

**IN THE SUPREME COURT OF OHIO**

**STATE OF OHIO, ex rel.  
CITY OF YOUNGSTOWN,**

*Relator,*

v.

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

*Respondents.*

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: Case No. 2015-1422  
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: **Original Action in Mandamus**  
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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”) states:

**ANSWER**

1. The Complaint speaks for itself. To the extent a further response to paragraph one of the Complaint is required, Respondent denies for want of knowledge any remaining allegations.
2. Respondent denies for want of knowledge the allegations contained in paragraph two of the Complaint.
3. Exhibit A speaks for itself. To the extent a further response to paragraph three of the Complaint is required, Respondent denies any remaining allegations for want of knowledge.

4. Respondent denies the Secretary of State failed to perform any mandatory duties required by law or exceeded his power. Respondent denies for want of knowledge the remaining allegations contained in paragraph four of the Complaint.
5. R.C. 2731.02 speaks for itself. Further, the allegations contained in paragraph five of the Complaint call for a legal conclusion for which no response is required. To the extent a further answer is required, Respondent denies any remaining allegations.
6. The allegations contained in paragraph six of the Complaint call for a legal conclusion for which no response is required. To the extent a further answer is required, Respondent denies any remaining allegations.
7. The allegations contained in paragraph seven of the Complaint call for a legal conclusion for which no response is required. To the extent a further answer is required, Respondent denies any remaining allegations.
8. R.C. 3501.11 speaks for itself. To the extent a further response to paragraph eight of the Complaint is required, Respondent denies any remaining allegations.
9. The allegations contained in paragraph nine of the Complaint call for a legal conclusion for which no response is required. To the extent a further answer is required, Respondent denies any remaining allegations.
10. The allegations contained in paragraph ten of the Complaint call for a legal conclusion for which no response is required. To the extent a further answer is required, Respondent denies any remaining allegations.
11. The allegations contained in paragraph eleven of the Complaint call for a legal conclusion for which no response is required. To the extent a further answer is required, Respondent denies any remaining allegations.

12. The allegations contained in paragraph twelve of the Complaint call for a legal conclusion for which no response is required. To the extent a further answer is required, Respondent denies any remaining allegations.
13. The allegations contained in paragraph thirteen of the Complaint call for a legal conclusion for which no response is required. To the extent a further answer is required, Respondent denies any remaining allegations.
14. Respondent admits there are less than ninety days remaining until the November 3, 2015 election. Further answering, the allegations contained in paragraph fourteen of the Complaint call for a legal conclusion for which no response is required. Respondent denies any remaining allegations.
15. Respondent admits that Relator is a municipal corporation within the State of Ohio. The cases cited in paragraph fifteen of the Complaint speak for themselves. Further, the remaining allegations contained in the paragraph call for a legal conclusion for which no response is required.
16. Exhibit B speaks for itself. To the extent a further response to paragraph sixteen of the Complaint is required, Respondent denies any remaining allegations.
17. The allegations contained in paragraph seventeen of the Complaint call for a legal conclusion for which no response is required. To the extent a further answer is required, Respondent denies any remaining allegations.
18. Respondent admits the allegations contained in paragraph eighteen of the Complaint.
19. R.C. 3501.11 speaks for itself. Further, the allegations contained in paragraph nineteen of the Complaint call for a legal conclusion for which no response is required. To the extent a further answer is required, Respondent denies any remaining allegations.

20. Respondent, Jon Husted, admits that he is the Secretary of State for the State of Ohio. Exhibit C speaks for itself. To the extent a further response to paragraph twenty of the Complaint is required, Respondent admits that, on August 13, 2015, Secretary Husted upheld a protest against proposed county charter petitions filed in Athens, Fulton, and Medina counties made pursuant to R.C. 307.95. Respondent denies for want of knowledge any remaining allegations.
21. Youngstown City Charter Section 120 speaks for itself. To the extent a further response to paragraph twenty-one is required, Respondent denies any remaining allegations.
22. Article XVIII, Sections 8 and 9 of the Ohio Constitution speak for themselves.
23. Respondent denies for want of knowledge the allegations contained in paragraph twenty-three of the Complaint.
24. Respondent denies for want of knowledge the allegations contained in paragraph twenty-four of the Complaint.
25. Respondent denies for want of knowledge the allegations contained in paragraph twenty-five of the Complaint.
26. Respondent denies for want of knowledge the allegations contained in paragraph twenty-six of the Complaint.
27. Respondent denies for want of knowledge the allegations contained in paragraph twenty-seven of the Complaint.
28. Respondent denies for want of knowledge the allegations contained in paragraph twenty-eight of the Complaint.
29. Respondent denies for want of knowledge the allegations contained in paragraph twenty-nine of the Complaint.

