

**Case No. 2015-1371
Expedited Election Case**

**Supreme Court
of the State of Ohio**

STATE OF OHIO *ex rel.* RENEE WALKER,

Relator,

and

JOHN P. REGAN, *et al.*,

Putative Relators,

v.

JON HUSTED, Ohio Secretary of State,

Respondent,

and

JOANNE DOVE PRISLEY, *et al.*,

Intervening Respondents.

ANSWER OF INTERENING RESPONDENT MARK OVERHOLT

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Now comes Intervening Respondent Mark Overholt (aka George Markley Overholt) and for his Answer to the Complaint herein states as follows:

FIRST DEFENSE

1. In answering Paragraph 1, Intervening Respondent Overholt admits Petitioners (or Relator and Putative Relators) have requested a writ of mandamus seeking to compel the Ohio Secretary of State to certify three county charter petitions (exemplars of which are attached to the Complaint as Exhibits A, B, and C, collectively hereinafter the “Petitions for Proposed County Charters”) to the ballots in Fulton, Medina and Athens Counties for the general election to be held on November 3, 2015; Intervening Respondent Overholt denies all remaining allegations therein.

2. Intervening Respondent Overholt admits the allegations in paragraph 2.

3. In answering Paragraph 3, Intervening Respondent Overholt admits Respondent Secretary of State sustained, in part, protests to the Petitions for Proposed County Charters; Intervening Respondent Overholt denies all remaining allegations therein.

4. In answering Paragraph 4, Intervening Respondent Overholt admits less than 90 days remains until the general election scheduled for November 3, 2015; Intervening Respondent Overholt denies all remaining allegations therein.

5. In answering Paragraph 5, Intervening Respondent Overholt denies for lack of knowledge and information sufficient to form an opinion as to the truth thereof the allegations therein.

6. In answering Paragraph 6, Intervening Respondent Overholt denies for lack of knowledge and information sufficient to form an opinion as to the truth thereof the allegations therein.

7. In answering Paragraph 7, Intervening Respondent Overholt denies for lack of knowledge and information sufficient to form an opinion as to the truth thereof the allegations therein.

8. In answering Paragraph 8, Intervening Respondent Overholt denies for lack of knowledge and information sufficient to form an opinion as to the truth thereof the allegations therein.

9. In answering Paragraph 9, Intervening Respondent Overholt denies for lack of knowledge and information sufficient to form an opinion as to the truth thereof the allegations therein.

10. In answering Paragraph 10, Intervening Respondent Overholt denies for lack of knowledge and information sufficient to form an opinion as to the truth thereof the allegations therein.

11. In answering Paragraph 11, Intervening Respondent Overholt denies for lack of knowledge and information sufficient to form an opinion as to the truth thereof the allegations therein.

12. In answering Paragraph 12, Intervening Respondent Overholt admits that Respondent Husted is the Ohio Secretary of State and that his duties and responsibilities are defined generally by Chapter 35 of the Ohio Revised Code, and that he is capable of being sued in his official capacity; Intervening Respondent Overholt denies all remaining allegations therein.

13. In answering Paragraph 13, Intervening Respondent Overholt states that the assertions therein are legal conclusions to which no response is required; to the extent one is required, Intervening Respondent Overholt denies all allegations therein.

14. In answering Paragraph 14, Intervening Respondent Overholt denies for lack of knowledge and information sufficient to form an opinion as to the truth thereof the allegations therein.

15. In answering Paragraph 15, Intervening Respondent Overholt denies for lack of knowledge and information sufficient to form an opinion as to the truth thereof the allegations therein.

16. In answering Paragraph 16, Intervening Respondent Overholt denies for lack of knowledge and information sufficient to form an opinion as to the truth thereof the allegations therein.

17. In answering Paragraph 17, Intervening Respondent Overholt denies for lack of knowledge and information sufficient to form an opinion as to the truth thereof the allegations therein.

18. In answering Paragraph 18, Intervening Respondent Overholt admits that Respondent Husted issued a decision addressing various protests that had been filed against the Petitions for Proposed County Charters, a copy of this decision being attached as Exhibit E to the Complaint; Intervening Respondent Overholt denies all remaining allegations therein.

