Supreme Court of Ohio Clerk of Court - Filed January 19, 2016 - Case No. 2015-2092

IN THE SUPREME COURT OF OHIO

STATE ex rel. CORNERSTONE DEVELOPERS, LTD.,	:	CASE NO. 2015-2092
Relator,	:	**ORIGINAL ACTION in Mandamus and Prohibition**
v.	:	
GREENE COUNTY BOARD OF ELECTIONS, *et al.*,	:	**Expedited Election Case Under S.C. Prac. R. 12.08**
Respondents.	:	

REPLY BRIEF OF RESPONDENT SUGARCREEK TOWNSHIP

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STATEMENT OF THE CASE

Relator brings this action purporting to seek Writs of Mandamus and Prohibition through this Court's expedited election case process. This is not the first time (rather, it is the fourth) that Relator has instituted litigation in an attempt to block Sugarcreek Township from exercising its statutory authority under the Revised Code. Nor is this the first time that controversy surrounding this property has been before this Court. In *Sugarcreek Township v. City of Centerville*, 193 Ohio App.3d 408, 2011 Ohio 1830, this Court decided the interplay between Type II annexations into a city and that city's ability to create tax-increment financing ("TIF") on the annexed property. The annexed property at issue in that case is the same property at issue in the matter pending before this Court now.

Despite Relator repeatedly claiming this Court held that the Township was *required* to provide fire and EMS services to the parcel at issue, the Township respectfully submits that was not the issue decided at all. Rather, on October 11, 2012, this Court held that a municipality may adopt a TIF that temporarily exempts property annexed as a result of an expedited Type II annexation from township property taxes. Even then, the Township expressed concern regarding the cost of providing fire and EMS services to the area subject to the TIF that Centerville was going to attempt to place on the property.

After this Court's decision, the City of Centerville decided to implement a 30-year, 100% TIF – not a 10-year, 75% TIF as discussed by this Court in the opinion cited above or implied by Relator (See Relator's Amended Complaint, ¶ 18). They obtained the consent of the school district, as required by statute. (See Centerville City Council Minutes dated July 15, 2013 and June 2, 2014, attached hereto as Exhibits B and C). Over an

extended period of time, the Township and the City of Centerville attempted to reach an agreement whereby the City would compensate the Township for provision of fire and EMS services, which would significantly increase in demand. Those negotiations stalled in the Fall of 2014.

In November, 2014, the Township passed a resolution creating a fire district. The first lawsuit filed by the Relator quickly followed. The parties entered into an agreed preliminary injunction during the pendency of the case and attempted to settle the matter. The Township ultimately withdrew the fire district resolution, choosing to seek the input of the members of the Sugarcreek Township community before placing a measure on the ballot.

In March 2015, Relator again brought litigation against the Township, seeking relief from the United States District Court, Southern District of Ohio. In that action, they sought certification of questions of law to this Court regarding the application of R.C. § 505.37. The U.S. District Court ultimately dismissed several of Relator's claims with prejudice and ordered him to either amend the complaint or the remainder of the claims would also be dismissed. The Relator never amended his complaint and the matter was dismissed.

Rather, on November 10, 2015, Relator again instituted litigation against the Township in Greene County Common Pleas Court Case No. 2015 CV 0760. Among other things, Relator brought a declaratory judgment claim, asking the Court to find that the Township is not permitted to create a fire district which does not include his property. That action is still pending before the Greene County Common Pleas Court. (See Greene County Complaint attached as Exhibit A).

Finally, on December 29, 2015, Relator filed the instant expedited election action before this Court, purporting to seek writs of mandamus and prohibition to prevent the question of the fire district tax levy from appearing on the ballot for the electorate's consideration. However, a comparison of the instant complaint with the complaint filed and currently pending Greene County Common Pleas Court reveals Relator's allegations are largely the same. Relator very clearly appears to be seeking declaratory relief from this Court in the form of extraordinary writs.

FACTUAL BACKGROUND

In the face of certainly rising costs of fire and EMS services to the Cornerstone development and after several stalled meetings and failed negotiations with the City of Centerville, the Township opted to pursue the cessation of a township-wide fire department and, instead, create a fire district. On October 19, 2015, the Sugarcreek Township Board of Trustees passed a resolution creating the Sugarcreek Fire District ("Fire District") pursuant to R.C. § 505.37. During the same meeting, the Township passed a resolution seeking certification from the county auditor with regard to the then-current tax valuation of the unincorporated area of Sugarcreek Township and the dollar amount of revenue that would be generated by a newly passed 5.3 mill tax levy. (See Resolution Numbers 2015.10.19.06, 2015.10.19.07 and 2015.10.19.08, submitted by Relator as Exhibits 8, 9 and 10).

