ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE EX REL. CYNTHIA BALAS-BRATTON	:	CASE NO. 2014-0374
Relator	:	Original Action in Prohibition
vs.	:	
HON. JON HUSTED, Ohio Secretary of State, et al.	:	Expedited election case under S.Ct.Prac.R. 12.08
Respondents	:	

RELATOR'S S.CT.PRAC.R. 12.08(A)(2)(c) REPLY BRIEF

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RELATOR'S REPLY BRIEF

Now comes Relator, by and through counsel, and hereby respectfully submits her Reply to the March 24, 2014 Merit Briefs of Respondents the Ohio Secretary of State ("Secretary"), the Stark County Board of Elections ("BOE"), Intervenor George T. Maier ("Maier" and/or "Candidate Maier") and *Amicus Curiae* Buckeye State Sheriff's Association ("BSSA"), collectively "Respondents".

A. INTRODUCTION

In Reply to the aforesaid Merit Briefs, Relator incorporates herein by reference her March 19, 2014 Merit Brief and further replies hereinbelow.

In that regard, given the "commonality" of the arguments presented by Respondents, Relator will hereinbelow jointly address same, without needlessly making specifically separate "point/ counterpoint" replies thereto.

However, as to the BSSA's Merit Brief, Relator does note that same inexplicably presents a position directly contrary to that set forth in that Association's prior *amicus* briefs before this Court regarding construction and application of O.R.C. 311.01(B)(9).

B. REPLY ARGUMENT

Relator's First Claim for Relief

Notwithstanding Respondents' disingenuous assertions to the contrary (and their rather "cavalier" attitude about the matter), Relator/Protestor was in fact denied due process before the BOE and that denial was, for want of a better term, "a real big deal" under

both this Court's jurisprudence <u>and</u> that of the United States Supreme Court.

In short, Respondents seek to "bypass" the seminal due process issue here by minimizing and degrading its great importance to our justice system and by then, in "it's too late to complain" fashion and/or in "better luck next time" fashion, to simply declare it moot (and therefore not properly before this Court).

"Bottom line", it is no exaggeration to state that due process is "sacrosanct" to and in our justice system; i.e., that there simply is no question whatsoever that the requirement of due process is not a mere "technicality" that an adjudicatory body may disregard and then *sua sponte* "jettison" at will.

Indeed, in *In the Matters of Murchison* (1955), 349 US 133, 136, the United States Supreme Court unambiguously held that "A fair trial in <u>a **fair** tribunal is a **basic requirement** of due process</u>. Fairness of course requires an absence of actual bias in the trial of cases . . . [and] to perform its high function in the best way 'justice must satisfy the appearance of justice'". (emphasis supplied)

In other words, it is axiomatic and "goes without saying" that "Due process <u>requires</u> that an individual in an administrative proceeding is entitled to a fair hearing <u>before an **impartial** tribunal</u>". (*Althof v. Ohio State Bd. of Psychology* (10th Dist.), 2007-Ohio-1010, citing at ¶ 32 to *Murchison, supra;* emphasis

supplied.)

As set forth in Relator's Merit Brief (and as amply supported by her admissible documentary evidence herein and/or below), it is far beyond any legitimate dispute that BOE Member St. John, at all times relevant, was in fact blatantly biased and prejudiced in Candidate Maier's favor and had already, well **before** the BOE's February 21, 2014 Protest hearing, made up his mind to vote thereat for denial of Relator's Protest.

It is also far beyond any legitimate dispute that BOE Member St. John, well **before** that *quasi*-judicial proceeding, had already expressly, openly and unequivocally demonstrated his aforesaid bias and prejudice and attendant predisposition via his actions (his two pre-hearing DCC votes for Candidate Maier) and via his written words (his pre-hearing DCC letter of support for Candidate Maier) and via his spoken words (his post-Protest/pre-hearing statements to *The Repository* reporter). (Reference Submission Exhibits C, D, H and I.)

It is also far beyond any legitimate dispute that BOE Member St. John's unreasonable (and inexplicable) refusal to recuse himself from the *quasi*-judicial proceedings below served to deny Relator her (never-waived) due process right to have ". . . a hearing before an unbiased and fair and impartial tribunal". (*Hutchinson v. Wayne Twp. Bd. of Zoning Appeals* (12th Dist.), 2011-Ohio-5590 at ¶ 11.)

In that regard, "It is axiomatic that a hearing conducted before a biased tribunal does not fulfill a requisite requirement of fundamental fairness that must predominate in all quasi-judicial proceedings". (*Althof, supra*, at ¶ 35.)

