

IN THE SUPREME COURT OF OHIO

THE STATE OF OHIO EX. REL.
SUMMIT COUNTY REPUBLICAN
PARTY EXECUTIVE COMMITTEE

CASE NUMBER: 08-0478

RELATOR,

vs.

JENNIFER BRUNNER
OHIO SECRETARY OF STATE

RESPONDENT.

RELATOR'S MERIT BRIEF

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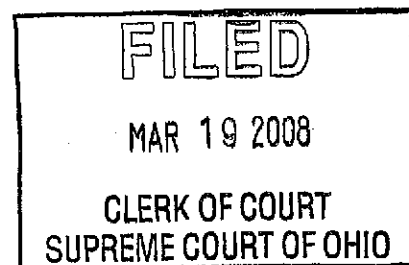


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I. INTRODUCTION

Relator, State ex rel. Summit County Republican Party Executive Committee (sometimes referred to as the “Summit GOP Executive Committee”) has filed this action against Secretary of State Brunner (“Secretary Brunner”) seeking a writ of mandamus pursuant to O.R.C. § 3501.07 and for other writs pursuant to Ohio Constitution Article IV, section 2(B)(1)(d) and O.R.C. § 2503.40.

The GOP Executive Committee challenges Secretary Brunner’s arbitrary, unreasoned, and unconcionable actions (1) rejecting the Summit County Board of Elections (the “Summit BOE”) appointment of Brian K. Daley, the extremely competent individual recommended by the Summit GOP Executive Committee to the Summit County Board of Elections (the “Summit BOE”), pursuant to O.R.C. § 3501.07 on the basis of anonymous unsigned, unsworn, unauthenticated, and unverified information solicited from and collected from Summit County Democrat Party Finance Chairman, Wayne Jones; and (2) unilaterally appointing an individual recommended by Democrat Wayne Jones, a democrat appointee member of the Summit BOE, in contravention and violation of O.R.C. § 3501.07 and the bipartisanship standards established by the Ohio General Assembly therein in that statute.

This is matter of first impression for this Court. While there have been other mandamus actions filed under O.R.C. Section 3501.07, no reported decision by this Court has involved a case where the Secretary of State actively solicited negative information about a local political party’s recommended appointee for a board of elections from a board member and high ranking official of the other political party. No reported decision by this Court involves a case where a Secretary of State rejected two competent local

party recommended elections board appointees on the basis of anonymous, secret, unsigned, unsworn, unauthenticated and unverified information gathered and submitted by operatives of the opposing party, working in concert with the Secretary of State and her staff. There simply has never been a case like this one, where the Secretary of State has brazenly demolished the Legislature's statutory structure for maintaining bipartisan balance on local elections boards under O.R.C. Section 3501.07 by asking for and following the recommendation of an official of the non-appointing party instead of the political party specified in that statute.

Simply put, Secretary Brunner, in concert with Summit County Democrat Finance Chairman Wayne Jones and other local democrats, "targeted" Alex Arshinkoff for rejection from appointment to the Summit BOE. After bushwacking Arshinkoff, Secretary Brunner and her political henchmen aimed their political guns at Brian Daley, the subsequent appointee recommended by the Summit GOP Executive Committee; rejecting Daley, essentially for being affiliated with or like Alex Arshinkoff. Such "guilt by association" and gross misuse of Section 3501.07 by the Secretary of State is unprecedented in Ohio.

The following issues concerning O.R.C. § 3501.07 ("Section 3501.07") are central to the resolution of this case:

1. Can the Secretary of State refuse to appoint a competent individual recommended by the executive committee of one political party to a local board of election under the guise of a "reasoned decision" on the basis of anonymous, unsigned, unsworn, unauthenticated, and unverified letters and unrelated opinion and

hearsay inclusive newspaper editorials and articles solicited and obtained by the Secretary of State and her staff from the opposing political party?

2. Can the Secretary of State arbitrarily deny such appointment without providing the applicable party's recommended appointee or the recommending party's executive committee the opportunity to respond to the unsigned, unsworn, unauthenticated, and unverified documentation and newspaper editorials and articles submitted in opposition to such appointment by the opposing political party?
3. Can the Secretary of State, in the exercise of her authority under Section 3501.07, ignore the minimum constitutional Due Process requirements of fundamental fairness, notice, and the opportunity to be heard?
4. Can the Secretary of State delegate the statutory recommendation authority of one political party's executive committee to the finance chairman of an opposing political party through the subterfuge of claiming that she was merely exercising her "reasoned" decisionmaking authority under Section 3501.07?
5. Can the Secretary of State abdicate her appointment authority under Section 3501.01 to the finance chairman of the party in opposition to the party whose executive committee recommended a highly competent appointee for a local board of election?
6. Can the Secretary of State unilaterally destroy the bipartisanship balance of local boards of election mandated by the Ohio General Assembly in Section 3501.07 by conspiring with a democratic member of a local elections board and officer of the local democratic party to hunt for "reasons" for her rejection of a 29 + years

board member and the highly competent alternate recommended by the Summit GOP Executive Committee and then appoint the individual recommended by that democrat official without the Summit GOP Executive Committee's favorable recommendation?

The answer to each of these questions is a resounding "no"!

The clear and unequivocal impact and purpose of Section 3501.07 is to protect the integrity of Ohio's elections by preventing one political party from exercising unchecked power over the county election process. Under that statute, this is accomplished by giving each of the predominant political parties the authority to recommend two members for appointment to each local county election board (one for each party every two years). The Secretary of State has a duty to approve these local party recommended appointees if they are competent. O.R.C. Section 3501.07.

In 2008, Secretary Brunner appointed all 88 individuals recommended by local Democratic executive committees. Secretary Brunner did not approve four individuals recommended by local Republican Party executive committees, including Alex Arshinkoff and Brian Daley, who were overwhelmingly recommended by the Summit GOP Executive Committee.

