

FAX

To: ROSS COUNTY CLERK OF COURTS

From: DEREK J. MYERS

Fax: (740) 702-3018

Pages: 17 + ONE (1) COVER SHEET

Phone:
(740) 702-3010

Date: September 5, 2024

Subject: 24CI000378

Message:

TO THE CLERK:

Please promptly time stamp these filings, add them to the case -- 24CI000378 -- and immediately forward a copy to the presiding Judge as there is a hearing today and these motions are imperative to today's hearing.

Thank you,
/s/Derek J. Myers
740.313.8652
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IN THE COURT OF COMMON PLEAS
ROSS COUNTY, OHIO

James R. Hatfield

Plaintiff,

vs.

Ross County Board of Elections

Defendant.

CASE NO. 24CI000378

**JUDGE JOHN T. WALLACE, BY
ASSIGNMENT**

**MOTION TO INTERVENE UNDER
CIVIL RULE 24 OF PROPOSED
INTERVENOR DEREK J. MYERS**

Proposed Intervenor, Derek J. Myers, is an elector of Ross County, Ohio and moves to intervene under Civil Rule 24 to assert the defenses and claims in his proposed Answer and Motion to Dismiss, a copy of which is attached as Exhibit A.

A memorandum in support is attached.

Respectfully submitted,



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dmyers@ChillicotheGuardian.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served this 5th Day of September, 2024 as follows:

VIA ELECTRONIC MAIL AND REGULAR U.S. MAIL:

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INTERVENOR
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CASE NO. 24CI000378

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**MEMORANDUM IN SUPPORT
OF MOTION TO INTERVENE
UNDER CIVIL RULE 24**

I. INTRODUCTION

On August 8, 2024, Plaintiff, James R. Hatfield (“HATFIELD”) filed a “*declaratory judgment and prohibitory injunction*” with this Court seeking relief to “*obtain declaratory judgment that Isaac Oberer (“OBERER”) is not qualified to be a candidate for Ross County Sheriff because Oberer does not meet the qualifications set forth in Ohio Revised Code Section 311.01(B) and that the denial of Plaintiff’s related Protest was improper.*” Further, Hatfield seeks to have the Defendant, Ross County Board of Elections “*restrained and preliminarily enjoined or prohibited from placing the name of Isaac Oberer on the November 2024 ballot as a candidate for the Office of Ross County Sheriff.*”

II. BACKGROUND

A. The Protest.

Isaac Oberer filed to run for Ross County Sheriff in March 2024. He met with the County’s administrative Judge, Judge Matthew Schmidt and submitted to an Ohio BCI&I/FBI background check. Oberer also outlined Oberer’s residency and employment histories and swore to the truth that the information that he provided was true and accurate, and signed an

affidavit before the administrative Judge, as required by Ohio Revised Code 311.01. Shortly thereafter, the administrative Judge sent the filings to the Ross County Board of Elections; Oberer proceeded to file a petition of candidacy with an excess number of qualified elector signatures on a Petition for Candidacy for the Office of Sheriff.

Sometime later that month, on or about March 25, 2024, Hatfield filed a protest challenging Oberer's qualifications to run for the Office of Sheriff. The Board of Elections ("DEFENDANT") took the protest and scheduled it for a hearing to hear the merits of the argument and to determine if Oberer met Ohio Revised Code 311.01. Later, on or about April 5, 2024, the hearing was canceled by the Ohio Secretary of State because Oberer had not been certified by the Board of Elections to be a candidate, yet. In Ohio, only *certified* candidates can have their candidacy protested, because otherwise, they are not candidates.

Later on in May, the Defendant approved Oberer's petition by validating the signatures as authentic, and having met the threshold required by law, Oberer was certified as an independent candidate for Sheriff. This pushed Hatfield to file a second protest – this time a timely one against Oberer – again calling into question "Oberer's qualifications to run for Sheriff."

In his second protest filing, Hatfield specifically outlined that Oberer did not have the requisite two (2) consecutive years of supervisory experience at the rank of sergeant or above; and that Oberer did not possess a college education that was an associates degree in law enforcement or a bachelor's degree in any field, as mandated by Ohio Revised Code 311.01.. Thus, Hatfield argued that Oberer did not meet the requirements to run for the Office of Sheriff.

On June 17, 2024, the defendant held a hearing to discuss the merits of the complaint. During the hearing, the matter was continued to July 10, 2024.

On July 10, 2024, Oberer was represented in the hearing by legal counsel, Chillicothe-based attorney Michael Warren. At the conclusion of the hearing, the majority of defendant voted in the affirmative to keep Oberer on the ballot after hearing the testimony of several individuals, including that of Hatfield.