19. In answering Paragraph 19, Intervening Respondent Overholt admits that the decision of Respondent Husted, *i.e.*, Exhibit E to the Complaint, speaks for itself and is the best evidence of the contents thereof.

20. In answering Paragraph 20, Intervening Respondent Overholt admits that the decision of Respondent Husted, *i.e.*, Exhibit E to the Complaint, speaks for itself and is the best evidence of the contents thereof.

21. Intervening Respondent Overholt denies the allegations in paragraph 21.

22. In answering Paragraph 22, Intervening Respondent Overholt states that the assertions therein are legal conclusions to which no response is required; to the extent one is required, Intervening Respondent Overholt denies all allegations therein.

23. In answering Paragraph 23, Intervening Respondent Overholt admits that the decision of Respondent Husted, *i.e.*, Exhibit E to the Complaint, speaks for itself and is the best evidence of the contents thereof.

24. In answering Paragraph 24, Intervening Respondent Overholt states that the assertions therein are legal conclusions to which no response is required; to the extent one is required, Intervening Respondent Overholt denies all allegations therein.

25. Intervening Respondent Overholt denies the allegations in paragraph 25.

26. In answering Paragraph 26, admits the Petitions for Proposed County Charters do not provide for an alternative form of government. Further answering Paragraph 26, tates the remaining allegations concern contentions with respect to how applicable statutes apply to Medina, Fulton and Athens Counties, which are legal conclusions, and no further response is required.

27. In answering Paragraph 27, states that no response is required because the contents of the Secretary of State of Ohio's "Ballot Questions and Issues Handbook" and Ohio Attorney General opinions are not controlling and set forth legal issues to be decided by this Court.

28. In answering Paragraph 28, states that no response is required because the contents of the Secretary of State of Ohio's "Ballot Questions and Issues Handbook" is not controlling and sets forth legal issues to be decided by this Court.

29. In answering Paragraph 29, Intervening Respondent Overholt states that the assertions therein are legal conclusions to which no response is required; to the extent one is required, Intervening Respondent Overholt denies all allegations therein.

30. In answering Paragraph 30, Intervening Respondent Overholt admits that a writ of mandamus is an extraordinary remedy, but denies all remaining allegations therein.

31. Intervening Respondent Overholt denies the allegations in paragraph 31.

32. Intervening Respondent Overholt denies the allegations in paragraph 32.

33. Intervening Respondent Overholt denies the allegations in paragraph 33

34. Intervening Respondent Overholt denies the allegations in paragraph 34.

SECOND DEFENSE

35. Respondent Husted does not have a clear legal duty to perform the acts which Relators claim he must, nor does Relator have a clear legal right to the relief requested and, therefore, this Court lacks original jurisdiction under the Ohio Constitution to issue a writ of mandamus against Respondent Husted.

THIRD DEFENSE

36. This Court lacks subject matter jurisdiction to adjudicate Relators' claims.

FOURTH DEFENSE

37. Relator's Complaint fails to state a claim upon which relief can be granted.

FIFTH DEFENSE

38. Relator's Complaint is barred under the doctrine of laches.

SIXTH DEFENSE

39. Relators' Complaint fails to name all parties necessary for just adjudication of the Complaint.

SEVENTH DEFENSE

40. Relators' Complaint is not supported by an Affidavit, and if the "Verification" is deemed to be equivalent to an Affidavit, it nonetheless is not made on personal knowledge and does not show affirmatively that the affiant is competent to testify to all matters stated in the affidavit, all in violation of Sup. Ct. R. Prac. 12.02.

EIGHTH DEFENSE

41. Certain aspects of this action were not brought in the name of the state on relation to an individual and, thus, it cannot be properly maintained as a mandamus action.

NINTH DEFENSE

42. As the true relief that Relators seek is injunctive or declaratory judgment, this Court lacks jurisdiction over this purported mandamus action.

TENTH DEFENSE

43. Any allegation, claim or assertion in Relator's Complaint that is not specifically admitted herein is denied.

WHEREFORE, Intervening Respondent Overholt prays that the Complaint be dismissed or, in the alternative, that Relator's request for relief be denied, and for any additional relief to which he may be entitled in law or in equity.

Respectfully submitted,

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*Attorney for Putative Intervening
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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing will be served, via e-mail, upon the following on the 28th day of August 2015:

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