

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO EX. REL., : CASE NO. 2015-1297
 ROBERT L. RICHARDS, et al. :
 Relators : (Expedited Election Matter)
 vs. :
 STARK COUNTY BOARD OF ELECTIONS, :
 et al. :
 Respondents :

**MOTION OF FRANCIS H. CICCHINELLI, JR. FOR LEAVE TO INTERVENE
 AND
 MOTION FOR LEAVE TO FILE ATTACHED ANSWER INSTANTER**

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RECEIVED
 AUG 12 2015
 CLERK OF COURT
 SUPREME COURT OF OHIO

FILED
 AUG 12 2015
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 SUPREME COURT OF OHIO

MEMORANDUM IN SUPPORT OF MOTIONS

A. INTRODUCTION

Movant Francis H. Cicchinelli, Jr. ("Movant" and/or "Cicchinelli") is an Independent Candidate for the public office of the Mayor of the City of Massillon and is the "de facto" "target" of this action in prohibition.

Cicchinelli's Motion for Leave to Intervene as a party Respondent herein is timely brought pursuant to Civ R 24(A) and/or (B).

For the reasons set forth hereinbelow, that Motion and Cicchinelli's "sister" Motion for Leave to File Attached [Exhibit A] Answer *Instante* should be granted.

B. ARGUMENT

At the outset, it is noteworthy that this Court, on multiple occasions, has previously granted leave to intervene to other similarly situated candidates who were the subject of complaints in prohibition.

On that basis alone, such leave should be granted to this Movant.

Additionally, it is otherwise respectfully suggested that Movant has a Civ R 24(A) right to herein intervene.

Specifically, the instant Motion has obviously been timely filed (noting that Summons herein was issued on August 7, 2015); and, Movant, as a candidate, obviously has a vested interest in the

subject matter of this action and is so-situated that disposition of same may, as a practical matter, impair or impede his ability to protect that interest, which he respectfully suggests is not adequately represented by the existing parties.

Alternately, Movant should, pursuant to Civ R 24(B), be granted permissive intervention for the same foregoing reasons.

C. CONCLUSION

For all or any of the reasons set forth hereinabove, it is respectfully suggested that Cicchinelli should be granted leave to herein intervene as a party Respondent and that his "sister" Motion for Leave to file *instanter* his Answer (which is attached hereto as Exhibit A) should be granted.

Respectfully submitted,

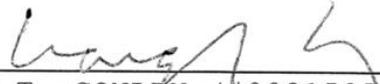


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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motions was served, by regular U.S. Mail this 11th day of August, 2015, upon Steven P. Okey, counsel for Relators, 337 Third Street N.W., Canton, Ohio 44702, Stark County Prosecuting Attorney John D. Ferrero, counsel for Respondent Stark County Board of Elections,

110 Central Plaza South, Suite 510, Canton, Ohio 44702, and Ohio Attorney General Mike DeWine, counsel for Respondent Ohio Secretary of State Jon Husted, 30 East Broad Street, 16th Floor, Columbus, Ohio 43215.



CRAIG T. CONLEY (#0021585)
Counsel for Movant

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ANSWER OF INTERVENOR-RESPONDENT FRANCIS H. CICCHINELLI, JR.

Now comes Intervenor-Respondent, Independent Candidate Francis H. Cicchinelli, Jr. ("Cicchinelli"), by and through counsel, and hereby makes the following admissions, denials and averments to Relators' Complaint for Writ of Prohibition ("Complaint").

FIRST DEFENSE

1. Cicchinelli admits the allegations contained in paragraph no. 1 of Relators' Complaint.
2. Cicchinelli admits the allegations contained in paragraph no. 2 of Relators' Complaint.
3. Cicchinelli admits the allegations contained in paragraph no. 3 of Relators' Complaint.
4. Cicchinelli admits that Relators herein "seek a writ of prohibition", but denies the remaining allegations contained in paragraph no. 4 of Relators' Complaint.

