

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, ex rel.	:	
FRANK MORRIS, et al.,	:	
	:	
<i>Relators,</i>	:	Case No. 2015-1277
	:	
- vs -	:	
	:	
STARK COUNTY BOARD	:	An Original Action in Prohibition
OF ELECTIONS, et al.,	:	
	:	
<i>Respondents.</i>	:	

ANSWER AND AFFIRMATIVE DEFENSES OF
INTERVENOR RESPONDENT THOMAS M. BERNABEI

MICHAEL DEWINE (0009181)
OHIO ATTORNEY GENERAL
SARAH E. PIERCE (0087799)*
*Counsel of Record
ZACHERY P. KELLER (0086930)
NICOLE M. KOPPITCH (0082129)
Assistant Attorneys General
Constitutional Offices Section
30 East Broad Street, 16th Floor
Columbus, Ohio 43215
Telephone: 614.466.2872
Facsimile: 614-728-7592
sarah.pierce@ohioattorneygeneral.gov
zachery.keller@ohioattorneygeneral.gov ni-
cole.koppitch@ohioattorneygeneral.gov

RAYMOND V. VASVARI, JR. (0055538)*
*Counsel of Record
K. ANN ZIMMERMAN (0059486)
VASVARI & ZIMMERMAN
1301 East Ninth Street
1100 Erieview Tower
Cleveland, Ohio 44114-1844
Telephone: 216.458.5880
Telecopier: 216.928.0016
vasvari@vasvarilaw.com
zimmerman@vasvarilaw.com

*Counsel for Intervenor
Respondent Thomas M. Bernabei*

*Counsel for Respondent
Ohio Secretary of State Jon Husted*

List of Counsel Continues on the Next Page

LEE E. PLAKAS (0008628)*

*Counsel of Record
TZANGAS PLAKAS MANNOS LTD.
220 Market Avenue South, 8th Floor
Canton, Ohio 44702
Telephone: 330-455-6112
Facsimile: 330-455-2108
lplakas@lawlion.com

ROBERT S. PECK (PHV 7590-2015)

CENTER FOR CONSTITUTIONAL
LITIGATION, P.C.
777 6th Street NW, Suite 520
Washington, D.C. 20001
Telephone: 202-944-2803
Facsimile: 202-965-0920
robert.peck@cclfirm.com

*Counsel for Relators Frank Morris,
Chris Smith, Thomas E. West, Kevin
Fisher, David R. Dougherty, John
Mariol II, and Edmond J. Mack*

N. ZACHARY WEST (0087805)*

*Counsel of Record
THE OHIO DEMOCRATIC PARTY
340 East Fulton Street
Columbus, Ohio 43215
Telephone: 614-221-6563
Facsimile: 614-221-0721
zwest@ohiodems.org

*Counsel for Relator
The Ohio Democratic Party*

DEBORAH A. DAWSON (0021580)*

*Counsel of Record
STEPHAN P. BABIK (0080165)
JOHN D. FERRERO (0018950)
THE STARK COUNTY
PROSECUTING ATTORNEY
110 Central Plaza South, Suite 510
Canton, Ohio 44702
Telephone: 330-451-7865
Facsimile: 330-451-7225
dadawson@starkcountyohio.gov
spbabik@starkcountyohio.gov

*Counsel for Respondent
Stark County Board of Elections*

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**ANSWER AND AFFIRMATIVE DEFENSES OF
INTERVENOR RESPONDENT THOMAS M. BERNABEI**

Intervenor-Respondent Thomas M. Bernabei (“Bernabei”) – like Respondent Ohio Secretary of State John Husted – will conform this Answer to the traditional customs, forms and to the legal requirements of a proper pleading.

In doing so, however, he adopts and echoes the preliminary statement made in the Answer lately filed by Secretary Husted, and notes that the prolix document by which this action was initiated, is in no sense a complaint within the meaning of Civil Rule 8, in that it is neither a short nor plain statement of the alleged bases upon which the Relators claim to be entitled to relief. Rather, at fifty seven pages and one hundred fifty three paragraphs, the Complaint is a rambling mixture of factual allegations, legal argument, editorial comment, and outright speculation, mixed so thoroughly together as to confound the ordinarily straightforward task of drafting an Answer, which flaunts both the letter and spirit of S.Ct.Prac.R. 12.01(A)(2)(b) and needlessly compounds the work of Respondents’ counsel.

FIRST DEFENSE

1. Bernabei denies that he failed to comply with mandatory Ohio election law, but admits the remaining, characterizations of the Complaint set forth in Paragraph 1 thereof.

2. Bernabei denies that either Respondent the Stark County Board of Elections or Secretary Husted failed to enforce any statute or legal requirement relevant to this matter, and further answering, states that the remaining statements set forth in Paragraph 2 of the Complaint consist of legal arguments, and not well pleaded allegations of fact to which any response is required. To the extent that any response is required, Bernabei specifically denies each and every one of the remaining averments set forth in that Paragraph.

