

**IN THE SUPREME COURT OF OHIO**

**STATE OF OHIO, ex rel.  
FRANK MORRIS, et al.,**

*Relators,*

v.

**STARK COUNTY BOARD OF  
ELECTIONS, et al.,**

*Respondents.*

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:  
: Case No. 2015-1277  
:  
: **Original Action in Prohibition**  
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**ANSWER AND AFFIRMATIVE DEFENSES OF RESPONDENT  
SECRETARY OF STATE JON HUSTED**

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For his Answer and Affirmative Defenses to Relators’ Complaint for Writ of Prohibition, Respondent Secretary of State (“Respondent”) will conform his Answer to traditional pleading requirements. Respondent, however, initially objects to Relators’ style of pleading. Relators’ fifty-seven page “Complaint for a Writ of Prohibition” does not set forth – in any manageable fashion – a specific statement of alleged facts that entitle Relators to relief. Rather, the overwhelming majority of the Complaint consists of legal argument and analysis characteristic of a motion or brief. Relators’ approach makes answering the Complaint with specificity (on a highly expedited schedule) extremely difficult. In light of this, Respondent answers as follows:

Respondent specifically denies any allegations contained in Relators’ headings and sub-headings used throughout the Complaint.

1. The Complaint speaks for itself. Further answering, the allegations contained in paragraph 1 of the Complaint call for a legal conclusion for which no response is required. To the extent a further answer is required, any remaining allegations are denied.

2. Respondent denies that he failed to meet any legal obligation. Further answering, the allegations contained in paragraph 2 of the Complaint call for a legal conclusion for which no response is required. To the extent a further answer is required, any remaining allegations are denied.
3. Respondent denies that he failed to meet any legal obligation. Further answering, the allegations contained in paragraph 3 of the Complaint call for a legal conclusion for which no response is required. To the extent a further answer is required, any remaining allegations are denied.
4. Respondent admits that he broke a tie-vote of Respondent Board in favor of certifying Thomas M. Bernabei's independent candidacy for Mayor of Canton to the November 3, 2015 General Election ballot. Respondent specifically denies that he failed to meet any legal obligation in doing so. Further answering, the remaining allegations contained in paragraph 4 of the Complaint call for a legal conclusion for which no response is required. To the extent a further answer is required, any remaining allegations are denied.
5. Respondent denies for want of knowledge the allegations contained in paragraph 5 of the Complaint.
6. Respondent denies for want of knowledge the allegations contained in paragraph 6 of the Complaint.
7. Respondent denies for want of knowledge the allegations contained in paragraph 7 of the Complaint.
8. Respondent denies for want of knowledge the allegations contained in paragraph 8 of the Complaint.

9. Respondent denies for want of knowledge the allegations contained in paragraph 9 of the Complaint.
10. Respondent denies for want of knowledge the allegations contained in paragraph 10 of the Complaint.
11. Respondent denies for want of knowledge the allegations contained in paragraph 11 of the Complaint.
12. Respondent denies for want of knowledge the allegations contained in paragraph 12 of the Complaint.
13. Respondent admits the allegations contained in paragraph 13 of the Complaint.
14. Respondent admits the allegations contained in paragraph 14 of the Complaint.
15. Respondent denies that he failed to meet any legal obligation. Further answering, the allegations contained in paragraph 15 of the Complaint call for a legal conclusion for which no response is required.
16. Respondent denies for want of knowledge the allegations contained in paragraph 16 of the Complaint.
17. Respondent admits that Relators filed a protest against Mr. Bernabei's nominating petition. Further answering, Exhibit A speaks for itself and the remaining allegations contained in paragraph 17 of the Complaint call for legal conclusions for which no response is required. To the extent a further answer is required, any remaining allegations are denied.
18. Exhibit B speaks for itself. Further answering, Respondent is without sufficient knowledge to admit or deny the allegations contained in paragraph 18 of the Complaint. Paragraph 18 of the Complaint also calls for legal conclusions for which no response is

required. To the extent a further answer is required, any remaining allegations are denied.