Resolution Number 2015.10.19.07 requested certification from the County Auditor, and upon certification, authorized and directed the Township Fiscal Officer to certify a copy of the resolution to the Greene County Board of Elections. The resolution and auditor's certification were, in fact, certified to the Greene County Board of Elections on or around November 24, 2015.

PROPOSITION OF LAW NO. 1:

THE TOWNSHIP DID NOT VIOLATE R.C. § 5705.03(B)(3) IN CERTIFYING THE FIRE DISTRICT LEVY TO THE BOARD OF ELECTIONS

It is not necessary for this Court to review this issue as Relator has failed to demonstrate the elements necessary for the granting of a writ of mandamus or prohibition or how this Proposition of Law relates to such elements. However, because Relator's brief focuses on this issue, the Township will respond. Revised Code § 5705.03 outlines the procedure by which a taxing authority places tax levies outside the ten-mill limitation on the ballot.

R.C. § 5705.03 states:

> "(B)(1) When a taxing authority determines that it is necessary to levy a tax outside the ten-mill limitation for any purpose authorized by the Revised Code, the taxing authority shall certify to the county auditor *a resolution* or ordinance requesting that the county auditor certify to the taxing authority the total current tax valuation of the subdivision, and the number of mills required to generate a specified amount of revenue, or the dollar amount of revenue that would be generated by a specified number of mills. *The resolution* or ordinance shall state the purpose of the tax, whether the tax is an additional levy or a renewal or replacement of an existing tax, and the section of the Revised Code authorizing submission of the question of the tax.
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> ***
>
> (B)(3) If, upon receiving the certification from the county auditor, the taxing authority proceeds with the submission of the question of the tax to electors, the taxing authority shall certify *its resolution* or ordinance, accompanied by a copy of the county auditor's certification, to the proper county board of elections in the manner and within the time prescribed by the section of the Revised Code governing submission of the question, and shall include with its certification the rate of the tax levy, expressed in mills for each one dollar in tax valuation as estimated by the county auditor." (emphasis added)

Pursuant to R.C. § 3501.02(F)(1), any question or issue – except a candidacy – to be voted upon at an election shall be certified, for placement upon the ballot, to the board

of elections not later than four p.m., 90 days before the day of the election. The presidential primary election is scheduled for March 15, 2016; the deadline for certification was December 16, 2015.

The resolution at issue plainly requests the Greene County Auditor to certify the total current tax valuation of the unincorporated area of Sugarcreek Township (the same area to be included in the Fire District) and the dollar amount of revenue that would be generated by 5.3 mills. The resolution also states the purpose of the tax is for the benefit of the Sugarcreek Fire District, pursuant to R.C. § 5705.19(I) and that this would be a new and additional tax for a five year period. The resolution complies with all of the requirements outlined in R.C. § 5705.03(B)(1). Moreover, the resolution authorized and directed the Township Fiscal Officer to certify a copy of the resolution request to the Greene County Auditor, and if necessary, the Greene County Board of Elections. On November 24, 2015, the Township certified the resolution and a copy of the Greene County Auditor's certification to the Greene County Board of Elections, as required by statute.

Relator belatedly argues the Township was required to pass two separate resolutions in order to properly certify the matter to the Greene County Board of Elections. This argument is not supported by a plain reading of R.C. § 5705.03(B)(3); there is simply no requirement that a second resolution be passed. Indeed, each time the world "resolution" is used in R.C. § 5705.03 at all, including in (B)(1) and (B)(3), the world is singular. Nowhere does (B)(3) say the taxing authority must certify its "resolutions" or pass a second resolution; it only requires the taxing authority to certify its resolution – its

singular resolution – along with the county auditor's certification to the appropriate board of elections. That is exactly what Sugarcreek Township did in this case.

