

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

James R. Hatfield, :
3010 West Junction Road :
Chillicothe, Ohio 45601 : Case No. 24CI000378

Plaintiff, :
vs. : Judge Michael M. Ater

Ross County Board of Elections :
475 Western Avenue, Suite D :
PO Box 1663 :
Chillicothe, Ohio 45601 :
Defendant. :

**PLAINTIFF JAMES R. HATFIELD’S MOTION
FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

Now comes Plaintiff James R. Hatfield, pursuant to Ohio Rule of Civil Procedure 65, and respectfully moves this Court for an Order temporarily restraining and preliminarily enjoining Defendant, the Ross County Board of Elections, from placing the name of Isaac Oberer (“Oberer”) on the November 2024 general election ballot as a candidate for the Office of Ross County Sheriff. Immediate and irreparable injury, loss, and damage will result if Defendant is not restrained and enjoined. In fact, Defendant has an express duty to remove Oberer’s name from the “election ballot now” if Oberer is not a qualified candidate. *State ex rel. Craig v. Scioto Cty.*, 2008-Ohio-706, ¶28 (emphasis in original). A Verified Complaint for Declaratory Judgment and Prohibitory Injunction has also been filed with this Court.

Defendant abused its discretion and plainly disregarded Ohio Revised Code Section 311.01(B) by denying Plaintiff's Protest, filed May 24, 2024, and permitting Oberer to remain certified as a candidate for Ross County Sheriff in the November 2024 general election. *See State ex rel. Wellington v. Mahoning Cty. Bd. of Elections*, 2008-Ohio-5510, ¶1, 3, 31. Upon information and belief, as provided in Plaintiff's Verified Complaint for Declaratory Judgment and Prohibitory Injunction, Oberer is not a qualified candidate for the Office of County Sheriff per O.R.C. § 311.01(B). 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). Plaintiff's Protest, raising Oberer's failure to meet the requirements of O.R.C. § 311.01(B)(9) and the absence of any verification that Oberer satisfies O.R.C. § 311.01(B)(4), was improperly denied.

Ohio Revised Code Section 311.01(B) establishes that "no person is eligible to be a candidate for sheriff, and no person shall be elected or appointed to the office of sheriff, unless that person meets all of the [] requirements" set forth in O.R.C. § 311.01(B)(1) – (9). The purpose of the statutory requirements is to "aid the electorate" and "minimize voter confusion." *Foster*, 53 Ohio App. 2d 213 at 222, *quoting Lubin v. Panish*, 415 U.S. 709, 713 (1974). Without an Order restraining and enjoining Defendant from placing Oberer's name on the November 2024 general election ballot, the spirit of the statutory requirements of O.R.C. § 311.01(B) will be frustrated and immediate and irreparable harm will result.

The grounds for the requested restraining order and preliminary injunction are more fully explained in the accompanying Memorandum in Support and the Verified Complaint for Declaratory Judgment and Prohibitory Injunction filed contemporaneously herewith. Plaintiff respectfully requests that this Court issue the Proposed Temporary Restraining Order attached

hereto as Exhibit 1 and set this case for a preliminary injunction hearing, with any briefing schedule being expedited due to the time-sensitive nature of election matters.

Respectfully submitted,

/s/ Daniel T. Downey

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MEMORANDUM IN SUPPORT

It is imperative that Defendant, the Ross County Board of Elections, is restrained and enjoined from placing the name of an unqualified candidate for the Office of County Sheriff on the November 2024 general election ballot. *See State ex rel. Craig v. Scioto Cty.*, 2008-Ohio-706, ¶28. Ohio Revised Code Section 311.01(B) explicitly instructs that “no person is eligible to be a candidate for sheriff, and no person shall be elected [] to the office of sheriff, unless that person meets all of the [] requirements” listed in divisions (1) through (9). Upon information and belief that Isaac Oberer (“Oberer”), who has been certified as an Independent Candidate for Ross County Sheriff, does not possess the statutorily required supervisory experience or education, Plaintiff, James R. Hatfield, filed a timely protest against the candidacy of Oberer for County Sheriff. Defendant improperly denied Plaintiff’s Protest by a two-to-one vote despite never receiving or otherwise viewing any of the following for Oberer: (1) a high school diploma or certificate of high school equivalence; (2) a bachelor’s degree 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; or (3) 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. Oberer should not remain certified as a candidate for the Office of County Sheriff, and Plaintiff’s requested injunctive relief is appropriate.

