

In the Supreme Court of Ohio

STATE <i>ex rel.</i> CITY OF YOUNGSTOWN	:	Case No. 2015-1422
	:	
Relator,	:	
	:	
v.	:	Expedited Election Case Pursuant to
	:	S.Ct.Prac.R. 12.08
MAHONING COUNTY BOARD OF	:	
ELECTIONS, <i>et al.</i>	:	
	:	
Respondents.	:	
	:	

**ANSWER AND AFFIRMATIVE DEFENSES OF RESPONDENTS
MAHONING COUNTY BOARD OF ELECTIONS, DAVID BETRAS, MARK MONROE,
ROBERT WASKO, AND TRACEY WINBUSH TO VERIFIED COMPLAINT FOR A
PEREMPTORY WRIT OF MANDAMUS**

VORYS, SATER, SEYMOUR AND PEASE LLP

Lisa Babish Forbes (0060105)
Kyle S. Baird (0089746)
Aaron M. Williams (0090319)
200 Public Square, Suite 1400
Cleveland, Ohio 44114
Phone: (216) 479-6100
Fax: (216) 479-6060
E-mail: lbforbes@vorys.com
ksbaird@vorys.com
amwilliams@vorys.com

John Keller (0019957)
52 East Gay Street
Columbus, OH 43215
Phone: (614) 464-6400
Fax: (614) 464-6350
E-mail: jkkeller@vorys.com

*Attorneys for Respondent Mahoning County Board
of Elections*

In response to Relator City of Youngstown's ("Relator") Verified Complaint for a Peremptory Writ of Mandamus (the "Complaint"), Respondents Mahoning County Board of Elections, David Betras, Mark Monroe, Robert Wasko, and Tracey Winbush (collectively the "Board") states as follows:

1. The Board states that the Complaint speaks for itself, and further answering denies that the Relator is entitled to a writ of mandamus.

2. The Board admits that the proposed Charter Amendment was presented to Youngstown City Council on August 3, 2015, and that it had a sufficient number of signatures. Further answering, the Board denies the remaining allegations in paragraph 2 of the Complaint.

3. The Board states that Exhibit A speaks for itself. To the extent a response is nonetheless required, the Board denies the remaining allegations contained in paragraph 3 of the Complaint to the extent they are inconsistent with Exhibit A.

4. The Board admits that it did not certify the proposed amendment to the Charter of the City of Youngstown to appear on the November 3, 2015 ballot. Further answering, the Board denies the remaining allegations in paragraph 4 of the Complaint.

5. The Board admits that this Court has jurisdiction over this matter and that R.C. 2731 governs mandamus proceedings. Answering further, the Board denies the remaining allegations in paragraph 5 of the Complaint.

6. The Board admits that it did not certify the proposed amendment to the Charter of the City of Youngstown to appear on the November 3, 2015 ballot. Further answering, the Board denies the remaining allegations in paragraph 6 of the Complaint.

7. The Board denies the allegations in paragraph 7 of the Complaint.

8. The Board admits that R.C. 3501.11 outlines some of the duties of the Board. The Board denies the remaining allegations in paragraph 8 of the Complaint.

9. The Board denies the allegations in paragraph 9 of the Complaint.

10. The Board denies the allegations in paragraph 10 of the Complaint.

11. The Board states that the allegations in paragraph 11 are legal conclusions to which no response is required. To the extent an answer is necessary, the Board denies the allegations in paragraph 11 of the Complaint.

12. The Board states that the allegations in paragraph 12 are legal conclusions to which no response is required. To the extent an answer is necessary, the Board denies the allegations in paragraph 12 of the Complaint.

13. The Board states that the allegations in paragraph 13 are legal conclusions to which no response is required. To the extent an answer is necessary, the Board denies the allegations in paragraph 13 of the Complaint.

14. The Board admits that the November 3, 2015 election is less than 90 days from August 28, 2015, the date of the filing of the Complaint in this matter. Further answering, the Board denies the remaining allegations in paragraph 14 of the Complaint.

15. The Board admits that the City of Youngstown is a municipal corporation in the State of Ohio. Further answering, the Board states that the allegations in paragraph 15 are legal conclusions to which no response is required. Further answering, the Board states that *State ex rel. Bedford v. Cuyahoga Cty. Bd. Of Elections (1991), 62 Ohio St. 3d 17, 577 N.E.2d 645* and *State ex rel. City of Toledo v. Lucas County Bd. Of Elections, 95 Ohio St. 3d 73 (2002)* speak for themselves. To the extent a further response is nonetheless required, the Board denies the

remaining allegations contained in paragraph 15 of the Complaint to the extent they are inconsistent with *Bedford* and *City of Toledo*.

16. The Board states that Exhibit B speaks for itself. To the extent a response is nonetheless required, the Board denies the allegations contained in paragraph 16 of the Complaint to the extent they are inconsistent with Exhibit B.

