

ORIGINAL

IN THE SUPREME COURT OF OHIO

State of Ohio, ex rel. Timothy A. Swanson,	:	Case No. 2013-1822
et al.,	:	
	:	
Relators,	:	
	:	
v.	:	
	:	
Stark County Democratic Central Committee,	:	Original Action in Mandamus
et al.,	:	
	:	
Respondents.	:	

RESPONSE OF RESPONDENTS TO MOTION FOR ANCILLARY INJUNCTIVE RELIEF

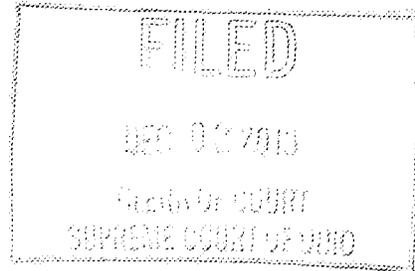
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RESPONSE OF RESPONDENTS TO MOTION FOR ANCILLARY INJUNCTIVE RELIEF

The relators have filed a motion for ancillary injunctive relief, including a temporary restraining order. For the reasons set forth below, the respondents Stark County Democratic Central Committee (DCC) and Randy Gonzalez, the committee's chairman, hereby request the Court to deny the relators' motion.

A review of the relators' motion requires the consideration of four factors. "In deciding whether to grant a preliminary injunction, a court must look at: 1) whether there is a substantial likelihood that plaintiff will prevail on the merits; 2) whether plaintiff will suffer irreparable injury if the injunction is not granted; 3) whether third parties will be unjustifiably harmed if the injunction is granted; and 4) whether the public interest will be served by the injunction. Further, the party seeking the preliminary injunction must establish a right to the preliminary injunction by showing clear and convincing evidence of each element of the claim." *Vanguard Transp. Sys., Inc. v. Edwards Transfer & Storage Co.*, 109 Ohio App.3d 786, 790, 673 N.E.2d 182 (10th Dist.1996) (citations omitted). *Accord Garb-Ko, Inc. v. Benderson*, 10th Dist. Franklin No. 12AP-430, 2013-Ohio-1249, ¶32.

Addressing each of these four considerations, the respondents submit that the relators have failed to show each necessary element for injunctive relief.

I. There is not a substantial likelihood that the relators will prevail on the merits.

A. The relators are not likely to prevail on the merits because this Court does not have jurisdiction over the underlying action.

The relators filed an underlying case styled as an "original action in mandamus." As an adjunct to that action, the relators have also filed a motion for ancillary injunctive relief. The relators' motion should be denied because the underlying action, although labeled as "in

mandamus,” is in substance an action for injunctive relief, over which this Court lacks original jurisdiction. Additionally, even if the Court finds the underlying action to be within its jurisdiction, the relators have failed to meet their burden of showing by clear and convincing evidence each element necessary for the injunctive relief they seek.

The Ohio Constitution does not grant this Court original jurisdiction for injunctive or declaratory relief. “That we have not original jurisdiction of suits for injunctions is entirely clear.” *State ex rel. Ellis v. Bd. of Deputy State Supervisors*, 70 Ohio St. 341, 348, 71 N.E. 717 (1904). “Original jurisdiction is conferred upon the Supreme Court by the state Constitution only in *quo warranto*, *mandamus*, *habeas corpus*, prohibition and *procedendo*. The court is without authority to entertain an action in injunction instituted therein.” *State ex rel. Smith v. Indus. Comm.*, 139 Ohio St. 303, 39 N.E.2d 838 (1942), paragraph one of the syllabus.

