

**No. 2024-00721**

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# **In The Supreme Court of Ohio**

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ORIGINAL ACTION IN PROHIBITION AND MANDAMUS

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**THEODORE THOMAS, ET AL**

*Relators,*

**v.**

**WOOD COUNTY BOARD OF ELECTIONS**

*Respondent.*

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**ANSWER OF RESPONDENT WOOD COUNTY BOARD OF ELECTIONS**

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Norman A. Abood (002004)  
*COUNSEL OF RECORD*  
Tyler J. Lantzsch (0102438)  
101 Broadcast Building  
136 N. Huron Street  
Toledo, Ohio 43604  
Telephone: (419) 724-3700  
Fax: (419) 724-3701  
Email: norman@nabood.com  
Email: tyler@nabood.com

COUNSEL FOR RELATORS

John A. Borell (0016461)  
*COUNSEL OF RECORD*  
Special Wood County Prosecuting Attorney  
700 Adams Street, Suite 250  
Toledo, OH 43624  
Telephone: (419) 213-2001  
Fax: (419) 213-2011  
Email: JABorell@co.lucas.oh.us

COUNSEL FOR RESPONDENT

Now comes Respondent, the Wood County Board of Elections, and pursuant to Section 12.08(A) of the *Supreme Court Rules of Practice*, submits its Answer to Relators' Complaint for a Writ of Prohibition and/or Mandamus:

1. Admits that this Court has jurisdiction over Original Actions as alleged in paragraph 1 of the complaint, but denies that the Court has jurisdiction in this case because of defects in the complaint.

2. Is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 2, 3, 4, 5, 6, and 7 of the complaint and therefore, denies same.

3. Admits the allegations contained in paragraph 8 of the complaint.

4. Admits the allegations contained in paragraph 9 of the complaint.

5. Denies the allegation contained in paragraph 10 of the complaint.

6. Admits the allegations contained in paragraph 11 of the complaint.

7. Incorporates herein the admissions, denials and averments contained in paragraphs 1 through 6 in response to paragraph 12 of the complaint.

8. Is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, and 23 of the complaint and therefore, denies same.

9. Denies the allegations contained in paragraph 24 of the complaint, since use of the property refers to zoning classification.

10. Admits the allegations contained in paragraphs 25, 26, 27, 28, 29, and 30 of the complaint.

11. Is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 31 of the complaint and therefore, denies same.

12. Admits that on November 17, 2023, the Director of the Wood County Board of Elections sent a letter to the Board member that included the total number of part-petitions submitted, the total number of signatures submitted, the number of valid signatures, and the

number of signatures that represented 15% of the 2022 Gubernatorial vote in the unincorporated area of Lake Township, but denies the remaining allegations contained in paragraph 32 of the complaint.

13. Admits that the notice for the Respondent's December 21, 2023 regular meeting complied with the requirements of Section 121.22 of the Ohio Revised Code and that Relator Thomas failed to follow the link to the meeting notice, but is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 33 of the complaint.

14. Admits the allegations contained in paragraphs 34, 35, 36, 37 and 38 of the complaint.

15. Admits that the Respondent overruled all alleged errors within its jurisdiction to consider and did not consider the alleged errors not within its statutory jurisdiction as alleged in paragraphs 39 and 40 of the complaint; further admits that the Respondent did not have the authority, under Ohio election, to consider a protest based on the following assertions: (1) the refusal to deny the zoning amendment would constitute and unlawful taking of property without just compensation and is not a fair and efficient use of township zoning powers, (2) placing the zoning referendum on the ballot may disrupt the operation and legal development of private property in Lake Township, (3) the zoning change does not pose any threat to the health, safety, or welfare of the Township..

16. Admits the allegations contained in paragraph 41 of the complaint.

17. Incorporates herein the admissions, denials and averments contained in paragraphs 1 through 41 in response to paragraph 42 of the complaint.