5. Cicchinelli admits that Relators filed a Protest with Respondent Stark County Board of Elections ("Board"), but denies, for want of knowledge, that Relators are "qualified electors" and denies the remaining allegations contained in paragraph no. 5 of Relators' Complaint.

6. Cicchinelli denies the allegations contained in paragraph no. 6 of Relators' Complaint.

7. Cicchinelli denies the allegations contained in paragraph no. 7 of Relators' Complaint.

8. Cicchinelli denies the allegations contained in paragraph no. 8 of Relators' Complaint.

9. Cicchinelli denies the allegations contained in paragraph no. 9 of Relators' Complaint.

10. Cicchinelli denies the allegations contained in paragraph no. 10 of Relators' Complaint.

11. Cicchinelli admits the allegations contained in paragraph no. 11 of Relators' Complaint.

12. Cicchinelli denies the allegations contained in paragraph no. 12 of Relators' Complaint.

13. Cicchinelli admits that Relators' Protest "speaks for itself", but denies the remaining allegations contained in paragraph no. 13 of Relators' Complaint; and, as to Relators' footnote 1, Cicchinelli avers that the subject "two other qualified Massillon electors" had never authorized Relators' counsel,

Attorney Steven P. Okey, to name them as Protestors in the first place.

14. Cicchinelli (who is not an attorney) admits that the Board conducted a hearing on Relators' Protest, that he testified thereat and that the taken-out-of-context portions of that testimony appear to be accurately recited, but denies the remaining allegations contained in paragraph no. 14 of Relators' Complaint to the extent that same purport to support either Relators' Protest or their instant Complaint.

15. Cicchinelli denies the allegations contained in paragraph no. 15 of Relators' Complaint.

16. Cicchinelli admits that his wife (who is not an attorney) testified at the Board's hearing and that the taken-out-of-context portions of that testimony appear to be accurately recited, but denies the remaining allegations contained in paragraph no. 16 of Relators' Complaint to the extent that same purport to support either Relators' Protest or their instant Complaint.

17. Cicchinelli denies the allegations contained in paragraph no. 17 of Relators' Complaint.

18. Cicchinelli admits the allegations contained in paragraph no. 18 of Relators' Complaint; and Cicchinelli avers that the Democratic Board members' Protest Hearing participation and vote served to unconstitutionally deny him his due process right to appear before a neutral *quasi-judicial* tribunal.

19. Cicchinelli admits the allegations contained in paragraph no. 19 of Relators' Complaint.

20. Cicchinelli admits the allegations contained in paragraph no. 20 of Relators' Complaint.

21. Cicchinelli admits that the cited portions of Husted's decisional letter appear to be accurately stated, but denies the remaining allegations contained in paragraph no. 21 of Relators' Complaint.

22. Cicchinelli admits the allegations contained in paragraph no. 22 of Relators' Complaint; and Cicchinelli avers that the Democratic Board members' Protest Hearing participation and vote served to unconstitutionally deny him his due process right to appear before a neutral *quasi-judicial* tribunal.

23. Cicchinelli denies the allegations contained in paragraph no. 23 of Relators' Complaint.

24. Cicchinelli admits that the cited jurisprudence from this Court "speaks for itself", but denies the remaining allegations contained in paragraph no. 24 of Relators' Complaint that said jurisprudence supports Relators' Complaint.

25. Cicchinelli denies the allegations contained in paragraph no. 25 of Relators' Complaint.

26. Cicchinelli denies the allegations contained in paragraph no. 26 of Relators' Complaint.

27. Cicchinelli denies the allegations contained in paragraph

no. 27 of Relators' Complaint.

28. Cicchinelli denies the allegations contained in paragraph no. 28 of Relators' Complaint.

29. Cicchinelli admits that Relators appear to have accurately recited a portion of O.R.C. 3513.257, but denies the remaining allegations contained in paragraph no. 29 of Relators' Complaint that said Code Section supports Relators' Complaint.