Secretary Brunner is operating under the legal misconception that:

"the statute merely requires, ... that the Secretary of State have reason to believe that any appointed elector will not be competent to serve as a member of the Board of Elections. This is an objective determination to be made by the Secretary of State, not a factual conclusion that must be proven to the acceptance by all. It has nothing to do with Daley's background or actual competence...." (Emphasis added)

See Respondent Ohio Secretary of State Jennifer Brunner's Motion in Limine, Memorandum in Support at p. 3, filed with this Court in this case on March 7, 2008; See also Brunner Dep. Rel. Vol. 1A, p.127.

Secretary Brunner does not see her duty under Section 3501.07 as having to seek the truth (whether the recommended appointee is “competent”). Rather, Secretary Brunner sees her duty as merely having to find an excuse to deny a local party’s choice, any “reason” will do, even one manufactured by the opposing political party. Along the way, fundamental constitutional principles of notice, fairness, and Due process are simply ignored by the Secretary Brunner and her staff. As to compliance with those constitutional principles, Secretary Brunner simply replies “I was not required to.”

Secretary Brunner’s mistreatment of Section 3501.07 and her powers and duties thereunder threaten the delicate balance statutorily designed by the Ohio Legislature to provide for a fair and balanced elections process in Ohio. That bipartisan balance is totally destroyed when the Secretary of State is allowed to conspire with members of the opposing political party, her party, to defeat the recommended competent appointee of the other political party based on anonymous, secret, unsigned, unsworn, unverified, or hearsay-ridden materials invited for submission by the Secretary of State and solicited and submitted by the opposing political party.

In this case, the extremely competent former TRW, Inc. Director – Finance, Mr. Brian Daley, is the victim of such political chicanery, guilt by association, politics, and Secretary Brunner invited political witch hunt. Like Mr. Alex Arshinkoff, Mr. Daley fell prey to Secretary Brunner’s manipulation of Section 3501.07 and the predatory, political assassination efforts of the local Democratic Finance Chairman, Wayne Jones and other Democrats, which actions were taken, at Secretary Brunner’s specific invitation and with her blessing. But, the political chicanery did not stop there. As Secretary Brunner freely admits, Democrat Finance Chairman Wayne Jones, not the Summit County Republican

Executive Committee, recommended Donald Varian for appointment to the Summit County BOE Secretary Brunner did no even contact the Summit GOP Executive Committee. Secretary Brunner and her staff also did not scrutinize Mr. Jones' recommended appointee, Donald Varian, in the same way that they investigated Alex Arshinkoff and Brian Daley. Secretary Brunner appointed Democrat Wayne Jones' personally recommended appointee, thereby obliterating the bipartisan and political party balance of the Summit BOE prescribed by Section 3501.07.

The statutory process and delicate political balance mandated in Section 3501.07 can only be restored in Summit County by the granting of the writ of mandamus and other writ requested by Relator in his case.

II. STATEMENT OF THE FACTS AND EVIDENCE

In O.R.C. § 3501.07, the Ohio Legislature has prescribed a check and balance system for local county elections boards based on having two appointees recommended by the two predominant political parties.

In 2008, local democratic party executive committees recommended 88 individuals for local election board appointments in Ohio. Deposition of David Ferrell ("Ferrell Dep.") Rel.¹ Vol. II, p. 8-10. Secretary Brunner appointed all 88 democratic appointees. Deposition of Secretary of State Jennifer Brunner ("Brunner Dep.") Rel. Vol. I, p. 26-27, Secretary Brunner did not approve the appointment of four persons recommended by local Republican Executive Committee for appointment to local

¹ References to all depositions, affidavits and other evidence in the record referenced herein shall be to Relator ("Rel."), Volume ("Vol.") and Page ("p.") contained in Relator's Evidence filed on March 14, 2008

elections boards in three counties: Hardin, Lawrence,² and two individuals in Summit. Brunner Dep. Rel. Vol. II, p. 28.

By letter dated January 30, 2008, the Summit County GOP Executive Committee initially recommended to Secretary Brunner that the experienced and extremely competent Alex Arshinkoff, a 29+ year member of the Summit County Board of Elections, be reappointed to the Summit County BOE. Brunner Dep. Rel. Vol. I, p.66-69; Exhibit A thereto, Rel. Vol. IV, p. 194-196; Volume I, p. 197-201; Exhibit A attached to Relator's Verified Petition. Secretary Brunner never chastised or criticized Alex Arshinkoff's performance on the Summit County BOE during her fourteen months as Ohio Secretary of State. Brunner Dep., Vol. I, p. 78-80.

Secretary Brunner admitted under oath that she had a conversation with her democratic colleague Wayne Jones in January, 2008, at which time Jones told Secretary Brunner "you should not reappoint Alex Arshinkoff." Brunner Dep., Rel. Vol. I, p. 70: Secretary Brunner further admitted under oath that she told Jones "I cannot simply not reappoint him. If there's evidence, you would have to send it to me." Brunner Dep., Rel. Vol. I, p. 70. Secretary Brunner testified that, in January, 2008, she had no evidence in her file that would allow her to reject Alex Arshinkoff's reappointment to the Summit BOE. *Id.*, Rel. Vol. IA, p. 165.

On or about February 1, 2008 a two-page anonymous letter with numerous unsworn and unauthenticated exhibits addressed to Secretary Brunner, bearing no identification of the sender and bearing no signature or name of signator (with exhibits, the "Anti-Arshinkoff Letter") reputedly was a "walk-in" was "dropped off" at Secretary

² A mandamus action has been filed by the Lawrence County Republican Party Executive Committee and is pending as Ohio Supreme Court Case Number 2008-0442.

Brunner's office in Columbus and was time-stamped as a "walk-in" by that office. Brunner Dep., Rel. Vol. IA, 141. Exhibit B to Brunner Dep., Rel. Vol. IC, p. 361 and follows Farrell Dep. Rel. Vol. II, p. 468-470; Rel. Vol. IC, p. 361; Brunner Dep., Vol IA, p.146-147. Mr. Ferrell, director of the elections division in Secretary Brunner's office, testified under oath that the Anti-Arshinkoff Letter was anonymously filed at the Secretary of State's counter and that he did not know the source or author of that letter. *Id.*, Rel Vol. II, p. 469.