19. Exhibit B speaks for itself. Further answering, Respondent is without sufficient knowledge to admit or deny the allegations contained in paragraph 19 of the Complaint. The allegations contained in paragraph 19 of the Complaint also call for a legal conclusion for which no response is required. To the extent a further answer is required, any remaining allegations are denied.
20. Exhibit B speaks for itself. Further answering, Respondent is without sufficient knowledge to admit or deny the allegations contained in paragraph 20 of the Complaint. The allegations in paragraph 20 of the Complaint also call for a legal conclusion for which no response is required. To the extent a further answer is required, any remaining allegations are denied.
21. The allegations contained in paragraph 21 of the Complaint call for a legal conclusion for which no response is required. To the extent a further answer is required, any remaining allegations are denied.
22. Exhibits B and C speak for themselves. Further answering, Respondent denies for want of knowledge the remaining allegations in paragraph 22 of the Complaint.
23. Respondent denies the allegations contained in paragraph 23 of the Complaint.
24. The Advisory speaks for itself. The allegations contained in paragraph 24 of the Complaint call for a legal conclusion for which no response is required. To the extent a further answer is required, any remaining allegations are denied.

25. The Advisory speaks for itself. The allegations contained in paragraph 25 of the Complaint call for a legal conclusion for which no response is required. To the extent a further answer is required, any remaining allegations are denied.
26. The Advisory speaks for itself. The allegations contained in paragraph 26 of the Complaint call for a legal conclusion for which no response is required. To the extent a further answer is required, any remaining allegations are denied.
27. The Advisory speaks for itself. Further answering, the remaining allegations contained in paragraph 27 of the Complaint call for a legal conclusion for which no response is required. To the extent a further answer is required, any remaining allegations are denied.
28. The Advisory speaks for itself. To the extent a further answer is required, any remaining allegations contained in paragraph 28 of the Complaint are denied.
29. Exhibits D and E speak for themselves. To the extent a further answer is required, any remaining allegations are denied.
30. The allegations contained in paragraph 30 of the Complaint call for a legal conclusion for which no response is required. To the extent a further answer is required, any remaining allegations are denied.
31. The allegations contained in paragraph 31 of the Complaint call for a legal conclusion for which no response is required. To the extent a further answer is required, any remaining allegations are denied.
32. Respondent denies the allegations contained in paragraph 32 of the Complaint.

33. Exhibit B speaks for itself. Respondent denies for want of knowledge the allegations contained in paragraph 33 of the Complaint. To the extent a further answer is required, any remaining allegations are denied.
34. Exhibit B speaks for itself. Respondent denies the remaining allegations contained in paragraph 34 of the Complaint.
35. Exhibit B speaks for itself. Respondent denies for want of knowledge the remaining allegations contained in paragraph 35 of the Complaint.
36. Exhibit B speaks for itself. Respondent denies for want of knowledge the allegations contained in paragraph 36 of the Complaint.
37. Exhibit B speaks for itself. Further answering, Respondent denies for want of knowledge the remaining allegations contained in paragraph 37 of the Complaint.
38. Exhibit B speaks for itself. Further answering, Respondent denies for want of knowledge the remaining allegations contained in paragraph 38 of the Complaint.
39. Exhibit B speaks for itself. The allegations contained in paragraph 39 of the Complaint call for a legal conclusion for which no response is required. To the extent a further answer is required, any remaining allegations are denied.
40. Exhibit B speaks for itself. Further answering, Respondent denies for want of knowledge the remaining allegations contained in paragraph 40 of the Complaint.
41. The *Jolivette* opinion speaks for itself. Further answering, Respondent denies for want of knowledge the allegations contained in paragraph 41 of the Complaint.
42. Exhibits B and C speak for themselves. Respondent denies the allegations contained in paragraph 42 of the Complaint.