30. Cicchinelli admits that Relators appear to have accurately recited O.R.C. 3501.01(I), but denies the remaining allegations contained in paragraph no. 30 of Relators' Complaint that said Code Section supports Relators' Complaint.

31. Cicchinelli admits that the cited Federal Court jurisprudence "speaks for itself", but denies the remaining allegations contained in paragraph no. 31 of Relators' Complaint that said jurisprudence supports Relators' Complaint.

32. Cicchinelli admits that the cited Federal Court jurisprudence "speaks for itself", but denies the remaining allegations contained in paragraph no. 32 of Relators' Complaint that said jurisprudence supports Relators' Complaint.

33. Cicchinelli admits that this Court will decide the law herein applicable, but denies the remaining allegations contained in paragraph no. 33 of Relators' Complaint.

34. Cicchinelli admits that the cited jurisprudence from this Court "speaks for itself", but denies the remaining allegations

contained in paragraph no. 34 of Relators' Complaint that said jurisprudence supports Relators' Complaint.

35. Cicchinelli denies the allegations contained in paragraph no. 35 of Relators' Complaint.

36. Cicchinelli denies the allegations contained in paragraph no. 36 of Relators' Complaint.

37. Cicchinelli denies the allegations contained in paragraph no. 37 of Relators' Complaint.

38. Cicchinelli admits the allegations contained in paragraph no. 38 of Relators' Complaint.

39. Cicchinelli denies the allegations contained in paragraph no. 39 of Relators' Complaint.

40. Cicchinelli denies the allegations contained in paragraph no. 40 of Relators' Complaint.

41. Cicchinelli denies each and every allegation of Relators' Complaint not specifically and unequivocally admitted hereinabove.

42. Cicchinelli denies any allegations contained in the "WHEREFORE" portion of Relators' Complaint and denies that Relators are entitled to any of the relief they herein seek.

SECOND DEFENSE

43. Relators' Complaint fails to state a claim upon which relief can be granted.

THIRD DEFENSE

44. Relators' claims should be dismissed because they failed

to meet their burden of proof during the Board's Protest Hearing.

FOURTH DEFENSE

45. Relators' claims should be dismissed because they have not and cannot establish that Respondents' exercise of *quasi-judicial* power was unauthorized by law.

FIFTH DEFENSE

46. Relators' claims should be dismissed because they have not and cannot establish that Husted's decision was a result of fraud, corruption or abuse of discretion.

SIXTH DEFENSE

47. Relators' claims should be dismissed because Cicchinelli was unconstitutionally denied his due process right to appear before a neutral *quasi-judicial* tribunal.

SEVENTH DEFENSE

48. Relators have failed to name necessary and indispensable parties.

EIGHTH DEFENSE

49. Relators' claims should be dismissed because they testified before the Board that they had no facts to support their Protest.

NINTH DEFENSE

50. Relators' claims should be dismissed because the statutes upon which they rely are unconstitutional on their face and/or are unconstitutional as applied to Cicchinelli.

WHEREFORE, Cicchinelli requests this Court dismiss Relators' Complaint at their cost and that it order such further relief to which Cicchinelli may be entitled under law or in equity.

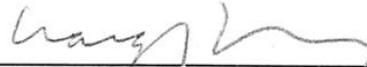
Respectfully submitted,



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I hereby certify that a copy of the foregoing Answer was served, by regular U.S. Mail this 11th day of August, 2015, upon Steven P. Okey, counsel for Relators, 337 Third Street N.W., Canton, Ohio 44702, Stark County Prosecuting Attorney John D. Ferrero, counsel for Respondent Stark County Board of Elections, 110 Central Plaza South, Suite 510, Canton, Ohio 44702, and Ohio Attorney General Mike DeWine, counsel for Respondent Ohio Secretary of State Jon Husted, 30 East Broad Street, 16th Floor, Columbus, Ohio 43215.



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