PROPOSITION OF LAW NO. 2:

THE CREATION OF THE FIRE DISTRICT DOES NOT VIOLATE R.C. 505.37

Again, Relator has not satisfied the elements for granting a writ of mandamus or prohibition. Mandamus is only appropriate to compel a party to do something, and Relators are not seeking to compel Sugarcreek to do anything. Instead, Relators appear to be seeking declaration from this Court that Sugarcreek cannot form a fire district. Such a declaration is more appropriately brought as a request for an injunction— which is exactly what Relator has currently pending before the State Court. Notwithstanding the foregoing, the Township will address Relator's Proposition of Law.

It is important to note that the writ is to be issued with great caution and only when the way is clear. *State ex rel. Donegan v. Cuyahoga Cty. Bd. of Elections*, 136 Ohio App. 3d 589, 593, 737 N.E.2d 545, 547 (2000) citing *State ex rel. Taylor v. Glasser* (1977), 50 Ohio St.2d 165, 364 N.E.2d 1. The writ may not be issued to compel the observance of laws in general, but only to command the performance of a specific act specially enjoined by law to be performed. *State ex rel. Stanley v. Cook* (1946), 146 Ohio St. 348, 66 N.E.2d 207, paragraph seven of the syllabus. Mandamus also may not be used to compel the performance of a permissive act. *State ex rel. Hodges,* 64 Ohio St.3d at 4, 591 N.E.2d at 1189.

A writ of mandamus compels action or commands the performance of a duty, while a decree of injunction ordinarily restrains or forbids the performance of a specified act. *State ex rel. Zupancic v. Limbach*, 58 Ohio St. 3d 130, 132, 568 N.E.2d 1206, 1208 (1991)

citing *State ex rel. Smith v. Indus. Comm.* (1942), 139 Ohio St. 303, 22 O.O. 349, 39 N.E.2d 838, paragraph, two of the syllabus.

R.C. § 505.37(C) plainly provides:

> "The board of township trustees of any township may, by resolution, whenever it is necessary * * * create a fire district of *any portions of the township that it considers necessary*. The fire district so created shall be given a separate name by which it shall be known." (emphasis added.)
>
> "Additional unincorporated territory of the township may be added to a fire district upon the board's adoption of a resolution authorizing the addition. A municipal corporation that is within or adjoining the township may be added to a fire district upon the board's adoption of a resolution authorizing the addition and the municipal legislative authority's adoption of a resolution or ordinance requesting the addition of the municipal corporation to the fire district."

I. The Township Had the Authority to Create the Fire District

The language of R.C. § 505.37 is permissive; that is, a township may choose to create a fire district or not. Moreover, there is no exception to the provision that the township may include whatever unincorporated territory that it considers necessary. In deciding to create a fire district in the first instance, the board of township trustees may include whatever area within the township that they choose. This conclusion is supported by the balance of the authority (admittedly scant) pertaining to township fire districts.

In 1947, and under a former version of the above quoted statute[1], the Ohio Attorney General opined "there is nothing in the language used in this statute which would make

[1] The former version of the statute, Section 3298-54, stated: "The board of trustees of any township in which there is located a municipal corporation or corporations, or a part of a municipal corporation, may by resolution whenever in their opinion it is expedient and necessary to guard against the occurrence of fires or to protect the property and lives of citizens against damages resulting therefore, create a fire district or districts of that portion of such township not included within the corporate limits of such municipal corporation or corporations..." See 1943 Op. Att'y Gen. No. 5798. Current R.C. § 505.37 is even broader than the section to which the Attorney General referred in the 1943 opinion, as the statute now provides that a township may create a fire district of ***any portions of the township that***

it mandatory that the trustees should organize into one or more districts all of the area of a given township...The words in this statute are not intended to impose a mandate on township trustees, but are strictly permissive and by way of conferring a power which it is within their discretion to exercise or not to exercise." 1943 Op. Att'y Gen. No. 5798.

The issue was again considered by the Ohio Attorney General in 1976. After citing the above quoted 1943 opinion with approval, the Attorney General provided factors to be considered by a township in establishing a fire district: "It would appear that whether there is a practical public interest mandating fire protection is a question of fact to be determined on a local level. Among the factors to be considered are the cost of protection and the potential for loss of lives or property, the ability of the township or the district to meet the financial burden of fire protection within R.C. 505.39 and R.C. 505.40, and the availability of firemen or another fire department with which to contract." 1976 Op. Att'y Gen. Ops. I, 3, 76-057.