3. Bernabei denies that either Respondent the Stark County Board of Elections (“the Board”) or Respondent Secretary (“the Secretary”) Husted failed to enforce any statute or legal requirement relevant to this matter, and further answering, states that the remaining statements set forth in Paragraph 3 of the Complaint consist of legal arguments, and not well pleaded allegations of fact to which any response is required. To the extent that any response is required, Bernabei specifically denies each and every one of the remaining averments set forth in that Paragraph.

4. Bernabei admits that the Secretary broke a tie vote by the Board, and did so in favor of placing Bernabei upon the November 2015 ballot as an independent candidate for Mayor of Canton, and denies each and every one of the remaining averments set forth in Paragraph 4 of the Complaint.

5. Bernabei admits the averments set forth in Paragraph 5 of the Complaint.

6. Bernabei admits the averments set forth in Paragraph 6 of the Complaint.

7. Bernabei admits the averments set forth in Paragraph 7 of the Complaint.

8. Bernabei admits the averments set forth in Paragraph 8 of the Complaint.

9. Bernabei admits the averments set forth in Paragraph 9 of the Complaint.
10. Bernabei admits the averments set forth in Paragraph 10 of the Complaint.
11. Bernabei admits the averments set forth in Paragraph 11 of the Complaint.
12. Bernabei denies that hundreds of office holders and hundreds-of-thousands of electors will be affected by any decision entered in this case, the outcome of which depends on its unique facts, but admits the remaining averments set forth in Paragraph 12 of the Complaint.
13. Bernabei admits the averments set forth in Paragraph 13 of the Complaint.
14. Bernabei admits the averments set forth in Paragraph 14 of the Complaint.
15. Bernabei admits that Art. IV § 2(B)(1)(d) of the Ohio Constitution invests this Court with jurisdiction to hear original actions in prohibition, but denies the remaining averments and editorial characterizations set forth in Paragraph 15 of the Complaint.
16. Bernabei admits that he is one of three Stark County Commissioners, denies that he is the “Democratic Stark County Commissioner” or that such an office exists, and admits the remaining averments set forth in Paragraph 16 of the Complaint.
17. Bernabei admits that the Relators filed the protest described in Paragraph 17 of the Complaint, and further answering states that Exhibit A to the Complaint speaks for itself. To the extent that Paragraph 17 incorporates or restates by reference the legal bases for that protest, it sets forth legal arguments, and not well pleaded allegations of fact to which an Answer is required. To the extent that any response is required, Bernabei specifically denies each and every one of the remaining averments set forth in that Paragraph.
18. Bernabei admits that the Board conducted a hearing on the protest on July 6, 2015, but denies each of the remaining averments set forth in Paragraph 18 of the Complaint.

19. Bernabei admits that he presented evidence of his desire to run for Mayor of Canton as an independent was motivated, at least in part, by his belief that he could well serve the citizens as Mayor, and that he was motivated, in part, to run for mayor based solely on his dissatisfaction with the Democratic candidates seeking that office. The remaining averments of Paragraph 19 of the Complaint consist of legal arguments, and not well-pleaded allegations of fact to which any Answer is required. To the extent that any response is required, Bernabei specifically denies each and every one of the remaining averments set forth in that Paragraph.

20. The allegations of Paragraph 20 of the Complaint purport to summarize Exhibit B to the Complaint, which speaks for itself, and contains both editorial characterizations and legal argument regarding the record, neither of which constitute well pleaded allegations of fact to which any Answer is required. To the extent that any response is required, Bernabei specifically denies each and every one of the averments set forth in that Paragraph.

21. Paragraph 21 of the Complaint consists entirely of legal arguments (complete with footnotes and case law citations), and contains no well pleaded allegations of fact to which any Answer is required. To the extent that any response is required, Bernabei specifically denies each and every one of the well-pleaded factual averments (if any) set forth in that Paragraph.

22. Bernabei admits the averments set forth in Paragraph 22 of the Complaint.

23. Paragraph 23 of the Complaint consists wholly of legal arguments and editorial statements, and contains no well-pleaded averment of fact to which any Answer is required. Bernabei specifically denies the conclusion that either the Secretary or the Board acted improperly in failing to sustain the protest. To the extent that any further response is required, Bernabei specifically denies the remaining averments set forth in that Paragraph.

24. Paragraph 24 of the Complaint consists entirely of legal arguments and contains no well pleaded allegations of fact to which any Answer is required, and the cited authorities speak for themselves. To the extent that Paragraph contains any factual averment to which any response is required, Bernabei denies each such averment.

25. Paragraph 25 of the Complaint consists entirely of legal arguments and contains no well pleaded allegations of fact to which any Answer is required, and the cited authorities speak for themselves. To the extent that Paragraph contains any factual averment to which any response is required, Bernabei denies each such averment.

