

IN THE SUPREME COURT OF OHIO

STATE ex rel. JUSTIN TJADEN	:	Case No. 24-0881
	:	
Relator,	:	
	:	Original Action in Mandamus
	:	
v.	:	
	:	
GEAUGA COUNTY BOARD OF	:	
ELECTIONS, et al	:	
Respondents.	:	

**RESPONDENT ASHTABULA COUNTY BOARD OF ELECTIONS
MOTION TO DISMISS COMPLAINT**

JUSTIN TJADEN

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Geneva, OH 44041

Relator

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Pursuant to S.Ct.Prac.R. 12.04(A) and Civ.R. 12(B)(1), Respondent, the Ashtabula County Board of Elections (“Respondent Ashtabula County”), by and through the undersigned counsel, hereby respectfully moves this Honorable Court for an order dismissing Relator’s Complaint for lack of subject matter jurisdiction. A Memorandum in Support is attached hereto and incorporated herein by reference.

Respectfully submitted,

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STATEMENT OF THE CASE

On June 13, 2024, Relator filed an original action in mandamus with this Honorable Court against Respondent Ashtabula County and Respondent Geauga County Board of Elections (“Respondent Geauga County”) as well as their respective officers, executives, and board members.¹ Relator is a resident of Geneva-on-the-Lake, Ohio and intended to run as an independent candidate for the 99th District of the State of Ohio House of Representatives, which includes portions of Ashtabula and Geauga Counties. On March 18, 2024, Relator submitted signatures to Respondent Geauga County for verification in accordance with R.C. 3513.257(C). Respondent Geauga County submitted signatures collected in Ashtabula County to Respondent Ashtabula County for verification. According to the allegations in Relator’s Complaint, Respondent Ashtabula County determined 118 of the submitted signatures were invalid and confirmed 196 valid signatures and communicated these determinations to Respondent Geauga County.

Respondent Geauga County held a special meeting on April 9, 2024. On the agenda for the meeting, among other matters, was “independent petitions.” At that meeting, Respondent Geauga County decline to certify Relator as a candidate for the 99th District of the Ohio House of Representatives.

Over two months later, on June 12, 2024, Relator filed a declaratory judgment action in the Geauga County Court of Common Pleas against Respondents. *Tjaden v. Geauga County Board of Elections et. al.*, Geauga C.P. No. 24M000398 (the “Geauga County Case”)(See Appendix A). A day later, Relator filed the instant action in mandamus. For the reasons set forth

¹ Secretary of State Frank LaRose and Attorney General David Yost are also referenced as parties but not named as respondents in Relator’s Complaint.

below, this Honorable Court lacks subject matter jurisdiction and Relator's Complaint must be dismissed.

ARGUMENT

Under Section 2(B)(1)(b), Article IV of the Ohio Constitution, the Supreme Court of Ohio has original jurisdiction in mandamus actions. *State ex rel. Wilke v. Hamilton Cty. Bd. of Commrs.*, 90 Ohio St.3d 55, 59, 2000 Ohio 13, 734 N.E.2d 811 (2000); see also R.C. 2731.02. Under the jurisdictional-priority rule, as between state courts of concurrent jurisdiction, the tribunal whose power is first invoked by the institution of proper proceedings acquires jurisdiction, to the exclusion of all other tribunals, to adjudicate upon the whole issue and to settle the rights of the parties. *State ex rel. Racing Guild of Ohio v. Morgan*, 17 Ohio St.3d 54, 56, 17 Ohio B. 45, 476 N.E.2d 1060 (1985), quoting *State ex rel. Phillips v. Polcar*, 50 Ohio St.2d 279, 364 N.E.2d 33 (1977), syllabus. In order for the jurisdictional-priority rule to apply, generally, the claims and parties must be the same. *See State ex rel. Hasselbach v. Sandusky Cty. Bd. of Elections*, 157 Ohio St.3d 433, 2019-Ohio-3751, 137 N.E.3d 1128, ¶ 9. Notwithstanding the foregoing, the jurisdictional-priority rule will still apply even when the causes of action and relief requested are not exactly the same, as long as the actions present part of the same "whole issue." *State ex rel. Dunlap v. Sarko*, 135 Ohio St.3d 171, 2013-Ohio-67, 985 N.E.2d 450, ¶ 11.

In this case, the parties in two actions are the same. Even though the titles in the complaints slightly differ, Relator is the plaintiff in the Geauga County Case and the Ashtabula County and Geauga County Boards of Elections and their officers, executives and board members are the Respondents in this case and the defendants in the Geauga County Case.

Although this case arises in mandamus and the Geauga County Case is a declaratory judgement action, the different actions present part of the same whole issue. In both cases, Relator

alleges (1) the Respondents overstepped their authority by invalidating elector's signatures in contradiction of *State ex rel. Crowl v. Delaware Cty. Bd. Of Elections*, 144 Ohio St.3d 346, 2015-Ohio-4097, 43 N.E.3d 406; (2) that Respondent Geauga County violated his rights to due process by failing to adequately notify him, allow him to be heard, and provide an unbiased tribunal regarding the April 9, 2024 special meeting of Respondent Geauga County; and (3) that R.C. 3513.257(C) is unconstitutional on its face and as applied to this case. In fact, many of the paragraphs of Relator's Complaint in the instant action are copied verbatim in Relator's complaint in the Geauga County Case. There is no meaningful difference between the two complaints. The only differences concern the manner in which the allegations are presented – in this case, the allegations are presented as a claim for mandamus and in the Geauga County Case as a declaratory judgement. Aside from the different standards for mandamus and declaratory judgement, the facts to be decided and the applicable law are the same, as well as Relator's requested relief in both cases.

Not only that, but in the prayer for relief in Relator's Complaint in the instant action, Relator asks this Honorable Court to bar Respondents from taking action until the Geauga County Case is decided on the merits. Relator essentially concedes that he has invoked the power of the Geauga County Court of Common Pleas first; but he is hedging his bets, asking both this Honorable Court and the Geauga County Court of Common Pleas to decide what is in effect the whole issue of his complaints – whether Respondents' conduct resulting in Relator's failure to be certified as an independent candidate for the 99th District of the Ohio House of Representatives violated Relator's rights and whether R.C. 3513.257(C) is unconstitutional on its face and as applied to this case.

The jurisdictional-priority rule was developed specifically to prevent inconsistent results and promote judicial economy. *Dunlap*, 2013-Ohio-67 at ¶ 12. In this case, Relator is attempting to bring the same issue under the guise of different causes of action to two courts at the same time, increasing the risk of inconsistent results. Allowing both this Honorable Court and the Geauga County Court of Common Pleas to simultaneously address these issues taxes judicial economy. The jurisdictional priority rule should, therefore apply. Due to the fact that the power of the Geauga County Court of Common Pleas was invoked first, this Honorable Court lacks subject matter jurisdiction pursuant to the jurisdictional-priority rule. This Honorable Court must dismiss this case pursuant to Civ.R. 12.01(B)(1).

CONCLUSION

For the foregoing reasons, Respondent prays this action be dismissed for lack of subject matter jurisdiction pursuant to Civ. R. 12(B)(1).

Respectfully submitted,

/s/ Matthew Hebebrand

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on or about June 21, 2024, a true and accurate copy of the foregoing was served by e-mail on the following:

Justin Tjaden

Kristine Rine
Assistant Prosecuting Attorney
Geauga County Prosecutor's Office

Ann Yackshaw
Assistant Attorney General
Ohio Attorney General's Office

/s/ Matthew Hebebrand
MATTHEW J. HEBEBRAND 0089454
Assistant Prosecuting Attorney

APPENDIX A

**IN THE COURT OF COMMON PLEAS
GEauga COUNTY, OHIO
CIVIL DIVISION**

JUSTIN TJADEN
5185 FAIRFAX DR
GENEVA, OHIO 44041

Plaintiff,

v.

**GEauga COUNTY BOARD OF
ELECTIONS**
470 CENTER ST - UNIT 6A
CHARDON, OHIO 44024

- and -

MICHELLE LANE, In Their Personal and
Official Capacity As Director Of The Geauga
County Board Of Elections
470 CENTER ST - UNIT 6A
CHARDON, OHIO 44024

- and -

NORA MCGINNIS In Their Personal and
Official Capacity As Deputy Director Of The
Geauga County Board Of Elections
470 CENTER ST - UNIT 6A
CHARDON, OHIO 44024

- and -

DENNIS M. PAVELLA , In Their Personal
and Official Capacity As Member Of The
Geauga County Board Of Elections
470 CENTER ST - UNIT 6A
CHARDON, OHIO 44024

- and -

CASE NO.

JUDGE

Request for Expedited Hearing

COMPLAINT

- Violation of 42 U.S.C. § 1983
- Open Meetings Act ORC § 121.22
- Declaratory Judgment

Jury Demand Endorsed Hereon

JOAN A. WINDNAGEL, In Their Personal and Official Capacity As Member Of The Geauga County Board Of Elections
470 CENTER ST - UNIT 6A
CHARDON, OHIO 44024

- and -

JANET M. CARSON, In Their Personal and Official Capacity As Member Of The Geauga County Board Of Elections
470 CENTER ST - UNIT 6A
CHARDON, OHIO 44024

- and -

RICHARD J. PIRAINO, In Their Personal and Official Capacity As Member Of The Geauga County Board Of Elections
470 CENTER ST - UNIT 6A
CHARDON, OHIO 44024

- and -

ASHTABULA COUNTY BOARD OF ELECTIONS
8 WEST WALNUT STREET
JEFFERSON, OH 44047

- and -

CHARLIE FRY, In Their Personal and Official Capacity As Director Of The Ashtabula County Board Of Elections
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JEFFERSON, OH 44047

- and -

JOHN MEAD, In Their Personal and Official Capacity As Deputy Director Of The Ashtabula County Board Of Elections
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JEFFERSON, OH 44047

- and -

JOSEPH J. VARCKETTE, In Their
Personal and Official Capacity As Member of
The Ashtabula County Board Of Elections
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- and -

ISAAC A. ARTHUR, In Their Personal and
Official Capacity As Member of The
Ashtabula County Board Of Elections
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- and -

SUSAN HAGAN, In Their Personal and
Official Capacity As Member of The
Ashtabula County Board Of Elections
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JEFFERSON, OH 44047

- and -

JEFF MAGYAR, In Their Personal and
Official Capacity As Member of The
Ashtabula County Board Of Elections
8 WEST WALNUT STREET
JEFFERSON, OH 44047

- also serve -

FRANK LAROSE, in His official capacity
as **OHIO SECRETARY OF STATE**
180 S CIVIC CENTER DR
COLUMBUS, OHIO 43215

- and -

DAVE YOST, in His Official capacity as
OHIO ATTORNEY GENERAL
30 E. BROAD STREET, 14TH FLOOR
COLUMBUS, OHIO 43215

Defendant.

I. PRELIMINARY STATEMENT

1. Now comes Plaintiff, Justin Tjaden, *pro se*, and respectfully submits this Complaint for Violation of 42 United States Code §§ 1983, *et seq.* and Declaratory Judgment against Defendants, the Geauga County Board of Elections and its members and directors, and the Ashtabula County Board of Elections and members and directors, seeking monetary damages and declaratory relief to prevent irreparable harm to Plaintiff's constitutional rights and to the democratic electoral process for all Ohioans.

2. This action arises from Defendants' refusal to certify Plaintiff as an Independent candidate for Ohio House of Representatives, House District 99, for the November 5, 2024 General Election. The "official" refusal occurred at a Special Meeting scheduled for April 9, 2024. This refusal is based on a disputed interpretation and application of ORC § 3513.257 and related statutes. Plaintiff contends that these requirements, and/or Defendants' application thereof, while acting under the color of Ohio State Election Law, violated his rights under the United States Constitution and the Ohio Constitution, including but not limited to the rights to equal protection, free speech and association, and due process.

