed, heard, and determined in the same manner as a protest against the candidacy of any person filing a declaration of candidacy singly.

The secretary of state shall, on the seventieth day before the day of a primary election, certify to each board in the state the forms of the official ballots to be used at the primary election, together with the names of the candidates to be printed on the ballots whose nomination or election is to be determined by electors throughout the entire state and who filed valid declarations of candidacy and petitions.

The board of the most populous county in a district comprised of more than one county but less than all of the counties of the state shall, on the seventieth day before the day of a primary election, certify to the board of each county in the district the names of the candidates to be printed on the official ballots to be used at the primary election, whose nomination or election is to be determined only by electors within the district and who filed valid declarations of candidacy and petitions.

The board of a county within which the major portion of the population of a subdivision smaller than the county and situated in more than one county is located shall, on the seventieth day before the day of a primary election, certify to the board of each county in which a portion of that subdivision is located the names of the candidates to be printed on the official ballots to be used at the primary election, whose nomination or election is to be determined only by electors within that subdivision and who filed valid declarations of candidacy and petitions.

Amended by 129th General Assembly File No.105,SB 295, §1, eff. 8/15/2012.

Amended by 129th General Assembly File No.40,HB 194, §1 Made subject to referendum in the Nov. 6, 2012 election. The version of this section thus amended was repealed by 129th General Assembly File No.105,SB 295, §1, eff. 8/15/2012.

Amended by 128th General Assembly File No.29,HB 48, §1, eff. 7/2/2010.

Effective Date: 2002 HB445 12-23-2002; 09-29-2005; 05-02-2006

## **109:2-1-12 Certification before service and re-entry requirements.**

(A)

(1) No person shall, after January 1, 1966, receive an original appointment on a permanent basis as a peace officer unless such person has previously been awarded a certificate by the executive director attesting to satisfactory completion of the basic course prescribed in rule 109:2-1-16 of the Administrative Code.

(2) No person shall, after January 1, 1989, be permitted to perform the functions of a peace officer or to carry a weapon in connection with peace officer duties unless such person has successfully completed the basic course and has been awarded a certificate of completion by the executive director.

(3) All peace officers employed by a county, township, or municipal corporation of the state of Ohio on January 1, 1966, and who have either completed at least sixteen years of full-time active service as such peace officer or have completed equivalent service as determined by the executive director, may receive an original appointment on a permanent basis and serve as a peace officer of a county, township, or municipal corporation, or as a state university law enforcement officer without receiving a basic training certificate signed by the executive director.

(B) Credit for prior equivalent training or education:

(1) An individual who has successfully completed prior training or education other than under the auspices of the Ohio peace officer training commission and who is appointed as a peace officer in Ohio may request credit for that portion of the basic training course which is equivalent to training previously completed. Training or education which shall be accepted includes, but is not limited to, training or education certified by another state, another government agency, military service, the state highway patrol or a college, university or other educational institution.

(2) The applicant shall provide to the executive director documented evidence of the training. The executive director shall review the record of the prior training or education and make a determination of the training the person shall be required to complete in a commission-approved basic training school.

(3) Credit for equivalent training may also be given under this rule for experience when the applicant can, through a means that the executive director has approved in advance, demonstrate to the executive director a level of proficiency that is equivalent to the proficiency required to complete one or more portions of the basic training course.

(4) If the applicant disputes any of the training assigned by the executive director, he or she may request a hearing before the commission as provided in sections 119.06 and 119.07 of the Revised Code. The commission shall conduct the hearing as required by sections 119.01 to 119.13 of the Revised Code.

(C) All persons who have previously been appointed as a peace officer and have been awarded a certificate of completion of basic training by the executive director or those peace officers described in paragraph (A)(3) of this rule who terminate their appointment from, an agency will have their training eligibility reviewed by the executive director upon reappointment.

Upon appointing a person to a peace officer position as described in division (A) of section 109.71 of the Revised Code, the appointing agency shall submit a request for the executive director to evaluate the officer's training and eligibility to perform the functions of a peace officer. Such request will be made on a form provided by the executive director and shall be submitted immediately upon appointing the officer.