Thus, the initial question before this Court is jurisdictional. If the substance of the underlying action is injunctive in nature, then jurisdiction is absent and the motion which the relators claim to be “ancillary” to the underlying action must be denied. “[I]f the allegations of a complaint for a writ of mandamus indicate that the real objects sought are a declaratory judgment and a prohibitory injunction, the complaint does not state a cause of action in mandamus and must be dismissed for want of jurisdiction.” *State ex rel. Grendell v. Davidson*, 86 Ohio St.3d 629, 634, 1999-Ohio-130, 716 N.E.2d 704. *Accord State ex rel. Reese v. Cuyahoga Cty Bd. of Elections*, 115 Ohio St.3d 126, 2007-Ohio-4588, 873 N.E.2d 1251, ¶ 12; *State ex rel. Obojski v. Perciak*, 113 Ohio St.3d 486, 2007-Ohio-2453, 866 N.E.2d 1070, ¶ 13. As this Court has held: “Where a petition filed in the Supreme Court or in the Court of Appeals is in the form of a proceeding in mandamus but the substance of the allegations makes it manifest that the real object of the relator is for an injunction, such a petition does not state a cause of action in

mandamus and since neither the Supreme Court nor the Court of Appeals has original jurisdiction in injunction the action must be dismissed for want of jurisdiction.” *State ex rel. Pressley v. Indus. Comm.*, 11 Ohio St.2d 141, 228 N.E.2d 631 (1967), paragraph four of the syllabus.

In determining the substance of the underlying action, the Court is not controlled by how the relators have styled their complaint. “The nature of the writ sought is not to be determined by the label attached thereto by the relator.” *State ex rel. Smith*, 139 Ohio St. at 308. Instead, the Court looks to the substance of the complaint and “the real objects sought.” *State ex rel. Grendell*, 86 Ohio St.3d at 634. Indeed, the relators’ action is subjected to scrutiny to ensure that the Court’s jurisdiction is invoked in proper cases only: “[T]his court will scrutinize pleadings in order to assure that actions filed by parties requesting mandamus relief are consistent with our prior decisions as to the form and substance of the relief sought.” *State ex rel. Zupancic v. Limbach* (1991), 58 Ohio St.3d 130, 132, 568 N.E.2d 1206.

The distinction between an action in mandamus and an action for injunction is clear. “A writ of mandamus compels action or commands the performance of a duty, while a decree of injunction ordinarily restrains or forbids the performance of a specified act.” *State ex rel. Smith*, paragraph two of the syllabus. The *Smith* court elaborated on this standard in the body of the opinion: “There is a substantial difference between commanding and forbidding action. It has been well stated that the important feature of the writ of mandamus which distinguishes it from any other remedial writ is that it is used merely to compel action and to coerce the performance of a pre-existing duty. The functions of an injunction are ordinarily to restrain motion and enforce inaction, while those of mandamus are to set in motion and compel action.” *Id.* at 306.

The relators pray for relief that is injunctive in nature because they seek to restrain and forbid the respondents from performing certain acts. While the relators' complaint is couched in terms of compelling acts, the complaint really seeks to restrain the respondents: "The Relators aver that unless the Respondents are ordered to follow clear Ohio law, and their duty imposed by such law, the Stark County Democratic Central Committee will convene, allow, review and permit consideration of other unqualified and untimely applicants * * *." Complaint ¶ 17 (emphasis added). Clearly, the relators are trying to prevent an act from occurring.

The relators seek to forbid the DCC from "review[ing] and accept[ing] applications from individuals other than those who had applied" previously. Complaint ¶ 27. Further, the relators seek to prohibit and forbid the respondents from considering anyone other than Lou Darrow and Larry Dordea. Complaint ¶¶ 11, 26. Indeed, the relators expressly state that "George Maier . . . should not and cannot be considered as an applicant for Stark County Sheriff." Complaint ¶ 21. And perhaps most insightful is that the relators are asking this Court to prohibit a vote from taking place by ordering instead the counting of votes previously cast! Complaint p. 6, ¶ 2, Memorandum in support pp. 13-14, ¶ b.

Clearly, the relators are seeking to prohibit, forbid and restrain a number of acts by the respondents. The gravamen of the relators' complaint is not to compel the DCC to perform a specific act. Rather, the relators seek to prohibit the DCC from considering any applicant other than those proposed by the relators, and to prohibit the DCC from even holding a vote. Merely because the relators have phrased much of their complaint in the affirmative does not magically transform the inherently injunctive nature of the relief they seek. Regardless of how the relators may label their action, the substance, core and real object of their complaint remains injunctive.