43. Exhibit B speaks for itself. Further answering, Respondent denies for want of knowledge the remaining allegations contained in paragraph 43 of the Complaint.
44. The exhibit speaks for itself. Respondent denies for want of knowledge the allegations contained in paragraph 44 of the Complaint.
45. Exhibit B speaks for itself. Further answering, Respondent denies for want of knowledge the remaining allegations contained in paragraph 45 of the Complaint.
46. Exhibit B speaks for itself. Further answering, Respondent denies for want of knowledge the remaining allegations contained in paragraph 46 of the Complaint.
47. Exhibit B speaks for itself. Further answering, Respondent denies for want of knowledge the remaining allegations contained in paragraph 47 of the Complaint.
48. Exhibit B speaks for itself. Further answering, Respondent denies for want of knowledge the remaining allegations contained in paragraph 48 of the Complaint.
49. Exhibit B speaks for itself. Further answering, Respondent denies for want of knowledge the remaining allegations contained in paragraph 49 of the Complaint.
50. Respondent denies the allegations contained in paragraph 50 of the Complaint.
51. Respondent denies for want of knowledge the allegations contained in paragraph 51 of the Complaint.
52. Exhibit B speaks for itself. Further answering, Respondent denies for want of knowledge the remaining allegations contained in paragraph 52 of the Complaint.
53. Exhibit B speaks for itself. Further answering, Respondent denies for want of knowledge the remaining allegations contained in paragraph 53 of the Complaint.
54. Exhibit B speaks for itself. Further answering, Respondent denies for want of knowledge the remaining allegations contained in paragraph 54 of the Complaint.

55. The exhibits speak for themselves. Further answering, Respondent denies for want of knowledge the remaining allegations contained in paragraph 55 of the Complaint.
56. The exhibits speak for themselves. Further answering, Respondent denies for want of knowledge the remaining allegations contained in paragraph 56 of the Complaint.
57. The exhibits speak for themselves and to the extent the allegations contained in paragraph 57 represent a legal argument as opposed to factual allegations, no further response is required. Further answering, Respondent denies for want of knowledge the remaining allegations contained in paragraph 57 of the Complaint.
58. Exhibit B speaks for itself and to the extent the allegations contained in paragraph 58 represent a legal argument as opposed to factual allegations, no further response is required. Further answering, Respondent denies for want of knowledge the remaining allegations contained in paragraph 58 of the Complaint.
59. The *Morrison and Jolivette* opinions speak for themselves. Otherwise, the allegations contained in paragraph 59 of the Complaint call for a legal conclusion for which no response is required. To the extent a further answer is required, any remaining allegations are denied.
60. Respondent denies the allegations contained in paragraph 60 of the Complaint.
61. The exhibits speak for themselves. Respondent specifically denies that through and after the filing of Bernabei's independent candidacy petitions on May 4, 2015, that Bernabei remained affiliated with the Democratic Party. Further answering, Respondent denies for want of knowledge the remainder of the allegations contained in paragraph 61 of the Complaint.

62. Exhibit B speaks for itself. Further answering, Respondent denies for want of knowledge the remaining allegations contained in paragraph 62 of the Complaint.
63. The *Jolivette* opinion speaks for itself. Otherwise, the allegations contained in paragraph 63 of the Complaint call for a legal conclusion for which no response is required. To the extent a further answer is required, any remaining allegations are denied.
64. The Advisory and case law speak for themselves. Further answering, the allegations contained in paragraph 64 of the Complaint call for a legal conclusion for which no response is required. To the extent a further answer is required, any remaining allegations are denied.
65. The exhibits speak for themselves. Further answering, Respondent denies for want of knowledge the remaining allegations contained in paragraph 65 of the Complaint.
66. The exhibits speak for themselves. Further answering, Respondent denies for want of knowledge the remaining allegations contained in paragraph 66 of the Complaint.
67. Exhibit B speaks for itself. Further answering, Respondent denies for want of knowledge the remaining allegations contained in paragraph 67 of the Complaint.
68. Exhibit B speaks for itself. Further answering, Respondent denies for want of knowledge the remaining allegations contained in paragraph 68 of the Complaint.
69. Exhibit B speaks for itself. Further answering, Respondent denies for want of knowledge the remaining allegations contained in paragraph 69 of the Complaint.
70. Exhibit B speaks for itself. Further answering, Respondent denies for want of knowledge the remaining allegations contained in paragraph 70 of the Complaint.
71. The exhibits speak for themselves. Further answering, Respondent denies for want of knowledge the remaining allegations contained in paragraph 71 of the Complaint.