3. Plaintiff seeks compensatory and punitive damages, declaratory judgment, and injunctive relief to prevent his exclusion from the ballot.

II. JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter of this action pursuant to ORC § 2721 *et seq.* and Article IV, Section 4(B) of the Ohio Constitution.

5. Venue is proper in this Court because the actions giving rise to this Complaint occurred within this County, and Defendants operate within this jurisdiction.

III. PARTIES

6. Plaintiff Justin Tjaden is a resident of Geneva-on-the-Lake, Ohio, and strives to be an Independent candidate for Ohio House District 99, which encompasses the lakeshore cities of Ashtabula County and roughly $\frac{3}{4}$ of Geauga County, Ohio.

7. Defendants, Geauga County Board of Elections, Ashtabula County Board of Elections, and their respective directors and members, is responsible for overseeing elections within Geauga and Ashtabula County, including Geauga County's sole responsibility of verification of petitions for candidates seeking ballot access for Ohio House District 99.

8. Secretary of State Frank LaRose is the statewide public official elected to oversee the administration of elections in Ohio.

9. Ohio Attorney General Dave Yost is the statewide public official elected to serve as legal advisor to the Ohio State government.

IV. ISSUES FOR REVIEW

10. Plaintiff re-alleges and incorporates by reference all preceding paragraphs of this Complaint as if fully set forth herein.

11. Plaintiff respectfully outlines the following legal issues this Court can expect to review, critical to the analysis and adjudication of this matter.

12. These issues, and the facts surrounding them, are unique. It appears no court in Ohio has rendered an opinion regarding an Independent candidate's proposed candidacy under ORC § 3513.257(C) *when neither major party candidate faced a primary challenger*. The issues are as follows:

a. Whether the "separate but equal" nature of the significant differences in signature requirements for Independent candidates, as compared to major party candidates *who never faced a challenger in the March 19, 2024 Primary Election*, violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, or the

Equal Protection Clause of Article I, Section 2 to the Ohio Constitution.

b. Whether the application of ORC § 3513.257(C), both facially and as applied to the facts herein, by requiring Independent candidates to gather a significantly higher number of signatures than major party candidates *who face no primary challengers*, infringe upon Plaintiff's and similarly situated Independent candidates' rights of free speech and rights of freedom of association as provided by the First Amendment to the United States Constitution or their rights of free speech as provided by Article I, Section 11 of the Ohio Constitution.

c. Whether the lack of a clear, objectively fair, and transparent processes for signature verification deny Plaintiff and similarly situated Independent candidates due process under the Fourteenth Amendment to the United States Constitution or Article 1, Section 16 of the Ohio Constitution.

d. Whether the failure to clearly and conspicuously notify Plaintiff of the Board's intent to take "official action" regarding his submitted petitions at the April 9, 2024 Special Meeting deny Plaintiff and similarly situated Independent candidates due process under the Fourteenth Amendment to the United States Constitution or Article 1, Section 16 of the Ohio Constitution.

e. Whether the refusal to allow Plaintiff to be heard and present evidence at the April 9, 2024 Special Meeting, wherein an "official act" took place, deny Plaintiff and similarly situated Independent candidates due process under the Fourteenth Amendment to the United States Constitution or Article 1, Section 16 of the Ohio Constitution.

f. Whether the review of Plaintiff's Independent candidacy petitions by a hostile "bipartisan" team consisting of Democrats and Republicans, deny Plaintiff and similarly situated Independent candidates' rights to due process under the Fourteenth Amendment to the United States Constitution or Article 1, Section 16 of the Ohio Constitution, as Plaintiff is to be afforded a fair, unbiased tribunal.

g. Whether a Board of Elections, empowered under ORC § 3501.11, has the authority to review individual elector signatures within a candidacy petition, compare it against the elector's "legal mark," and reject candidacy petitions after a sufficient number of signatures have been invalidated. If they do not, would those actions violate Plaintiff's right to due process under the Fourteenth Amendment to the United States Constitution or Article 1, Section 16 of the Ohio Constitution?

13. These issues are presented in light of the fundamental constitutional principles that underpin our electoral process and the rights of individuals to participate in that process on an equal basis. The resolution of these issues is essential not only for the Plaintiff's immediate candidacy but also for the integrity of the electoral system and the rights of all individuals who

seek to engage in political expression and association through Independent candidacies.

V. STATEMENT OF THE FACTS

14. Plaintiff re-alleges and incorporates by reference all preceding paragraphs of this Complaint as if fully set forth herein.

15. Plaintiff, Justin Tjaden, is a resident of Geneva-on-the-Lake, Ohio, and aspires to serve his community through elected office.

16. With a commitment to represent the diverse voices of Ohio House District 99, Mr. Tjaden declared his candidacy as an Independent for the General Election scheduled for November 5, 2024.

17. This declaration set in motion his effort to meet the statutory requirements for ballot access as prescribed by Ohio Revised Code § 3513.257.

18. Pursuant to ORC § 3513.257(C), an Independent candidate such as Mr. Tjaden is required to submit a nominating petition signed by 1% of the total electors in preceding gubernatorial election of District 99. ORC § 3513.257(C).

19. In the instant case, the required number of signatures is purported to be 495.

20. In contrast, candidates affiliated with major political parties, pursuant to ORC § 3513.05, are only required to submit 50 signatures to qualify for their respective party's primary election.

21. However, if the major party candidate does not face a primary challenger, they are automatically qualified for the general ballot.

22. During the course of his campaign, Mr. Tjaden met hundreds of voters from all walks of life and across the political spectrum – collecting signatures from Independents, unaffiliated voters, Republicans, and Democrats alike.

23. On March 9, 2024, Mr. Tjaden was endorsed by the Reform Party of the United States, emphasizing the legitimacy and integrity of Tjaden's campaign.

24. On March 18, 2024, Mr. Tjaden submitted 552 signatures to the Geauga County Board of Elections for verification, as primary certifiers of Mr. Tjaden's petitions in accordance with ORC § 3513.257.

25. The requirement of 495 signatures was not transmitted to Mr. Tjaden until he was submitting his petitions.

26. The number was, initially, erroneously communicated by members of the Ashtabula County Board of Elections, who called the Geauga Board to raise their threshold from their initial statement after Mr. Tjaden handed over his petitions and declared his collected total.

27. Defendants sent petition parts that related to Ashtabula County's portion of District 99 to the Ashtabula County Board of Elections.

28. Mr. Tjaden was told by employees of Defendant Geauga Board of Elections that *he* was to call the *Board* over the next two weeks to check on the status of his petitions, because the Board *would not* contact Mr. Tjaden when the review was complete.

29. Upon their "review," the Geauga and Ashtabula County Boards of Elections "determined" that only 371 of Mr. Tjaden's signatures were valid, falling short of the required amount of 495 signatures (See Exhibits A and B, true and accurate copies of reports provided by the Geauga and Ashtabula Boards of Elections, respectively).

30. On March 28, 2024, the determination of valid signatures, and the Board's intent to *possibly* refuse certification of qualification for the ballot, was communicated via phone conference and email to Mr. Tjaden (See Exhibit C, a true and accurate copy of the email delivered to Mr. Tjaden, wherein an employee for the Board notified Mr. Tjaden that the Geauga

Board was scheduled to meet on April 9, 2024 Special Meeting, where the Board, “will be reviewing the petitions and *may* take official action.”).

31. On April 2, 2024, Mr. Tjaden delivered a letter to the Board, noting his dispute regarding the statutory signature requirements and requesting the Board “table certification of my petition until a Court rule on the legality of the statute concerning the number and nature of signatures required for Independent candidates, as outlined in ORC § 3513.257.” (See Exhibit D, a true and accurate copy of the letter delivered to the Board).

32. The April 2 letter further requested members of the Board contact Mr. Tjaden at their earliest convenience to discuss the matter of certification. Exhibit D.

33. Employees for the Board did not confirm receipt of the April 2 letter until April 4, 2024 and did not address Mr. Tjaden’s request for a meeting to discuss the petitions.

34. Because of the Board’s silence, Mr. Tjaden attempted to file a Joint Motion for Temporary Restraining Order and Preliminary Injunction and Complaint for Declaratory Judgment on April 8, 2024.

35. Mr. Tjaden relayed this filing to the Board via email at 11:56 a.m. on April 8, 2024.

36. Also included in the email was an additional letter from Mr. Tjaden, delivered to the Board, wherein the letter stated:

Furthermore, should the Board consider bringing up certification at the upcoming special meeting scheduled for April 9, 2024, I kindly request that I be provided with the time and location of the meeting and be allowed an opportunity to be heard at this hearing, per my constitutional rights.

(See Exhibits E and F, true and accurate copies of the April 8, 2024 email and correspondence, respectively.)

37. On April 9, at 7:10 a.m., 19 hours after the initial request and less than two hours

before the Special Meeting, Mr. Tjaden received an email from Defendant Michelle Lane, stating:

Good morning,
The Board meeting is today at 9:00 a.m. as posted on our website.
Independent petitions are on the agenda.

(See Exhibit G, a true and accurate copy of the 7:10 a.m. email).

38. Attached hereto is Exhibit H, a true and accurate mobile screenshot of Geauga Board's website posting and the "agenda."

39. To this point, it had still not been confirmed whether the Board will be taking "official action" at the April 9, 2024 Special Meeting.

40. To this point, it had also still not been confirmed whether the Board would hold a hearing or whether the Board would allow Mr. Tjaden to speak, present evidence, or do anything beyond be present at the time "Independent Petitions" were discussed during the jam-packed agenda.

41. After waking to the prior email, Mr. Tjaden responded at 8:52 a.m.:

Ms. Lane:

Obviously I won't be at this meeting. It's concerning that you are refusing me a right to be heard when you are taking up my petitions. I will remind the board, through this email, that pursuant to ORC 3153.262, Independent petitions do not need to be certified until May 31. To certify after 1) I have requested to be heard, 2) after a lawsuit has been filed, and 3) when the board has nearly two months before their certification deadline, would be an egregious violation of my constitutional right to equal protection and due process. I'm urging the board to not make matters worse and to table my petitions until a court has ruled on the validity of ORC 3513.257(C).

(See Exhibit I, a true and accurate copy of the 8:52 a.m. email).

42. At 1:49 p.m., Mr. Tjaden received correspondence from Geauga County Assistant Prosecutor Kristin Rine, informing Mr. Tjaden of her Representation of the Board. She did not relay any information about the special meeting in this initial introduction.

43. At 3:32 p.m. after a request for more information was sent by Mr. Tjaden, Defendant Rine responded:

Mr. Tjaden:

The Geauga County Board of Elections took action at today's meeting and did not certify your candidacy for Ohio House 99th District based on review of the petition and the insufficient number of valid signatures as required by state law.

(See Exhibit J, a true and accurate copy of the April 9, 2024 email conversation between Mr. Tjaden and Defendant Rine.)

44. Defendant's April 9, 2024 decision to exclude Mr. Tjaden from the ballot based on the aforementioned findings has precipitated this instant legal challenge.

45. On April 10, 2024, Plaintiff received notice from this Court that the original filing in the instant case was rejected due to clerical error in Plaintiff's Praeclipe for Service. A true and accurate copy of the rejection email is attached hereto as Exhibit K.

46. Over the course of his Independent campaign, Mr. Tjaden sustained substantial physical, emotional, and financial hardship, pushing for a viable third option for an electorate in the face of political forces unwilling and/or unable to assist.