26. Paragraph 26 of the Complaint consists entirely of legal arguments and contains no well pleaded allegations of fact to which any Answer is required, and the cited authorities speak for themselves. To the extent that Paragraph contains any factual averment to which any response is required, Bernabei denies each such averment.

27. Bernabei denies the implication in Paragraph 27 of the Complaint that his awareness of the law governing disaffiliation demonstrated any bad faith or improperly motivated conduct on his part. The remaining portions of that Paragraph consist entirely of legal arguments and contain no well pleaded allegations of fact to which any Answer is required, and the cited authorities speak for themselves. To the extent that Paragraph contains any factual averment to which any response is required, Bernabei denies each such averment.

28. Paragraph 28 of the Complaint consists entirely of legal arguments and contains no well pleaded allegations of fact to which any Answer is required, and the cited authorities speak for themselves. To the extent that Paragraph contains any factual averment to which any response is required, Bernabei denies each such averment.

29. Paragraph 29 of the Complaint consists entirely of legal arguments and contains no well pleaded allegations of fact to which any Answer is required, and the cited authorities, appended as Exhibits D and E to the Complaint, speak for themselves. To the extent that Paragraph contains any factual averment to which any response is required, Bernabei denies each such averment.

30. Paragraph 30 of the Complaint consists entirely of legal arguments and contains no well pleaded allegations of fact to which any Answer is required, and the cited case speaks for itself. To the extent that Paragraph contains any factual averment to which any response is required, Bernabei denies each such averment.

31. Paragraph 31 of the Complaint consists entirely of legal arguments and contains no well pleaded allegations of fact to which any Answer is required, and the cited authorities speak for themselves. To the extent that Paragraph contains any factual averment to which any response is required, Bernabei denies each such averment.

32. Bernabei denies every averment set forth in Paragraph 32 of the Complaint.

33. In response to Paragraph 33 of the Complaint, Bernabei admits that he was and is aware of the disaffiliation requirements imposed on putative independent candidates for elected office in Ohio, and further answering, states that the record of the July 6, 2015 hearing before the Board speaks for itself.

34. In response to Paragraph 34 of the Complaint, Bernabei admits having signed the statement contained in Protestors' Hearing Ex. 49, denies that his signature on that document in any way precluded his subsequent good-faith disaffiliation from the Democratic Party, and denies the remaining averments set forth in that Paragraph.

35. In response to Paragraph 35 of the Complaint, Bernabei admits that the testimony reproduced there was given at the hearing conducted July 6, 2015, states that the record in that regard speaks for itself, and denies the remaining averments set forth in that Paragraph.

36. Bernabei admits that he was elected Stark County Commissioner in 2010 and 2012, and that he ran for that office in each case as a Democrat, and denies the remaining averments set forth in that Paragraph.

37. Bernabei denies every averment set forth in Paragraph 37 of the Complaint.

38. In response to Paragraph 38 of the Complaint, Bernabei admits that he has not asked the Stark County Board of Elections to alter or adjust records showing him to be a “Democratic office holder,” to the extent such a thing exists, and further answering, states that he unambiguously undertook steps to make his disaffiliation from that Democratic Party known to the Board. Bernabei denies, for want of knowledge sufficient to form a belief as to their veracity, each of the remaining averments set forth in that Paragraph.

39. In response to Paragraph 39 of the Complaint, Bernabei denies that he in any sense remains affiliated with the Democratic Party. The remaining portions of Paragraph 39 of the Complaint consist entirely of legal arguments and contain no well pleaded allegations of fact to which any Answer is required, and the cited authorities speak for themselves. To the extent that Paragraph contains any factual averment to which any response is required, Bernabei denies each such averment.

40. In response to Paragraph 40 of the Complaint, Bernabei denies the implication that he is required to resign his office as County Commissioner in order to completely disaffiliate from the Democratic Party, and further answering, states that the testimony given at the July 6, 2015 hearing conducted by the Board speaks for itself.

41. Bernabei admits he has not “withdrawn” the affirmation described in Paragraph 41 of the Complaint, whatever that means and however it might be accomplished, if at all, but denies the implication that such an action is a prerequisite to disaffiliation under Ohio law. The remainder of Paragraph 41 consists of legal arguments and not well pleaded allegations of fact to which any Answer is required, and the cited case speaks for themselves. To the extent that Paragraph contains any factual averment to which any response is required, Bernabei denies each such averment.

42. Bernabei admits that the facts of this case are unique, states that Exhibits B and C to the Complaint speak for themselves, and denies the remaining averments set forth in Paragraph 42 of the Complaint.

43. Bernabei admits the allegations set forth in Paragraph 43 of the Complaint.

44. Bernabei admits that Paragraph 44 of the Complaint accurately reproduces a piece of campaign literature used by Kristen Guardado, and further answering, states that he became treasurer to that campaign prior to his disaffiliation from the Democratic Party, and resigned from his position as treasurer as part of a series of deliberate acts taken in support of his disaffiliation, from that party, all prior to his submission of nominating petitions as an independent candidate for Mayor of Canton, which petitions were submitted on May 4, 2015.