Secretary Brunner testified that she also did not know the source or author of the Anti-Arshinkoff Letter. Brunner Dep. Rel. Vol. IA, p. 147. Nonetheless, Secretary Brunner said she relied on the unsigned, anonymous Anti-Arshinkoff Letter and accompanying unsworn, unauthenticated and unverified letters and hearsay newspaper editorials and articles as the "reason" for not approving Summit County GOP Executive Committee recommendation that Alex Arshinkoff be reapproved to the Summit BOE. Brunner Dep., Rel. Vol. IA. p. 146-147; Exhibit B, Rel. Vol. IC, p. 361 and follows.

Subsequently, James Hardy, Secretary Brunner's regional coordinator for Akron, Ohio, testified under oath that he was called by Wayne Jones and asked by Mr. Jones to come to Jones' law office. When Mr. Hardy went to Mr. Jones' office, Wayne Jones handed Mr. Hardy the unsigned and anonymous Anti-Arshinkoff Letter with the attached twenty-four plus exhibits. Deposition of James Hardy ("Hardy Dep."), Rel. Vol. IV, p. 865-867. Mr. Hardy further testified under oath that he mailed the Anti-Arshinkoff Letter with exhibits to David Ferrell, Mr. Hardy's immediate supervisor in Secretary Brunner's office. *Id.*, Rel. Vol. IV, p. 867.

Based on the Anti-Arshinkoff Letter covertly provided by Democrat Wayne Jones, Secretary Brunner informed the Summit County GOP Executive Committee on February 20, 2008, that she would not approve Mr. Arshinkoff's appointment to the Summit County BOE. Brunner Dep. Exhibit 1-B, Rel. Vol. IB, p. 202; Relator Evidence Vol. IIIA, p. 801; Exhibit B to Verified Petition.

On February 26, 2008, the Summit County Republican Executive Committee held a meeting to recommend another person for appointment to the Summit County BOE. Affidavit of Alex Arshinkoff, Rel. Vol. III, p. 823; Vol. III, p. 787; Affidavit of Jack Morrison ("Morrison Aff."), Rel. Vol. III, p. 825; Affidavit of Steven Kotsatos ("Kotsatos Aff."), Rel. Vol. III, p. 854. As certified by Steven Kotsatos, Assistant Secretary of the Summit GOP Executive Committee, a quorum, although not required by O.R.C. Section 3501.07, was present. Kotsatos, Rel. Vol. III, p. 854; Jack Morrison Affidavits, Rel. Vol. IIIA p. 781-782; Brunner Dep. Exhibit 1-B, Rel. Vol. 1-8 p.213.

At that February 26th meeting, the Summit GOP Executive Committee nominated Brian K. Daley, an extremely competent and successful businessman and former City of Hudson City Council President, for recommendation to Secretary Brunner for appointment to the Summit County BOE. Daley Aff., Rel. Vol. III, p. 781. Exhibit D to Verified Complaint, Rel. Vol. IIIA, p. 804. Brian Daley is a college graduate, was employed by TRW, Inc. as Director-Finance and Manager-Internal Audit for 12 years, and served as an effective City Council member and City Council President in the City of Hudson, Ohio. Affidavit of Brian K. Daley ("Daley Aff.") and resume attached thereto (copy attached to this brief for the Court's convenience. Rel. Vol. III, p.781, 784; See Kotsatos Aff., Rel. Vol. III, p. 854. Mr. Daley has an exemplary criminal record, has

never been found in violation of any ethics rule, and has no conflicts of interest with respect to serving on the Summit County BOE. Daley Aff. Rel. Vol. III ,p. 784; Brunner Dep., Re; Vol. 1A, p. 112-114. The Summit GOP Executive Committee overwhelmingly voted to recommend Brian Daley to Secretary of State Brunner for appointment to the Summit BOE, with only one dissenting vote. Morrison Aff., Rel. Vol. III, p. 825; Affidavit of Alex. Arshinkoff (“Arshinkoff Aff.”), Rel. Vol. III, p. 787.

On February 27, 2008, Secretary Brunner again spoke with Democrat Wayne Jones about the Summit GOP Executive Committee’s recommendation of Brain Daley for appointment to the Summit County BOE. Brunner Dep., Rel. Vol. I p. 47-48. And, once again, Democrat Finance Chairman, Wayne Jones took exception with the Summit GOP Executive Committee Party’s second recommended appointee, Brian Daley, telling Secretary Brunner that “there were problems with Mr. Daley’s recommendations” and “there would be information coming to [her].” *Id.*, Rel. Vol. I, p. 47-48. At that time, Secretary Brunner then asked Mr. Jones, “What other Republicans are there?” *Id.*, Rel. Vol. I, p. 48. Democrat Wayne Jones then recommended that Secretary Brunner appoint Donald Varian to the BOE in lieu of the appointee recommended by the Summit GOP Executive Committee. *Id.*

Secretary Brunner’s office had already prepared the Brian Daley’s appointment oath and certificate in anticipation that he would be appointed to the Summit BOE. Brunner Dep., Rel. Vol. I, p. 92-93.

Shortly after Secretary Brunner’s meeting with Wayne Jones, more unsworn, unauthenticated, and unverified, letters, and unrelated hearsay riddled newspaper editorials and articles were received by Secretary Brunner and her staff. This time the

unsworn, unauthenticated, unverified, and materials were critical of Brian Daley, (the “Anti-Daley Materials”). The Anti-Daley Materials, were funneled from Mr. Jones’ “people” to Secretary Brunner through her field representatives, James Hardy. Brunner Dep., Rel. Vol. I, p. 81-82; Exhibit 9 to the Brunner Dep., Rel. Vol. IB, p. 250. Secretary of State Brunner, however, said she did not know how her office received the Anti-Daley Materials. Brunner Dep. Rel. Vol. IA, p. 147. David Ferrell, Mr. Hardy’s boss, also claimed not to know how those materials were obtained. Ferrell Dep., Rel. Vol. II, p. 469.