Even if there was some affirmative duty that the relators seek to enforce, “[w]here, as here, an action in mandamus does not provide effective relief unless accompanied by an ancillary injunction, it would appear that injunction rather than mandamus is the appropriate remedy.” *State ex rel. Corron v. Wisner*, 25 Ohio St.2d 160, 163, 267 N.E.2d 308 (1971); *State ex rel. Satow v. Gausse-Milliken*, 98 Ohio St. 3d 479, 482-83, 2003-Ohio-2074, 786 N.E.2d 1289, ¶ 15.

As if to prove the point, the relators initially claimed that “[n]either a declaratory judgment nor a prohibitory injunction would serve as alternative, adequate remedies * * *.” Memorandum in Support p. 12. Yet, the relators immediately thereafter filed the motion for ancillary injunctive relief, and complained that “*mandamus* would not afford complete relief.” Motion p. 9. This is the exact scenario described in *State ex rel. Corron*. The rule in that case is clear: where an action in mandamus does not provide effective relief unless accompanied by an ancillary injunction, then injunction rather than mandamus is the appropriate remedy.

There is nothing “ancillary” about the injunctive relief sought by the relators. In fact, the relators’ mandamus complaint simply cannot be viable without the accompanying motion for injunctive relief. The relators demand that no vote take place, certain votes must not be counted, and certain candidates must not be considered. This is not only injunctive in nature, but depends absolutely on the Court granting injunctive relief.

The relief sought by the motion – prohibiting the respondents from considering any applicant other than Darrow and Dordea – is a mirror image of the relief sought by the complaint. This proves conclusively that the complaint is an injunctive action masquerading as a mandamus action.

The inescapable conclusion, therefore, is that instead of being “ancillary” to the mandamus action, the motion for injunctive relief is instead clearly necessary for the viability of

the mandamus complaint. The two documents are fully integrated and fundamentally linked in the result they seek. Indeed, the relators have “fully incorporated” their complaint and memorandum into their motion. Motion p. 2.

This Court has long applied a jurisdictional principal that prohibits the filing of injunctive actions veiled as mandamus actions. This principal should be exercised in the case at bar and the motion for ancillary injunctive relief should be denied.

B. Even if this Court did have jurisdiction over the underlying action, the relators are not likely to prevail on the merits.

Assuming arguendo that this Court has jurisdiction to hear the underlying action, the relators are not likely to prevail on the merits of that action and cannot meet the requirements for the issuance of a writ of mandamus.

The standards for a writ of mandamus are well established. “In order to be entitled to a writ of mandamus, the relator must establish that he has a clear legal right to the relief prayed for, that respondent has a clear legal duty to perform the requested act and that relator has no plain and adequate remedy at law.” *State ex rel. Howard v. Ferreri*, 70 Ohio St.3d 587, 589, 1994-Ohio-130, 639 N.E.2d 1189.

1. **The relators have no clear legal right to the requested relief.**
2. **The respondents are not under a clear legal duty as claimed by the relators.**

The relators’ entire case rests upon a sentence and a half found at ¶ 28 of this Court’s decision in *State ex rel. Swanson v. Maier*, ___ Ohio St.3d ___, 2013-Ohio-4767 (*Swanson I*). At the end of that paragraph, the Court stated that “the vacancy occurred on January 7, the first day of McDonald’s term. And 30 days after that date is the ‘qualification date,’ February 6, 2013.” Indeed, the relators’ complaint refers on eight occasions to the date of February 6, 2013. The

relators describe this date as “inflexible” and argue that it is frozen in time as the qualification date as this matter moves forward prospectively. Memorandum p. 6.

The respondents most certainly understand that February 6, 2013, served as the qualification date for the quo warranto action in *Swanson I*. The dispute then before the Court required a review of Maier’s qualifications as of the date originally established as the qualification date.

However, the statutes, the public interest and simple logic tell us that the original qualification date from ten months ago cannot be locked in for all time for purposes of effectuating and implementing the Court’s remedy in *Swanson I*.

Our consideration must begin with the statute that empowers the DCC to appoint the sheriff. R.C. 305.02(B) states in pertinent part: “If a vacancy occurs from any cause in any of the offices named in division (A) of this section, * * * if such vacancy occurs because of the death, resignation, or inability to take the office of an officer-elect whose term has not yet begun, an appointment to take such office at the beginning of the term shall be made by the central committee of the political party with which such officer-elect was affiliated.”