45. Bernabei admits the allegations set forth in Paragraph 45 of the Complaint, and further answering, states the record of the July 6, 2015 hearing before the Board speaks for itself.

46. Bernabei admits the allegations set forth in Paragraph 46 of the Complaint, notes that the advertisement in question was recorded prior to his disaffiliation from the Democratic Party, and further answering, states the record of the July 6, 2015 hearing before the Board speaks for itself, without the boldface editorial embellishments added by Petitioners.

47. Bernabei denies that the advertisement in question implied anything about his future intentions regarding party affiliation, denies the implication that the advertisement in any way precluded or limited his right to disaffiliate with the Democratic Party at the time of his choosing, states that the record of the July 6, 2015 hearing speaks for itself, and denies the remaining averments set forth in Paragraph 47 of the Complaint.

48. Bernabei admits having testified as alleged in Paragraph 48 of the Complaint, and further answering states that the record of the July 6, 2015 hearing speaks for itself.

49. Bernabei admits having testified as alleged in Paragraph 49 of the Complaint, and further answering states that the record of the July 6, 2015 hearing speaks for itself.

50. Bernabei denies every averment set forth in Paragraph 50 of the Complaint.

51. Bernabei denies every averment set forth in Paragraph 51 of the Complaint.

52. In response to Paragraph 52 of the Complaint, Bernabei states that that the record of the July 6, 2015 hearing speaks for itself, and further answering, notes that he testified at that hearing that he submitted letters of resignation addressed to the three Stark County Democratic clubs to which he belonged the week prior to May 4, 2015.

53. In response to Paragraph 53 of the Complaint, Bernabei states that that the record of the July 6, 2015 hearing speaks for itself, and further answering, notes that he testified at that hearing that he submitted letters of resignation addressed to the three Stark County Democratic clubs to which he belonged the week prior to May 4, 2015.

54. In response to Paragraph 54 of the Complaint, Bernabei states that that the record of the July 6, 2015 hearing speaks for itself, and further answering, notes that he testified at that hearing that he submitted letters of resignation addressed to the three Stark County Democratic

clubs to which he belonged the week prior to May 4, 2015, and thus denies the averment that he did not resign prior to that date.

55. In response to Paragraph 55 of the Complaint, Bernabei states that that the record of the July 6, 2015 hearing speaks for itself, and further answering, denies the editorial characterization of his testimony as unpersuasive, denies as a legal argument to which no Answer is required the allegation that his explanation regarding his method of resignation was irrelevant, and denied each remaining averment set forth in that Paragraph.

56. In response to Paragraph 56 of the Complaint, Bernabei states that that the record of the July 6, 2015 hearing speaks for itself, and further answering, denies that the subjective impressions of the club presidents in any way impaired or limited his disaffiliation from the Democratic Party.

57. In response to Paragraph 57 of the Complaint, Bernabei states that that the record of the July 6, 2015 hearing speaks for itself, and further answering, denies, for want of knowledge sufficient to form a belief as to their veracity, each of the remaining averments set forth in that Paragraph.

58. In response to Paragraph 58 of the Complaint, Bernabei states that that the record of the July 6, 2015 hearing speaks for itself, and further answering, denies that his failure to send the letters via postal mail, rather than through a trusted intermediary who was herself a party member and official, in any way impairs his disaffiliation from the Democratic Party.

59. Paragraph 59 of the Complaint consists entirely of legal arguments and contains no well pleaded allegations of fact to which any Answer is required, and the cited authorities speak for themselves. To the extent that Paragraph contains any factual averment to which any response is required, Bernabei denies each such averment.

60. Bernabei denies every averment set forth in Paragraph 60 of the Complaint.

61. Bernabei denies every averment set forth in Paragraph 61 of the Complaint.

62. Bernabei admits that he did not ask for his name and picture to be removed from yard signs already posted, campaign flyers already printed and from the wall of the local party headquarters, a place he was did not even know that it appeared, and denies, for want of knowledge sufficient to form a belief as to their veracity, each of the remaining averments set forth in that Paragraph.

63. Paragraph 63 of the Complaint consists entirely of legal arguments and contains no well pleaded allegations of fact to which any Answer is required, and the cited authorities speak for themselves. To the extent that Paragraph contains any factual averment to which any response is required, Bernabei denies each such averment.

64. Paragraph 64 of the Complaint consists entirely of legal arguments and contains no well pleaded allegations of fact to which any Answer is required, and the cited authorities speak for themselves. To the extent that Paragraph contains any factual averment to which any response is required, Bernabei denies each such averment.

65. Bernabei admits the allegations set forth in Paragraph 65 of the Complaint, and further answering, states the record of the July 6, 2015 hearing before the Board speaks for itself.