Once again, James Hardy, who works directly for David Ferrell, admitted under oath that he collected the Anti-Daley Materials from Wayne Jones after or while Hardy engaged in conversations with Wayne Jones about Mr. Daleys’ pending appointment. Hardy Dep. Rel, Vol. IV, p. 55-87. Mr. Hardy collected the Anti-Daley materials from another Democrat office holder in Summit County, Hudson City Councilman and current democrat candidate for the Ohio House – Mike Moran and Brian Daley’s angry and biased neighbor, Debbie Vagas. Hardy Dep., Rel. Vol. IV, p.855-858. Mr. Hardy said Wayne Jones called him to discuss the Daley situation. Hardy Dep., Rel. Vol. IV, p. 858. Mr. Hardy said that he personally tracked down or picked up two newspaper editorials contained in the Anti-Daley Materials from Wayne Jones and received the e-mail contained in those materials directly from Mike Moran. *Id.*, p. 842-848, 854. Mr. Hardy forwarded the Anti-Daley Materials to David Ferrell and Secretary Brunner’s assistant, Erin Duffy. *Id.* Rel. Vol. IV, p. 850. Mr. Hardy admitted that he did not verify any of the information contained in the Anti-Daley Materials. *Id.* Rel. Vol. IV, p. 850. Moreover, Mr. Hardy admitted that he did not look for any positive information about Brian Daley.

Id., Rel. Vol. IV, p. 862. Mr. Hardy also admitted that he did not look for, solicit, collect or seek to obtain any similar background information about Donald Varian or current democrat board appointee Tim Gerbach for Secretary Brunner's review before she appointed Varian or Gerbach, the Summit County Democratic Party's recommended reappointee for the Summit BOE, to the board. *Id.*, Rel. Vol. IV, p. 862. Secretary Brunner personally spoke with Democrat Mike Moran, Brian Daley's political nemesis, on February 27, 2008. Brunner Dep. Rel. Vol. IA, p. 100, but never spoke with Brian Daley. *Id.* at p. 91, 117.

Secretary Brunner used the Anti- Daley Materials as the reason for her rejection of Brian Daley to the Summit County BOE. Brunner Dep., Rel. Vol. I, p. 88 and follows; Exhibit 9 thereto; Rel. Vol. IB, p. 250. On February 29, 2008, Secretary Brunner sent a letter to the Summit GOP Executive Committee informing the committee that she had rejected its recommended appointee, Brunner, Dep., Exhibit 1-8, Rel. Vol.18, p. 213.

At the time Secretary Brunner made her decision to reject Brian Daley's recommended appointment to the Summit County BOE, Secretary Brunner had received no input or information about Mr. Daley from Hudson Mayor, William Currin, Brunner Dep., Rel. Vol. IA, p.137; William Currin Deposition, Respondent's Evidence, Vol. VI, p. 39-42. In fact, Mayor Currin testified that he had no contact or conversation with Secretary Brunner prior to February 29, 2008 and that his first involvement in this matter was when he was served with a subpoena by the Attorney General's office in this case on March 12, 2008. *Id.* Secretary Brunner confirmed that she had no contact or conversation with Mayor Currin about Brian Daley before or after rejecting Mr. Daley's appointment. Brunner Dep., Rel., Vol. 1A, p. 137.

At the time Secretary Brunner rejected Brian Daley for appointment, Secretary Brunner also did not have any of the unverified and unauthenticated cited pleadings in the City of Hudson v. William E. Vagas, et al. case that has subsequently been filed as “evidence” in this case. Respondent’s Evidence Vol. VII. These documents were obtained solely for this litigation. These documents in Respondent’s Volume VII should be disregarded because they are not authenticated or verified under oath as required by the Rules of this Court.

Moreover, The City of Hudson’s law Director, Charles T. Riehl has aptly described the Vagas litigation as follows:

“with respect to the City of Hudson (“Hudson”), this case involved nothing more than the City’s attempt to enforce its applicable local regulations adopted by Article XVIII, Section 3 of Ohio Constitution, and for the protection of the public health and safety.” (emphasis added)

See certified copy of the City of Hudson Brief in opposition filed with the Summit County Common Pleas Court on March 3, 2008 at p. 2. Rel. Vol. III. p. 784.

Secretary Brunner subsequently appointed democrat Wayne Jones’ personally recommended appointee, Donald Varian, to the Summit County BOE instead of either of the appointees statutorily recommended by the Summit GOP Executive Committee - - Alex Arshinkoff and Brian Daley. Brunner Dep. Rel. Vol. I, p. 46. Secretary Brunner had not even seen Mr. Varian’s resume or any other documents detailing Mr. Varian’s competency when she appointed him. Brunner Dep. Rel. Vol. I, p.50. Secretary Brunner never discussed Mr. Varian’s appointment with the Summit GOP Executive Committee’s Chairman or any other representative of the Summit GOP Executive Committee. Farrell, Dep., Rel. Vol. II, p. 503; Arshinkoff Aff., Rel. Vol. III, p. 787-788. Mr. Varian was never recommended for appointment to the Summit BOE by the Summit

GOP Executive Committee. Farrell Dep. Rel. Vol II, p. 503; Arshinkoff Aff. Rel. Vol. III, p. 787-788. Mr. Varian and the Democratic reappointees to the Summit County BOE, Tim Gerbach, were not subject to the same vigorous, although dubious, background witch hunt by Secretary Brunner and her staff as, Alex Arshinkoff and Brian Daley. Brunner Dep., Rel. Vol. IB p. 120-121; Hardy Dep., Rel. Vol. IV p.862.

Secretary Brunner never discussed her concerns about Brian Daley or his appointment with Mr. Daley or the Summit GOP Executive Committee before rejecting Mr. Daley's appointment. Brunner Dep., Rel. Vol. IB p. 117; Daley Affidavit, Rel. Vol. III p. 819; Arshinkoff Aff., Rel. Vol. III p. 787. Brunner says "I was not required to". Brunner Dep., Rel. Vol. IB, p. 117. Secretary Brunner took the same action in Lawrence County. Brunner Dep., Rel. Vol. I, p.41.