The Ohio Attorney General again considered the issue in 1987. After citing the previous opinions with approval, the Attorney General opined: "if a township chooses to provide fire protection without the creation of one or more fire districts, it cannot exclude portions of the township from the area to which the fire protection is provided." However, "the area to which fire protection is provided *may be limited if the fire protection is furnished through the creation of one or more fire districts.*" 1987 Op. Att'y Gen. No. 87-040 (emphasis added).

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it considers necessary, as opposed to only those outside a municipal corporation. The statute has been amended over the last 60 years, and the Ohio General Assembly has made it broader, affirming that a township has the power to create a fire district with whichever portions of the township it deems within their judgment as in need of fire protection.

Additionally, the Sixth District Court of Appeals has reached a similar conclusion. In *Richfield Twp. v. Toledo Area Metro. Park Bd.* (June 19, 1981), Lucas App. No. L-81-034, the issue considered was whether a township could create a fire district that excluded tax exempt property. The court held that the statute clearly permitted the township to exclude the park district. The court went on to consider the factors discussed in the 1976 Ohio Attorney General's Opinion and found that the township could have found that the exclusion of the park district was necessary and expedient based upon the financial burdens to the township and the availability of another fire department with which to contract. *Id.*

The authority on this issue is unambiguous; it is within the Township's discretion whether it chooses to form a fire district that excludes portions of the township. The Relator's claim that the Township violated R.C. § 505.37 in creating the Fire District is without merit.

II. The Township Was Not Required to Obtain the Consent of the City of Centerville Prior to the Creation of the Fire District

The Relator claims that the Township must include Cornerstone in the Fire District because the property is part of a municipal corporation (the City of Centerville), and only the City of Centerville may remove incorporated land from a township fire district. This argument must fail because it relies upon facts that are simply untrue.

The portion of R.C. § 505.37(C) relevant to the removal of incorporated territory states, in pertinent part: "Any municipal corporation may withdraw from a township fire district created under division (C) of this section by the adoption by the municipal legislative authority of a resolution or ordinance ordering withdrawal." That section plainly provides the procedure by which territory belonging to a municipal corporation

may be removed *from an existing fire district*. It has absolutely nothing to do with how a township fire district is created. The rhetoric of the Relator's filings and their insistence on calling this a "Replacement Fire District" notwithstanding, the evidence submitted to this Court clearly establishes that Sugarcreek Township has previously operated a township-wide fire department, not a fire district. Therefore, the plain language of the statute makes clear that the Township was not required to obtain a resolution or ordinance from the City of Centerville prior to drawing the borders of their newly established Fire District. The Relator's argument to the contrary is without merit.

PROPOSITION OF LAW NO. 3:

RELATOR HAS FAILED TO ESTABLISH THE ELEMENTS NECESSARY TO OBTAIN RELIEF IN MANDAMUS

In order to sustain a claim for a writ of mandamus, the Relator must establish a clear legal right to the requested relief, a clear legal duty on the part of the Board of Elections and Ohio Secretary of State to provide that relief, and the lack of an adequate remedy in the ordinary course of law. *State ex rel. Taxpayers for Westerville Schools v. Franklin Cty. Bd. of Elections*, 133 Ohio St.3d 153, 2012 Ohio 4267.

I. Relator's Complaint Fails to State a Claim in Mandamus

This Court has previously stated: "In general, if the allegations of a complaint for a writ of mandamus indicate that the real objects sought are a declaratory judgment and a prohibitory injunction, the complaint does not state a cause of action in mandamus and must be dismissed for want of jurisdiction. *State ex rel. Mackey v. Blackwell*, 106 Ohio St.3d 261, 2005 Ohio 4789 citing *State ex rel. Grendell v. Davidson* (1999), 86 Ohio St.3d 629. In making such a determination, the Court "must examine [their] complaint to 'see whether it actually seeks to prevent, rather than compel, official action.'" *Id* quoting *State ex rel. Cunningham v. Amber Cunningham Co., L.P.A.* (2002), 94 Ohio St.3d 323. "Where, as here, an action in mandamus does not provide effective relief unless accompanied by an ancillary [preventive] injunction, it would appear that injunction rather than mandamus is the appropriate remedy." *State ex rel. Satow v. Gausse-Milliken*, 2003-Ohio-2074, ¶ 15, 98 Ohio St. 3d 479, 482, 786 N.E.2d 1289, 1292 citing *State ex rel. Corron v. Wisner* (1971), 25 Ohio St.2d 160, 163, 54 O.O.2d 281, 267 N.E.2d 308.