66. Bernabei admits the allegations set forth in Paragraph 66 of the Complaint, and further answering, states the record of the July 6, 2015 hearing before the Board speaks for itself.

67. Bernabei admits the allegations set forth in Paragraph 67 of the Complaint, and further answering, states the record of the July 6, 2015 hearing before the Board speaks for itself.

68. Bernabei admits the allegations set forth in Paragraph 68 of the Complaint, and further answering, states the record of the July 6, 2015 hearing before the Board speaks for itself.

69. In response to Paragraph 69 of the Complaint, Bernabei states that that the record of the July 6, 2015 hearing speaks for itself, and further answering, denies that the cited testimony established whether he informed Guardado of his disaffiliation before or after filing his nominating petitions on May 4, 2015.

70. In response to Paragraph 70 of the Complaint, Bernabei denies that he filed his resignation after filing his petitions, and further answering states that that the record of the July 6, 2015 hearing speaks for itself.

71. Bernabei admits the allegations set forth in Paragraph 71 of the Complaint, and further answering, states the record of the July 6, 2015 hearing before the Board speaks for itself.

72. Bernabei admits the allegations set forth in Paragraph 72 of the Complaint, and further answering, states the record of the July 6, 2015 hearing before the Board speaks for itself.

73. Bernabei admits the allegations set forth in Paragraph 73 of the Complaint, and further answering, states the record of the July 6, 2015 hearing before the Board speaks for itself.

74. Bernabei admits the allegations set forth in Paragraph 74 of the Complaint, and further answering, states the record of the July 6, 2015 hearing before the Board speaks for itself.

75. Bernabei admits the allegations set forth in Paragraph 75 of the Complaint, and further answering, states the record of the July 6, 2015 hearing before the Board speaks for itself.

76. Paragraph 76 of the Complaint consists entirely of legal arguments and contains no well pleaded allegations of fact to which any Answer is required, and the cited authorities speak for themselves. To the extent that Paragraph contains any factual averment to which any response is required, Bernabei denies each such averment.

77. Bernabei admits that he presented evidence at the July 6, 2015 hearing demonstrating his efforts to disaffiliate himself from the Democratic Party, but denies the remaining assertions set forth in Paragraph 77 of the Complaint as legal arguments, and not well pleaded allegations of fact to which any Answer is required. To the extent that any response is required, he specifically denies each and every one of the remaining averments set forth in that Paragraph.

78. Bernabei denies every averment set forth in Paragraph 78 of the Complaint.

79. Paragraph 79 of the Complaint consists of legal arguments and contains no well pleaded allegations of fact to which any Answer is required, and the cited authorities speak for themselves. To the extent that Paragraph contains any factual averment to which any response is required, Bernabei denies each such averment.

80. Paragraph 80 of the Complaint consists of legal arguments and contains no well pleaded allegations of fact to which any Answer is required, and the cited authorities speak for themselves. To the extent that Paragraph contains any factual averment to which any response is required, Bernabei denies each such averment.

81. Paragraph 81 of the Complaint consists of legal arguments and contains no well pleaded allegations of fact to which any Answer is required, and the record of the July 6, 2015 hearing speaks for itself. To the extent that Paragraph contains any factual averment to which any response is required, Bernabei denies each such averment.

82. In response to Paragraph 82 of the Complaint, Bernabei states that the the record of the July 6, 2015 hearing speaks for itself as to his bases for disaffiliating from the Democratic Party. The remainder of that Paragraph contains legal arguments and legal conclusions, and not well pleaded facts to which any Answer is required.

83. Bernabei admits the allegations set forth in Paragraph 83 of the Complaint, and further answering, states the record of the July 6, 2015 hearing before the Board speaks for itself.

84. Bernabei admits the allegations set forth in Paragraph 84 of the Complaint, and further answering, states the record of the July 6, 2015 hearing before the Board speaks for itself.

85. Bernabei admits the allegations set forth in Paragraph 85 of the Complaint, and further answering, states the record of the July 6, 2015 hearing before the Board speaks for itself.

86. Bernabei admits the allegations set forth in Paragraph 86 of the Complaint, and further answering, states the record of the July 6, 2015 hearing before the Board speaks for itself.

87. Paragraph 87 of the Complaint consists of legal arguments and contains no well pleaded allegations of fact to which any Answer is required, and the cited authorities speak for themselves. To the extent that Paragraph contains any factual averment to which any response is required, Bernabei denies each such averment.

88. Paragraph 88 of the Complaint consists of legal arguments and contains no well pleaded allegations of fact to which any Answer is required, and the cited authorities speak for themselves. To the extent that Paragraph contains any factual averment to which any response is required, Bernabei denies each such averment.