Secretary Brunner appointed Donald Varian to the Summit County BOE before the Summit GOP Executive Committee could file this mandamus action. Arshinkoff Aff., Rel. Vol. IB, p. 117. She Took the same action in Lawrence County, Brunner Dep. Rel. Vol. I, p. 41.

At the Summit County BOE reorganization meeting on March 5, 2008, Donald Varian participated as a member of the board and voted to fire seven employees of the Summit BOE. Brian Williams Affidavit("Williams Affidavit") and Exhibits thereto, Rel. Vol.III p.808-827; Morrison Aff, Rel. Vol. IIIA, p. 782..

III. STATEMENT OF THE CASE

Relator has brought this action for mandamus pursuant to its statutory right to pursue such relief under O.R.C. § 3501.07.

Relator seeks other writs pursuant to Ohio Constitution Article IV, Section 2 (B)(1)(d) and O.R.C. § 2503.40.

This Court has established an expedited filing and briefing schedule.

Both parties filed evidence of record on March 14, 2008.

This Court should not consider the deposition testimony of William Currin because, by her own admission, Mr. Currin never conveyed his opinions or observations concerning Brian Daley to Secretary Brunner or her staff prior to her rejecting Mr. Daley on February 29, 2008. Brunner Dep., Vol. 1A, p. 137. Therefore, Mr. Currin's testimony is totally irrelevant. Secretary Brunner cannot attempt to justify her arbitrary and unreasoned decision to reject Mr. Daley's appointment with after-the-fact obtained evidence. For that same reason, this Court should not consider pleadings from the *City of Hudson v. William E. Vagas, et al.* (Respondent Volume VII), which pleadings are not relevant and were not reviewed or considered by Secretary Brunner when she rejected the Summit County Republican Party's recommendation of Brian Daley for appointment to the Summit County BOE. Moreover, Respondent has filed these pleadings without the sworn verification or authentication required by the Rules of this Court. Therefore, these pleadings should be disregarded (Respondent Volume VII) in their entirety.

IV. ARGUMENT AND LAW

- A. **Under O.R.C. § 3501.07, Secretary Brunner has a legal duty to appoint the extremely competent, Brian K. Daley to the Summit BOE, as recommended by the Summit County Republican Party Executive Committee.**

Under O.R.C. § 3501.07, Secretary Brunner has a legal duty to appoint Brian Daley, the Summit GOP Executive Committee's overwhelmingly recommended appointee to the Summit BOE because Brian Daley is extremely competent. O.R.C. §

3501.07; State ex rel. Cuyahoga County Democratic Party Executive Committee v. Taft, Secretary of State (1993), 67 Ohio St. 3d 1 (hereinafter referred to as the "Dimora Case").

Secretary Brunner has failed to perform and has refused to perform her legal duty to appoint Brian Daley to the Summit BOE in violation of her duties under Section 3501.07. Dimora Case. Instead, working in concert with a high ranking Summit County Democrat and other Summit County Democrats, Secretary Brunner and her staff have engaged in a deliberate effort to circumvent her legal duty and to defeat the Summit County Republican Party's statutory recommendations. In the process, Secretary Brunner has essentially abdicated her responsibilities to Wayne Jones, a high ranking Summit County Democrat, thereby rendering Section 3501.07 a nullity in this case.

Moreover, Secretary Brunner's so-called "reasons" for rejecting Mr. Daley's appointment constitute nothing more than mere suspicion based on (1) unsworn, unauthenticated, and unverified letters with unfounded personal opinions, personal and political bias, and personal assaults by political rivals and a disgruntled neighbor who was sued by the City of Hudson ("Hudson") because the neighbor violated Hudson's health and safety laws, Rel. Vol. III p.784; and (2) unrelated hearsay-ridden and unverified newspaper editorials and articles. Brunner Dep. and Exhibits B, Rel. Vol. IC, p. 361 and follows. These one-sided and biased documents solicited by Secretary Brunner from Democrat Wayne Jones, were pursued and obtained by James Hardy on behalf of the Secretary of State from two Summit County Democrat officials - - Wayne Jones and Mike Moran. Hardy Dep., Rel. Vol. IV. While these unsworn, unauthenticated, and unverified Anti-Daley Materials were replete with personal attacks

on Mr. Daley, neither Secretary Brunner, nor any member of her staff made any effort to verify that information or contact Mr. Daley or the Summit GOP Executive Committee to allow Mr. Daley or the Executive Committee the opportunity to respond to or address the matters discussed in those unsworn letters and newspaper items. Brunner Dep., Rel. Vol. IB, p. 148. When asked why Secretary Brunner did not provide any such notice and opportunity to be heard (fundamental due process requirements), Secretary Brunner simply responded “I was not required to.” *Id.*, Rel. Vol. IB, p.117, 148.

Relator is entitled to a Writ of Mandamus, pursuant to O.R.C. § 3501.07, mandating and directing that Secretary Brunner perform her legal duty under that statute and appoint the extremely competent Brian Daley to the Summit BOE, as overwhelmingly recommended by the Summit GOP Executive Committee.

i. Brian K. Daley is a duly qualified elector, and a member of the Summit County Republican Party, an individual of good character, and extremely competent to serve as a member of the Summit BOE.

The statutory threshold requirement for appointment to a local board of election is that the local party recommended appointee must be “competent” to serve on the board. O.R.C. § 3501.07. The statute does not define the term competent or establish any standards for making a competency determination. Secretary Brunner has no published or directive establishing the criteria for determining “competence” under 3501.07. Brunner Dep., Rel. Vol. I, p. 30-32.

Words in election statutes are presumed, in the absence of evidence to the contrary, to have been used in their ordinary sense. *State ex rel. Carson v. Jones*, 24 Ohio St. 2d, 70, 263 N.E. 2d 567 (1970). This Court has determined that “[t]he ordinary meaning of ‘competent’ is ‘possessed of or characterized by marked or insufficient

aptitude, skill, strength, or knowledge.” State Ex Rel. Pontillo v. Pub. Emb. Ret. Sys. Bd., 98 Ohio St. 3d 500, 2003-Ohio-2120.