B. The Declaratory Judgement Filing.

As stated above, the Plaintiff has filed with this Court the above-captioned case seeking the Court to overrule the Board of Elections decision made on July 10, 2024. Further, on August 8, 2024, Plaintiff requested a “temporary restraining order and preliminary injunction” seeking the defendant be barred from placing Oberer’s name on the ballot until the merits of the above-captioned case could be heard; this Court granted the Plaintiff’s request on August 23, 2024.

On September 4, 2024, the defendant, through their legal counsel, the county prosecuting attorney, answered the complaint, asserting a host of defenses and asking that the matter be dismissed. Among the answers, the defendant's counsel stated that Oberer – who is the person who would be disenfranchised by any adverse action taken by this court under this matter – was not named as a defendant in this matter. Further, no paperwork from the Clerk of Court’s office shows that Oberer has even been notified that such an action is pending.

III. LAW AND ARGUMENT

A. The right to intervene is construed liberally in favor of intervention.

The right to intervene must be liberally construed in favor of intervention. *State ex rel. Smith v. Frost* (1995), 74 Ohio St.3d 107, 108; *Fifth Third Mortgage Co. v. Deanna*, 8th Dist. App. No. 91094, 2008-Ohio-6162, at P8.

B. The Court should permit the Proposed Intervenor to intervene as a matter of right under Civil Rule 24(A).

Under Civil Rule 24(A), intervention as of right shall be permitted when, upon timely application, an applicant:

claims an interest relating to the property or transaction that is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

A party is permitted to intervene as of right under Civil Rule 24(A) if four elements are met: (1) the proposed intervenor has a protectable interest relating to the property or transaction that is the subject of the action; (2) the proposed intervenor is in a position such that the disposition of the action may, as a practical matter, impair or impede its interest; (3) the motion to intervene is timely; and (4) the proposed intervenor's interest is not adequately represented by the existing parties. *See, e.g., Alhamid v. Great Am. Ins. Cos.*, 7th Dist. No. 02-CA0-114, 2003-Ohio-4740, at P15. As demonstrated below, the Proposed Intervenor meets each of these elements.

(1) *The Proposed Intervenor claims an interest relating to the property or transaction that is the subject of the action.*

Here, the Proposed Intervenor manifestly has an interest relating to the property or transaction that is the subject of this action. The removal of Oberer from the ballot will disenfranchise the intervenor from having a choice at the ballot box on November 5, 2024.

(2) *The Proposed Intervenor is so situated that disposition of this action may, as a practical matter, impair or impede their ability to protect their interests.*

To show that it is so situated that the disposition of the action may, as a practical

matter, impair or impede its ability to protect its interest, a proposed intervenor need show only that impairment of its interest is possible if intervention is denied. *Michigan State AFL-CIO v. Miller* (6th Cir. 1997), 103 F.3d 1240.⁵ Here, there is no question that the interest of the Proposed Intervenor would be impaired if intervention were denied. If the Court finds in favor of the Defendant, then the Proposed Intervenor will be subject to having only one choice for the Office of Sheriff on the November 5, 2024 ballot; a choice that the Intervenor might not wish to exercise a vote for. This is Moreover, this litigation may present the only opportunity Proposed Intervenor will have to challenge the Plaintiff's claims.

(3) ***The Proposed Intervenor's interests are not adequately represented by the existing parties.***

The Proposed Intervenor's interests are certainly not adequately represented by the existing parties. A proposed intervenor need only meet a minimum burden in establishing that its interest may not be adequately represented by existing parties. *Frost*, 74 Ohio St.3d at 108. While the Board of Elections is being defended by their legal counsel, the Prosecuting Attorney is not a lawyer for the people of Ross County and is not legal counsel for the Intervenor. The Intervenor is having their ability to choose between two candidates ripped away from them if this Court grants the Plaintiff's request and complaint.

Unless the Proposed Intervenor is permitted to intervene, there will be no parties in this action that would be directly affected by the outcome of this Court's decision. The Plaintiff is clearly bias and not voting for Mr. Oberer – as he seeks to have him tossed from the ballot; and the Defendant, the Board of Elections, is an entity, not an elector who wishes to exercise a choice at the ballot box on November 5, 2024.

(4) ***The Proposed Intervenor's Motion to Intervene is timely.***

Finally, there can be no question concerning the timeliness of the Proposed Intervenor's

Motion to Intervene. The timeliness of a motion to intervene depends upon the facts and circumstances of the case. *State ex rel. First New Shiloh Baptist Church v. Meagher* (1998), 82 Ohio St.3d 501, 503. In determining the timeliness of a motion to intervene, courts consider the following factors:

(1) the point to which the suit had progressed; (2) the purpose for which intervention is sought; (3) the length of time preceding the application during which the proposed intervenor knew or reasonably should have known of his interest in the case; (4) the prejudice to the original parties due to the proposed intervenor's failure after he knew or reasonably should have known of his interest in the case to apply promptly for intervention; and (5) the existence of unusual circumstances militating against or in favor of intervention.