72. The exhibits speak for themselves. Further answering, Respondent denies for want of knowledge the remaining allegations contained in paragraph 72 of the Complaint.
73. Exhibit B speaks for itself. Further answering, Respondent denies for want of knowledge the remaining allegations contained in paragraph 73 of the Complaint.
74. Exhibit B speaks for itself. Further answering, Respondent denies for want of knowledge the remaining allegations contained in paragraph 74 of the Complaint.
75. Exhibit B speaks for itself. Further answering, Respondent denies for want of knowledge the remaining allegations contained in paragraph 75 of the Complaint.
76. The Advisory and Exhibit C speak for themselves. Respondent specifically denies that he disregarded the standards set forth by the Advisory. Further answering, the allegations contained in paragraph 76 of the Complaint call for a legal conclusion for which no response is required. To the extent a further answer is required, any remaining allegations are denied.
77. The Advisory, *Jolivette* decision, and Exhibit B speak for themselves. Further answering, the allegations contained in paragraph 77 of the Complaint call for a legal conclusion for which no response is required. To the extent a further answer is required, any remaining allegations are denied.
78. The allegations contained in paragraph 78 of the Complaint call for a legal conclusions for which no response is required. To the extent further answer is required, any remaining allegations are denied.
79. The case law cited in paragraph 79 speaks for itself. Further answering, the allegations contained in paragraph 79 of the Complaint call for a legal conclusion for which no

response is required. To the extent a further answer is required, any remaining allegations are denied.

80. The allegations contained in paragraph 80 of the Complaint call for a legal conclusion and include legal argument for which no response is required. To the extent a further answer is required, any remaining allegations are denied.
81. Respondent denies the allegations contained in paragraph 81 of the Complaint.
82. The exhibits speak for themselves. Respondent denies the allegations contained in paragraph 82 of the Complaint.
83. Exhibit B speaks for itself. Further answering, the remaining allegations contained in paragraph 83 of the Complaint call for a legal conclusion for which no response is required. To the extent a further answer is required, any remaining allegations are denied.
84. The exhibits speak for themselves. Further answering, Respondent denies for want of knowledge the remaining allegations contained in paragraph 84 of the Complaint.
85. Exhibit B speaks for itself. Further answering, Respondent denies for want of knowledge the remaining allegations contained in paragraph 85 of the Complaint.
86. Exhibit B speaks for itself. Further answering, Respondent denies for want of knowledge the remaining allegations contained in paragraph 86 of the Complaint.
87. The allegations contained in paragraph 87 of the Complaint call for a legal conclusion for which no response is required. To the extent a further answer is required, any remaining allegations are denied.

88. Exhibit C speaks for itself. The allegations contained in paragraph 88 of the Complaint call for a legal conclusion and include legal arguments for which no response is required. To the extent a further answer is required, any remaining allegations are denied.
89. Exhibit B speaks for itself. Further answering, the remaining allegations contained in paragraph 89 of the Complaint call for a legal conclusion for which no response is required. Respondent further denies for want of knowledge the remaining allegations contained in paragraph 89 of the Complaint.
90. Exhibit B speaks for itself. Respondent further denies for want of knowledge any remaining allegations contained in paragraph 90 of the Complaint.
91. The *Jolivette* opinion and Exhibit B speak for themselves. Otherwise, the allegations contained in paragraph 91 of the Complaint call for a legal conclusion for which no response is required. To the extent a further answer is required, any remaining allegations are denied.
92. Exhibit B speaks for itself. Further answering, the remaining allegations contained in paragraph 92 of the Complaint call for a legal conclusion for which no response is required. Respondent further denies for want of knowledge any remaining allegations contained in paragraph 92 of the Complaint.
93. Exhibit B speaks for itself. Further answering, the remaining allegations contained in paragraph 93 of the Complaint call for a legal conclusion for which no response is required. Respondent further denies for want of knowledge any remaining allegations contained in paragraph 93 of the Complaint.
94. Exhibit B speaks for itself. Further answering, Respondent denies for want of knowledge the remaining allegations contained in paragraph 94 of the Complaint.