30. Respondent admits that the Mahoning County Board of Elections held a meeting on August 26, 2015. Respondent denies for want of knowledge any remaining allegations contained in paragraph thirty of the Complaint.
31. Respondent admits the Mahoning County Board of Elections voted against certifying the proposed charter amendment. Respondent denies for want of knowledge any remaining allegations contained in paragraph thirty-one of the Complaint.
32. Paragraph thirty-two of the Complaint calls for a legal conclusion for which no response is required. To the extent a further answer is required, Respondent denies the allegations.
33. Paragraph thirty-three of the Complaint calls for a legal conclusion for which no response is required. To the extent a further answer is required, Respondent denies the allegations.
34. The allegations contained in paragraph thirty-four of the Complaint call for a legal conclusion for which no response is required. To the extent a further answer is required, Respondent denies any remaining allegations.
35. R.C. 3501.38 speaks for itself. In further response, the allegations contained in paragraph thirty-five of the Complaint call for a legal conclusion for which no response is required. To the extent a further response is required, Respondent denies any remaining allegations.
36. The opinions in *State ex rel. Kilby v. Summit Cnty. Bd. of Elections*, *State ex rel. Citizen Action v. Hamilton Cnty. Bd. of Elections*, and *State ex rel. DeBrosse v. Cool* speak for themselves. To the extent a further response to paragraph thirty-six of the Complaint is required, Respondent denies any remaining allegations for want of knowledge.

37. The allegations contained in paragraph thirty-seventeen of the Complaint call for a legal conclusion for which no response is required. To the extent a further answer is required Respondent denies any remaining allegations.
38. The allegations contained in paragraph thirty-eight of the Complaint call for a legal conclusion for which no response is required. To the extent a further answer is required, Respondent denies any remaining allegations.
39. The opinion in *State ex rel. McGovern v. Bd. of Elections* speaks for itself. To the extent a further response to paragraph thirty-nine of the Complaint is required, Respondent denies any remaining allegations.
40. The opinion in *State ex rel. Ebersole v. City of Powell* speaks for itself. To the extent a further response to paragraph forty of the Complaint is required, Respondent denies any remaining allegations.
41. Respondent admits that the Mahoning County Prosecuting Attorney represents the Mahoning County Board of Elections. Respondent denies for want of knowledge the remaining allegations contained in paragraph forty-one of the Complaint.
42. The allegations contained in paragraph forty-two of the Complaint call for a legal conclusion for which no response is required. To the extent a further answer is required, Respondent denies any remaining allegations.
43. Respondent denies for want of knowledge the allegations contained in paragraph forty-three of the Complaint.
44. The allegations contained in paragraph forty-four of the Complaint call for a legal conclusion for which no response is required. To the extent a further answer is required, Respondent denies for want of knowledge any remaining allegations.

45. The allegations contained in paragraph forty-five of the Complaint call for a legal conclusion for which no response is required. To the extent a further answer is required, Respondent denies any remaining allegations.
46. The allegations contained in paragraph forty-six of the Complaint call for a legal conclusion for which no response is required. To the extent a further answer is required, Respondent denies any remaining allegations.
47. Paragraph forty-seven of the Complaint calls for a legal conclusion for which no response is required. To the extent a further answer is required, Respondent denies any remaining allegations for want of knowledge.
48. Respondent denies the allegations contained in paragraph forty-eight of the Complaint.
49. The allegations contained in paragraph forty-nine call for a legal conclusion for which no response is required. Further, the opinion in *State ex rel. Senn v. Bd. of Elections* speaks for itself.
50. The opinion in *State ex rel. Clinard v. Greene Cnty.* speaks for itself. To the extent a further response to paragraph fifty of the Complaint is required, Respondent denies any remaining allegations.
51. Respondent denies the allegations contained in paragraph fifty-one of the Complaint.
52. Respondent denies the allegations contained in paragraph fifty-two of the Complaint.
53. The allegations contained in paragraph fifty-three of the Complaint call for a legal conclusion for which no response is required. To the extent a further answer is required, Respondent denies any remaining allegations.

54. The allegations contained in paragraph fifty-four of the Complaint call for a legal conclusion for which no response is required. To the extent a further answer is required, Respondent denies any remaining allegations.
55. Respondent specifically denies that Relator is entitled to the relief requested in the Prayer for Relief.
56. Respondent denies any and all allegations contained in Relator's 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**

57. Relator has failed to state a claim upon which it is entitled to relief from Respondent Secretary of State.

#### **Second Defense**

58. Relator has failed to satisfy the requirements for a writ of mandamus to issue.

#### **Third Defense**

59. Respondent Secretary of State Husted's conduct, to the extent it is at issue in Relator's Complaint, was authorized by law.

#### **Fourth Defense**

60. Respondent Secretary of State Jon Husted is not a proper party to this lawsuit.

#### **Fifth Defense**

61. Respondent reserves the right to add additional defenses, including additional affirmative defenses, as they may become apparent during the course of this case.

WHEREFORE, having answered Relator's Complaint, Respondent Secretary of State Jon Husted respectfully requests that this Court dismiss it in its entirety, with prejudice.

Respectfully submitted,  
MIKE DEWINE  
Ohio Attorney General

*/s/ Nicole M. Koppitch*

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*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 electronic mail or by facsimile transmission on September 8, 2015, upon the following:

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