47. Mr. Tjaden put his law practice and personal relationships in jeopardy as he pursued his candidacy, recognizing the magnitude of the message he spread was too important if Ohioans were to ever see a truly representative government again.

48. Mr. Tjaden contends that the disparate treatment of Independent candidates regarding signature requirements, especially when neither major party candidate faces primary opponents, coupled with the opaque and inconsistent verification process and subsequent "hearings" that refused him a right to be heard, violates his constitutional rights and those of the voters who seek to support Independent candidates.

VI. STANDARD OF REVIEW

49. Plaintiff re-alleges and incorporates by reference all preceding paragraphs of this Complaint as if fully set forth herein.

50. First, as a matter of course, Plaintiff recognizes that:

It is a well-settled rule that an Act of the General Assembly is entitled to a strong presumption of constitutionality... Moreover, challenged legislation will not be invalidated unless the challenger establishes the unconstitutional nature of the statute beyond a reasonable doubt.

State v. Hochhausler, 76 Ohio St.3d 455, 668 N.E.2d 457 (1996) (internal citation removed).

51. Regarding the issue of standing:

We find that standing must be based on the number of valid signatures the candidate submits. Thus, standing is demonstrated in the present matter by the fact that [Plaintiff] ended up with less than the statutory required number of signatures after [Defendants] reviewed his nominating petitions.

State ex rel. Wilcoxson v. Harsman, 2d Dist. Montgomery No. 24095, 2010-Ohio-4048.

52. Transitioning to Plaintiff's claims, 42 U.S.C. § 1983 states, in pertinent part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.

53. Therefore, the elements of a 42 U.S.C. § 1983 are: (1) a person(s) acting under the color of state law (2) deprived Plaintiff of a right protected by the Constitution or laws of the United States. *Williams v. Ohio BMV*, S.D.Ohio No. 3:19-cv-00240, 2019 U.S. Dist. LEXIS 196402 (Nov. 12, 2019), citing *Shadrick v. Hopkins County*, Ky., 805 F.3d 724, 736 (6th Cir.

2015).

54. Regarding declaratory judgment, Ohio Revised Code § 2721.02 states, in pertinent part:

(A) Subject to division (B) of this section, courts of record may declare rights, status, and other legal relations whether or not further relief is or could be claimed. No action or proceeding is open to objection on the ground that a declaratory judgment or decree is prayed for under this chapter. The declaration may be either affirmative or negative in form and effect. The declaration has the effect of a final judgment or decree.

55. In the present case, Plaintiff asserts that the application of ORC § 3513.257 imposes an unconstitutional burden on Independent candidates, including him, thereby justifying the Court's consideration of injunctive relief under the aforementioned standards.

56. ORC § 3513.257 states:

Each person desiring to become an independent candidate for an office for which candidates may be nominated at a primary election, except persons desiring to become independent joint candidates for the offices of governor and lieutenant governor and for the offices of president and vice-president of the United States, shall file no later than four p.m. of the day before the day of the primary election immediately preceding the general election at which such candidacy is to be voted for by the voters, a statement of candidacy and nominating petition as provided in section 3513.261 of the Revised Code. Persons desiring to become independent joint candidates for the offices of governor and lieutenant governor shall file, not later than four p.m. of the day before the day of the primary election, one statement of candidacy and one nominating petition for the two of them. Persons desiring to become independent joint candidates for the offices of president and vice-president of the United States shall file, not later than four p.m. of the ninetieth day before the day of the general election at which the president and vice-president are to be elected, one statement of candidacy and one nominating petition for the two of them. The prospective independent joint candidates' statement of candidacy shall be filed with the nominating petition as one instrument.

The statement of candidacy and separate petition papers of each candidate or pair of joint candidates shall be filed at the same time as one instrument.

The nominating petition shall contain signatures of qualified electors of the district, political subdivision, or portion of a political subdivision in which the candidacy is to be voted on in an amount to be determined as follows:

(A) If the candidacy is to be voted on by electors throughout the entire state, the nominating petition, including the nominating petition of independent joint candidates for the offices of governor and lieutenant governor, shall be signed by no less than five thousand qualified electors, provided that no petition shall be accepted for filing if it purports to contain more than fifteen thousand signatures.

(B) If the candidacy is to be voted on by electors in any district, political subdivision, or part thereof in which less than five thousand electors voted for the office of governor at the most recent election for that office, the nominating petition shall contain signatures of not less than twenty-five qualified electors of the district, political subdivision, or part thereof, or a number of qualified signatures equal to at least five per cent of that vote, if this number is less than twenty-five.

(C) If the candidacy is to be voted on by electors in any district, political subdivision, or part thereof in which five thousand or more electors voted for the office of governor at the most recent election for that office, the nominating petition shall contain a number of signatures equal to at least one per cent of those electors.

All nominating petitions of candidates for offices to be voted on by electors throughout the entire state shall be filed in the office of the secretary of state. No nominating petition for the offices of president and vice-president of the United States shall be accepted for filing unless there is submitted to the secretary of state, at the time of filing the petition, a slate of presidential electors sufficient in number to satisfy the requirement of the United States Constitution. The secretary of state shall not accept for filing the statement of candidacy of a person who desires to be an independent candidate for the office of governor unless it also shows the joint candidacy of a person who desires to be an independent candidate for the office of lieutenant governor, shall not accept for filing the statement of candidacy of a person who desires to be an independent candidate for the office of lieutenant governor unless it also shows the joint candidacy of a person who desires to be an independent candidate for the office of governor, and shall not accept for filing the statement of candidacy of a person who desires to be an independent candidate to the office of governor or lieutenant governor who, for the same election, has already filed a declaration of candidacy, a declaration of intent to be a write-in candidate, or a statement of candidacy, or has become a candidate by the filling of a vacancy under section 3513.30 of the Revised Code for any other state office or any federal or county office.

Nominating petitions of candidates for offices to be voted on by electors within a district or political subdivision comprised of more than one county but less than all counties of the state shall be filed with the boards of elections of that county or part of a county within the district or political subdivision which had a population greater than that of any other county or part of a county within the district or political subdivision according to the last federal decennial census.

Nominating petitions for offices to be voted on by electors within a county or

district smaller than a county shall be filed with the board of elections for such county.

No petition other than the petition of a candidate whose candidacy is to be considered by electors throughout the entire state shall be accepted for filing if it appears on its face to contain more than three times the minimum required number of signatures. A board of elections shall not accept for filing a nominating petition of a person seeking to become a candidate if that person, for the same election, has already filed a declaration of candidacy, a declaration of intent to be a write-in candidate, or a nominating petition, or has become a candidate by the filling of a vacancy under section 3513.30 of the Revised Code for any federal, state, or county office, if the nominating petition is for a state or county office, or for any municipal or township office, for member of a city, local, or exempted village board of education, or for member of a governing board of an educational service center, if the nominating petition is for a municipal or township office, or for member of a city, local, or exempted village board of education, or for member of a governing board of an educational service center. When a petition of a candidate has been accepted for filing by a board of elections, the petition shall not be deemed invalid if, upon verification of signatures contained in the petition, the board of elections finds the number of signatures accepted exceeds three times the minimum number of signatures required. A board of elections may discontinue verifying signatures when the number of verified signatures on a petition equals the minimum required number of qualified signatures.

Any candidate, other than a candidate for judge of a municipal court, county court, or court of common pleas, who files a nominating petition may request, at the time of filing, that the candidate be designated on the ballot as a nonparty candidate or as an other-party candidate, or may request that the candidate's name be placed on the ballot without any designation. Any such candidate who fails to request a designation either as a nonparty candidate or as an other-party candidate shall have the candidate's name placed on the ballot without any designation.

The purpose of establishing a filing deadline for independent candidates prior to the primary election immediately preceding the general election at which the candidacy is to be voted on by the voters is to recognize that the state has a substantial and compelling interest in protecting its electoral process by encouraging political stability, ensuring that the winner of the election will represent a majority of the community, providing the electorate with an understandable ballot, and enhancing voter education, thus fostering informed and educated expressions of the popular will in a general election. The filing deadline for independent candidates required in this section prevents splintered parties and unrestrained factionalism, avoids political fragmentation, and maintains the integrity of the ballot. The deadline, one day prior to the primary election, is the least drastic or restrictive means of protecting these state interests. The general assembly finds that the filing deadline for independent candidates in primary elections required in this section is reasonably related to the state's purpose of

ensuring fair and honest elections while leaving unimpaired the political, voting, and associational rights secured by the first and fourteenth amendments to the United States Constitution.

57. The powers of County Board of Elections are codified in ORC § 3501.11, which states, in pertinent part (emphasis added):

Each board of elections shall exercise by a majority vote all powers granted to the board by Title XXXV of the Revised Code, shall perform all the duties imposed by law, and shall do all of the following:

...

(K)(1) Review, examine, and certify the sufficiency and validity of petitions and nomination papers, and, after certification, return to the secretary of state all petitions and nomination papers that the secretary of state forwarded to the board;

...

VII. LEGAL ANALYSIS

A. The Board Overstepped its Statutory Authority by Invalidating Elector's Signatures Within the Nominating Petition, per *State ex rel. Crowl v. Delaware Cty. Bd. of Elections*, 144 Ohio St.3d 346, 2015-Ohio-4097, 43 N.E.3d 406

58. Plaintiff re-alleges and incorporates by reference all preceding paragraphs of this Complaint as if fully set forth herein.

59. In rejecting Mr. Tjaden's candidacy "based on review of the petition and the insufficient number of valid signatures as required by state law[,"] (Exhibit J) the Board overstepped its statutory authority in prematurely reviewing elector's signatures – a job meant for the public.

60. In *State ex rel. Crowl v. Delaware Cty. Bd. of Elections*, 144 Ohio St.3d 346, 2015-Ohio-4097, 43 N.E.3d 406, the Ohio Supreme Court took up the issue of the Board of Election's review of elector's signatures on a Township Trustee's nominating petition. The Court determined that it's not in the Board of Elections purview to "police petition signatures for nonconforming legal marks"

The "Nominating Petition and Statement of Candidacy for Township Office" used

by Crowl, which was prescribed by the secretary of state, Form No. 3-R (06-10), provides a space for the elector's "signature." ... [V]oters did precisely what the form instructed them to do: they provided a signature. The form did not ask the electors to provide his or her "legal mark," nor did it alert them that a mismatch could invalidate their signatures.

Boards of elections have a statutory duty to certify the validity of petitions. R.C. 3501.11(K). This court has long held that these county boards must confirm that signatures are *genuine*... The design of Form No. 3-R strongly suggests that the secretary's interpretation of R.C. 3501.11(K) to which we accord great deference—obliges the boards to confirm the authenticity of signatures, *but it does not impose on them the responsibility to enforce R.C. 3501.011 by policing petition signatures for nonconforming legal marks.*

Crowl, 144 Ohio St.3d 346, 347 (emphasis added).

61. Form No. 3-R is largely identical to Form No. 3-G, which Mr. Tjaden was required to complete for his candidacy.

62. ORC § 3501.11(K)(1) makes it clear that the Board's duty is to review examine, and certify the sufficiency and validity of *petitions and nomination papers*. This means the Board is to review the signature, address, and any additional requirements of the candidate in the Statement of Candidacy, as well as the signature and additional requirements in the Circulator's Statement. However, Form No. 3-G, in resembling Form No 3-R in the *Crowl* decision, makes it clear that it's not the Board of Elections duty, at least *initially*, to review elector's signatures, or even address those signatures, so long as the signature and address provided complies with the Board's ability to identify the elector and determine the signature is not fraudulent.