R.C. 305.02(C) establishes the time limit in which the DCC has authority to make the appointment: “Not less than five nor more than forty-five days after a vacancy occurs, the county central committee shall meet for the purpose of making an appointment under this section.” Clearly, after a vacancy, there is a 45 day window in which the DCC has legal authority to make an appointment. After 45 days, the DCC’s legal authority lapses and it has no power to appoint. No interpretive gymnastics are necessary for this conclusion.

Obviously, the original 45 day window had long since lapsed as of November 6, 2013, the date on which *Swanson I* was announced. Yet, this Court expressly stated that Swanson

would be reinstated “until the DCC, pursuant to R.C. 305.02(B), appoints a person qualified under R.C. 311.01 to assume the office of Stark County sheriff.” *Id.* at ¶ 40. How can the Court’s sending this back to the DCC be reconciled with the lapsed 45 day time limit to appoint? Put another way, how could this matter be sent back to the DCC if, as relators argue, the vacancy and qualification dates are forever frozen in time? If the relators are correct, then the DCC would have no authority whatsoever to make an appointment because the 45 days have long since lapsed.

Logically, the only way this case can be sent back to the DCC for appointment is if there is a new 45 day period following the vacancy created when Maier was removed from office. If the vacancy and qualification dates are frozen in time, then this Court’s only remedy after ousting Maier would have been to simply reinstate Swanson as acting sheriff. The lapsed 45 day period would have prohibited the matter from returning to the DCC. The very fact that this Court acknowledged the DCC’s current power to appoint compels the conclusion that a new 45 day window was necessarily created.

It is important to recognize that R.C. 305.02(C) does not grant any court the authority to extend the original 45 day period, this Court did not purport to assume such power in *Swanson I*, and the relators never asked the Court to do so. Indeed, to extend the original 45 day time period to 329 days (as of December 2, 2013) would violate the long established rule that this Court will not rewrite a statute. “Our role is to interpret existing statutes, not rewrite them.” *Kish v. City of Akron*, 109 Ohio St.3d 162, 2006-Ohio-1244, 846 N.E.2d 811, ¶ 44. “It is our duty to apply the statute as the General Assembly has drafted it; it is not our duty to rewrite it.” *Doe v. Marlinton Local Sch. Dist. Bd. of Educ.*, 122 Ohio St.3d 12, 2009-Ohio-1360, 907 N.E.2d 706, ¶ 29.

It is ironic that the relators point out “the passing of the qualification date” and admit that “[t]he ‘qualification date’ is long passed.” Memorandum pp. 3, 9. Yet, the relators fail to acknowledge the passing of the time period in which the DCC had its original legal authority to appoint the sheriff.

Similarly, the relators insist that “the disqualification of Maier does not somehow taint the appointment process begun in January of 2013.” Memorandum p. 4. One strains to understand how this appointment process – with a disqualified winner, an “unlawful appointment” (Memorandum p. 12), and a majority of the votes being “void” (Complaint ¶ 15) – is still somehow viable.

It is abundantly transparent that the relators are taking an á la carte approach to this entire process. The relators want to retain some portions – the original vacancy date, the original qualification date, Darrow’s original application. But the relators want to throw out or simply ignore other portions – a majority of the votes, the DCC’s 45 day window to appoint, the voting process itself. Truly, the relators have engineered a conveniently self-serving design that manufactures their desired outcome. But the relators’ proposition would lead to absurd results and would set a precedent that is dangerous to the public interest.

The public interest demands that only persons who are legally qualified may be appointed sheriff. “R.C. 311.01 expressly prohibits the appointment of a candidate for county sheriff who does not meet the specific statutory requirements set out in that section.” *Swanson I* at ¶ 27.

Some of those statutory requirements include:

- The person has been a resident of the county for at least one year immediately prior to the qualification date. R.C. 311.01(B)(2).

- The person has not been convicted of or pleaded guilty to a felony, any offense involving moral turpitude, or an offense that is a misdemeanor of the first degree. R.C. 311.01(B)(5).
- The person has certain other credentials within three, four or five years immediately prior to the qualification date. R.C. 311.01(B)(8) and (9)(a).