As can be determined from the certified transcript of the July 10, 2024 hearing conducted by Defendant over Plaintiff’s Protest, this is not a matter in which “there is conflicting evidence” on the issue of whether Oberer satisfies the requirements of O.R.C. § 311.01(B)(9). *State ex rel Wolfe v. Delaware Cty. Bd. of Elections*, 88 Ohio St. 3d 182, 185 (2000). There was zero evidence presented to Defendant showing that Oberer holds an acceptable post-secondary degree under

O.R.C. § 311.01(B)(9)(b), and legal counsel for Oberer stipulated at the July 10, 2024 hearing that Oberer does not possess the requisite supervisory experience under O.R.C. § 311.01(B)(9)(a). (*See* Transcript – Exhibit 11 to Verified Complaint, p. 19, 51). Defendant has not fulfilled its responsibility under O.R.C. § 311.01(F)(2) of “determining whether [Oberer] satisfies the qualifications specified in R.C. 311.01(B) for the office of county sheriff.” 2001 Ohio Atty.Gen.Ops. No. 2001-026, *citing Wolfe*, 88 Ohio St. 3d 182; *State ex rel. Snider v. Stapleton*, 65 Ohio St. 3d 40 (1992); *State ex rel. Shumate v. Portage Cty. Bd. of Elections*, 64 Ohio St. 3d 12 (1992). It is simply improper to thrust Defendant’s responsibility under O.R.C. § 311.01(F)(2) onto the administrative judge of the court of common pleas whose role in the election process is merely to receive, and not evaluate, the candidate’s application. *See* O.R.C. § 311.01(F)(1). (*See also* Transcript – Exhibit 11 to Verified Complaint, p. 13-14). Because “it clearly appears from specific facts shown [] by the verified complaint that immediate and irreparable injury, loss or damage will result” if an unqualified candidate is named on the ballot for the upcoming election, emergency relief is warranted. Civ.R. 65(A).

I. FACTUAL BACKGROUND

The facts underlying this case are set forth in Plaintiff’s contemporaneously filed Verified Complaint for Declaratory Judgment and Prohibitory Injunction (“Verified Complaint”) and are fully incorporated herein by reference.

II. LEGAL ANALYSIS AND ARGUMENT

Plaintiff is entitled to a temporary restraining order and preliminary and permanent injunction against Defendant to prevent Defendant from placing the name of a candidate for Ross County Sheriff who does not meet the qualification requirements of O.R.C. § 311.01(B) on the November 2024 ballot. Ohio Rule of Civil Procedure 65 authorizes the issuance of a temporary

restraining order and preliminary injunction to prevent irreparable harm to the applicant. There are four factors to be established for issuance of a temporary restraining order and/or preliminary injunction, and Plaintiff meets all four in this matter.

1. The substantial likelihood that Plaintiff will prevail on the merits;
2. Irreparable harm to Plaintiff absent the requested injunctive relief;
3. The balance of harm to Plaintiff and injury to Defendant and others; and
4. The public interest served by issuing the requested injunctive relief.

Mike Lapine, Inc. v. Cleveland Bus. Show, Inc., 1986 Ohio App. LEXIS 6131, *7 (8th Dist. Mar. 27, 1986) (citations omitted); *see also Smith v. Ohio High Sch. Ath. Ass’n*, Stark C.P. No. 2019 CV02419, 2020 Ohio Misc. LEXIS 5028 (Jan. 13, 2020) (granting temporary restraining order); *P&G v. Stoneham*, 140 Ohio App. 3d 260, 267 (1st Dist. 2000); *Toledo Police Patrolman’s Ass’n, Local 10 v. City of Toledo*, 127 Ohio App. 3d 450, 469 (6th Dist. 1998). Applying each of the four factors confirms that Plaintiff, and the electorate, is deserving of the injunctive relief Plaintiff seeks under Civ.R. 65. *See Tatman v. Carley*, 2004-Ohio-4814 (5th Dist.) (affirming trial court’s order enjoining Board from placing candidate on November ballot).