Although Relator's Complaint is couched in the language of complaints for mandamus and prohibition, the Complaint plainly seeks a declaratory judgment from this Court declaring that the Township's creation of the Fire District at issue violated R.C. § 505.37. The Complaint further seeks to prevent official action; that is, it seeks to prevent the Township from placing the fire district levy on the March, 2016 ballot. Therefore, their claim for mandamus must be dismissed.

II. Relator Failed to Exercise an Adequate Remedy at Law

It is well settled that a writ of mandamus may not be issued when there is a plain and adequate remedy in the ordinary course of law. *State ex rel. Natl. Elec. Contractors Assn., Ohio Conference v. Ohio Bur. of Emp. Serv.* (1998), 83 Ohio St.3d 179. "In order for an alternative remedy to constitute an adequate remedy at law, it must be complete, beneficial and speedy." *Id.* This Court noted long ago that "where parties to a mandamus action are also parties, or may be joined as parties, in a previously filed declaratory judgment action involving the same subject matter, a court, in the exercise of its discretion, may refuse to issue a writ of mandamus." *State ex rel. Bennett v. Lime* (1978), 55 Ohio St.2d 62. In addition, the fact that an alternative remedy may no longer be available to a party because of their failure to timely pursue them does not render them inadequate. *In re Estate of Davis* (1996), 77 Ohio St.3d 45.

The Relator filed a lawsuit against the Township on November 10, 2015 seeking declaratory relief (among other things) regarding the Township's ability to draw a fire district under R.C. § 505.37. (See Relator's Complaint in Greene County Common Pleas Court Case No. 2015 CV 0760, attached hereto as Exhibit A). Reviewing the complaint filed in the Greene County Common Pleas Court case and the Complaint filed in this

action reveals factual allegations, legal arguments and conclusions that are largely identical to each other; it is clear that the Relator is seeking declaratory relief through a mandamus action in this Court. Moreover, the Relator has an adequate remedy in the ordinary course of law in pursuing his claim for declaratory relief in the pending Greene County Common Pleas Court case; the fact that he did not seek a preliminary injunctive order through that case and that it may no longer be a timely request does not render that remedy inadequate. *Davis, supra*.

PROPOSITION OF LAW NO. 4:

A BOARD OF ELECTIONS DOES NOT EXERCISE QUASI-JUDICIAL POWER IN PLACING A PROPERLY CERTIFIED ISSUE ON THE BALLOT

As an initial matter, it must be noted that Relator's Amended Complaint does not contain any allegations against Sugarcreek Township to warrant a writ of prohibition. Notwithstanding this omission, the Township will address Relator's Proposition of Law. To obtain a writ of prohibition, the relator must establish that (1) the board is about to exercise judicial or quasi-judicial power, (2) the exercise of that power is unauthorized by law, and (3) denial of the writ will cause injury for which no other adequate remedy in the ordinary course of law exists. *State ex rel. Baldzicki v. Cuyahoga Cty. Bd. of Elections*, 90 Ohio St.3d 238, 2000 Ohio 67. "'Quasi-judicial authority is the power to hear and determine controversies between the public and individuals that *require* a hearing resembling a judicial trial." *Id* citing *State ex rel. Wright v. Ohio Bur. of Motor Vehicles* (1999), 87 Ohio St.3d 187; *State ex rel. Hensley v. Nowak* (1990), 52 Ohio St.3d 98. As this Court has previously noted, "When no statute or other pertinent law *requires* the board of elections to conduct a hearing resembling a judicial trial, the board does not exercise quasi-judicial authority regardless of whether protests have been filed." *State ex rel. Wright v. Cuyahoga Cty. Bd. of Elections*, 120 Ohio St.3d 92, 2008 Ohio 5553 citing *Baldzicki, supra.*

In *Baldzicki, supra*, the Court denied a writ of prohibition sought to prevent the board of elections from placing a rezoning ordinance on the city's election ballot where the ordinance provided for the submission of the question of rezoning to the citizens of

the city. The Court noted that there was no statutory requirement that the board of election conduct a hearing resembling a quasi-judicial trial on the protest that had been filed against placing the ordinance on the election ballot. *Baldzicki, supra*.