Based on Brian Daley’s education, extensive and exemplary finance and management work experience with major businesses, and effective service as Hudson City Council President and member, Mr. Daley unquestionably has the “aptitude, skill strength [and] knowledge” to serve competently on the Summit BOE Daley Dep. Rel.; Vol.III, p.781-787 (See courtesy copy of resume attached as Annex 1 hereto). The record before this Court is replete with documentation that demonstrates Brian Daley’s aptitude, skills, strengths and knowledge:

Director-Finance, TRW Steering Wheel Systems, N.A. (1996-1997), Responsible for all financial and MIS functions of TRW’s North American steering wheel operations, including capital equipment planning and financing. Worked periodically for TRW, on a consulting basis, on various business acquisitions and financial reporting matters.
Manager-Internal Audit TRW (1987-19996).

Responsible for managing numerous concurrent audits of TRW’s non-core businesses in the US and Europe. Worked with investment bankers, tax attorneys and prospective buyers in establishing sales terms and evaluating various financial structuring alternatives to maximize transaction benefits.

BS in Business Administration (Accounting Major), Northwestern University, 1965. General Electric Company – Financial Management Program, 1968. Northwestern University (Kellogg School) – Institute for Management, 1983. Certified Internal Auditor (CIA), 1972. Kentucky Governor’s Executive Commission, 1980. Budget Committee of Tobacco Institute, Washington, DC, 1983. Board of Directors, National Retail Merchants Association, Audit, Group.

In 1998, retired as Director-Finance, TRW Steering Wheel Systems, N.A.

Through 2005, worked on a consulting basis in the U.S. and Europe, for three large corporations. This work was in the areas of mergers and acquisitions, controllership, financial reporting and auditing.

Served on Hudson City Council from December of 2003 until December 2007; the last two years as Council president.

Married, three children and five grandchildren.

Daley Aff., Rel. Vol. III, p. 781, 784-786.

As a Hudson Council Member, Brian Daley was “fair, unbiased and always interested foremost with the best interest of the City of Hudson.....Mr. Daley was always open to hearing all points of view on an issue and willing to work with all interested parties for the betterment of Hudson, even if our opinions differed.”

Affidavit of Hudson Councilman Tom Elicson, Rel. Vol. III, p.874.

Brian Daley is a “fair and competent supervisor who treated me and other members of his staff with courtesy and respect.

Affidavit of Martin Michalik (former member of Mr. Daley’s TRW staff), Rel. Vol. III, p. 875.

As a Hudson Council Member, Brian Daley was “fair, unbiased and always interested, first and foremost, in the best interests of the City of Hudson.” Mr. Daley “treated Hudson City Council members with dignity and respect, even if our opinion differed. Any suggestion that Mr. Daley is a ‘Bully’ or ‘overbearing’ is completely without merit.

Affidavit of Hudson Councilman John Jeffers, Rel. Vol. III, P.826, original attached as Exhibit I to the Verified Complaint.

The record contains numerous other sworn affidavits attesting to Brian Daley’s competence and qualifications to serve on the Summit BOE. See Affidavits of John Jeffers, John V. Frank, Eugene Wyatt, David Burke, George Janik, and Elsie Thomas. Rel. Vol. IIIA, pp. 826-833; originals attached as Exhibits to the Verified Complaint.

It is incongruous to find that a college educated, successful finance and management director of TRW, Inc., and well respected city council member is somehow not competent to serve on the Summit County BOE.

Secretary Brunner reached that erroneous conclusion, rejecting Mr. Daley after such rejection was first recommended by Democrat Finance Chairman Wayne Jones and

then “papered” by Secretary Brunner’s staff with help from and Democrats Mike Moran, and Wayne Jones (who told Brunner “there will be information coming”) with one-sided, unsworn, unauthenticated, and unverified information obtained solely to support Mr. Jones’ recommendation that Brian Daley not be appointed. Brunner Dep., Exhibit B Rel. Vol. IC, p. 361 and follows,

As a matter of law, Brian Daley is competent to serve on the Summit BOE, as recommended by the Summit County GOP Executive Committee *Dimora* Case, *supra*..

ii. Secretary Brunner is operating under the unconstitutional misconception that Brian Daley’s actual competency is not the threshold issue, but rather she merely needs a reason (excuse) to reject Mr. Daley’s appointment.

Secretary Brunner asserts that:

“the statute Section 3501.07 merely requires that the Secretary of State have reason to believe that any appointed elector will not be competent to serve as a member of the Board of Elections. This is an objective determination to be made by the Secretary of State, not a factual conclusion that must be proven to the acceptance by all. It has nothing to do with Daley’s background or actual competence....”

Respondent’s Ohio Secretary of State Brunner’s Motion in Limine, Memorandum in Support, at p.3, filed with this Court in this case on March 7, 2008. Brunner Dep., Rel. Vol. IA, p.127.

Secretary Brunner’s self-serving interpretation of Section 3501.07 can be simply restated as: it is not about the truth (whether Mr. Daley is competent), it is about finding an excuse for rejecting Mr. Daley’s local party recommended appointment. Based on this interpretation, Secretary Brunner invited Democrat Party Finance Chair Wayne Jones to provide her documentation (“you would have to send it to me”) about the Summit GOP Executive Committee recommended appointees (“if there is evidence, you would have to send it to me.”) Brunner Dep., Rel. Vol. I, p.70. Secretary Brunner’s interpretation and

actions taken based thereon render the competency standard and the local political party recommendation powers in Section 3501.07 totally inoperative and ineffective.

Moreover, Secretary Brunner has applied Section 3501.07 in this case with a total disregard to the fundamental constitutional Due Process principles of notice, fairness, and opportunity to be heard before a government official takes a detrimental action. Ohio Constitution Article I, Section 1, U.S. Constitution Fifth and Fourteenth Amendments. As Secretary Brunner reads Section 3501.07, she can conduct a Spanish Inquisition like investigation of a local party's recommended appointee and thereby negate the local political party's statutory power to recommend an appointee simply by inviting a colleague of her political party to dig up and submit unsigned, unsworn, unauthenticated and unverified allegations and unrelated newspaper editorials about that appointee, without providing any to the appointee with any notice or opportunity to rebut or address the negative or critical information collected by the opposing political party. Brunner Dep., Rel. Vol. I, pp. 71-73. ("I wasn't required.")