Id., quoting *Triax Co. v. TRW, Inc.* (C.A.6, 1984), 724 F.2d 1224, 1228.

Here, the defendants did not file their answer to the Complaint until September 3, 2024, one day before this Motion to Intervene was filed. The Proposed Intervenors have acted promptly in filing his Motion to Intervene. The Proposed Intervenor's Motion to Intervene, therefore, is timely.

As a result, the Court should permit the Proposed Intervenor to intervene as of right in this action under Civil Rule 24(A).

C *The Court should permit the Proposed Intervenor to intervene under Civil Rule 24(B).*

Under Civil Rule 24(B), permissive intervention should be allowed as follows:

Upon timely application anyone may be permitted to intervene in an action: ... (2) when an applicant's claim or defense and the main action have a question of law or fact in common. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

Here, the Proposed Intervenor's defenses and the main action have questions of law or fact in common-in fact they concern virtually the same questions of law and fact. And,

permitting the Proposed Intervenor to intervene will not unduly delay or prejudice the adjudication of the rights of the original parties. The Court, therefore, should permit Proposed Intervenors to intervene under Civil Rule 24(B).

D. The pleading required by Civil Rule 24(C) is attached hereto.

Finally, Civil Rule 24(C) requires that a pleading "setting forth the claim or defense for which intervention is sought" must accompany the motion to intervene. That pleading is attached hereto.

IV. **CONCLUSION**

Accordingly, Proposed Intervenor respectfully requests that this Court grant his Motion to Intervene, either as of right under Civil Rule 24(A) or under the permissive circumstances set forth in Civil Rule 24(B).

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served this 5th Day of September, 2024 as follows:

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INTERVENOR
Respectfully submitted,



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**JUDGE JOHN T. WALLACE, BY
ASSIGNMENT**

**INTERVENOR'S ANSWER AND
MOTION TO DISMISS**

Comes now, Intervenor, Derek J. Myers and moves this Court to dismiss the above-captioned case filed by James R. Hatfield, Plaintiff, on the grounds that it fails to state a valid legal claim, among many other reasons. Intervenor denies all lawfully wrong asserted claims by the Plaintiff and admits to those that are factual and lawful.

Memorandum in Support of Motion

1. A challenge under Civ. R. 12(B)(6) compels the trial court to consider “whether the pleadings, when taken as true, are legally sufficient to satisfy the elements of at least some legally recognized claim.” A motion under Rule 12(b)(6) is properly granted when (1) no law supports the plaintiff’s claims, (2) the complaint does not plead sufficient facts to state a legally sound claim, or (3) the complaint discloses facts that necessarily defeat the plaintiff’s claims.

2. The complaint in this matter claims in the alternative that:

A). Isaac D. Oberer (“OBERER”) does not possess the required degrees required to be a Sheriff or the required rank, or

B). That he failed to staple his degrees to the Affidavit to become a Candidate for Sheriff and failed to provide them to the Board of Elections or the Administrative Judge.

3. Ohio Revised Code 311.01 is crystal clear about both issues.

4. Oberer has both a high school diploma and a college degree.

5. Ohio Revised Code 311.01 does not require a Candidate to include his diploma and degree with his Affidavit filed with the administrative Judge:

(4) The person has been awarded a high school diploma or a certificate of high school equivalence issued for achievement of specified minimum scores on a high school equivalency test approved by the department of education pursuant to division (B) of section 3301.80 of the Revised Code. (9)(b) Has completed a bachelor's degree in any field or has an associate degree in law enforcement or criminal justice from a college or university authorized to confer degrees by the Ohio board of regents or the comparable agency of another state in which the college or university is located.

(F)(1) Each person who is a candidate for election to or who is under consideration for appointment to the office of sheriff shall swear before the administrative judge of the court of common pleas as to the truth of any information the person provides to verify the person's qualifications for the office. A person who violates this requirement is guilty of falsification under section [2921.13](#) of the Revised Code.

6. The duty to make sure an Affidavit complies with the law falls to the Common Pleas Court Judge. In this case, the Honorable Matthew Schmidt found that Oberer's Affidavit met all the qualifications required by law to be a Candidate for Sheriff and forwarded it to the Board of Elections.