(D) Breaks in service/requirements for update training evaluations:

(1) All persons who have previously been appointed as a peace officer and have been awarded a certificate of completion of basic training by the executive director or those peace officers described in paragraph (A)(3) of this rule who have had no appointment as either a peace officer or a trooper for one year or less shall remain eligible for re-appointment as a peace officer and shall not be required to complete additional, specialized training to remain eligible for re-appointment as a peace officer.

(2) All persons who have previously been appointed as a peace officer and have been awarded a certificate of completion of basic training by the executive director or those peace officers described in paragraph (A)(3) of this rule who have not been appointed as either a peace officer or a trooper for more than one year but less than four years shall, within one year of the re-appointment date as a peace officer, successfully complete a refresher course prescribed by the executive director and any training as required by paragraph (D)(1) of this rule. This course and appropriate examination must be approved by the executive director and shall be sufficient in content and subject material to refresh that officer's knowledge of the role, function, and practices of a peace officer in light of that officer's past training and experience. Officers required to complete the refresher course are permitted to perform the functions of a peace officer for one year from the date of the re-appointment which gave rise to the requirement. In the event specialized training has been mandated during the period between the date of the original appointment and the re-appointment date, said individual shall be required to successfully complete that mandated specialized training within one year of re-appointment as a peace officer or else demonstrate to the executive director a level of proficiency in that area of specialized training that is equivalent to the proficiency of one who has completed

such training.

(3) All persons who have previously been appointed as a peace officer and have been awarded a certificate of completion of basic training by the executive director or those peace officers described in paragraph (A)(3) of this rule who have not been appointed as either a peace officer or a trooper for more than four years shall, upon re-appointment as a peace officer, complete the basic training course prior to performing the functions of a peace officer.

(4) Notwithstanding the training requirements set forth in paragraphs (D)(1) and (D)(2) of this rule, a member of the national guard or a military reservist who has previously been appointed as a peace officer and has been awarded a certificate of successful completion of basic training by the executive director or those peace officers described in paragraph (A)(3) of this rule who are members of the national guard or military reserves and have not been appointed as a peace officer for one year or more due to active duty in the uniformed services, when such absence from the appointment is as a direct result of the person's mobilization to active duty service, shall, upon return from active duty, be immediately eligible for appointment as a peace officer and shall not be required to meet the training requirements set forth in paragraphs (D)(1) and (D)(2) of this rule.

(E) Any person who has been appointed as a peace officer and has been awarded a certificate of completion of basic training by the executive director and has been elected or appointed to the office of sheriff shall be considered a peace officer during the term of office for the purpose of maintaining a current and valid basic training certificate. Any training requirements required of peace officers shall also be required of sheriffs.

(F) Every person who has been re-appointed as a peace officer and who must complete training pursuant to paragraph (D)(1) or (D)(2) of this rule shall cease performing the functions of a peace officer and shall cease carrying a weapon unless the person has within one year from the date of re-appointment, received documentation from the executive director that certifies that person's compliance with the above training requirements.

(G) The executive director may extend the time for completion of the training requirements based upon written application from the appointing authority of the individual. Such application will contain an explanation of the circumstances which create the need for the extension. Factors which may be considered in granting or denying the extension include, but are not limited to, serious illness of the individual or an immediate family member, the absence of a reasonably accessible training course, or an unreasonable shortage of manpower within the employing agency. Based on the circumstances in a given case, the executive director may modify the completion date for any training assigned. An extension shall generally be for ninety

days, but in no event may the executive director grant an extension beyond one hundred eighty days.

(1) Should the executive director deny the request for an extension, he shall notify and advise the appointing authority that the appointing authority may request a hearing before the commission as provided in sections 119.06 and 119.07 of the Revised Code. The commission shall conduct the hearing as required by sections 119.01 to 119.13 of the Revised Code.

(2) The provisions of paragraph (G) of this rule shall remain in effect until such time as the commission makes the determination to grant or deny the request.

(H) This rule shall not be construed to preclude a township, county, or municipal corporation from establishing time limits for satisfactory completion of the basic course and re-entry requirements of less than the maximum limits prescribed by the commission. If a township, county, or municipal corporation has adopted time limits less than the maximum limits prescribed above, such time limits shall be controlling.

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