Secretary Brunner's failure to allow Brian Daley or the Summit County Republican Executive Committee any opportunity to respond to the Anti-Daley Materials in this case violates Relator's (as well as Mr. Daley's) constitutionally protected fundamental Due Process rights under Article I, Section 1 of the Ohio Constitution and the Fifth and Fourteenth Amendments to United States Constitution.

Moreover, Secretary Brunner's actions under, and interpretation of, Section 3501.07 are contrary to Ohio law.

Ohio Revised Code Section 1.47, in pertinent part reads:

"in enacting a statute, it is presumed that:

(A) compliance with the constitutions of the State and of the United States is intended;

* * * *

(C) A just and reasonable result is intended;"

Secretary Brunner's assertion that she does not have to abide by any fundamental Due Process or fairness standards in the exercise of her legal duties and authority under Section 3501.07 ("it wasn't required") violates O.R.C. § 1.47 because it would require an application and interpretation of Section 3501.07 that statutorily precludes compliance with Due Process standards under the Ohio and U.S. Constitutions violation of O.R.C. § 1.47 (A). Additionally, applying and interpreting Section 3501.07 in the manner asserted by Secretary Brunner would not render a "just and reasonable" result as required by O.R.C. § 1.47 (C). *Mishr v. Poland Bd. of Zoning Appeals*, 76 Ohio St. 3d 238 (1996) (statutory construction that leads to absurd consequences, manifestly contradicts common sense, or leads to collateral consequences of great absurdity or injustice may be rejected). Rather, Secretary Brunner's application and interpretation of Section 3501.07 leads to the following absurd, statutory contradictory, and unjust results:

- (i) the elimination of even basic Due Process protections in a statutorily mandated process,
- (ii) the circumvention of a political party's statutory right to make a meaningful recommendation of an appointee to a local elections board,
- (iii) the manipulation of the statutory party recommendation process by the opposing political party, and
- (iv) circumvention of a local political party's right to seek mandamus as provided for in Section 3501.07, before the Secretary of State makes a local election board appointment.

As this Court is well aware, on review of statutory acts, a court is bound to give a constitutional rather than unconstitutional construction if one is readily available. In Re Protest of Brooks, 115 Ohio App. 3d 370, 2003 Ohio 6348, 801 N.E. 2d 503 (2003).

Allowing Secretary Brunner to rewrite Section 3501.07 in a way that eliminates fundamental Due Process would create a Star Chamber approach to the appointment process that would condone and allow political and personal enemies of recommended appointees to take behind the scenes actions to derail appointments based on anonymous, unsigned, unsworn, unauthenticated, unverified, and unchallenged allegations against the other local political party's recommended appointee, without any notice or hearing to the appointing party or appointee. This would clearly result in an unconstitutional construction of Section 3501.07 and consequences that manifestly contradict common sense. Mishr, supra.

Secretary Brunner, in the exercise of her legal duties and authority under Section 3501.07, has a legal duty to comply with basic Due Process requirements of the Ohio and United States Constitutions. Secretary Brunner has breached that duty in this case.

For the reasons stated above, Brian Daley is "competent" to serve on the Summit BOE and Secretary Brunner should be directed to make that appointment.

B. Secretary Brunner grossly abused her discretion in rejecting the Summit GOP Executive Committee's recommendation of Brian Daley for appointment to the Summit BOE, which rejection was arbitrary, unreasonable, and unconscionable.

While Secretary Brunner normally has a substantial degree of discretion in reviewing the recommendations of local party executive committees with respect to board of elections appointments, Secretary Brunner's authority is neither unlimited nor omnipotent. State ex rel. Cuyahoga County Democratic Party Executive Committee v.

Taft, Secretary of State, 67 Ohio St. 3d 1(1993). That discretion should be more limited in this case where Secretary Brunner invited and interjected Democratic Finance Chairman Wayne Jones into all aspects of the board appointment process. Brunner Dep. Rel. Vol. I, pp. 47, 48, 70.

Secretary Brunner's disapproval of an appointee recommended by the county party executive committee must be predicated on legitimate reasons, not mere suspicion or one-sided, trumped up politically motivated charges and accusations. *Dimora* Case, *supra*. Secretary Brunner's disapproval cannot be based on anonymous, unsigned, unsworn, unauthenticated, and unverified documents produced and submitted by political enemies and operatives from the opposing political party in response to Secretary Brunner's request to create a file, Brunner Dep. Exhibit B, Rel. Vol. IC, P. 361.

An "abuse of discretion" for purposes of granting a Writ of Mandamus, reflects "an unreasonable, arbitrary, or unconscionable decision." *State ex rel. Van Dyke v. Pub. Emp. Retirement Bd.*, 99 Ohio St. 3d 430, 2003-Ohio – 4123, 793 N.E. 2d 438(2003); *State ex rel. Princeton City School Dist. Bd. of Edn. V. State Bd. Of Edn.*, 139 Ohio App. 3d 257, 743 N.E. 2d 503 (10th Dist. 2000) (An abuse of discretion by a public body or official, as basis for issuance of a writ of mandamus, implies an attitude that is unreasonable, or unconscionable).

- (i) **Secretary Brunner's reliance on unsigned, unsworn, and unverified documentation solicited and received from high ranking officials of the opposite political party, without providing Relator and its recommended appointee an opportunity to respond, is unconscionable.**

Preserving public confidence in the integrity of the election process is essential to the functioning of a participatory democracy. *Purell v. Gonzalez*, 127 S.Ct 5(2006).

Section 3501.07 seeks to preserve public confidence in the integrity of Ohio's elections by requiring an equal balance between the predominant political parties on local elections boards. O.R.C. § 3501.07.