If, as the relators argue, the qualification date is frozen back on February 6, 2013, then what assurance does the public have that the applicants from 10 months ago are currently in compliance with these strict statutory requirements? Are they still residents of Stark County? Have they been convicted of or pleaded guilty to a crime? Are their credentials still within the valid windows of time set by statute? If the relators are correct, none of this matters. The relators have plainly stated their extreme position: “[A]ny such applicant considered and who may be eventually appointed, whose application was not processed before February 6, 2013, by law is unqualified.” Complaint ¶ 27. “There is nothing in Ohio law which requires that the relator qualify again.” Memorandum p. 5. The relators fail to take into account anything that may have happened during the interim period while this case was pending -- events that could make a previously qualified applicant, currently unqualified.

Under the relators’ scheme, the public interest would have to take a back seat to a mindless obedience to a stale qualification date. This could lead to the absurd and dangerous result that the only persons “qualified” to be sheriff could be persons who live in other counties or who have been convicted of crimes. Meanwhile, the DCC would be prohibited from finding out if applicants are currently qualified, and fully qualified and law abiding applicants must be rejected, all thanks to a stale qualification date. Certainly, this absurd and unreasonable result is not in the public interest and was not intended by the legislature that enacted the statute. “It is a

cardinal rule of statutory construction that a statute should not be interpreted to yield an absurd result.” *Mishr v. Bd. of Zoning Appeals*, 76 Ohio St.3d 238, 240, 1996-Ohio-400, 667 N.E.2d 365. Indeed, courts must presume that a “just and reasonable result is intended.” R.C. 147(C).

The relators’ position clearly violates the intent of the statutes that govern the filling of vacancies in the office of sheriff. A qualification date is set 30 days after a vacancy occurs. R.C. 311.01(H)(1). From between five and 45 days after a vacancy, the Central Committee has legal power to make an appointment. R.C. 305.02(C). From this statutory timetable, it is evident that the legislative intent is to hold a vote of appointment close in time to when the applicants have established their qualifications. The relators want to disregard this legislative intent and instead cling to a stale qualification date that is now remote in time to the vote of appointment. Turning the legislative intent on its head, the relators now seek to prohibit any effort to update the qualifications of the previous applicants.

To reach a reasonable and just result, this Court need not rewrite the statute or engage in twisting interpretations. All that needs to be done is to acknowledge what was already recognized in *Swanson I*: that a new 45 day period was triggered by the vacancy caused by the removal of Maier. Within this 45 day period is an updated 30 day qualification date that ensures that the statutory qualifications are enforced, the legislative intent is followed, and the public interest is served by allowing currently qualified applicants to be considered for appointment.

With these considerations in mind, we can see the absurdity of the relators’ claim that the DCC intends to meet “for the sole purpose of avoiding the requirements of law.” Complaint ¶ 17. One can be reasonably skeptical of the relators’ ability to read the minds of the 206 members of the DCC. It is equally absurd to ascribe a single subjective intent to 206 separate people, a

number of whom disagreed during the original vote. As discussed above, the respondents are merely trying to follow the law in moving this matter forward.

The relators cite the case of *State ex rel. Williamson v. Cuyahoga Cty. Bd. of Elections* in support of their demand that Darrow simply be announced the winner, with no new vote taking place. The relators' reliance on *Williamson* is completely misplaced.

In *Williamson*, Lambros and Williamson were the two candidates for the office of law director. It was determined that Lambros was not an eligible candidate for the election and his votes could not be counted. This left Williamson as the only eligible candidate on the ballot. Because Williamson was the only eligible candidate, the Court found that there was a clear legal duty to count only the votes cast for Williamson and declare him the winner of the election.

However, the *Williamson* Court took great care to point out that this second-place-wins rule does not apply when there is more than one eligible candidate, as here. When there is more than one eligible candidate, but the candidate receiving the highest number of votes is disqualified or unable to take office, the second place candidate is not elected. "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." (Underscore added. Italics sic.) *State ex rel. Williamson v. Cuyahoga Cty. Bd. of Elections*, 11 Ohio St.3d 90, 92, 464 N.E.2d 138 (1984), quoting *State ex rel. Halak v. Cebula*, 49 Ohio St.2d 291, 293, 361 N.E.2d 244 (1977). Accord *State ex rel. Haff v. Pask*, 126 Ohio St. 633, 186 N.E. 809 (1933), paragraph three of the syllabus. In these situations, a candidate must be both eligible and the highest vote recipient.