63. This belief is reinforced by reviewing ORC § 3501.38 – "General rules for petitions and declarations of candidacy." There, it is striking to note that in the statute governing the "general rules" of this matter, the phrase "legal mark" is nowhere to be found, but instead states "Each signer may also print the signer's name, so as to clearly identify the signer's signature." ORC § 3501.38(B).

64. This provision would only make sense if signers of candidacy petitions under ORC § 3501.38 did not have to provide a “legal mark” pursuant to ORC § 3501.011.

65. Without this requirement, the legal mark combined with the elector’s address would be sufficient to identify the elector, and there would be no need for a printed name.

66. In fact, the Geauga and Ashtabula County Boards of Elections consistently identified “invalid” electors with the information provided.

67. Exhibits A and B, *supra*, shows both Ashtabula and Geauga Boards of Elections were able to identify the signers of signatures they invalidated. The signature and elector were identified through the signature and address provided, but was invalidated as “not genuine” compared to the elector’s “legal mark.”

68. Other signatures were invalidated because of an “insufficient address,” even though, again, the elector was identified by the respective Boards based on the address provided.

69. The signatures were invalidated because, as an example, addresses were provided stating “555 Plymouth,” instead of “555 Plymouth Rd.” See Generally Exhibits A and B.

70. ORC § 3501.38(B) makes it clear that a “legal mark” is not needed in this instance because, if it were, the elector would not need to also print their name, “so as to clearly identify the signer’s signature.” The “legal mark” would already make the signer readily identifiable.

71. In fact, the physical act of registering to vote with one’s “legal mark” via Ohio’s Voter Registration and Information Update Form (a true and accurate copy of which is attached hereto as Exhibit L) weighed against the elector signing Petition Form 3-G, shows clearly that it’s unreasonable to expect identical signatures because the spaces provided for signing are *vastly* different.

72. When printed on standard 8.5”x11” paper, the block provided for a “Signature” on

Exhibit K measures 11.5 cm wide, by 1.75 cm tall, for a total surface area of 20.125 cm² to provide a “legal mark.”

73. Comparatively, the block provided for a “Signature” on Petition form 3-G, when printed on standard 8.5”x11” paper (See Generally Exhibits A and B) measures 3.8 cm wide by 0.7 cm tall, for a total surface area of 2.66 cm² to provide a signature.

74. This means the signature block on Form 3-G is over 7.5 times smaller than the signature block provided on Ohio’s Voter Registration Form.

75. Logic would follow that a signature, but not one’s “legal mark” is sufficient for purposes of satisfying ORC § 3513.257(C) because the space is simply too small to adequately make an “identical legal mark” to the substantially larger space provided – especially when one considers older populations and other physical hurdles that some electors face.

76. If the signer is worried about not being identified properly because they were unable to provide a “legal mark”, they can print their name above their signature in accordance with ORC § 3501.38(B).

77. This interpretation of the Board’s duties flows with basic concepts of statutory interpretation. When analyzing a statute:

To discern [statutory] intent, we first consider the statutory language, reading all words and phrases in context and in accordance with the rules of grammar and common usage. Id. We give effect to the words the General Assembly has chosen, and we may neither add to nor delete from the statutory language... When the statutory language is unambiguous, we apply it as written without resorting to rules of statutory interpretation or considerations of public policy... In other words, our review “starts and stops” with the unambiguous statutory language.

Gabbard v. Madison Local School Dist. Bd. Of Edn. (2021), 165 Ohio St.3d 390, 2021-Ohio-2067, 179 N.E.3d 1169, ¶ 13 (internal citations removed).

78. Here, it is unambiguous and cannot be disputed that the General Assembly did not

intend to require electors to provide their “legal mark” when signing Form 3-G.

79. If they had, the signature block on Form 3-G wouldn’t be 7.57 times *smaller* than the space provided for a “legal mark” on Ohio’s Voter Registration Page, and the General Assembly wouldn’t have allowed electors to print their name as identifiers above the signature provided.

80. This path is further reinforced by the procedural protections already in place *after* the Board of Elections reviews the Statement of Candidacy and Nominating Statement, because as it sits individuals who have petitions rejected at the outset are granted zero statutory reprieve. See *State ex rel. Crowl*, 144 Ohio St.3d 346, 347, O’Connor, C.J., concurring¹.

81. Under this more practical interpretation, the question of signature validity would be addressed in ORC § 3513.263, which states, in pertinent part (emphasis added):

All petition papers so transmitted to a board of elections, and all nominating petitions filed with a board of elections shall, under proper regulation, be open to public inspection until four p.m. of the eightieth day before the day of such general election. Each board shall, not later than the seventy-eighth day before the day of such general election examine and determine the *sufficiency of the signatures* on the petition papers transmitted to or filed with it and the *validity or invalidity of petitions* filed with it, and shall return to each other board all petition papers transmitted to it by such other board, together with its certification of its determination as to the validity or invalidity of signatures thereon. A signature on a nominating petition is not valid if it is dated more than one year before the date the nominating petition was filed. All other matters affecting the validity or invalidity of such petition papers shall be determined by the board with whom such petition papers were filed.

Written protests against such nominating petitions may be filed by any qualified elector eligible to vote for the candidate whose nominating petition the elector objects to, not later than the seventy-fourth day before the general election. Such protests shall be filed with the election officials with whom the nominating petition was filed. Upon the filing of such protests, the election officials with whom it is filed shall promptly fix the time and place for hearing it, and shall forthwith *mail*

¹ “However, the Revised Code does not appear to contain a comparable provision for a candidate to challenge the disqualification of the petition; certainly, the parties have not pointed us to any provision. Nevertheless, boards of elections have permitted candidates to appear at board meetings to present evidence and argument in opposition to disqualifications.”

notice of the filing of such protest and the time and place for hearing it to the person whose nomination is protested. They shall also forthwith *mail notice of the time and place* fixed for the hearing to the person who filed the protest. At the time and place fixed, such election officials shall hear the protest and determine the validity or invalidity of the petition. Such determination shall be final.

82. Once the Board determines the *sufficiency of the signatures*, a.k.a. the determination that the petitions have the requisite number of signatures for the office sought, and then determine the *validity* of the Statement of Candidacy and Circulator Statement in compliance with ORC §§ 3513.09 and 3501.38(E)(1), respectively, they are not to review each elector's signature individually to match the "legal mark," but instead review the signatures to ensure none are clearly fraudulently signed, and leave further determination to the public – who can object to any number of elector's signatures.

83. Once an official objection is made, Mr. Tjaden would then be afforded a hearing, after being *mailed actual notice of the hearing date and location*, to determine the validity of any disputed elector's signature.

84. This procedure is further outlined in ORC § 3501.39, which states, in pertinent part (emphasis added):

(A) The secretary of state or a board of elections shall accept any petition described in section 3501.38 of the Revised Code unless one of the following occurs:

(1) A written protest against the petition or candidacy, naming specific objections, is filed, a hearing is held, and a determination is made by the election officials with whom the protest is filed that the petition is invalid, in accordance with any section of the Revised Code providing a protest procedure.

(2) A written protest against the petition or candidacy, naming specific objections, is filed, a hearing is held, and a determination is made by the election officials with whom the protest is filed that the petition violates any requirement established by law.

(3) In the case of an initiative petition received by the board of elections, the petition falls outside the scope of authority to enact via initiative or does not satisfy the

statutory prerequisites to place the issue on the ballot, as described in division (M) of section 3501.38 of the Revised Code. The petition shall be invalid if any portion of the petition is not within the initiative power.

(4) The candidate's candidacy or the petition violates the requirements of this chapter, Chapter 3513. of the Revised Code, or any other requirements *established by law*.

85. Again, "R.C. 3501.11(K)... obliges the boards to confirm the authenticity of signatures, but it does not impose on them the responsibility to enforce R.C. 3501.011 by policing petition signatures for nonconforming legal marks." *Crowl*, 144 Ohio St.3d 346, ¶ 11 (2015). See also *State ex rel. Scott v. Franklin Cty. Bd. of Elections*, 139 Ohio St.3d 171, 174, J. Kennedy, Concurring.²

86. In conclusion, the Board's actions, as detailed herein, contravene the clear directive set forth by Ohio law and binding precedential rulings. The invalidation of elector signatures on Mr. Tjaden's nominating petition represents an overreach of the Board's statutory duties, with significant implications for Mr. Tjaden's candidacy and, by extension, the democratic rights of the voters in Ohio House District 99.

87. Such actions not only disregard the legislature's intent as articulated in ORC § 3501.11(K)(1) and bypass a perfectly logical flow of due process, but also imperils the very integrity of the electoral process for all Ohioans. Accordingly, the Plaintiff urges this Court to recognize the Board's misapplication of the law in accordance with the *Crowl* decision, rectify the erroneous disqualification of elector signatures, and uphold the sanctity of the electoral process by ensuring that every legitimate signature—and thus every voice—is duly considered and counted.

2 "Form No. [3-G] creates a trap for the unwary. It is fundamentally unfair, and an abuse of discretion, to tell voters that a 'signature' will be acceptable, and then invalidate some of those signatures because they do not satisfy narrower, undisclosed criteria."

88. In doing so, the Court will affirm the principles of due process, fair play, and democratic participation that are hallmarks of our constitutional republic.

B. The Board's Refusal to Notify Plaintiff of "Official Actions" taking place the April 9, 2024 Special Meeting; Their Subsequent Refusal to Allow Plaintiff to be heard at the April 9, 2024 Special Meeting; and Their Failure to Provide an Unbiased Tribunal is an Unconstitutional Violation of Due Process Afforded by the 14th Amendment or Article 1, Section 16 of the Ohio Constitution

89. Plaintiff re-alleges and incorporates by reference all preceding paragraphs of this Complaint as if fully set forth herein.

90. "Due process under the Ohio and United States Constitutions demands that the right to notice and an opportunity to be heard must be granted at a meaningful time and in a meaningful manner where the state seeks to infringe a protected liberty or property interest."

State v. Hochhausler, 76 Ohio St.3d 455, 459, 668 N.E.2d 457 (1996).

91. It has been long established in this country that "some form of hearing is required before an individual is finally deprived of a property interest." *Mathews v. Eldridge*, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976), citing *Wolff v. McDonnell*, 418 U.S. 539, 557-558 (1974). See also *Phillips v. Commissioner*, 283 U.S. 589, 596-597 (1931), *Dent v. West Virginia*, 129 U.S. 114, 124-125 (1889).

92. It cannot be disputed that Mr. Tjaden has a liberty and property interest in being named to the ballot as an Independent Candidate for the November General Election.

93. "[T]he right to procedural due process is 'absolute' in the sense that it does not depend upon the merits of a claimant's substantive assertions..." *Carey v. Piphus*, 435 U.S. 247, 98 S.Ct. 1042, 55 L.Ed.2d 252 (1978).

94. Further, "Due process requires that an individual in an administrative proceeding is entitled to a fair hearing before an impartial tribunal." *Lake Front Med., LLC v. Ohio DOC*,

2022-Ohio-4281, 202 N.E.3d 156 (11th Dist.), quoting *Serednesky v. Ohio State Bd. of Psychology*, 10th Dist. Franklin No. 05AP-633, 2006-Ohio-3146, ¶ 21.

95. "However, the concept of due process is flexible and varies depending on the importance attached to the interest and the particular circumstances under which the deprivation may occur." *Hochhausler*, 76 Ohio St.3d 455, 459, citing *Walters v. Natl. Assn. of Radiation Survivors* (1985), 473 U.S. 305, 320, 105 S. Ct. 3180, 3189, 87 L. Ed. 2d 220, 232.