89. In response to Paragraph 89 of the Complaint, Bernabei states the record of the July 6, 2015 hearing before the Board speaks for itself as to his testimony. The remainder of the Paragraph contains legal arguments, and not well pleaded allegations of fact to which any Answer is required. To the extent that the remainder of that Paragraph contains any factual averment to which any response is required, Bernabei denies each such averment.

90. In response to Paragraph 90 of the Complaint, Bernabei states the record of the July 6, 2015 hearing before the Board speaks for itself as to his testimony, and denies the substance and the implications of the characterization of his testimony in that Paragraph.

91. Paragraph 91 of the Complaint consists of legal arguments and contains no well pleaded allegations of fact to which any Answer is required, and the cited authorities speak for themselves. To the extent that Paragraph contains any factual averment to which any response is required, Bernabei denies each such averment.

92. In response to Paragraph 92 of the Complaint, Bernabei states the record of the July 6, 2015 hearing before the Board speaks for itself as to his testimony. The remainder of the Paragraph contains legal arguments, and not well pleaded allegations of fact to which any Answer is required. To the extent that the remainder of that Paragraph contains any factual averment to which any response is required, Bernabei denies each such averment.

93. In response to Paragraph 93 of the Complaint, Bernabei states the record of the July 6, 2015 hearing before the Board speaks for itself as to his testimony, and further answering, denies the characterization of his testimony in that Paragraph, specifically denies that he engaged in post petition activity that in any way undermined or cast doubt on his disaffiliation from the Democratic Party, and denies each and every remaining averment in that Paragraph.

94. In response to Paragraph 94 of the Complaint, Bernabei states the record of the July 6, 2015 hearing before the Board speaks for itself as to his testimony, and further answering, denies the characterization of his testimony in that Paragraph, specifically denies that he engaged in activity that in any way undermined, impaired or cast doubt on his disaffiliation from the Democratic Party, and denies each and every remaining averment in that Paragraph.

95. Paragraph 95 of the Complaint consists of legal arguments and contains no well pleaded allegations of fact to which any Answer is required, and the cited authorities speak for themselves. To the extent that Paragraph contains any factual averment to which any response is required, Bernabei denies each such averment.

96. Paragraph 96 of the Complaint consists of legal arguments and contains no well pleaded allegations of fact to which any Answer is required, and the cited authorities speak for themselves. To the extent that Paragraph contains any factual averment to which any response is required, Bernabei denies each such averment.

97. Bernabei admits the allegations set forth in Paragraph 97 of the Complaint, and further answering, states the record of the July 6, 2015 hearing before the Board speaks for itself.

98. Paragraph 98 of the Complaint consists of legal arguments and contains no well pleaded allegations of fact to which any Answer is required, and the cited authorities speak for themselves. To the extent that Paragraph contains any factual averment to which any response is required, Bernabei denies each such averment.

99. Bernabei admits the allegations set forth in Paragraph 99 of the Complaint, and further answering, states the record of the July 6, 2015 hearing before the Board speaks for itself.

100. Paragraph 100 of the Complaint consists of legal arguments and contains no well pleaded allegations of fact to which any Answer is required, and the cited authorities speak for themselves. To the extent that Paragraph contains any factual averment to which any response is required, Bernabei denies each such averment.

101. Paragraph 101 of the Complaint consists of legal arguments and contains no well pleaded allegations of fact to which any Answer is required, and the cited authorities speak for themselves. To the extent that Paragraph contains any factual averment to which any response is required, Bernabei denies each such averment.

102. Paragraph 102 of the Complaint consists of legal arguments and contains no well pleaded allegations of fact to which any Answer is required, and the cited authorities speak for themselves. To the extent that Paragraph contains any factual averment to which any response is required, Bernabei denies each such averment.

103. Paragraph 103 of the Complaint consists of legal arguments and contains no well pleaded allegations of fact to which any Answer is required, and the cited authorities speak for themselves. To the extent that Paragraph contains any factual averment to which any response is required, Bernabei denies each such averment.

104. Paragraph 104 of the Complaint consists of legal arguments and contains no well pleaded allegations of fact to which any Answer is required, and the cited authorities speak for themselves. To the extent that Paragraph contains any factual averment to which any response is required, Bernabei denies each such averment.

105. Paragraph 105 of the Complaint consists of legal arguments and contains no well pleaded allegations of fact to which any Answer is required, and the cited authorities speak for themselves. To the extent that Paragraph contains any factual averment to which any response is required, Bernabei denies each such averment.

106. Paragraph 106 of the Complaint consists of legal arguments and contains no well pleaded allegations of fact to which any Answer is required. Further Answering, Bernabei denies the legal conclusions and arguments, and any factual averments contained in that Paragraph.

107. Bernabei admits the allegations set forth in Paragraph 107 of the Complaint, and further answering, states the record of the July 6, 2015 hearing before the Board speaks for itself.

108. Bernabei admits the allegations set forth in Paragraph 108 of the Complaint, and further answering, states the record of the July 6, 2015 hearing before the Board speaks for itself.