95. The *Jolivette* opinion speaks for itself. Otherwise, the allegations contained in paragraph 95 of the Complaint call for a legal conclusion for which no response is required. To the extent a further answer is required, any remaining allegations are denied.
96. Respondent denies the allegations contained in paragraph 96 of the Complaint and specifically denies that Relators are entitled to any writ of prohibition.
97. The exhibit speaks for itself. Respondent further denies for want of knowledge the allegations contained in paragraph 97 of the Complaint.
98. The allegations contained in paragraph 98 of the Complaint call for a legal conclusion for which no response is required. To the extent a further answer is required, any remaining allegations are denied.
99. The exhibit speaks for itself. The allegations contained in paragraph 99 of the Complaint call for a legal conclusion for which no response is required. To the extent a further answer is required, any remaining allegations are denied.
100. The allegations contained in paragraph 100 of the Complaint call for a legal conclusion for which no response is required. To the extent a further answer is required, any remaining allegations are denied.
101. The allegations contained in paragraph 101 of the Complaint call for a legal conclusion for which no response is required. To the extent a further answer is required, any remaining allegations are denied.
102. The allegations contained in paragraph 102 of the Complaint call for a legal conclusion for which no response is required. To the extent a further answer is required, any remaining allegations are denied.

103. The allegations contained in paragraph 103 of the Complaint call for a legal conclusion for which no response is required. To the extent a further answer is required, any remaining allegations are denied.
104. The allegations contained in paragraph 104 of the Complaint call for a legal conclusion for which no response is required. To the extent a further answer is required, any remaining allegations are denied.
105. The Secretary of State form speaks for itself. The allegations contained in paragraph 105 of the Complaint call for a legal conclusion for which no response is required. To the extent a further answer is required, any remaining allegations are denied.
106. Respondent denies the allegations contained in paragraph 106 of the Complaint.
107. The exhibits speak for themselves. Further answering, Respondent denies for want of knowledge the remaining allegations contained in paragraph 107 of the Complaint.
108. Exhibit B speaks for itself. Further answering, Respondent denies for want of knowledge the remaining allegations contained in paragraph 108 of the Complaint.
109. Exhibit B speaks for itself. Further answering, Respondent denies for want of knowledge the remaining allegations contained in paragraph 109 of the Complaint.
110. Exhibit B speaks for itself. Further answering, Respondent denies for want of knowledge the remaining allegations contained in paragraph 110 of the Complaint.
111. Exhibit B speaks for itself. Further answering, Respondent denies for want of knowledge the remaining allegations contained in paragraph 111 of the Complaint.
112. Exhibit B speaks for itself. Further answering, Respondent denies for want of knowledge the remaining allegations contained in paragraph 112 of the Complaint.

113. Exhibit B speaks for itself. Further answering, Respondent denies for want of knowledge the remaining allegations contained in paragraph 113 of the Complaint.
114. Exhibit B speaks for itself. Further answering, Respondent denies for want of knowledge the remaining allegations contained in paragraph 114 of the Complaint.
115. Exhibit B speaks for itself. Further answering, Respondent denies for want of knowledge the remaining allegations contained in paragraph 115 of the Complaint.
116. The allegations contained in paragraph 116 of the Complaint call for a legal conclusion and include legal argument for which no response is required. To the extent a further answer is required, any remaining allegations are denied.
117. Exhibit B speaks for itself. Further answering, Respondent denies for want of knowledge the remaining allegations contained in paragraph 117 of the Complaint.
118. The allegations contained in paragraph 118 of the Complaint call for a legal conclusion and include legal argument for which no response is required. To the extent a further answer is required, any remaining allegations are denied.
119. Respondent denies the allegations contained in paragraph 119 of the Complaint.
120. The allegations contained in paragraph 120 of the Complaint call for a legal conclusion for which no response is required. To the extent a further answer is required, any remaining allegations are denied.
121. The Ohio Secretary of State, Voter Registration and Information Update Form speaks for itself. Further answering, the remaining allegations contained in paragraph 121 of the Complaint call for a legal conclusion for which no response is required. To the extent a further answer is required, any remaining allegations are denied.