96. The determination of whether the procedures taken by the Board were a violation of Plaintiff's due process rights

[G]enerally requires consideration of three distinct factors: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Mathews, 424 U.S. 319, 335 (1976), see also *Hochhausler*, 76 Ohio St.3d 455, 460.

i. Mathews Test – First Prong

97. Applying the first Mathews factor, the private interest at stake was significant.

98. "All political power is inherent in the people. Government is instituted for their equal protection and benefit." Ohio Const. Article I, § 2.

99. We as a nation have long recognized the right to vote for your preferred candidate is as fundamental, if not more so, than any other American right:

No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined. Our Constitution leaves no room for classification of people in a way that unnecessarily abridges this right.

Wesberry v. Sanders, 376 U.S. 1, 84 S.Ct. 526, 11 L.Ed.2d 481 (1964).

100. This belief stemmed from the days of our country's founding, when James Madison wrote:

"Who are to be the electors of the [F]ederal Representatives? Not the rich more than the poor; not the learned more than the ignorant; not the haughty heirs of distinguished names, more than the humble sons of obscure and unpropitious fortune. The electors are to be the great body of the people of the United States..."

The Federalist, No. 57 (Cooke ed. 1961), at 385.

101. Mr. Tjaden sought to participate in the democratic process, a foundational element of civic engagement and public service. The ability to run for public office is not a private concern but one that implicates the bedrock principles of representative democracy. The interests implicated here are not only Mr. Tjaden's but also those of the electorate of Ohio House District 99, who have a vested interest in a fair and free election.

ii. Mathews Test – Second Prong

102. Under the second Mathews factor, the risk of erroneous deprivation of Mr. Tjaden's interest was high, and in fact did occur.

103. The Board holds immense, but not absolute, power when it comes to their review of petitions.

104. "Under R.C. 3501.39(A)(3), a Board of Elections has the authority, *sua sponte*, to reject a nominating petition if the petition violates the requirements of R.C. Chapter 3513 or any other law." *State ex rel. Lorenzi v. Mahoning Cty. Bd. of Elections*, 7th Dist. Mahoning No. 07 MA 127, 2007-Ohio-5879.

105. This authority, while necessary for maintaining the integrity of the electoral process, can also lead to the exclusion of candidates from the ballot, thereby limiting voter choice and undermining the principles of democratic representation.

106. This authority does not grant the Board the ability to "review" petitions for faulty

“legal marks” or addresses to ensure the number of “valid” signatures falls well short of the required amount.

107. This authority also does not grant the Board the ability to reject petitions without a hearing that Mr. Tjaden has been clearly notified of prior and has the opportunity to attend.

108. There are no appeals processes for a hopeful candidate after the Board rejects a petition in the alleged manner of this case. See *State ex rel. Crowl*, 144 Ohio St.3d 346, 347, O’Connor, C.J., concurring, Footnote 1, *supra*.

109. By taking up Mr. Tjaden’s petitions for “official action,” the Board held a hearing as to the determination of Mr. Tjaden’s signatures.

110. “Due process under the Ohio and United States Constitutions demands that the right to notice and an opportunity to be heard must be granted at a meaningful time and in a meaningful manner where the state seeks to infringe a protected liberty or property interest.” *Hochhausler*, 76 Ohio St.3d 455, 459 (1996).

111. “This right to be heard has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest.” *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 657, 94 L.Ed. 865, 873 (1950).

112. Further:

An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections... The notice must be of such nature as reasonably to convey the required information... and it must afford a reasonable time for those interested to make their appearance... But if with due regard for the practicalities and peculiarities of the case these conditions... are reasonably met, the constitutional requirements are satisfied. ‘The criterion is not the possibility of conceivable injury but the just and reasonable character of the requirements, having reference to the subject with which the statute deals.’

But when notice is a person's due, process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it. The reasonableness and hence the constitutional validity of any chosen method may be defended on the ground that it is in itself reasonably certain to inform those affected... or, where conditions do not reasonably permit such notice, that the form chosen is not substantially less likely to bring home notice than other of the feasible and customary substitutes.

Id. (internal citations removed), citing *Am. Land Co. v. Zeiss*, 219 U.S. 47, 31 S.Ct. 200, 55 L.Ed. 82 (1911).

113. The Board will inevitably suggest that it provided notice to Mr. Tjaden through emails and through the Board's publication of the April 9, 2024 Special Meeting on its website.

114. However, in review of the evidence, the Board exclusively used vague language to never adequately notify Mr. Tjaden that the petitions he submitted would definitively be taken up at the April 9 meeting, presumably to ensure Mr. Tjaden never actually attended the hearing. (See Exhibit C, wherein the Board, "will be reviewing the petitions and *may* take official action." See also Exhibit G, delivered at 8:10 a.m.: "The Board meeting is today at 9:00 a.m. as posted on our website; Independent petitions are on the agenda.")

115. Nowhere in the evidence can it be shown that Mr. Tjaden was given direct, actual notice that *his* petitions would be addressed, and not merely a discussion about *Independent* petitions, a discussion that could have involved relaying information of Mr. Tjaden's prior lawsuit and a decision to table a formal declaration – which is what Mr. Tjaden requested in the first place.

116. Regarding the website publication, "It would be idle to pretend that publication alone, as prescribed here, is a reliable means of acquainting interested parties of the fact that their rights are before the [Board]." *Mullane*, 339 U.S. 306, 315 (1950) (discussing newspaper

publications).

117. Not only that, but the *Mullane* court was clear in a manner directly analogous to this case when it stated, “The chance of actual notice is further reduced when, as here, the notice required *does not even name those whose attention it is supposed to attract*, and does not inform acquaintances who might call it to attention. In weighing its sufficiency on the basis of equivalence with actual notice, we are unable to regard this as more than a feint.” *Id.* (emphasis added).

118. “Where the names and post-office addresses of those affected by a proceeding are at hand, the reasons disappear for resort to means less likely than the mails to apprise them of its pendency.” *Mullane*, 339 U.S. 306, 318 (1950). The Board had Mr. Tjaden’s address, and thus had no excuse to not provide him actual, written notice, delivered to him, notifying him of the “hearing” that was to take place. See also ORC § 3513.263³.

119. The Board’s decision to hold a review of Mr. Tjaden’s petitions without adequate notice to him, and taking official action without providing a reasonable opportunity for Mr. Tjaden to be heard, collectively show a process that was not only flawed but fundamentally unconstitutional.

120. Further, as outlined in the March 28, 2024 email (Exhibit C), the Geauga County Board of Elections Office Administrator stated:

Point of procedure:

The Geauga County Board of Elections had two sets of *bi-partisan* teams review the signatures that we deemed invalid. Our Board has instructed its staff to always review petitions with multiple sets of eyes.

³ “...Upon the filing of such protests, the election officials with whom it is filed shall promptly fix the time and place for hearing it, and shall forthwith *mail notice of the filing* of such protest and the time and place for hearing it to the person whose nomination is protested. They shall also forthwith *mail notice of the time and place* fixed for the hearing to the person who filed the protest.”

We will not speak to the procedure that Asthbulia (sic) County Board of Elections uses to verify petitions but we will state we requested that a double check was done on your set of petitions. We have been assured that they have been double-checked.

121. This email confirms that, at least for the Geauga County Board of Elections, Mr. Tjaden had no representation in the room where signatures were being reviewed for validation.

122. “Bi-Partisan” is known to mean “Democrat and Republican” officials were reviewing Mr. Tjaden’s signatures.

123. Mr. Tjaden is not a Democrat. He is not a Republican. He is running as an Independent candidate.

124. To say there was a bi-partisan review of Mr. Tjaden’s signatures only confirms that members of two parties, neither of which want Mr. Tjaden to be on the November ballot, were responsible for deciding if he qualified for the November election.

125. “A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the probability of unfairness.” *In re Murchison*, 349 U.S. 133, 75 S.Ct. 623, 99 L.Ed. 942 (1955).

126. “The Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases.” *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 100 S.Ct. 1610, 64 L.Ed.2d 182 (1980).

127. This email effectively says, “We know you are worried about the wolf overseeing your hen house, but don’t worry, we have a hyena looking it over as well.”

128. The Geauga Board’s actions were also in violation of Ohio Open Meetings Act, ORC § 121.22, which requires public bodies in Ohio to conduct *all* public business in open meetings that the public may attend and observe, something that was not done for the review of

Plaintiff's petitions, even though it is official business.

129. This lack of procedural fairness carries a significant risk of wrongful exclusion from the ballot, as appears to have been the case with Mr. Tjaden's candidacy. Had he been given the right of an advocate reviewing signatures during their review, or opportunity to be heard at the "hearing," he could have had the ability to provide sufficient evidence to reverse the Board's initial decision. See *State ex rel. Scott v. Franklin Cty. Bd. of Elections*, 139 Ohio St.3d 171, ¶ 19, 2014-Ohio-1685, 10 N.E.3d 697.

iii. Mathews Test – Third Prong

130. The third Mathews factor considers the value of additional or substitute procedural safeguards.

131. As noted in Chief Justice O'Connor's concurring opinion in *Crowl*, "[T]he Revised Code does not appear to contain a comparable provision for a candidate to challenge the disqualification of the petition; certainly, the parties have not pointed us to any provision." *Crowl*, 144 Ohio St.3d 346, 347, O'Connor, C.J., concurring.

132. Initially, it should be noted that the Board completely ignored at least one procedural safeguard outlined in ORC § 3513.262 which states, in pertinent part:

Each board shall, not later than the next fifteenth day of July, or if the primary election was a presidential primary election, not later than the end of the tenth week after the day of that election, examine and determine the sufficiency of the signatures on the petition papers transmitted to or filed with it, and the validity of the petitions filed with it, and shall return to the secretary of state all petition papers transmitted to it by the secretary of state, together with its certification of its determination as to the validity or invalidity of signatures thereon, and shall return to each other board all petition papers transmitted to it by such other board, as provided in this section, together with its certification of its determination as to the validity or invalidity of signatures thereon.

133. This statute grants a review period extending until May 31, 2024.

134. After Plaintiff submitted his petitions on March 18, 2024, following this statutory

framework would have provided the Board ample time to consider the merits of the petition and the validity of signatures *after* court adjudication, without rushing to a premature conclusion that would disenfranchise Relator and his supporters.

135. Such safeguards could have also included timely, direct notice of the board meeting, and an opportunity for Mr. Tjaden to address the Board. These measures would have served to ensure a more accurate determination of Mr. Tjaden's eligibility and would have been of great procedural and substantive value.

136. The Government's interest, including any fiscal and administrative burden imposed by additional procedural safeguards, does not outweigh Mr. Tjaden's right to due process, nor can the Board point to any real burden these safeguards would create.

137. Ensuring that electoral processes are conducted fairly and transparently is a central function of government and is critical to maintaining public confidence in our electoral system. The administrative burdens of providing adequate notice and a meaningful opportunity to be heard are minimal, especially when balanced against the severe consequences of disenfranchising a candidate and potentially altering the outcome of an election.

138. In the instant matter, the Board's procedures—or lack thereof—constituted a deprivation of Mr. Tjaden's protected interest without the due process guaranteed by the Fourteenth Amendment. The Plaintiff was entitled to adequate notice and a meaningful opportunity to be heard, which the Board's last-minute email and conduct denied. This hasty decision-making process not only impinged upon Mr. Tjaden's rights but also upon the collective interest of the electorate.

139. In sum, the Board's actions in this matter fell short of the constitutional mandate for due process. Plaintiff respectfully requests this honorable Court to recognize these

shortcomings and afford the necessary legal remedy to protect the electoral rights of both the candidate and the voters of Ohio House District 99.