17. The Board admits the allegations in paragraph 17 of the Complaint.

18. The Board admits the allegations in paragraph 18 of the Complaint.

19. The Board admits that R.C. 3501.11 establishes duties of the Board, but the Board denies that its duties are limited to the duties contained in R.C. 3501.11. Further answering, the Board denies the remaining allegations to the extent they are inconsistent with R.C. 3501.11.

20. The Board states that Exhibit C speaks for itself. Further answering, the Board admits that it considered the Secretary of State's opinion before it decided not to certify the proposed amendment for the November 3, 2015 election. The Board denies the remaining allegations contained in paragraph 20 of the Complaint to the extent they are inconsistent with Exhibit C.

21. The Board states that the Youngstown City Charter speaks for itself and admits that the Complaint accurately quotes the language of Section 120 of the Charter.

22. The Board admits that Article XVIII, Section 9 addresses submission of municipal charter amendments. The Board denies the remaining allegations in paragraph 22 of the Complaint.

23. The Board admits the allegations in paragraph 23 of the Complaint.

24. The Board admits the allegations in paragraph 24 of the Complaint.

25. The Board admits allegations in paragraph 25 of the Complaint.

26. The Board admits the allegations in paragraph 26 of the Complaint.

27. The Board admits the allegations in paragraph 27 of the Complaint.

28. The Board admits the allegations in paragraph 28 of the Complaint.

29. The Board admits the allegations in paragraph 29 of the Complaint.

30. The Board admits that the Mahoning County Board of Elections held a meeting on August 26, 2015, that was attended by Board Chairman Mark E. Munroe, and Board Members David J. Betras, Robert J. Wasko and Tracey S. Winbush. The Board denies the remaining allegations in paragraph 30 of the Complaint.

31. The Board admits the allegations in paragraph 31 of the Complaint.

32. The Board denies the allegations in paragraph 32 of the Complaint.

33. The Board denies the allegations in paragraph 33 of the Complaint.

34. The Board denies the allegations in paragraph 34 of the Complaint.

35. The Board states that R.C. 3501.38 speaks for itself. Further answering, the Board states that the proposed charter amendment had sufficient signatures of sufficient quality to meet the requirements of R.C. 3501.38. To the extent a response to paragraph 35 of the Complaint is still required, the Board denies the remaining allegations contained in paragraph 35 of the Complaint to the extent they are inconsistent with R.C. 3501.38.

36. The Board states that *State ex rel. Kilby v. Summit Cnty. Bd. Of Elections*, 133 Ohio St. 3d 184, 2012-Ohio-4310, 977 N.E.2d 590; *State ex rel. Citizen Action v. Hamilton Cnty. Bd. of Elections*, 115 Ohio St. 3d 437, 2007-Ohio-5379, 875 N.E.2d 902; and *State ex rel. DeBrosse v. Cool*, 87 Ohio St. 3d 1, 1999-Ohio-239, 716 N.E.2d 1114 speak for themselves. Further answering, the Board states that the allegations in paragraph 36 are legal conclusions to which no response is required. To the extent a response is nonetheless required, the Board

denies the remaining allegations contained in paragraph 36 of the Complaint to the extent they are inconsistent with *Kilby*, *Citizen Action*, and *DeBrosse*.

37. The Board denies the allegations in paragraph 37 of the Complaint.

38. The Board states that the allegations in paragraph 38 are legal conclusions to which no response is required. To the extent an answer is necessary, the Board denies the remaining allegations.

39. The Board states that *State ex rel. McGovern v. Bd. of Elections*, 24 Ohio Misc. 135, 263 N.E.2d 586 (C.P. 1970) speaks for itself. Further answering, the Board states that the allegations in paragraph 39 are legal conclusions to which no response is required. To the extent a response is nonetheless required, the Board denies the remaining allegations contained in paragraph 39 of the Complaint to the extent they are inconsistent with *McGovern*.

40. The Board states that *State ex rel. Ebersole v. City of Powell*, 141 Ohio St. 17 (2014) speaks for itself. Further answering, the Board states that the allegations in paragraph 40 are legal conclusions to which no response is required. To the extent a response is nonetheless required, the Board denies the remaining allegations contained in paragraph 40 of the Complaint to the extent they are inconsistent with *Ebersole*.

41. The Board states that allegations in paragraph 41 of the Complaint seek to invade privileged attorney-client communications. Consequently, the Board declines to respond.

42. The Board admits that it did not certify the proposed amendment to the Charter of the City of Youngstown to appear on the November 3, 2015 ballot. Further answering, the Board denies the remaining allegations in paragraph 42 of the Complaint.

43. The Board admits that members of the Board of Elections discussed the case of *Morrison v. Beck Energy Corp.* at the August 26, 2015 meeting of the Board of Elections. Further answering, the Board denies the remaining allegations in paragraph 43 of the Complaint.