122. Exhibit B speaks for itself. Further answering, Respondent denies for want of knowledge the remaining allegations contained in paragraph 122 of the Complaint.
123. Exhibit B speaks for itself. Further answering, Respondent denies for want of knowledge the remaining allegations contained in paragraph 123 of the Complaint.
124. The allegations contained in paragraph 124 of the Complaint call for a legal conclusion for which no response is required. To the extent a further answer is required, any remaining allegations are denied.
125. Exhibit B speaks for itself. Further answering, Respondent denies for want of knowledge the remaining allegations contained in paragraph 125 of the Complaint.
126. Exhibit B speaks for itself. Further answering, Respondent denies for want of knowledge the remaining allegations contained in paragraph 126 of the Complaint.
127. Respondent denies for want of knowledge the allegations contained in paragraph 127 of the Complaint.
128. Exhibit B speaks for itself. Further answering, Respondent denies for want of knowledge the remaining allegations contained in paragraph 128 of the Complaint.
129. Exhibit B speaks for itself. Further answering, Respondent denies for want of knowledge the remaining allegations contained in paragraph 129 of the Complaint.
130. The exhibits speak for themselves. Further answering, Respondent denies for want of knowledge the remaining allegations contained in paragraph 130 of the Complaint.
131. Respondent specifically denies that the relevant case law was not considered. Further answering, the allegations contained in paragraph 131 of the Complaint call for a legal conclusion for which no response is required. To the extent a further answer is required, any remaining allegations are denied.

132. The allegations contained in paragraph 132 of the Complaint call for a legal conclusion for which no response is required. To the extent a further answer is required, any remaining allegations are denied.
133. The allegations contained in paragraph 133 of the Complaint call for a legal conclusion and include legal argument for which no response is required. To the extent a further answer is required, any remaining allegations are denied.
134. Respondent denies the allegations contained in paragraph 134 of the Complaint.
135. Respondent denies the allegations contained in paragraph 135 of the Complaint.
136. The allegations contained in paragraph 136 of the Complaint call for a legal conclusion for which no response is required. Further answering, Respondent denies for want of knowledge the allegations in Paragraph 136 of the Complaint.
137. The allegations contained in paragraph 137 of the Complaint call for a legal conclusion for which no response is required. To the extent a further answer is required, any remaining allegations are denied.
138. Respondent specifically denies that Relators are entitled to the relief requested in the Prayer for Relief.
139. Respondent denies any and all allegations contained in Relators' Complaint not expressly admitted above. Moreover, all of the case law, other legal authority, and exhibits cited throughout the Complaint speak for themselves.

### **AFFIRMATIVE DEFENSES**

#### **First Defense**

140. Relators have failed to state a claim upon which they are entitled to relief from Respondent.

**Second Defense**

141. Relators have failed to satisfy the requirements for a writ of prohibition to issue;

**Third Defense**

142. Respondent's exercise of power was authorized by law;

**Fourth Defense**

143. Respondent did not abuse his discretion in finding that Relators failed to meet their burden of demonstrating clear and convincing evidence in support of disqualifying Thomas Bernabei.

**Fifth Defense**

144. Respondent reserves the right to add additional defenses, including additional affirmative defenses, as they become apparent in discovery.

WHEREFORE, having answered Relators' Complaint, Respondent respectfully requests that this Court dismiss it in its entirety, with prejudice.

Respectfully submitted,

MIKE DEWINE  
Ohio Attorney General

*/s/ Sarah E. Pierce*

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*Counsel for Respondent*

*Ohio Secretary of State Jon Husted*

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing *Answer and Affirmative Defenses of Respondent Secretary of State Jon Husted* was served by email on August 12, 2015, upon the following:

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*/s/ Sarah E. Pierce*

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