18. Denies the allegations contained in paragraph 43 of the complaint.

19. Denies allegations contained in paragraph 44 of the complaint.

20. Admits the allegations contained in paragraph 45 of the complaint.

21. Denies the allegations contained in paragraphs 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, and 56 of the complaint.

- 22. Admits the allegations contained in paragraph 57 of the complaint.
- 23. Incorporates herein the admissions, denials and averments contained in paragraphs 1 through 22 in response to paragraph 58 of the complaint.
- 24. Denies the allegations contained in paragraphs 59, 60, 61 and 62 of the complaint.
- 25. Denies each and every allegation of the complaint not expressly admitted to be true herein.

#### **FIRST DEFENSE**

- 26. The complaint is defective since it is improperly captioned.

#### **SECOND DEFENSE**

- 27. Section 519.12(H) of the Ohio Revised Code specially authorizes substantial compliance with the form and circulator statement of the petition.

#### **THIRD DEFENSE**

- 28. *R.C.* 519.12(H) requires that a referendum petition included the present zoning status not an historical summary of the actual use of the property.

#### **FOURTH DEFENSE**

- 29. The Election Falsification statement contained in the part-petitions herein includes the exact wording required by *R.C.* 519.12(H).

#### **FIFTH DEFENSE**

- 30. The Election Falsification statement contained in the part-petitions herein were placed in the exact location required by *R.C.* 519.12(H).

#### **SIXTH DEFENSE**

- 31. Notice of the December 21, 2023 regular meeting of the Wood County Board of Elections was properly noticed in accordance with *R.C.* 121.22(F).

#### **SEVENTH DEFENSE**

- 32. Relators were not entitled to advance notification of the December 23, 2023 regular meeting of the Wood County Board of Elections, since Relators failed to comply with the requirement of *R.C.* 121.22(F).

### **EIGHTH DEFENSE**

33. The Respondent did not have the authority, under Ohio election, to consider a protest based on the following assertions: (1) the refusal to deny the zoning amendment would constitute and unlawful taking of property with just compensation and is not a fair and efficient use of township zoning powers, (2) placing the zoning referendum on the ballot may disrupt the operation and legal development of private property in Lake Township, (3) the zoning change does not pose any threat to the health, safety, or welfare of the Township.

### **NINETH DEFENSE**

34. The Township Zoning Amendment was approved by the Lake Township Board of Trustees on September 19, 2023 and the amended R.C. 519.12(H), requiring signatures from 15% of the total vote cast for all candidates at the most recent election for governor in the unincorporated area of the Township, became effective on October 3, 2023. Therefore, the use of the amended R.C. 519.12(H) would have constituted a violation of Retroactivity Clause of the Ohio Constitution and the Ohio Revised Code.

### **TENTH DEFENSE**

35. The Respondent's decision denying the Relators' protest was not based on fraud or corruption, was not an abuse of discretion, and was not in clear disregard of applicable laws. Therefore, the Relators are not entitled to a writ of prohibition.

### **ELEVENTH DEFENSE**

36. The Relators have not established by clear and convincing that they have a clear legal right to the requested relief nor does the Respondent have a clear legal duty to provide that relief. Therefore, the Relators are not entitled to a writ of mandamus.

**WHEREFORE**, Respondent Wood County Board of Elections prays that the complaint be dismissed and that it recover its costs herein, including attorney fees.

Respectfully submitted,

/s/ John A. Borell

Special Prosecuting Attorney

Wood County, Ohio

Counsel for Respondent Wood County Board of  
Elections

**CERTIFICATE OF SERVICE**

A copy of foregoing Answer of Respondent Wood County Board of Elections was sent on the 18<sup>th</sup> day of January, 2024 by email to:

Norman A. Abood  
Tyler J. Lantzsch  
Email: norman@nabood.com  
Email: tyler@nabood.com

COUNSEL FOR RELATORS

/s/ John A. Borell  
Special Prosecuting Attorney  
Wood County, Ohio  
Counsel for Respondent Wood County Board of  
Elections