A. Plaintiff Has a Substantial Likelihood of Success on the Merits of His Claims.

Plaintiff will prevail on his claims against Defendant for the improper denial of Plaintiff’s Protest against the candidacy of Oberer for Ross County Sheriff and allowing Oberer to remain as a certified candidate for the November 2024 general election in violation of O.R.C. §311.01(B). The plain language of O.R.C. §311.01(B)(9) states that, for a person to be “eligible to be a candidate for sheriff,” he or she must have either of the following: (a) “at least two consecutive years of supervisory experience as a peace officer at the rank or sergeant or above”; *or* (b) “a bachelor’s degree in any field or [] an associate degree in law enforcement or criminal justice” from an adequately accredited college or university. Plaintiff filed a timely protest with Defendant

over Oberer's inability to meet either O.R.C. § 311.01(B)(9)(a) or (b). (Protest – Exhibit 4 to Verified Complaint; Transcript – Exhibit 11 to Verified Complaint, p. 2-3, 7). During the July 10, 2024 hearing, there was no evidence to support the conclusion that Oberer meets the criteria of O.R.C. § 311.01(B)(9), and Defendant inexcusably disregarded statute in breaching its duty to decertify Oberer as a candidate for Ross County Sheriff. *Craig*, 2008-Ohio-706 at ¶28.

More specifically, it was conceded that Oberer does not possess the supervisory experience needed to meet O.R.C. § 311.01(B)(9)(a). (Transcript – Exhibit 11 to Verified Complaint, p. 19, 51). Oberer refused to personally appear at the hearing and chose to dispatch a legal representative who was authorized to stipulate to Oberer's lack of supervisory experience but who refused to verify Oberer's lack of the required education under O.R.C. § 311.01(B)(9)(b). Rather than presenting evidence to refute the challenge to his qualifications under O.R.C. § 311.01(B)(9)(b), Oberer had his legal representative obfuscate with misplaced objections and misrepresentations of Judge Schmidt's functions as the Administrative Judge of the Ross County Court of Common Pleas. (*See e.g.*, Transcript – Exhibit 11 to Verified Complaint, p. 12-15, 22-23, 32, 42-43, 44-45, 55-57).

Plaintiff showed, during the July 10, 2024 hearing, that Oberer has never submitted any of the following for his application for candidacy: (1) a high school diploma or certificate of high school equivalence; (2) a bachelor's degree 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; or (3) 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. *See* O.R.C. §311.01(B)(4) and (9)(b). (Transcript – Exhibit 11 to Verified Complaint, p. 19-20, 27-28, 31-45,

47, 49, 53-54). Plaintiff was denied the opportunity to elicit hearing testimony from Oberer because Oberer refused to appear for the hearing, ignoring Defendant's several notices and the subpoena issued by Plaintiff's legal counsel for the hearing, Keith Washburn. (Id. at p. 5-6; Subpoena – Exhibit 9 to Verified Complaint; Delivery Confirmation – Exhibit 10 to Verified Complaint; *see also* Verified Cmpl., ¶31). As Mr. Washburn succinctly stated during the hearing, “The Board has not been shown a degree. If [Oberer] has a degree, all he has to do is come in here and say here's my degree.” (Transcript – Exhibit 11 to Verified Complaint, p. 45). Ultimately, Defendant denied Plaintiff's Protest and has kept Oberer certified as a candidate for the Office of County Sheriff in direct violation of O.R.C. §311.01(B). *State ex rel. Knowlton v. Noble Cty. Bd. of Elections*, 2010-Ohio-1115, ¶34 (“the board and its members abused their discretion and clearly disregarded R.C. 311.01(B)(9) by denying Knowlton's protest and certifying Hannum's candidacy for sheriff”).

While Oberer's peace officer training and certification was addressed during the July 10, 2024, hearing, the Ohio Supreme Court has clarified that “peace officer training is not acceptable to constitute course credit under R.C. 311.01(B)(9)(b), because it is already included in the eligibility requirements in R.C. 311.01(B)(8).” *Id.* at ¶31, *citing State ex rel. Wellington v. Mahoning Cty. Bd. of Elections*, 2008-Ohio-5510, ¶30 (“The postsecondary education needed under R.C. 311.01(B)(9)(b) is altogether distinct from the peace officer training specified in R.C. 311.01(B)(8).”). It was established during the hearing that the Pickaway Ross Career Technology Center named on Oberer's application is not “a post-secondary education facility” and is, instead, a trade school that Oberer attended “in 2015 in coordination with his high school.” (Transcript – Exhibit 11 to Verified Complaint, p. 33-24, 36, 38). The only education identified for Oberer during the hearing were the following: (1) graduation from Union-Scioto High School in 2015; (2)

Pickaway Ross Career Technology Center, a trade school, that was attended during Oberer’s “junior and senior years in high school”; and (3) enrollment in Ohio University in 2017 to enter the Southern Ohio Police Training Institute for his OPOTA certification, which does not confer a college degree. (Transcript – Exhibit 11 to Verified Complaint, p. 33-36, 38, 47). It was highlighted for Defendant that the section for college or post-secondary education was left “blank” on Oberer’s application materials, and no college or university was listed on Oberer’s resume. (Id. at p. 36-37; *see also id.* at p. 19-20, 33, 38, 41-42 49).