7. The Plaintiff does not have any authority to demand any more proof than is required by Ohio Revised Code 311.01.

8. The Plaintiff does not have any authority to demand more proof than Judge Schmidt.

9. The Plaintiff does not have any authority to demand more proof than the Board of Elections.

10. There simply is no basis in law to support Plaintiff's claim that Oberer is not qualified to run for Sheriff. Again, nowhere in Ohio Revised Code 311.01 does it state that Oberer must file a copy of his "college degree(s)" with the Board of Elections or produce them to anyone, for that matter. The Defendant was clearly satisfied with the evidence presented to them by Oberer and his counsel, or the lack thereof by the Plaintiff before and on July 10, 2024 that they ruled to keep Oberer on the ballot. The Plaintiff exhausted his remedy to rectify the issue at bar by exercising his right to challenge Oberer's candidacy through a protest with the Defendant. The Plaintiff did so, and the Defendant ruled against the Plaintiff. Simply because the Plaintiff is unhappy with the decision by the Defendant does not afford the Plaintiff the right to abuse the legal system by filing such a frivolous case as this one.

11. The proper act to challenge the Defendant's decision would be a petition for a Writ of Prohibition; not a "*declaratory judgment and prohibitory injunction*" request. In Ohio, when a party disagrees with a decision made by a county board of elections, the proper remedy is to file a petition for a writ rather than seeking injunctive relief. This principle is rooted in Ohio law and

case law interpreting the scope and limits of judicial review in election matters.

A. **Legal Framework:** Under Ohio law, particularly Ohio Revised Code (O.R.C.) § 3501.38, the decisions of county boards of elections must be contested through a petition for a writ of mandamus or a writ of prohibition. These writs are designed to compel or prevent action by public officials when there is a clear legal right and duty involved.

B. **Case Law:**

a. In *State ex rel. Damschroder v. Summit Cty. Bd. of Elections*, 123 Ohio St.3d 265, 2009-Ohio-2286, the Ohio Supreme Court clarified that disputes involving decisions of boards of elections are resolved through a writ of mandamus rather than through traditional injunctive relief. The Court emphasized that a writ of mandamus is an appropriate remedy to compel or prevent action by a board of elections.

b. Similarly, in *State ex rel. Davis v. Cuyahoga Cty. Bd. of Elections*, 102 Ohio St.3d 83, 2004-Ohio-2621, the Ohio Supreme Court reiterated that the review of election board decisions should be sought through a writ of mandamus. Injunctive relief is not the proper remedy in these cases as it is not designed to address the specific legal frameworks governing election boards.

C. **Rationale:** The use of a petition for a writ of mandamus or prohibition is proper because it directly addresses whether the board acted within its authority or failed to act where required by law. This method allows for a more focused and timely resolution of disputes involving election procedures and decisions, reflecting the urgent nature of election-related issues.

12. In summary, if one disagrees with a decision by a county board of elections in Ohio,

the appropriate legal remedy is to file a petition for a writ of mandamus or prohibition, rather than seeking injunctive relief. This approach aligns with established Ohio case law which prioritizes writs for resolving such disputes. In the case at bar, the Plaintiff has failed to file for such a writ and his request for “injunctive relief” is not the appropriate remedy under Ohio law.

13. If Plaintiff’s request under this action is granted, the Intervenor will be disenfranchised from his ability to cast a fair vote for the Office of Sheriff on November 5, 2024 by having a choice of who to elect to the Office of Sheriff.

14. Plaintiff has lied under oath and this Court should take what Plaintiff alleges with a grain of salt, and disregard anything he alleges in his frivolous filing. In the July 10, 2024 hearing that the Defendant held, Plaintiff lied under oath and said that he had not conspired with or met with Oberer’s opponent, Incumbent Sheriff George Lavender (“LAVENDER”) to discuss the protest of Oberer’s candidacy. That was proven to be false later when in the same hearing Major Mike Preston (“PRESTON”), a member of the Sheriff’s command staff testified that Plaintiff met with Lavender on at least one occasion to discuss the issue, inside the Sheriff’s physical county office, nonetheless. It was later learned that Plaintiff met with Lavender on at least two occasions at the Sheriff’s office to discuss the candidacy protest of Oberer and both times, Plaintiff was caught on security camera video and by eyewitnesses, including Preston, who was privy to the meetings and admitted that they were about the protest. An investigation and public records requests by the local news outlet, Scioto Valley Guardian¹ reveals that Plaintiff lied and that audio and video testimony supports his act of perjury.²

¹ Intervenor has financial interest in the media outlet mentioned, but had no involvement in the reporting or the facts; nor does the financial interest change the fact that Hatfield lied under oath.

² Audio of the lies and coverage from the news outlet may be viewed here: <https://perma.cc/25SR-ESQ7>

CONCLUSION

WHEREFORE, for all the foregoing, Intervenor, Derek J. Myers, prays this Court to dismiss Plaintiff's action, award attorney fees to the Defendants, issue sanctions for the frivolous filing against the Plaintiff, and for all other relief just and proper in the premises.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'Derek J. Myers', written in a cursive style.

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