The situation in the case at bar falls squarely within the rule of *Williamson*. There were two or more eligible candidates (Darrow and Dordea) and the candidate receiving the highest number of votes (Maier) was ineligible. Contrary to the relators' position, the candidate receiving the next highest number of votes (Darrow) is not elected. The relators have requested relief that is in direct violation of Ohio law. By itself, this is dispositive of the relators' claim.

Thus, the relators are not likely to prevail on the merits because they cannot establish a clear legal right to the requested relief. Nor can the relators establish a clear legal duty owed by the respondents to not hold a vote, count only a minority of past votes, declare the second place vote recipient as the winner, and fail to ensure that applicants are currently qualified to serve as sheriff.

3. The relators have a plain and adequate remedy at law, specifically, the appointment process set forth in R.C. 305.02(B).

The relators are not likely to prevail on the merits because they already have a plain and adequate remedy at law.

The relators claim that they have no adequate alternative remedy at law. Complaint ¶ 20. In fact, the adequate alternative remedy is quite apparent: the appointment process set forth in R.C. 305.02(B). Indeed, this Court stated at ¶ 40 of *Swanson I* that the DCC would proceed with the appointment process under that statute.

Thus, the Court has already set forth the relators' adequate alternative remedy at law. Assuming an appropriate application, the relator Darrow stands on a level playing field and enjoys as much an opportunity to win the vote as any other such applicant. While no one has a crystal ball that foretells the future, currently any appropriate applicant could win the vote. How can the relators claim that they have no adequate remedy at law when Darrow could actually

prevail in the vote of the DCC and be appointed sheriff? This is not the absence of an adequate alternative remedy at law, but rather an adequate remedy that the relators simply don't like.

Because the relators have a plain and adequate remedy at law, they are not likely to prevail on the merits and the ancillary injunctive relief should be denied.

II. The relators will not suffer irreparable injury if the injunction is denied.

The second element in deciding whether injunction relief is justified is whether the movant will suffer irreparable injury if the injunction is not granted. This requirement is not satisfied if injury is merely hypothetical or possible. Rather, the law requires that an irreparable injury will occur.

In the case at bar, the relators clearly fail this test. The only injury claimed by the relators is purely hypothetical. The relators state that an extraordinary writ "would be required in the event respondents proceed to appoint either George Maier or some other candidate * * *." Complaint ¶ 20. Similarly, the relators state: "If the respondents are not enjoined during the pendency of this case, and some person is appointed to the Office of Sheriff based upon an application received, reviewed and containing credentials dated *after* the applicable qualification date of February 6, 2013, another suit in *quo warranto* would likely result." Memorandum p. 4.

The phrases "would be," "in the event," "if," and "would" are all conditional phrases. Thus, even the relators cannot hide the fact that their claim is wholly dependent on a hypothetical condition – that someone other than Darrow wins the vote. However, at this point, no one knows how the vote will turn out. The simple fact is that the relators' conditional events – the if's and would be's – fall far short of the "will suffer irreparable injury" standard necessary to justify injunctive relief.

This Court has long held that “a court does not render advisory opinions.” *Mid-American Fire & Cas. Co. v. Heasley*, 113 Ohio St.3d 133, 2007-Ohio-1248, 863 N.E.2d 142, ¶ 9. “[I]n order for a justiciable question to exist, the danger or dilemma of the plaintiff must be present, not contingent on the happening of hypothetical future events * * * and the threat to his position must be actual and genuine and not merely possible or remote.” *Id.*, quoting *League for Preservation of Civil Rights v. Cincinnati*, 64 Ohio App. 195, 197, 28 N.E.2d 660 (1st Dist.1940). *Accord Scott v. Houk*, 127 Ohio St.3d 317, 2010-Ohio-5805, 939 N.E.2d 835, ¶ 22; *Ahmad v. AK Steel Corp.*, 119 Ohio St.3d 1210, 2008-Ohio-4082, 893 N.E.2d 1287, ¶ 3 (O’Connor concurring).