Plaintiff is substantially likely to succeed on his claims against Defendant based on the plain statutory language of O.R.C. § 311.01(B) and case precedent applying it. *See e.g., Tatman*, 2004-Ohio-4814, *citing Wolfe*, 88 Ohio St. 3d 182; *Craig*, 2008-Ohio-706; *Knowlton*, 2010-Ohio-1115, ¶¶33-35; *Wellington*, 2008-Ohio-5510 (granting writ to prevent the board of elections from certifying Aey’s qualifications as a candidate for sheriff). Not only is Plaintiff entitled to declaratory judgment that Oberer is not qualified to be a candidate for Ross County Sheriff in the November 2024 general election, but the emergency injunctive relief Plaintiff seeks to keep the name of an unqualified candidate off the ballot is necessary. Plaintiff satisfies the first factor for a temporary restraining order and preliminary injunction.

B. Plaintiff Will Face Irreparable Harm Absent Temporary and Permanent Injunctive Relief.

Plaintiff has no adequate remedy at law if an unqualified candidate for the Office of County Sheriff, under O.R.C. § 311.01(B), remains certified and is allowed on the November 2024 general election ballot. *See e.g., Craig*, 2008-Ohio-706 at ¶1, 25 (Board’s disregard of O.R.C. § 311.01(B) left relator without an “adequate remedy in the ordinary course of law”); *Knowlton*, 2010-Ohio-1115, ¶1, 18, 34-35. The proximity of the November 2024 general election and Defendant’s obligations in completing and publishing the ballot underscore the irreparable harm that will result

if the requested injunctive relief is not granted. *See* Verified Cmplt., ¶47. Accordingly, the requested temporary injunction “is a necessary adjunct to the administration of justice” until this Court can grant the more meaningful relief of a permanent injunction. *Gobel v. Laing*, 12 Ohio App. 2d 93, 94 (10th Dist. 1967).

The irreparable injury that will occur if the integrity of the November 2024 election process is not upheld cannot be quantified, adequately compensated with damages, or effectively addressed at a later trial. The requirements of O.R.C. § 311.01(B) must be upheld to guarantee that only eligible candidates can be elected as County Sheriff—“the top law enforcement officer[]” in the County with important responsibilities. *State ex rel. Watson v. Hamilton Cty. Bd. of Elections*, 88 Ohio St. 3d 239, 244 (2000). Conversely, there is no harm to Defendant or any third party by ensuring the requirements of O.R.C. § 311.01(B) are applied to a candidate for Ross County Sheriff. Plaintiff thus meets the second and third factors for a temporary restraining order and preliminary injunction.

C. Plaintiff’s Requested Injunctive Relief Will Serve the Public Interest.

The final factor for a temporary restraining order and preliminary injunction is readily met by Plaintiff under the circumstances presented to this Court. The requested injunctive relief is in the public’s best interest. The Ohio Supreme Court has previously acknowledged the “important interest in ensuring that the chief law enforcement officer[]” in each county “possess[es] certain minimum qualifications.” *Watson*, 88 Ohio St. 3d 239 at 244. It was additionally found by the Ohio Supreme Court that “R.C. 311.01(B)(9) reasonably furthers this interest by requiring either supervisory experience and the demonstration of proficiency in law enforcement skills denoted by promotion to a certain rank (R.C. 311.01[B][9][a]) or academic achievement [] of qualifying postsecondary education (R.C. 311.01[B][9][b]).” *Id.*, citing *Cicchino v. Luse*, 2000 U.S. Dist.

LEXIS 10314, *25-26 (S.D. Ohio Feb. 1, 2000) (“The Court finds that Ohio has an important, if not compelling, interest in assuring that its top law enforcement officers possess the minimum qualifications necessary to enforce and uphold the laws of the state of Ohio.”).

The Ross County electorate will be best served by preventing the name of a candidate who is not qualified for the Office of County Sheriff from being placed on the ballot. Plaintiff satisfies each of the four factors for a temporary restraining order and preliminary injunction. This Court should therefore grant the requested injunctive relief

III. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that this Court issue the Temporary Restraining Order attached hereto as Exhibit 1 and set this case for a preliminary injunction hearing.