44. The Board denies the allegations in paragraph 44 of the Complaint.

45. The Board denies the allegations in paragraph 45 of the Complaint.

46. The Board admits that a writ of mandamus is an extraordinary remedy and that it is the court's duty to review the Board's actions for an abuse of discretion in light of the Complaint for a Writ of Mandamus filed in this action. Further answering, the Board denies the remaining allegations of paragraph 46.

47. The Board states that the allegations in paragraph 47 are legal conclusions to which no response is required. To the extent an answer is necessary, the Board denies the remaining allegations.

48. The Board denies the allegations in paragraph 48 of the Complaint.

49. The Board states that *State ex rel. Senn v. Bd. of Elections*, speaks for itself. Further answering, the Board states that the allegations in paragraph 49 are legal conclusions to which no response is required. To the extent a response is nonetheless required, the Board denies the remaining allegations contained in paragraph 49 of the Complaint to the extent they are inconsistent with *Senn*.

50. The Board states that *State ex rel. Clinard v. Greene Cnty.*, speaks for itself. Further answering, the Board states that the allegations in paragraph 50 are legal conclusions to which no response is required. To the extent a response is nonetheless required, the Board admits the remaining allegations contained in paragraph 50 of the Complaint.

51. The Board denies the allegations in paragraph 51 of the Complaint.

52. The Board denies the allegations in paragraph 52 of the Complaint.

53. The Board denies the allegations in paragraph 53 of the Complaint.

54. The Board denies the allegations in paragraph 54 of the Complaint.

The Board denies all allegations not specifically admitted to be true herein, and further sets forth the additional defenses below:

FIRST DEFENSE

55. Relator has failed to state a claim upon which relief can be granted.

SECOND DEFENSE

56. Relator has an adequate remedy at law which, pursuant to Ohio Revised Code section 2731.05, precludes the issuance of any extraordinary writ.

THIRD DEFENSE

57. At all times, the Board acted in compliance with any and all applicable laws, codes, statutes, and/or regulations, and reasonably believed that they acted in compliance any and all applicable laws, codes, statutes, and/or regulations.

FOURTH DEFENSE

58. Relator does not have a clear legal right to have the Board rule the petition valid.

FIFTH DEFENSE

59. The purported verification to the Complaint does not satisfy S.Ct.Prac.R. 12.02(B).

SIXTH DEFENSE

60. On August 26, 2015, the Board had, and continues to have, reason to believe that the petition is invalid.

SEVENTH DEFENSE

61. Relators are not entitled to a writ of mandamus to compel the Board to exercise discretion to reach a particular result.

EIGHTH DEFENSE

62. Relators are not entitled to an award of costs and attorneys' fees.

NINTH DEFENSE

63. The Board specifically reserves the right to amend or plead further any other affirmative defense based upon discovery, or as they become known.

WHEREFORE, having fully answered, the Board requests that the Writ of Mandamus be denied; that the Complaint be dismissed in its entirety; and that the Board receives all other relief to which it may be entitled at law or in equity.

Respectfully Submitted,

/s/ Lisa Babish Forbes
Lisa Babish Forbes (0060105)
Kyle S. Baird (0089746)
Aaron M. Williams (0090319)
Vorys, Sater, Seymour and Pease LLP
200 Public Square, Suite 1400
Cleveland, Ohio 44114
Phone: (216) 479-6100
Fax: (216) 479-6060
E-mail: lbforbes@vorys.com
ksbaird@vorys.com
amwilliams@vorys.com

John Keller (0019957)
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street
Columbus, OH 43215
Phone: (614) 464-6400
Fax: (614) 464-6350
E-mail: jkkeller@vorys.com
*Attorneys for Respondent Mahoning County Board
of Elections*

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Answer and Affirmative Defenses of Respondents Mahoning County Board of Elections, David Betras, Mark Munroe, Robert Wasko, and Tracey Winbush* was served via email and/or facsimile transmission upon the following this 8th day of September, 2015:

Martin S. Hume
Mark D'Apollito
1900 Fifth Third Center
26 S. Phelps Street
Youngstown, OH 44503
mhume@YoungstownOhio.gov

Jon Husted
Ohio Secretary of State
180 East Broad Street, 16th Floor
Columbus, OH 43215
Fax: (614) 644-0649

Counsel for the Relator

Nicole Koppitch
Tiffany L. Carwile
Office of the Ohio Attorney General
30 E. Broad Street, 17th Floor
Columbus, Ohio 43215
Fax: (614)728-7592
nicole.koppitch@ohioattorneygeneral.gov
tiffany.carwile@ohioattorneygeneral.gov

*Counsel for Respondent Jon Husted, Ohio
Secretary of State*

/s/ Kyle Scott Baird
Kyle Scott Baird (0089746)