C. ORC 3513.257(C) is Unconstitutional on its Face and As Applied to This Case

140. “[A] law repugnant to the constitution is void.” *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 179, 2 L.Ed. 60 (1803).

141. In cases challenging the constitutionality of ballot restrictions, this Court is to apply the modified balancing test as established by the United States Supreme Court in *Anderson v. Celebrezze*, 460 U.S. 780, 103 S.Ct. 1564 (1983), and *Burdick v. Takushi*, 504 U.S. 428, 112 S.Ct. 2059 (1992). *Libertarian Party of Ohio v. Husted*, 2017-Ohio-7737, 97 N.E.3d 1083 (10th Dist.), discussing *State ex rel. Brown v. Ashtabula Cty. Bd. of Elections*, 142 Ohio St.3d 370, 2014-Ohio-4022, 31 N.E.3d 596 ⁴, see also *State ex rel. Brown*, 142 Ohio St.3d 370, J. O’Conner, Concurring.⁵

Under this test, in deciding whether a state election law violates First and Fourteenth Amendment constitutional rights, [this Court] must first weigh the character and magnitude of the burden the law imposes on those rights against the interests the state contends justify that burden, and consider the extent to which the state’s interests necessitate the burden.

State ex rel. Wilcoxson v. Harsman, 2d Dist. Montgomery No. 24095, 2010-Ohio-4048, quoting *Anderson*.

“Regulations imposing severe burdens on voters’ and candidates’ rights must be narrowly tailored to serve a compelling state interest, while lesser burdens require less exacting review, and a state’s important regulatory interests usually justify reasonable, nondiscriminatory restrictions.”

⁴ “The standards articulated by the Supreme Court in *Anderson* and *Burdick* that apply in civil litigation challenging the constitutionality of ballot restrictions inform our analysis, but those cases are not writ actions and do not involve the unique burdens that control the adjudication of original actions in this court.”

⁵ “But where a plaintiff alleges that the state has burdened voting rights through disparate treatment, the *Anderson/Burdick* balancing test is applicable.” citing *Obama for Am. v. Husted*, 697 F.3d 423, 429 (6th Cir.2012).

Id., 2010-Ohio-4048, see also *Timmons v. Twin Cities Area New Party* (1997), 520 U.S. 351, 358-359, 117 S.Ct. 1364, 1370, 137 L.Ed.2d 589, 598.

142. “[T]he right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, [thus] any alleged infringement must be carefully and meticulously scrutinized.” *Harper v. Virginia Bd. Of Elections*, 383 U.S. 663, 665 (1996). See also *Sweezy v. New Hampshire*, 354 U.S. 234, 250-251 (1957)⁶.

143. Further, “we note that a law severely burdens voting rights if it discriminates based on political content instead of neutral factors or if there are few alternative means of access to the ballot.” *State ex rel. Watson v. Hamilton Cty. Bd. of Elections*, 88 Ohio St.3d 239, 725 N.E.2d 255 (2000), citing *Citizens for Legislative Choice v. Miller* (C.A.6, 1988), 144 F.3d 916, 921.

144. In the case at bar, the statutory requirement of ORC § 3513.257(C) for Independent candidates like Plaintiff to gather a significantly higher number of signatures than their major-party counterparts *who do not face primary challengers* imposes a severe, content-based burden on both the candidates’ and voters’ rights.

145. This discriminatory burden is not justified by the state’s regulatory interests, and certainly not in a manner that is narrowly tailored to serve a compelling state interest.

i. The Narrow Scope of this Case - Where Major Party Opponents Did Not Face Primary Challengers – Highlights the Fact That Ohio Election Law Promotes “Separate and Unequal” Treatment of Political Candidates

146. “[T]he Equal Protection Clause does not make every minor difference in the application of laws to different groups a violation of our Constitution. But we have also held many

6 “Equally manifest as a fundamental principle of a democratic society is political freedom of the individual. Our form of government is built on the premise that every citizen shall have the right to engage in political expression and association... All political ideas cannot and should not be channeled into the programs of our two major parties. History has amply proved the virtue of political activity by minority, dissident groups, who innumerable times have been in the vanguard of democratic thought and whose programs were ultimately accepted. Mere unorthodoxy or dissent from the prevailing mores is not to be condemned. The absence of such voices would be a symptom of grave illness in our society.”

times that ‘invidious’ distinctions cannot be enacted without a violation of the Equal Protection Clause.” *Williams v. Rhodes*, 393 U.S. 23, 30, 89 S.Ct. 5, 21 L.Ed.2d 24 (1968), citing *Skinner v. Oklahoma*, 316 U.S. 535, 539-541 (1942); *Cox v. Louisiana*, 379 U.S. 536, 557 (1965); *Yick Wo v. Hopkins*, 118 U.S. 356 (1886); *Brown v. Board of Education*, 347 U.S. 483 (1954); *Loving v. Virginia*, 388 U.S. 1 (1967).

147. The only Ohio case to specifically consider the constitutionality of ORC § 3513.257(C)’s inflated signature requirements is *State ex rel. Wilcoxson v. Harsman*, 2d Dist. Montgomery No. 24095, 2010-Ohio-4048.

148. In *Wilcoxson*, an Independent candidate challenged signature requirements in ORC § 3513.257(C) on its face, claiming the required amount of signatures was unconstitutional in light of the required amount for major party candidates. Wilcoxson filed a Writ of Mandamus asking the court to compel the requisite board of elections to certify is petition for the General Election.

149. The *Wilcoxson* opinion is silent regarding primary challengers for Wilcoxson’s political opponents.

150. In denying writ, the *Wilcoxson* court did note ORC § 3513.257(C) presented discrimination based on political content, but the court justified this discrimination based off the fact that major primary opponents had primary challengers, stating:

The burden imposed on Independent candidates by R.C. 3513.257 is based on political affiliation by the simple fact that it is associated with party affiliation. However, it is ill-founded to say that the statute ‘discriminates based on political content’... Independent candidates are guaranteed a place on the general election ballot upon satisfying R.C. 3513.257. *Major and minor party candidates, however, are only guaranteed a place on their party’s primary election ballot, a first step in the process of securing a place on the general election ballot.* Once on the primary election ballot, said candidates must rally the support of a plurality of their party to win the primary. Only upon winning the primary do said candidates begin the process of garnering support from the entire population for the race on

the general election ballot.

Id. At ¶ 43 (emphasis as to primary challengers added).

151. This follows a common justification for disparate treatment of Independent voters – that major party candidates have a primary election, therefore lopsided signature requirements for Independent candidates to have direct access to the ballot are not overly burdensome. See also *Lawrence v. Blackwell*, 430 F.3d 368 (6th Cir. 2005).

152. Here, *neither major party candidate faced a primary challenger*. This significant fact eliminates the purported “first step” in the electoral process for major party candidates, as described in *Wilcoxson*.

153. Instead, the statute has granted them direct access to the general election ballot without any preliminary test of party support – only their ability to collect 50 signatures.

154. While ORC § 3513.257(C) is absent in terms of its justification for the heightened number of signatures required, it does address reasonings for filing deadlines under the statute, stating:

[T]he state has a substantial and compelling interest in protecting its electoral process by encouraging political stability, ensuring that the winner of the election will *represent a majority of the community*, providing the electorate with an understandable ballot, and enhancing voter education, thus fostering informed and educated expressions of the popular will in a general election.

ORC § 3513.257(C) (emphasis added).

155. When analyzing a statute:

Our paramount concern... is the legislature’s intent in enacting the statute... To discern that intent, we first consider the statutory language, reading all words and phrases in context and in accordance with the rules of grammar and common usage... When the statutory language is unambiguous, we apply it as written without resorting to rules of statutory interpretation or considerations of public policy.

Beder, 11th Dist. Geauga No. 2022-G-0008, 2022-Ohio-4463 (internal citations removed).

156. It follows, then, that the goal of ORC 3513.257(C) should also be to encourage political stability, ensure that the winner of the election will represent a majority of the community, provide the electorate with an understandable ballot, and enhance voter education.

157. A review of voter affiliation information provided by the Ohio Secretary of State makes it clear that neither “major party” reflects a “majority of the community” as desired by ORC 3513.257.⁷

158. Of the 82,022 registered voters in Ohio House District 99, only 19,953 (24.3%) are registered Republicans, and only 8,882 (10.8%) are registered Democrats. Meanwhile, 53,187 voters (64.84% of District 99) are Unaffiliated Voters without relation to either “major party.”

159. This disparity makes clear that the current signature requirements for Independent candidates do not reflect the political landscape of Ohio House District 99:

Concededly, the State does have an interest in attempting to see that the election winner be the choice of a majority of its voters. But to grant the State power to keep all political parties (i.e. Independent candidates) off the ballot until they have enough members (i.e. signatures) to win (i.e. make the ballot) would stifle the growth of all new parties (i.e. Independent candidates) working to increase their strength from year to year. Considering these Ohio laws in their totality, this interest cannot justify the very severe restrictions on voting and associational rights which Ohio has imposed.

Williams v. Rhodes, 393 U.S. 23, 32 (1968) (discussing Ohio’s then-existing laws for new political parties, but is analogous here).

160. The overwhelming majority of unaffiliated voters indicate a diverse electorate potentially open to Independent candidates, yet the statutory requirements disproportionately burden these candidates, limiting the electorate’s choices to a minority of “major parties.”

⁷ See: Ohio Secretary of State’s Voter Files Download Page (April 4-6, 2024), <https://www6.ohiosos.gov/ords/f?p=VOTERFTP:STREP:::#stRepVtrFiles> (Methodology: Because these voter files come in .txt format, Plaintiff uploaded the comma-separated values into Microsoft Excel).

161. "Of course, the number of voters in favor of a party, along with other circumstances, is relevant in considering whether state laws violate the Equal Protection Clause."

Id., 34.

162. The state's interest in "encouraging political stability" and "ensuring that the winner of the election will represent a majority of the community," balanced against the rights of voters and candidates under the First and Fourteenth Amendments, highlights the simple realization that the current signature requirement for Independent candidates, especially in a district with a significant unaffiliated voter base and major party candidates without primary opponents, does not serve these interests in a manner that is narrowly tailored and proportionate to the numerous goals a legislature may have in upholding restrictive election provisions. See *State ex rel. Purdy v. Clermont Cty. Bd. of Elections*, 77 Ohio St.3d 338, 673 N.E.2d 1351 (1996).⁸

163. In essence, since the establishment of the disparate nature of ballot access laws depending on your "political affiliation," Ohio has operated under a system wherein independent candidates, minor political party candidates, and major political party candidates are viewed as "separate but equal," a belief that was held unconstitutional as applied to school segregation in *Brown v. Board of Education*, 347 U.S. 483 (1954).

164. Declaring oneself as the "Republican" or "Democrat" candidate in Ohio districts where no others challenge that declaration leads to direct ballot access with 50 signatures. Declaring oneself as an "Independent" candidate to reach the same point requires nearly ten times the number of signatures.

⁸ "Some of the important state interests that have been recognized to uphold the constitutionality of various elections provisions are (1) having orderly, fair, and honest elections instead of chaos, (2) maintaining the integrity of the political process by preventing interparty raids and intraparty feuds, (3) maintaining the integrity of various routes to the ballot, (4) avoiding voter confusion, ballot overcrowding, or frivolous candidacies, (5) ensuring that elections are operated equitably and efficiently, (6) preventing candidacies that are prompted by short-range political goals, pique, or personal quarrel, and (7) preventing *parties* from fielding an Independent candidate to capture and bleed off votes in a general election that might otherwise go to another party." (Emphasis added)

165. Ohio election law fails to recognize the basic concepts of American Republicanism, “that all men are created equal.” Declaration of Independence (US 1776). See also *Rywelski v. Biden*, 10th Cir. No. 23-5099, 2024 U.S. App. LEXIS 10557 (May 1, 2024) (“The Declaration of Independence states the principles on which our government was founded.”)