109. Bernabei admits the allegations set forth in Paragraph 109 of the Complaint, with the caveat that the tenants, who initially declined, later changed their minds, but that Bernabei did not want to impose on them, a family with two children and an expectant mother. Further answering, Bernabei states the record of the July 6, 2015 hearing before the Board speaks for itself.

110. Bernabei admits the allegations set forth in Paragraph 110 of the Complaint, and further answering, states the record of the July 6, 2015 hearing before the Board speaks for itself.

111. Bernabei admits the allegations set forth in Paragraph 111 of the Complaint, and further answering, objects to the characterization of a form, which was tendered for filing only upon his future approval, as “forward dated,” and states the record of the July 6, 2015 hearing before the Board speaks for itself.

112. Bernabei admits the allegations set forth in Paragraph 112 of the Complaint, and further answering, objects to the characterization of a form, which was tendered for filing only upon his future approval, as “forward dated,” and states the record of the July 6, 2015 hearing before the Board speaks for itself.

113. Bernabei admits the allegations set forth in Paragraph 113 of the Complaint, and further answering, states the record of the July 6, 2015 hearing before the Board speaks for itself.

114. Bernabei admits the allegations set forth in Paragraph 114 of the Complaint, and further answering, states the record of the July 6, 2015 hearing before the Board speaks for itself.

115. Bernabei admits the allegations set forth in Paragraph 110 of the Complaint, and further answering, states the record of the July 6, 2015 hearing before the Board speaks for itself, and further answering, states that while the Lakecrest property did become available on May 6, 2015, he had no way of knowing that it would be available that soon, no control over when it became available, and that in fact it became available sooner than he had expected.

116. Paragraph 116 of the Complaint consists of legal arguments and contains no well pleaded allegations of fact to which any Answer is required, and the cited authorities speak for themselves. To the extent that Paragraph contains any factual averment to which any response is required, Bernabei denies each such averment.

117. Bernabei admits the allegations set forth in Paragraph 117 of the Complaint, and further answering, states the record of the July 6, 2015 hearing before the Board speaks for itself.

118. Paragraph 118 of the Complaint consists of legal arguments and contains no well pleaded allegations of fact to which any Answer is required, and the cited authorities speak for themselves. To the extent that Paragraph contains any factual averment to which any response is required, Bernabei denies each such averment.

119. Paragraph 119 of the Complaint consists of legal arguments and contains no well pleaded allegations of fact to which any Answer is required, and the cited authorities speak for themselves. To the extent that Paragraph contains any factual averment to which any response is required, Bernabei denies each such averment.

120. Paragraph 120 of the Complaint consists of legal arguments and contains no well pleaded allegations of fact to which any Answer is required, and the cited authorities speak for themselves. To the extent that Paragraph contains any factual averment to which any response is required, Bernabei denies each such averment.

121. Paragraph 121 of the Complaint consists of legal arguments and contains no well pleaded allegations of fact to which any Answer is required, and the cited authorities speak for themselves. To the extent that Paragraph contains any factual averment to which any response is required, Bernabei denies each such averment.

122. In response to Paragraph 122 of the Complaint, Bernabei states that the record of the July 6, 2015 Board hearing speaks for itself, and denies the implication and associated legal argument that 2118 University Avenue N.W. was a temporary residence, and not his fixed place of habitation, with the meaning of the Ohio Revised Code.

123. In response to Paragraph 123 of the Complaint, Bernabei states that the record of the July 6, 2015 Board hearing speaks for itself.

124. Paragraph 124 of the Complaint consists of legal arguments and contains no well pleaded allegations of fact to which any Answer is required. Further Answering, Bernabei denies the legal conclusions and arguments, and any factual averments contained in that Paragraph.

125. Bernabei admits the allegations set forth in Paragraph 125 of the Complaint, and further answering, states the record of the July 6, 2015 hearing before the Board speaks for itself.

126. Bernabei denies that the University Avenue property was unfurnished, admits that the property was listed for sale while he lived there, admits that he was not under contract to purchase it, and further answering states that he rented the property on a month-to-month lease, at \$1,000.00 per month, with an option to renew monthly.

127. Bernabei admits the allegations set forth in Paragraph 127 of the Complaint, and further answering, states the record of the July 6, 2015 hearing before the Board speaks for itself.

128. Bernabei admits that he never updated his address with the Office of Attorney Services to reflect the University Avenue address, but further answering notes he did update his address to reflect the subsequent Lakecrest Street address.

129. Bernabei admits the allegations set forth in Paragraph 129 of the Complaint, denies the implicit legal significance of the editorial characterization of the Lakecrest address, and further answering, states the record of the July 6, 2015 hearing before the Board speaks for itself.

130. Bernabei admits the allegations set forth in Paragraph 130 of the Complaint, and further answering, states the record of the July 6, 2015 hearing before the Board speaks for itself.