Respectfully submitted,

/s/ Daniel T. Downey

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served August 7, 2024 upon Ross County Prosecutor Jeffrey C. Marks, statutory legal counsel for Defendant, the Ross County Board of Elections, via electronic mail at prosecutor@rosscountyohio.gov. Hand-delivery of the foregoing to the Ross County Prosecutor's Office, 33 West Main Street, Suite 200, Chillicothe, Ohio 45601, was also attempted on August 7, 2024 at approximately 3:20pm; however, the Prosecutor's Office was closed. I further certify that a true and accurate copy of the foregoing was sent by FedEx overnight delivery on August 8, 2024 to statutory legal counsel for Defendant at 33 West Main Street, Suite 200, Chillicothe, Ohio 45601.

/s/ Daniel T. Downey

Daniel T. Downey (0063753)

FISHEL DOWNEY ALBRECHT & RIEPENHOFF LLC

Attorney for Plaintiff James R. Hatfield

**IN THE COURT OF COMMON PLEAS
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Plaintiff, :

vs. : Judge Michael M. Ater

Ross County Board of Elections :
475 Western Avenue, Suite D :
PO Box 1663 :
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Defendant. :

**PLAINTIFF JAMES R. HATFIELD’S SUPPLEMENTAL MEMORANDUM IN
SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER AND
PRELIMINARY INJUNCTION**

Plaintiff James R. Hatfield respectfully files this supplemental memorandum in support of his Motion for Temporary Restraining Order and Preliminary Injunction, filed August 8, 2024, to emphasize the looming dates of importance that demand quick action by the Court. Civ.R. 65. For example, O.R.C. §3501.39(B) restricts a Board of Elections, like Defendant, from invalidating any nominating petition after the sixtieth day prior to the election at which the candidate seeks election to office. *See also State ex rel. Lorenzi v. Mahoning Cty. Bd. of Elections*, 2007-Ohio-5879, ¶23 (7th Dist.)(approving decertification of nominating petition before general election). **September 6, 2024** is thus the deadline by which Defendant must invalidate the petition of Isaac Oberer to keep his name off the November 5, 2024 ballot, given Mr. Oberer’s failure to meet the qualification requirements of O.R.C. §311.01. (Verified Cmplt; Plf Mtn for TRO). The “ballots shall be printed and ready for use” by “overseas voters and absent uniformed services voters eligible to vote under

the Uniformed and Overseas Citizens Absentee Voting Act...on the forty-sixth day before the day of the election.” O.R.C. §3509.01(B)(1). Accordingly, the ballots need to be printed by **September 20, 2024** for such voters. The ballots “[f]or all other voters [] shall be printed and ready for use on the first day after the close of voter registration before the election,” making that printing deadline **October 8, 2024**. O.R.C. §3509.01(B)(2).

With the cutoff to invalidate Mr. Oberer’s petition being just **11 business days away**, and the first round of ballot printing occurring in 30 days, the need for a temporary restraining order is urgent. Plaintiff respectfully renews his request for the Court to issue the proposed Order attached to Plaintiff’s August 8, 2024 Motion for Temporary Restraining Order and Preliminary Injunction.

A subsequent preliminary injunction hearing is also needed. Under Civ.R. 65(B)(2), a trial on the merits should be advanced and consolidated with the injunction hearing to “prevent two hearings and save time and expense for the court and parties.” *Ohio Serv. Group, Inc. v. Integrated & Open Sys., L.L.C.*, 2006-Ohio-6738, ¶10 (10th Dist.). The facts and evidence to be offered at the preliminary injunction hearing in this matter would be no different than those focused on at a trial on the merits. Plaintiff therefore asks that this Court promptly schedule an injunction hearing and issue sufficient notice, under Civ.R. 65(B)(2), that the merits will be advanced and consolidated with the injunction hearing. *Id.*; *Seasonings Etcetera, Inc. v. Nay*, 1993 Ohio App. LEXIS 1182, *9-10 (10th Dist. Feb. 23, 1993).

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing *Plaintiff James R. Hatfield's Supplemental Memorandum in Support of Motion for Temporary Restraining Order and Preliminary Injunction* has been served this 21st day of August 2024 upon Defendant's statutory legal counsel via electronic mail sent to prosecutor@rosscountyohio.gov.

/s/ Daniel T. Downey _____
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FISHEL DOWNEY ALBRECHT & RIEPENHOFF LLC
Attorney for Plaintiff James R. Hatfield