166. There is but one class of electors in Ohio.

167. There is but one class of candidates on the Ohio, those who qualify for the ballot.

168. Any prior general election, under tenants of Equal Protection, cannot and should not have any bearing on proceeding elections, except to tally the number of actual voters in the election area in order to have equal nominating petitions for all candidates.

169. That the major parties, through their internal corporate bylaws codified into the Ohio Revised Code, have chosen wonky, restrictive measures for their own candidates’ ability to make a ballot does not have any bearing on an individual’s right to equal access to the ballot.

170. “The right to vote freely for the candidate of one’s choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government. And the right of suffrage can be denied by a *debasement or dilution* of the weight of a citizen’s vote just as effectively as by wholly prohibiting the free exercise of the franchise.” *Reynolds v. Sims*, 377 U.S. 533, 555, 84 S.Ct. 1362, 12 L.Ed.2d 506 (1964) (emphasis added).

171. Plaintiff asks this court to recognize, specifically highlighted in the instant case where major party opponents do not face primary challengers, a simple truth: that the 14th Amendment to the Constitution demands all *individual* candidates for the *same* office in the *same* election area pass the *same* (i.e. *equal*) test(s) for ballot access to get on their respective general election ballot.

172. “The idea that one group can be granted greater voting strength than another is

hostile to the one man, one vote basis of our representative government.” *Moore v. Ogilvie*, 394 U.S. 814, 819, 89 S.Ct. 1493, 23 L.Ed.2d 1 (1969).

173. By recognizing that an *equal* nominating petition for all *individual* candidates for the *same* office in the *same* area will show which *individual* candidates have a “preliminary showing of support,” especially in a district as non-partisan as District 99, this Court must recognize ORC § 3513.257(C) is not narrowly tailored and does not advance a compelling state interest, and is thus unconstitutional.

ii. Proportional Application of Signature Requirements for Independent Candidates

174. Alternatively, if this Court were to determine that major parties are entitled to some insulation from other willing candidates, a pivotal element that highlights the fact ORC § 3513.257(C) is not narrowly tailored is the potential for a proportional application of signature requirements for Independent candidates, as delineated in Ohio Revised Code §§ 3513.05 and 3513.257.

175. ORC § 3513.05 states, in pertinent part:

If the declaration of candidacy declares a candidacy which is to be submitted to electors throughout the *entire state*, the petition, including a petition for joint candidates for the offices of governor and lieutenant governor, *shall be signed by at least one thousand qualified electors* who are members of the same political party as the candidate or joint candidates, and the declaration of candidacy and petition shall be filed with the secretary of state; provided that the secretary of state shall not accept or file any such petition appearing on its face to contain signatures of more than three thousand electors.

(Emphasis added). In contrast, ORC § 3513.257 stipulates, in pertinent part (emphasis added):

(A) If the candidacy is to be voted on by electors throughout the *entire state*, the nominating petition, including the nominating petition of Independent joint candidates for the offices of governor and lieutenant governor, *shall be signed by no less than five thousand qualified electors*, provided that no petition shall be accepted for filing if it purports to contain more than fifteen thousand signatures.

176. This 1:5 ratio, deemed constitutional for statewide offices and not being objected

to here, provides a thoughtful and proportional application to prevent undue burdens on Independent candidates and ensure fair access to the electoral process.

177. Given this established ratio, a proportional application to district or smaller jurisdiction offices logically suggests that if a major party candidate for such offices is required to collect fifty signatures under § 3513.05, an Independent candidate should, therefore, be required to gather a proportionally similar amount, adjusted to reflect the statewide ratio deemed reasonable by the General Assembly.

178. This adjustment would equate to 250 signatures for Independent candidates for district-level offices, aligning with the constitutional ratio and acknowledging the different circumstances of individual candidacies, while significantly reducing the disproportionate burden currently placed on these candidates.

179. Under this interpretation, Plaintiff would have easily qualified for the November General Election, despite his requirement to collect five times as many signatures to get to the same starting line.

180. This proportional approach not only aligns with the spirit of equitable treatment under the law but also addresses the practical challenges faced by Independent candidates like the Plaintiff.

181. By requiring 250 signatures for district-level Independent candidates, the state can maintain its regulatory interests in ensuring a manageable and understandable ballot, preventing frivolous candidacies, and upholding the integrity of the electoral process, without imposing an unnecessarily onerous barrier to ballot access.

182. While a 10:1 ratio, as is the case at bar, may not seem unconstitutionally disparate to some, the framework of § 3513.257(C) means that a person seeking office as an Independent

candidate for one seat in the Ohio State Senate would need around 1,500 signatures (30:1).

183. It defies reason to suggest that it is objectively fair for an independent candidate seeking statewide office to need 5,000 signatures, while those aiming for a seat in the Ohio House of Representatives, representing merely 1.1% of the state, must gather a proportionally hefty 10% of that amount. Similarly, it is unreasonable for a State Senate candidate, who seeks to represent only about 3% of Ohio, to be required to collect 30% of the signatures needed for a statewide position.

184. In short, the law of large numbers necessitates a more nuanced approach; one more narrowly tailored which won't allow for unreasonably varied signature requirements at the expense of the electorate.

iii. Error in Wilcoxson Rendering ORC § 3517.01 as Analogous to § 3513.257(C)

185. As stated *supra*, the case *State ex rel. Wilcoxson v. Harsman* stands as Ohio's sole judicial interpretation of ORC § 3513.257(C)'s signature requirements for Independent candidates.

186. This Court must, respectfully, highly scrutinize the *Wilcoxson* court's opinion.

187. Plaintiff asks this Court to recognize the *Wilcoxson* court erred in its justification of upholding § 3513.257(C), saying an Independent candidacy is analogous to the requirements for forming a new political party under ORC § 3517.01.

188. The *Wilcoxson* court justified the heightened signature requirements for Independent candidates by drawing parallels to the formation of a new political party:

Moreover, the one percent signature requirement has been considered and adopted by the legislature in other ballot access contexts. As stated above, a person wishing to organize a new party must submit a petition to the secretary of state "signed by qualified electors equal in number to at least one percent of the total vote for governor or nominees for presidential electors at the most recent election." R.C. 3517.01. Candidates for office from the newly formed party are then entitled to

hold a primary election, regulated by the candidacy requirements outlined in R.C. 3513.05. *We find Wilcoxson's candidacy as an Independent analogous to one of a newly formed party. In a reasonable, nondiscriminatory fashion, the legislature has set forth like signature requirements to obtain access to the ballot.*

Id., 2010-Ohio-4048 at ¶ 49 (emphasis added).

189. The analogy fails to account for the unique electoral and political challenges confronting Independent candidates, who often lack the organizational support, resources, and established voter base accessible to existing, or even new, political parties.

190. Independent candidates like Plaintiff, by their very nature, operate outside the traditional party structures, relying on individual merit and direct voter engagement rather than party-driven mobilization.

191. The motivations that drive a singular Independent candidate are oftentimes divergent from the motivations to create a political party.

192. For instance, the singular nomination of an incumbent candidate who cannot, or will not, represent her constituents or dutifully attend to her responsibilities as a state representative, is enough for an Independent candidate to run for office, but it may not be enough to justify creating a whole political party.

193. “Since the principal policies of the major parties change to some extent from year to year, and since the identity of the likely major party nominees may not be known until shortly before the election, this disaffected ‘group’ will rarely if ever be a cohesive or identifiable group until a few months before the election.” *Williams v. Rhodes*, 393 U.S. 23, 33 (1968).

194. This distinction underscores the disproportionate burden placed on Independent candidates by ORC § 3513.257(C), which does not adequately reflect the practical realities of Independent campaigning.

195. Furthermore, by focusing narrowly on the procedural similarities between

Independent candidacies and new party formations, or by simply stating the candidate can join an existing party and run in their primary to change it from within (*Wilcoxson*, 2010-Ohio-4048 at ¶44), the *Wilcoxson* court overlooked the broader constitutional implications of imposing such a significant barrier to ballot access:

In the present situation the (then-Ohio) state laws place burdens on two different, although overlapping, kinds of rights -- the right of individuals to associate for the advancement of political beliefs, and the right of qualified voters, regardless of their political persuasion, to cast their votes effectively. Both of these rights, of course, rank among our most precious freedoms.

Williams v. Rhodes, 393 U.S. 23, 30 (1968) (discussing Ohio's then-existing ballot requirements for political parties, which notably caused a lowering of the signature threshold post-*Williams*).

196. The *Wilcoxson* court emphasizes some quasi-related statutes, like ORC § 3517.01 and its restrictive provisions on Plaintiff, but ignores other quasi-related laws, such as Article II, Section 1a and 1g of the Ohio Constitution, which grants 10 days to cure any insufficiencies in petitions for citizen-led statute initiatives or citizen-led amendments to the Ohio Constitution. Providing ten days to cure defects in Plaintiff's petitions would have likely resulted in avoiding the case at bar.

197. While the *Wilcoxson* court proclaimed, “[T]he State certainly has a legitimate interest in creating an election process that avoids voter confusion, ballot overcrowding, or frivolous candidacies[,] (2010-Ohio-4048, ¶47)” “No such remote danger can justify the immediate and crippling impact on the basic constitutional rights involved in this case.” *Williams*, 393 U.S. 23, 33.

198. This Court should also recognize this new, proportional interpretation provided by Plaintiff does not hinder those goals, but instead emphasizes the purpose of signature requirements, i.e. ““requiring some preliminary showing of a significant modicum of support”

before printing the name of a political candidate on the ballot.” *Wilcoxson*, 2010-Ohio-4048 at ¶ 47, quoting *Jenness v. Fortson*, 403 U.S. 431, 91 S.Ct. 1970, 29 L.Ed.2d 554 (1971).

199. The current structure of § 3513.257(C) does not require a “modicum” of support, but rather a mountain of support that is unjustifiable when major party candidates get direct access to the ballot with 50 signatures so long as they face no primary challengers.

200. Ignoring some quasi-related provisions that would benefit Plaintiff and other similarly situated Independent candidates while enforcing other quasi-related provisions is inherently unfair, unjust, and unconstitutional.

201. “It is true that this Court has firmly established the principle that the Equal Protection Clause does not make every minor difference in the application of laws to different groups a violation of our Constitution. But we have also held many times that ‘invidious’ distinctions cannot be enacted without a violation of the Equal Protection Clause.” *Williams*, 393 U.S. 23, 30 (1968).

202. As it sits, what was stated in the *Williams* decision 56 years ago still holds true: The fact is, however, that the Ohio system does not merely favor a “two-party system”; it favors two particular parties -- the Republicans and the Democrats -- and in effect tends to give them a complete monopoly. There is, of course, no reason why two parties should retain a permanent monopoly on the right to have people vote for or against them. Competition in ideas and governmental policies is at the core of our electoral process and of the First Amendment freedoms. New parties (i.e candidates) struggling for their place must have the time and opportunity to organize in order to meet reasonable requirements for ballot position, just as the old parties have had in the past.

Id. at 32 (1968).

203. Plaintiff asks this Court to recognize Ohio’s political stagnation and act on behalf of the entirety of the Ohio electorate in District 99, not just Plaintiff.