How can the relators claim that they “will suffer” irreparable injury when Darrow could actually prevail in the vote of the DCC and be appointed sheriff? The harm alleged by the relators is conditional and purely hypothetical, and would require this Court to issue an advisory opinion. Clearly, the relators have failed to show that they “will suffer” irreparable injury if the injunction is not granted.

III. Third parties will be unjustifiably harmed if the injunction is granted.

The third element for the Court to consider is whether granting the injunction will cause third parties to suffer unjustifiable harm.

If the relators’ injunctive relief is granted, currently qualified applicants who timely meet an updated qualification date must be automatically rejected and excluded from any consideration. Meanwhile, two applicants who previously met a now stale qualification date will enjoy a monopoly as the sole applicants before the DCC – without having to show that they remain qualified at present. This absurd result will cause unjustified harm to currently qualified

applicants who submit timely applications. Therefore, the requested injunctive relief should be denied.

IV. The public interest will not be served by the injunction.

The fourth and final factor to be considered is whether the public interest will be served by the requested injunction.

As discussed above, granting the requested injunctive relief would harm the public interest. It is not in the public interest for a sheriff to be appointed without confirming that the appointee is currently living in the county, has not committed a crime during the lengthy delays of litigation, and has current credentials that meet the statutory time frames. The public has a compelling interest in ensuring that previously qualified applicants have not become unqualified. Equally, the public has a compelling interest in having all currently qualified, timely applicants stand for consideration before their duly elected representatives on the Central Committee. This will maximize the opportunity to appoint the best qualified person for the office of sheriff. Under the relators' scheme, applicants whose current qualifications are unknown would be the only candidates to stand before the Central Committee. One struggles to identify how such a proposal serves the public interest.

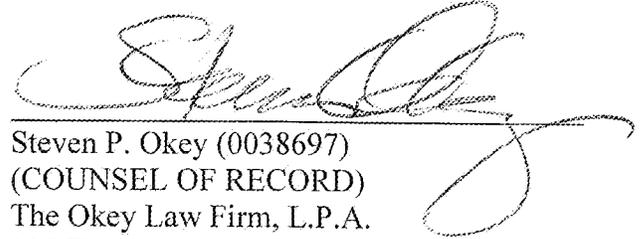
Granting injunctive relief would also disenfranchise the members of the DCC and the electorate that voted for the members. By improperly excluding otherwise timely and qualified applicants, the relators would essentially rig the ballots in favor of the relator Darrow. This is a most undemocratic enterprise that manifestly harms the public interest.

Because the requested injunctive relief would not serve the public interest, the relators' motion should be denied.

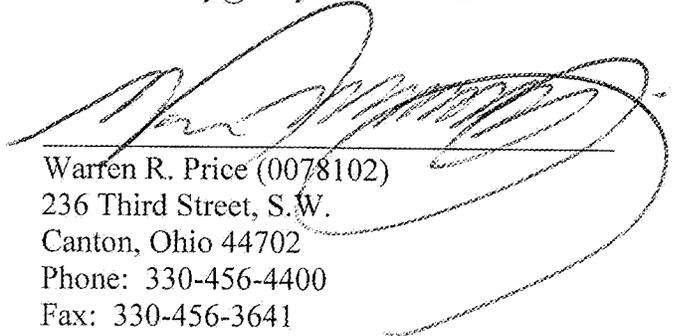
V. Conclusion

The relators have failed to show by showing clear and convincing evidence each element necessary to establish a right to injunctive relief. Therefore, the relators' motion for ancillary injunctive relief should be denied.

Respectfully submitted,



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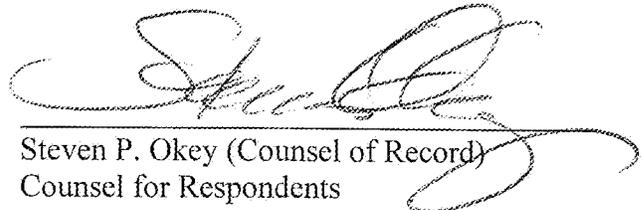
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