

In the Supreme Court of Ohio

STATE <i>ex rel.</i> VALERIA E. GONCALVES, <i>et al.</i>	:	Case No. 2015-1475
	:	
	:	
Relator,	:	
	:	Expedited Election Case Pursuant to
v.	:	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 MUNROE,
ROBERT WASKO, AND TRACEY WINBUSH**

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Respondents Mahoning County Board of Elections, David Betras, Mark Munroe, Robert Wasko, and Tracey Winbush (collectively the “Board”) respond to Relators Valeria E. Goncalves, Mary C. Khumprakob, Edson A. Knight, Heidi Jo Kroeck, Young Tensley, and Hattie W. Wilkins’ (collectively the “Relators”) Verified Complaint for a Writ of Mandamus (the “Complaint”) 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 admits that the Youngstown City Council passed ordinance No. 15-283 on August 24, 2015. The Board denies the remaining allegations contained in paragraph 3 of the Complaint to the extent they are inconsistent with ordinance No. 15-283.

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 states that Exhibit A speaks for itself. Further answering, 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. The Board denies the remaining allegations in paragraph 6 of the Complaint.

7. The Board admits that R.C. 3501.11 outlines some of the duties of the Board. The Board denies the remaining allegations in paragraph 7 of the Complaint.

8. The Board denies the allegations in paragraph 8 of the Complaint.

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

10. The Board states that the allegations in paragraph 10 are legal conclusions to which no response is required. To the extent an answer is necessary, the Board denies the allegations in paragraph 10 of the Complaint.

11. The Board admits that the November 3, 2015 election is less than 90 days from September 4, 2015, the date of the filing of the Complaint in this matter. Further answering, the Board denies the remaining allegations in paragraph 11 of the Complaint.

12. The Board is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in paragraph 12 of the Complaint and therefore denies them.

13. The Board admits the allegations in paragraph 13 of the Complaint.

14. The Board admits the allegations in paragraph 14 of the Complaint.

15. The Board admits that David Betras, Mark Munroe, Robert Wasko, and Tracey Winbush are duly appointed members of the Mahoning County Board of Elections. The Board also admits that R.C. 3501.11 establishes some duties of the Board, but denies that its duties are limited to the duties contained in R.C. 3501.11. Further answering, the Board denies the remaining allegations in paragraph 15 of the Complaint.

16. The Board states that Exhibit B 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 16 of the Complaint to the extent they are inconsistent with Exhibit B.

17. 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. Further answering, the Board admits that Article XVIII, Section 9 addresses submission of municipal charter amendments. The Board denies the remaining allegations in paragraph 17 of the Complaint.

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

19. The Board admits that the proposed charter amendment had sufficient signatures of sufficient quality for placement on the ballot. Further answering, 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 further admits that at the August 26, 2015 meeting the Board unanimously voted to not certify the proposed amendment to the Charter of the City of Youngstown to appear on the November 3, 2015 ballot. The Board denies the remaining allegations in paragraph 19 of the Complaint.

20. The Board denies the allegations in paragraph 20 of the Complaint.

21. The Board states that the allegations in paragraph 21 are legal conclusions to which no response is required. To the extent an answer is necessary, the Board denies the remaining allegations.

22. The Board states that *State ex rel. McGovern v. Bd. of Elections*, 24 Ohio Misc. 135, 263 N.E.2d 586 (C.P. 1970) and *State ex rel. Ebersole v. City of Powell*, 141 Ohio St. 17 (2014) speak for themselves. Further answering, the Board states that the allegations in

paragraph 22 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 22 of the Complaint.

23. 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 23 of the Complaint.

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

25. The Board states that R.C. 3501.38 speaks for itself. To the extent a response to paragraph 25 of the Complaint is still required, the Board denies the remaining allegations contained in paragraph 25 of the Complaint to the extent they are inconsistent with R.C. 3501.38.

26. 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 26 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 26 of the Complaint.

27. The Board states that *State ex rel. Senn v. Bd. of Elections* and *State ex rel. Clinard v. Greene Cnty.* speak for themselves. Further answering, the Board states that the allegations in paragraph 27 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 27 of the Complaint to the extent they are inconsistent with *Senn* and *Clinard*.

28. 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 28.

29. The Board states that the allegations in paragraph 29 are legal conclusions to which no response is required. To the extent an answer is necessary, the Board denies the remaining allegations.

30. The Board denies the allegations in paragraph 30 of the Complaint.

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

32. The Board denies the allegations in paragraph 32 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

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

SECOND DEFENSE

34. 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

35. 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 with any and all applicable laws, codes, statutes, and/or regulations.

FOURTH DEFENSE

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

FIFTH DEFENSE

37. The purported verifications to the Complaint do not satisfy S.Ct.Prac.R. 12.02(B).

SIXTH DEFENSE

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

SEVENTH DEFENSE

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

EIGHTH DEFENSE

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

NINTH DEFENSE

41. 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

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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 9th day of September, 2015:

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