204. In light of these considerations, this Court is presented with an opportunity to

reevaluate the rationale and application of ORC § 3513.257 in the context of Independent candidacies. A more nuanced understanding of the distinct challenges faced by Independent candidates, coupled with a careful consideration of the constitutional principles involved, supports a reexamination of the signature requirements to ensure they do not unjustly hinder the democratic process. By addressing the error in *Wilcoxson*, this Court can affirm its commitment to upholding the constitutional rights of all candidates and voters, fostering a more inclusive and representative electoral landscape.

205. Given the unique circumstances of this case—where neither major party candidate faced a primary challenger—the Court is urged to consider the specific impact of ORC § 3513.257(C) on the Plaintiff's ability to access the ballot. This situation presents a compelling argument for reevaluating the constitutionality of the statute under the modified balancing test established in *Anderson/Burdick*, and the court should deem ORC 3513.257(C) as unconstitutional on its face and as applied to the facts of this case.

VIII. CLAIMS FOR RELIEF

COUNT 1: VIOLATION OF 42 U.S.C. § 1983 (DEPRIVATION OF RIGHTS UNDER COLOR OF STATE LAW)

141. Plaintiff re-alleges and incorporates by reference all preceding paragraphs of this Complaint as if fully set forth herein.

142. Defendants, by and through their individual actions or acting in a conspiracy, as detailed in this Complaint, acted under color of state law by enforcing and applying state election statutes and regulations in a manner that resulted in the deprivation of Plaintiff's rights under the First and Fourteenth Amendments to the United States Constitution.

143. Specifically, Defendant's actions have deprived Plaintiff of his constitutionally protected right to access the electoral process on an equal basis with other candidates, thereby

denying him equal protection of the laws.

144. Defendants acted outside their bounds of statutory authority by invalidating elector signatures on Plaintiff's candidacy petition prior to public review, thereby violating his right to due process.

145. Defendant's refusal to provide adequate notice and an opportunity to be heard regarding the decision-making process on Plaintiff's candidacy deprived him of his right to procedural due process.

146. Defendant's refusal to hold a fair and unbiased review of Plaintiff's signatures deprived him of his procedural due process right to a fair tribunal.

147. The burden imposed by the state election law, as applied to Plaintiff, was not narrowly tailored to serve a compelling state interest, thereby violating his right to freedom of speech and association.

148. Defendants acted outside their bounds of statutory authority within the Ohio Open Meetings Act, ORC § 121.22, by holding official Board business without allowing those meetings to be open to the public.

149. As a direct and proximate result of Defendant's actions under color of state law, Plaintiff has suffered and continues to suffer damages for which he is entitled to relief pursuant to 42 U.S.C. § 1983.

150. To compensate for his injuries, Plaintiff seeks monetary damages in an amount no less than \$500,000.00 (Five Hundred Thousand Dollars), punitive damages, injunctive relief, and declaratory relief as appropriate to compensate for the injuries and public embarrassment sustained, to correct the public record, to prevent future harm, and to preserve the integrity of the electoral process.

IX. COMPLAINT FOR DECLARATORY JUDGMENT

148. Plaintiff incorporates by reference the above paragraphs as if fully restated herein, and for his Complaint for Declaratory Judgment states as follows:

NATURE OF THE ACTION

149. Plaintiff re-alleges and incorporates by reference all preceding paragraphs of this Complaint as if fully set forth herein.

150. This is an action for declaratory judgment pursuant to ORC § 2721.02, seeking a judicial declaration regarding the constitutionality and application of Ohio Revised Code § 3513.257, as it pertains to signature requirements for Independent candidates seeking ballot access for state legislative office and the duties of the Boards of Elections in administering that statute in accordance with their duties pursuant to ORC § 3501.11.

151. Plaintiff seeks a declaration that the disparate signature requirements for Independent candidates, compared to major party candidates who do not face primary election challengers, violate the Ohio Constitution and the United States Constitution.

152. Plaintiff further seeks a declaration that the conduct in rejecting his signatures, and the manner in which it was done, violates the Ohio Constitution and the United States Constitution.

FACTUAL ALLEGATIONS

153. Plaintiff re-alleges and incorporates by reference all preceding paragraphs of this Complaint as if fully set forth herein.

154. Plaintiff re-alleges and re-incorporates the factual allegations, legal arguments, assertions, and allegations made in the preceding paragraphs of this Complaint as if fully restated herein.

CLAIMS FOR RELIEF

**COUNT TWO:
OVERSTEPPING STATUTORY AUTHORITY**

148. Plaintiff re-alleges and incorporates by reference all preceding paragraphs of this Complaint as if fully set forth herein.

149. Plaintiff is entitled to a declaratory judgment that Defendants overstepped their statutory authority under ORC § 3501.11 by invalidating elector signatures within the nominating petition prior to public review and contrary to the ruling in *State ex rel. Crowl v. Delaware Cty. Bd. of Elections*.

**COUNT THREE:
CONSTITUTIONAL VIOLATION OF EQUAL PROTECTION**

150. Plaintiff re-alleges and incorporates by reference all preceding paragraphs of this Complaint as if fully set forth herein.

151. Plaintiff is entitled to a declaratory judgment that Defendants' interpretation and application of ORC § 3513.257, resulting in a significantly higher signature requirement for Independent candidates as compared to major party candidates *who do not face primary election challengers*, violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

**COUNT FOUR:
CONSTITUTIONAL VIOLATION OF FIRST AMENDMENT RIGHTS**

152. Plaintiff re-alleges and incorporates by reference all preceding paragraphs of this Complaint as if fully set forth herein.

153. Plaintiff is entitled to a declaratory judgment that the significant disparity in signature requirements for Independent candidates infringes upon Plaintiff's and similarly situated Independent candidates' First Amendment rights to free speech and association *when*

major party candidates do not face primary challengers.

**COUNT FIVE:
CONSTITUTIONAL VIOLATION OF DUE PROCESS**

154. Plaintiff re-alleges and incorporates by reference all preceding paragraphs of this Complaint as if fully set forth herein.

155. Plaintiff is entitled to a declaratory judgment that Defendants' lack of a clear, objective, and transparent process for the verification of signatures, failure to provide timely and adequate notice of their actions regarding Plaintiff's submitted petitions, failure to provide a fair, unbiased tribunal to review signatures, and refusal to allow Plaintiff to be heard at the April 9, 2024 Special Meeting constitutes a denial of due process under the Fourteenth Amendment to the United States Constitution.

**COUNT SIX:
UNCONSTITUTIONALITY OF STATUTORY REQUIREMENTS**

156. Plaintiff re-alleges and incorporates by reference all preceding paragraphs of this Complaint as if fully set forth herein.

157. Plaintiff is entitled to a declaratory judgment that the statutory requirements as applied by Defendants under ORC § 3513.257 are unconstitutionally vague and/or overbroad, both on their face and as applied, in light of the unique circumstances of this case where neither major party candidate faced a primary challenger.

**COUNT SEVEN:
APPLICATION OF SIGNATURE REQUIREMENTS UNDER THE OHIO
CONSTITUTION**

158. Plaintiff re-alleges and incorporates by reference all preceding paragraphs of this Complaint as if fully set forth herein.

159. Plaintiff alleges that the signature requirements for Independent candidates violate similar protections under the Ohio Constitution, including Ohio's right to freedom of speech and

by extension freedom of association as provided in Article I, Section 2 of Ohio's Constitution; right to equal protection as provided in Ohio Constitution Article I, Section 11 of Ohio's Constitution; and right to due process as provided in Ohio Constitution Article I, Section 16.

- a) The unequal burden imposed on Independent candidates under ORC 3513.257(C) inhibits their ability to effectively exercise their rights to freedom of speech and association as guaranteed by the Ohio Constitution.
- b) Additionally, the differential treatment of Independent candidates regarding signature requirements constitutes a violation of Ohio Constitution Article I, Section 11, which guarantees equal protection of the laws, by subjecting Independent candidates to stricter requirements compared to major party candidates who do not face primary election challengers.
- c) Further, the lack of transparency and clarity regarding signatures requirements, as evidenced by the failure to clearly communicate the requirement for 495 valid signatures to Plaintiff until after he had submitted his petitions, and failure to have an Independent representative present during signature validation, constitutes a violation of the right to due process as provided in Ohio Constitution Article I, Section 16.

X. PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court:

A. For Violations of 42 U.S.C. § 1983:

- 1) Declare that Defendants' actions in failing to certify Plaintiff as a candidate, failing to provide adequate notice and an opportunity to be heard, and applying the law in a discriminatory fashion against Independent candidates violated Plaintiff's rights under the First and Fourteenth Amendments of the United States Constitution.

- 2) Award compensatory damages in an amount not less than \$500,000.00 to Plaintiff for the deprivation of constitutional rights, for any losses suffered, and for the distress and humiliation experienced as a result of Defendants' actions.
- 3) Award punitive damages against Defendants in their individual capacities, in an amount not less than \$500,000.00, as permitted by law, to punish Defendants for their evil motive or intent, or due to their reckless or callous indifference to Plaintiff's federally protected rights.
- 4) Grant injunctive relief ordering Defendants to immediately cease the enforcement of unconstitutional practices and to take specific actions to remedy the violations, including but not limited to certifying Plaintiff's candidacy and adopting new, constitutional procedures for candidate certification and petition validation.
- 5) Order Defendants to pay the costs of this action, including reasonable attorney's fees pursuant to 42 U.S.C. § 1988.
- 6) Grant such further relief as the Court finds just and appropriate under the circumstances.

B. Declare that the signature requirements for Independent candidates, as set forth in Ohio Revised Code § 3513.257(C), are unconstitutional under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and corresponding provisions of the Ohio Constitution, particularly when the candidate's opponents in the general election never face a primary challenger, because it imposes unequal burdens on Independent candidates, and their supporters, for ballot access.

C. Declare the signature requirements pursuant to ORC § 3513.257(C) as an infringement of First Amendment Rights as further provided by the First Amendment to the United States

Constitution: The unequal and unjust treatment of Independent candidates under the signature requirements unduly burdens the First Amendment rights of free speech and association, inhibiting the ability of Independent candidates like Plaintiff to effectively participate in the electoral process.

- D. Declare that the Geauga County Board of Elections overstepped its statutory authority pursuant to *State ex rel. Crowl v. Delaware Cty. Bd. of Elections*.
- E. Declare the signature requirements pursuant to ORC § 3513.257(C) as a breach of Ohio Constitutional Protections: The disparate treatment of Independent candidates under the signature requirements violates protections under the Ohio Constitution, which guarantees equal protection of the laws under Article I, Section 11 and the right to participate fully in the political process without arbitrary or unreasonable barriers to candidacy pursuant to:
 - i. Violation of Ohio Constitution Article I, Section 2
 - ii. Violation of Ohio Constitution Article I, Section 11
 - iii. Violation of Ohio Constitution Article I, Section 16
- F. Enjoin Defendants from enforcing the signature requirements against Plaintiff;
- G. Order that Defendants are to certify Plaintiff's Petitions in accordance with this Order, and that Plaintiffs' name be placed on the ballot for the November 5, 2024 General Election for Ohio House District 99;
- H. Award Plaintiff reasonable costs, including attorney's fees, incurred in bringing this action;
- I. Grant such other and further relief as the Court deems proper.

JURY DEMAND AND REQUEST FOR EXPEDITED SCHEDULE

Plaintiff respectfully demands a trial by jury on all issues so triable. Plaintiff further requests an expedited briefing schedule as to the Declaratory Judgment Action, as time is of the essence in relation to the November 2024 general election.

Respectfully submitted by:

JUSTIN D. TJADEN, ATTORNEY AT LAW, LLC

/s/ Justin D. Tjaden

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