

**IN THE COURT OF COMMON PLEAS
ROSS COUNTY, OHIO**

James R. Hatfield,	:	
	:	Case No. 24CI000378
Plaintiff,	:	
vs.	:	Judge John T. Wallace
	:	Sitting by Assignment
Ross County Board of Elections	:	
	:	
Defendant.	:	

PLAINTIFF’S RESPONSE IN OPPOSITION TO MOTION TO INTERVENE

Plaintiff James R. Hatfield respectfully opposes the “Motion to Intervene Under Civil Rule 24 of Proposed Intervenor Derek J. Myers.” Civ.R. 6(C)(1). Because Mr. Myers’s ultimate objective, to uphold Defendant’s July 10, 2024 decision, is seemingly the same as that of Defendant, Mr. Myers’s interest in this matter is adequately represented. “When the party seeking intervention has the same ultimate objective as a party in the suit, the presumption arises that its interests are adequately represented[.]” *Ohio Bldg. & Constr. Trades Council v. Cuyahoga Cty. Bd. of Comm’rs.*, 2001-Ohio-4228, 2001 Ohio App. LEXIS 4345, *12 (4th Dist. Sept. 27, 2001), *rev’d on other grounds*, 2002-Ohio-7213.

Defendant, the Ross County Board of Elections, has not advocated for reversal of its own determination or vote that denied Plaintiff James Hatfield’s protest and allowed Isaac Oberer to remain certified as a candidate for Ross County Sheriff. Defendant’s position therefore aligns with Mr. Myers’s stated interest. (*See* Memo in Support of Mtn to Intervene, p. 4). Furthermore, Mr. Myers does not disagree with the contents of Defendant’s September 4, 2024 Answer referenced

in Mr. Myers's Motion to Intervene. However, Mr. Myers is mistaken at page 5 of his Memorandum in Support of his Motion to Intervene because, "[i]f the Court finds in favor of the Defendant," Mr. Myers will ***not*** "be subject to having only one choice for the Office of Sheriff on the November 5, 2024 ballot." (Memo in Support of Mtn to Intervene, p. 4). Mr. Myers's wish to have a "choice for the Office of Sheriff" will be fulfilled should this Court rule in Defendant's favor.

Mr. Myers's proposed "Answer and Motion to Dismiss" attached to the September 5, 2024 "Motion to Intervene Under Civil Rule 24 of Proposed Intervenor Derek J. Myers" should be denied and stricken. Four main reasons support denial of and striking the proposed "Answer and Motion to Dismiss." First, Mr. Myers's motion to intervene should be denied given that his interests are adequately represented by Defendant. Second, Mr. Myers has no standing to answer the Complaint, and there are no allegations directed at Mr. Myers to which he can respond. Third, the proposed "Answer and Motion to Dismiss" is not a proper Answer to Plaintiff's Complaint pursuant to Civ.R. 8(B); *see also* Civ.R. 12(B). This Court is authorized by Civ.R. 12(F) to strike "from any pleading any insufficient [] defense or any [] immaterial, impertinent, or scandalous matter." The improprieties of the attempted "Answer" should thus be "order[ed] stricken." Civ.R. 12(F).

Fourth, it is the "accepted rule that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *O'Brien v. Univ. Comm. Tenants Union, Inc.*, 42 Ohio St. 2d 242, 245 (1975), *quoting Conley v. Gibson*, 355 U.S. 41, 45 (1957). Material facts have been admitted, as was necessary, in Defendant's September 4, 2024 Answer. (*See* BOE Answer, p. 2 at ¶3; *see also* Complaint, p. 6-7 at ¶32-39). This Court has also granted a temporary restraining order

based on its review of the Complaint, Memorandum in Support of the August 8, 2024 Motion for Temporary Restraining Order and Preliminary Injunction, and August 21, 2024 Supplemental Memorandum in Support of Motion for Temporary Restraining Order and Preliminary Injunction. (See 8/23/24 Order). As such, it is not “beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” *O’Brien*, 42 Ohio St. 2d 242 at 245. Should Mr. Myers be permitted to intervene, his motion to dismiss must be denied.

The proposed motion to dismiss is further defeated by its own misrepresentations of law. Under Ohio Revised Code §311.01, the “administrative judge of the court of common pleas” merely receives the candidate’s affidavit and passes the materials onto the Board of Elections for their determination, under O.R.C. §311.01(F)(2), “whether or not a candidate for the office of sheriff...meets the qualifications[.]” (See Proposed Answer and Motion to Dismiss, p. 2-3; *see also* Exhibit 1-B to Complaint; Complaint, p. 2 at ¶9; BOE Answer, p. 2 at ¶3). When Mr. Oberer’s candidacy was certified, Plaintiff rightfully followed the procedure “designed to insure that only qualified candidates will be considered by the electorate and will have their votes counted.” *Foster v. Cuyahoga Cty. Bd. of Elections*, 53 Ohio App. 2d 213, 221 (8th Dist. 1977). Mr. Myers’s Memorandum in Support of his Motion to Intervene acknowledges that Plaintiff could not file his protest challenging Mr. Oberer’s eligibility until Mr. Oberer was certified by the Board of Elections. (Memo in Support of Mtn to Intervene, p. 2). Statute then provides for a hearing to resolve the challenge to a candidate’s qualifications, and Mr. Oberer chose not to personally appear or otherwise submit proof of the educational requirements of O.R.C. §311.01(B)(9)(b). (Complaint, p. 6-7 at ¶30, ¶36-39; BOE Answer, p. 2 at ¶3; *see also* Memo in Support of Mtn to Intervene, p. 3).

Given the posture of the matter at the time of Plaintiff's filing, a Complaint for declaratory and injunctive relief was and still is proper. *See e.g., Tatman v. Carley*, 2004-Ohio-4814 (5th Dist.); *Tatman v. Fairfield Cty. Bd. of Elections*, 2004-Ohio-3701, ¶18 ("In action for a prohibitory injunction in common pleas court provides an adequate remedy in the ordinary course of law); S.Ct.Prac.R. 12.08. Mr. Myers's allegations against Plaintiff's credibility are misplaced and undeserving of attention in this Response.

For the foregoing reasons, Plaintiff respectfully requests that the September 5, 2024 "Motion to Intervene Under Civil Rule 24 of Proposed Intervenor Derek J. Myers" be denied, along with the proposed "Answer and Motion to Dismiss."

Respectfully submitted,

/s/ Daniel T. Downey

Daniel T. Downey (0063753)

Angelica M. Jarmusz (0092249)

FISHEL DOWNEY ALBRECHT & RIEPENHOFF LLC

7775 Walton Parkway, Suite 200

New Albany, Ohio 43054

(614) 221-1216 – Telephone

(614) 221-8769 – Facsimile

ddowney@fisheldowney.com

ajarmusz@fisheldowney.com

Attorneys for Plaintiff James R. Hatfield

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served September 5, 2024 upon Defendant's counsel via electronic mail at prosecutor@rosscountyohio.gov and upon Derek Myers, Proposed Intervenor, via electronic mail at dmyers@ChillicotheGuardian.com

/s/ Daniel T. Downey

Daniel T. Downey (0063753)

FISHEL DOWNEY ALBRECHT & RIEPENHOFF LLC

Attorney for Plaintiff James R. Hatfield