As an initial consideration, Relator must establish the Greene County Board of Elections has exercised or is about to exercise quasi-judicial power. There is no evidence before this Court that the Greene County Board of Elections has held a protest hearing or is about to hold a protest hearing, nor are they required to do so. This is not a case involving written protests against petitions or candidacies, which would require quasi-judicial hearings pursuant to R.C. § 3501.39(A)(1), but a case involving the submission of a proposed fire district levy to the electorate, the Relator's January 8, 2016 "objection letter" notwithstanding. (See objection letter attached hereto as Exhibit E).

The evidence before this Court reveals that the Greene County Board of Elections has not exercised quasi-judicial power, nor are they about to exercise quasi-judicial power. In fact, they are not *required* to exercise quasi-judicial power to hear the Relator's objections. Therefore, Relator's claim for a writ of prohibition must be denied.

PROPOSITION OF LAW NO. 5:

RELATOR'S CLAIMS FOR MANDAMUS AND PROHIBITION ARE BARRED BY THE DOCTRINE OF LACHES

This Court has repeatedly observed the consistent requirement that relators in election cases act with the "utmost diligence" in bringing actions before this Court. *State ex rel. Newell v. Tuscarawas Cty. Bd. of Elections* citing *State ex rel. Carberry v. Ashtabula* (2001), 93 Ohio St.3d 522. Moreover, a "relator seeking extraordinary relief in an election-related matter bears the burden of establishing that the relator acted with the required diligence, and if the relator fails to do so, laches may bar the action." *Newell, supra* quoting *State ex rel. Hills Communities, Inc. v. Clermont Cty. Bd. of Elections* (2001), 91 Ohio St.3d 465. The elements of laches are (1) unreasonable delay or lapse of time in asserting a right, (2) the absence of an excuse for the delay, (3) knowledge, actual or constructive, of the injury or wrong, and (4) prejudice to the other party. *State ex rel. Polo v. Cuyahoga Cty. Bd. of Elections* (1995), 74 Ohio St.3d 143.

In dealing with the prejudice element, this Court has noted: "Our consistent requirement that expedited election cases be filed with the required promptness is not simply a technical nicety." *State ex rel. Chillicothe v. Ross Cty. Bd. of Elections*, 123 Ohio St.3d 439, 2009 Ohio 5523 quoting *State ex rel. Carberry v. Ashtabula* (2001), 93 Ohio St.3d 522. "Normally, this prejudice occurs because relators' delay prejudices respondents by making the case an expedited election case under [the Supreme Court Practice Rules], which restricts respondents' time to prepare and defend against relators' claims, or impairs boards of elections' ability to prepare, print, and distribute appropriate

ballots because of the expiration of the time for providing absentee ballots." *Id* quoting *State ex rel. Willke v. Taft*, 107 Ohio St.3d 1, 2005 Ohio 5303.

In *Newell, supra*, this Court found the relator's claim was barred by laches when he waited twenty days after the petitions were filed to file his protest with the board of elections, then waiting another 14 days after the board of elections' determination to file an action for extraordinary relief. Indeed, this Court has held that a delay as brief as nine days can preclude the consideration of an expedited election case on its merits. *State ex rel. Demaline v. Cuyahoga Cty. Bd. of Elections* (2000), 90 Ohio St.3d 523; *State ex rel. Landis v. Morrow Cty. Bd of Elections* (2000), 88 Ohio St.3d 187.

This is not a case in which the delay is arguable; the resolutions at issue were passed by the Township in a regularly advertised public meeting on October 19, 2015. The relator was well aware of the passage of the resolutions, as he attached them to a filing in the federal litigation on October 21, 2015 titled, "Notice of Additional Facts." (Attached hereto as Exhibit D). Relator then filed a lawsuit through the Greene County Common Pleas Court on November 10, 2015, seeking declaratory relief (among other claims), claiming the Township violated R.C. § 505.37 in the creation of the Fire District. The Township sought and obtained certification from the Greene County Auditor and certified the matter to the Greene County Board of Elections on November 24, 2015. Rather than seek other timely relief, Relator waited until he was inside the timeframe to have this matter expedited to invoke the jurisdiction of this Court. This is not a delay of 9, 14 or 20 days, but a delay of 70 days – more than two months.

Relator's claims for relief must fail as they are barred by laches due to a delay attributable only to Relator.

CONCLUSION

For the foregoing reasons, Respondent Sugarcreek Township respectfully requests that this Court deny Relator's Complaint for Writ of Mandamus and/or Writ of Prohibition.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the Respondent Sugarcreek Township's Reply Brief has been served via email on the same date of filing to the following:

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