In sum, contrary to both BOE Member St. John's disingenuous protestations and Respondents' unsupported assertions, Relator (the Protestor below) has quite clearly met her burden of proving that BOE Member St. John was, at all times relevant, materially pro-Maier and anti-Protestor biased and prejudiced and predisposed; and that said BOE Member's outcome-determinative participation (over Relator's repeated objections) in the BOE's *quasi*-judicial proceedings adversely affected Relator's fundamental right and attendant entitlement to due process before the BOE.

Finally, as to the assertion made by one or more of the Respondents herein to the effect that BOE Member St. John's Protest hearing participation did not "influence" any other BOE Members or otherwise serve to "taint" the subject *quasi*-judicial proceedings, that conjecture is not supported by the record.

In fact, at the conclusion of the Protest hearing, the two Democrats and the two Republicans adjourned to separately "caucus", immediately after which Democratic BOE Member St. John made his "canned" motion to deny the Protest, which motion was, not "coincidentally", immediately seconded by his fellow Democratic BOE Member Ferruccio. (Hearing Tr. at pages 215, 216 and 217.)

In sum, had BOE Member St. John "done the right thing" below and recused himself, Relator's Protest would have been granted and the BOE's decision would never have been before the Secretary in the first place (and Relator would not have brought this original action in prohibition).

It therefore is again respectfully suggested that Relator's First Claim for Relief should be granted and that such a grant would be dispositive of this action "at the front door", without the need for this Court to address Relator's Second Claim for Relief.

In that regard, as noted by Justice Herbert in his concurring Opinion in *State ex rel. Dunbar v. Ham* (1976), 45 Ohio St.2d 112, 116, "There are undoubtedly some violations of some rights which rise to a level of constitutional insult . . ." sufficient to merit issuance of a writ of prohibition.

It is respectfully suggested that the aforesaid clear and egregious violation of Relator's constitutional due process rights during the subject *quasi*-judicial proceeding before the BOE rises to such a level, particularly in light of the fact that, due to the rapidly upcoming May primary, Relator has no other adequate remedy at law through which she can effectively "un-ring" that denial of due process "bell".

Relator's Second Claim for Relief

O.R.C. 2733.14

Because Relator's O.R.C. 2733.14 argument presents only an issue of law (and more specifically one of judicial statutory construction), Relator sees no need to herein reply to Respondents' arguments regarding same.

In short, for purposes of O.R.C. 2733.14, Relator relies upon her Merit Brief and again respectfully suggests that, all other issues aside, application of that unambiguous Revised Code Section renders Candidate/Usurper Maier ineligible, as a matter of law, to even be considered for the public office of Sheriff, much less to be on the May primary ballot for the very same public office from which this Court has already once ousted him.

O.R.C. 311.01(B)(9)

At the outset, it is clear that acceptance of Respondents' arguments on judicial construction of O.R.C. 311.01(B)(9) would require this Court to disregard the *stare decisis* effect of its prior jurisprudence (as cited in Relator's Merit Brief) that said Revised Code Subsection is not, as inexplicably determined by the Secretary, ambiguous and therefore needs to be liberally construed in favor of a candidate's ballot access.

Indeed, to the extent Relator must herein demonstrate that the Secretary, by and through his Decision, engaged in an abuse of discretion and/or in a clear disregard of applicable legal

provisions, she clearly has done so by pointing out to this Court the Secretary's inexplicable disregard of its prior jurisprudence.

As to O.R.C. 311.01(B)(9)(a), this Court's attention is respectfully directed to the fact that said Revised Code Subsection, which this Court has already (on multiple occasions) held to be clear and unambiguous, plainly requires <u>every</u> prospective candidate for sheriff, during the requisite two year/twenty-four consecutive months time period, to have been acting as a peace officer in a supervisory capacity at the **specified** rank of corporal or above.

For purposes of the instant Reply, Relator relies upon her Merit Brief as to the aforesaid time period and **specified** rank requirements, noting, again, that the civilian administrative public service upon which Candidate Maier has relied was "rankless", as well as insufficient to meet the mandatory twenty-four consecutive months; and noting also that Relator, contrary to Respondents' unsupported assertions, <u>never</u> argued below (or to this Court) that "rank" means wearing a uniform. (See Hearing Tr. at pages 214 and 215.)

In fact, Candidate Maier admitted at hearing that there was no "paramilitary rank associated with the job description" of Director or Assistant Director of the Ohio Department of Public Safety. (Hearing Tr. at page 200.)