131. Paragraph 131 of the Complaint consists of legal arguments and contains no well pleaded allegations of fact to which any Answer is required. Further Answering, Bernabei denies the legal conclusions and arguments, and any factual averments contained in that Paragraph.

132. Paragraph 132 of the Complaint consists of legal arguments and contains no well pleaded allegations of fact to which any Answer is required. Further Answering, Bernabei denies the legal conclusions and arguments, and any factual averments contained in that Paragraph.

133. Paragraph 133 of the Complaint consists of legal arguments and contains no well pleaded allegations of fact to which any Answer is required. Further Answering, Bernabei denies the legal conclusions and arguments, and any factual averments contained in that Paragraph.

134. Paragraph 134 of the Complaint consists of legal arguments and contains no well pleaded allegations of fact to which any Answer is required. Further Answering, Bernabei denies the legal conclusions and arguments, and any factual averments contained in that Paragraph.

135. Paragraph 135 of the Complaint consists of legal arguments and contains no well pleaded allegations of fact to which any Answer is required. Further Answering, Bernabei denies the legal conclusions and arguments, and any factual averments contained in that Paragraph.

136. Bernabei denies every averment set forth in Paragraph 136 of the Complaint.

137. Bernabei denies every averment set forth in Paragraph 137 of the Complaint.

138. Bernabei denies any allegation or averment, expressed or implied, in any caption, title, heading, footnote or subdivision of the Complaint.

139. Bernabei denies each and every allegation, averment or argument not otherwise admitted, denied, or denied for want of information sufficient to form a belief as to its veracity herein.

SECOND DEFENSE

140. Relators, and each of them, have failed to satisfy the requirements for a Writ of Prohibition to issue.

THIRD DEFENSE

141. Neither the Secretary nor the Board have engaged or are about to engage in any act contrary to law, nor take any act for which no adequate remedy at law exists.

FOURTH DEFENSE

142. The Secretary did not abuse his discretion in voting to break the tie vote of the Board in favor of permitting Bernabei to appear on the November 2015 ballot, and the Relators, and each of them, have failed to demonstrate by clear and convincing evidence that he did so.

FIFTH DEFENSE

143. The Relators, and each of them, seek equitable relief that contravenes the well established public policy of this state, to wit: resolving disputes over ballot access in favor or permitting the voters to have the broadest possible choice of candidates consistent with law.

SIXTH DEFENSE

144. The relief sought by the Relators contravenes the speech and association rights protected by First and Fourteenth Amendments to the United States Constitution by seeking to prevent Bernabei from severing his partisan political associations at will.

SEVENTH DEFENSE

145. The Relators, and each of them, have failed to demonstrate that the decision of the Secretary to permit Bernabei to appear upon the November 2015 was unsupported by credible evidence, or that his decision was arbitrary, unreasonable or contrary to law.

PRAYER

WHEREFORE, having pleaded his defenses against the Relators, and each of them, Intervenor Respondent Thomas M. Bernabei hereby respectfully prays that this action be dismissed, with prejudice, at Relators' cost, and that the decision of Secretary Husted placing his name upon the November 2015 ballot be sustained.

Respectfully submitted,

/s/ Raymond V. Vasvari, Jr.

RAYMOND V. VASVARI, JR. (0055538)*

*Counsel of Record

K. ANN ZIMMERMAN (0059486)

VASVARI & ZIMMERMAN

1301 East Ninth Street

1100 Erieview Tower

Cleveland, Ohio 44114-1844

Telephone: 216.458.5880

Telecopier: 216.928.0016

vasvari@vasvarilaw.com

zimmerman@vasvarilaw.com

Counsel for Intervener

Respondent Thomas M. Bernabei

CERTIFICATE OF SERVICE

True and accurate copies of the foregoing Answer and Affirmative Defenses of Intervenor Respondent Thomas M. Bernabei were served today, August 13, 2015, via email attachment as PDF documents upon the following at the email addresses indicated:

Lee Plakas | lplakas@lawlion.com
Robert S. Peck | Robert.peck@cclfirm.com

*Counsel for Relators Morris, Smith, West,
Fisher, Dougherty, Mariol II & Mack*

N. Zachary West | zwest@ohiodems.org

Counsel for Relator the Ohio Democratic Party

Deborah A. Dawson | dadawson@starkcountohio.gov

*Counsel of Record for Respondent
Stark Country Board of Elections*

Sarah E. Pierce | sarah.pierce@ohioattorneygeneral.gov
Zachary P. Keller | zachery.keller@ohioattorneygeneral.gov
Nicole M. Koppich | Nicole.kopitch@ohioattorneygeneral.gov

*Counsel for Respondent Ohio
Secretary of State John Husted*

Respectfully submitted,

/s/ Raymond V. Vasvari, Jr.

RAYMOND V. VASVARI, JR. (0055538)*

*Counsel of Record for Intervener
Respondent Thomas M. Bernabei*