It is also noteworthy that Candidate Maier's <u>own</u> "expert", the

Executive Director of the Buckeye State Sheriff's Association, who testified (over Relator's objection) before the BOE, in response to the question "Looking at (9)(a), and it uses this term rank of corporal, isn't that a paramilitary designation when it comes to police officers?", answered "In law enforcement it is a paramilitary [designation]". (Hearing Tr. at pages 171 and 172.)

As to the attendant peace officer requirement, although Maier purportedly maintained that status during the relevant time period, for purposes of his subject "rankless" civilian administrative duties, he was not acting therein as a peace officer.

Indeed, Candidate Maier admitted at hearing before the BOE that his position(s) with the Ohio Department of Public Safety did not require him (or any other person holding the positions of Department Director or Assistant Director) to be a peace officer. (Hearing Tr. at page 137.)

It is also noteworthy that Candidate Maier's own aforesaid "expert" also testified before the BOE that there was no such requirement. (Hearing Tr. at pages 172 and 173.)

In sum, it is clear that Candidate Maier's purported (but never-required) peace officer status while serving in the "rankless" and non-consecutive civilian administrative positions upon which he has relied is of no relevance upon application of O.R.C. 311.01(B)(9)(a).

As to O.R.C. 311.01(B)(9)(b), notwithstanding Respondents'

disingenuous assertions to the contrary, Candidate Maier (for the reasons set forth in Relator's Merit Brief) simply never met the requisite educational requirements of that Revised Code Subsection.

That unambiguous Revised Code Subsection plainly requires <u>every</u> candidate for sheriff to have actually "<u>completed</u> satisfactorily at least two years of post-secondary education or the equivalent in semester or credit hours <u>**in** a college or a university</u> 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 <u>or **in** a school</u> that holds a certificate of registration issued by the state board of career colleges and schools under Chapter 3332 of the Revised Code". (emphasis supplied)

In that regard, it is noteworthy that the aforesaid statutory term "in" is defined in *Merriam-Webster's Collegiate Dictionary*, Eleventh Edition (in pertinent and at page 627) as being "used as a function word to indicate inclusion, <u>location</u>, or position within limits". (emphasis supplied)

As set forth in Relator's Merit Brief, Candidate Maier never earned any credits at or "in" Stark State College; i.e., he did <u>not</u> satisfactorily complete <u>any</u> semester or quarter hours **in** that institution. (See Vogley Affidavit [Complaint and Submission Exhibit E] at, in particular, paragraphs nos. 4, 7, 8 and 12; and see Hearing Tr. at pages 127 and 128.)

Additionally, despite the fact that Maier never bothered to even enroll at or "in" Stark State College, even if *arguendo* he is nonetheless deemed to have somehow "earned" the requisite credits thereat, there is no evidence before this Court that said institution was either "authorized to confer degrees" or that it "holds a certificate of registration issued by the state board of career colleges and schools" - and it is respectfully suggested this Court may not simply presume the contrary.

It therefore is again respectfully suggested that, should same not be rendered moot by a grant of her First Claim for Relief, Relator's Second Claim for Relief should be granted, as Candidate Maier simply does not meet the qualification requisites of either O.R.C. 311.01(B)(9)(a) or O.R.C. 311.01(B)(9)(b).

C. CONCLUSION

For the reasons set forth hereinabove and/or in Relator's Merit Brief, it is again respectfully suggested that this Court should, in light of the clear and most egregious denial of due process to Relator, grant her First Claim for Relief and prohibit the Secretary from allowing and recognizing, as lawfully effective, BOE Member St. John's aforesaid motion and subsequent vote to deny Relator's Protest.

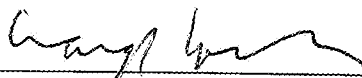
In the alternative, also for the reasons set forth hereinabove and/or in Relator's Merit Brief, it is respectfully suggested that this Court should, upon application of O.R.C. 2733.14, find that

Candidate Maier is statutorily ineligible to appear on the May 6 primary ballot as a Democratic candidate for Sheriff.

In the alternative, and also for the reasons set forth hereinabove and/or in Relator's Merit Brief, it is respectfully suggested that this Court should, upon application of O.R.C. 311.01(B)(9), find that Candidate Maier is not otherwise statutorily qualified to hold the public office of Sheriff.

In short, under all or any of the aforesaid alternatives, this Court should prohibit the Secretary and the BOE from including Maier on the May primary ballot (and, if is too late to do so, should prohibit the counting of any votes for Maier as *de jure* non-existent and therefore lawfully ineffective).

Respectfully submitted,



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PROOF OF SERVICE

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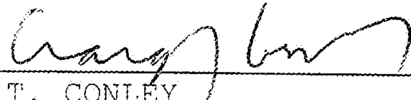

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