Secretary Brunner has allowed, and conspired with, the Summit County Democratic Party Finance Chairman, Wayne Jones, to hijack the Section 3501.07 bipartisan appointment process with respect to the 2008 Republican Party recommended elections board appointee in Summit County. Brunner Dep., Rel. Vol. I, p. 47, 48, 70. In fact, Democratic Finance Chairman, Wayne Jones has had his hand on the rudder throughout the entire appointment process, effectively steering the Secretary of State's ship through (i) the arbitrary disapproval of Mr. Jones' long-time political foe Alex Arshinkoff, *Id.* Rel. Vol.I, p. 70; (ii) the Summit County Republican Party's subsequent recommended appointee, Brian Daley *Id.* Rel. Vol. I, p. 47-48; and (iii) ultimately, the appointment of Wayne Jones' personally recommended choice - - Donald Varian. *Id.* Rel. Vol.I, p.48. How could this one-sided, covert political manipulation of the Section 3501.07 process be anything but unconscionable?

The unconscionability of Secretary Brunner's abuse of discretion and actions in this case are further bolstered by the documented conflicts in the sworn testimony of Secretary Brunner, her elections chief, David Farrell, and her field representative, David Hardy.

Prior to the filing of this Mandamus action, Secretary Brunner told Stephanie Warsmith, a reporter for the Akron beacon Journal, that she had obtained Donald Varian's name as a possible elections board appointee from her elections chief (David Farrell). See Affidavit of Stephanie Warsmith, Rel. Vol.III, p.876 (at para 6.); Under

oath in her deposition, Secretary Brunner subsequently testified that Democrat Finance Chairman Wayne Jones gave her Donald Varian's name and recommended Mr. Varian for appointment to the Summit BOE in a face-to-face meeting with Secretary Brunner on February 27, 2008. Brunner Dep., Rel. Vol. I, p. 46. However, David Farrell testified that Secretary Brunner gave Mr. Varian's name to Farrell. Farrell Dep. Rel. Vol. II, p. 27. David Farrell confirmed that Secretary Brunner obtained Donald Varian's name from Wayne Jones. Farrell Dep. Rel. Vol. II, p.496. If there was nothing nefarious about Secretary Brunner's recommending Democratic Finance Chairman Jones' personal choice for the Republican seat on the Summit County BOE, why did Secretary Brunner fail to disclose her true source of Mr. Varian's recommendation (Wayne Jones) to reporter Warsmith?

Additionally, Secretary Brunner and her staff demonstrated further deceptive conduct with respect to the unsigned letter and 24+ exhibits (the Anti-Arshinkoff Letter) that Secretary Brunner used to justify her disapproval of the Summit GOP Executive Committee recommendation of Alex Arshinkoff to the Summit County BOE on February 20, 2008. Brunner Dep. Exhibit B, Vol. IC, p.361 and follows . The Anti-Arshinkoff Letter had no identification as to its sender and no signature. Rel. Vol. IC, pp. 361-362. The unsigned, anonymous letters bears a Secretary of State Columbus office "walk in" time stamp, dated February 1, 2008. Rel. Vol. IC, p. 361. Secretary Brunner testified that she did not know the source of that unsigned letter, but still relied on it and the exhibits attached thereto as the basis for disapproving the Arshinkoff appointment. Brunner Dep. Vol IB, p.147. Secretary Brunner's elections chief, David Farrell, testified that he also did not know the source of the Anti-Arshinkoff Letter

(“someone just came and dropped it off”) and that it anonymously was left at the Secretary of State’s Columbus office. Farrell Dep. Rel. Vol. II, p. 469. During the subsequent deposition of Secretary Brunner’s Akron-area field representation, James Hardy, it became apparent that David Farrell’s testimony simply was not true. Secretary of State Field Representative Hardy testified under oath that Democrat Finance Chairman Wayne Jones gave the Anti-Arshinkoff Letter with exhibits to Mr. Hardy at Wayne Jones’ law office after Jones called Hardy to come to his office. Hardy Dep. Rel. Vol. IV, pp. 865-867. James Hardy further testified that he personally “mailed” the Anti-Arshinkoff Letter and Exhibits directly to his boss – David Farrell. *Id.* Rel. Vol. IV, p.867. “Oh what a tangled web we weave when first we practice to deceive.” Sir Walter Scott.

If Wayne Jones’ involvement in this sordid affair was above board and not unconscionable: (1) Secretary Brunner would have told reporter Warsmith that she obtained Donald Varian’s name from Wayne Jones; (2) Wayne Jones would have signed the Anti-Arshinkoff Letter; (3) Secretary Brunner’s records would reflect that the Arshinkoff Letter was received by mail from James Hardy to David Farrell and was not a “walk in” filing; and (4) David Farrell would have acknowledged receiving the Anti-Arshinkoff Letter from his subordinate, James Hardy who picked up the Anti-Arshinkoff Letter from Wayne Jones and mailed it to Mr. Farrell. Simply put, Secretary Brunner, her staff, and Wayne Jones knew or certainly should have known their actions were unconscionable because they were sabotaging the bipartisanship balance required by Section 3501.07 and circumventing the Summit GOP Executive Committee’s statutory right to make meaningful recommendations to Secretary Brunner under that statute. They just did not want anyone else to know what they were doing.

Secretary Brunner's actions, in concert with Democrat Finance Chairman Wayne Jones, are unconscionable and constitute a flagrant abuse of discretion, warranting Relator's requested grant of mandamus in this case. *Dimora*, Case, *supra*.

- ii. **Secretary Brunner abused her discretion because her rejection of Brian Daley's appointment was based on unsigned, unauthenticated, unsworn, and unverified documents and unrelated, hearsay-ridden newspaper editorials and articles.**

In addition to reading all constitutional Due Process requirements out of Section 3501.07, Secretary Brunner has eliminated any evidentiary standard in the exercise of her duties under that statute. In this case, Secretary Brunner has invited and relied upon unsigned letters, unsworn, and unauthenticated documents, and unrelated newspaper articles to justify her disapproval of the Summit GOP Executive Committee's recommended competent board appointees. Brunner Dep. Ex. B, Rel. Vol. IC, p. 361 and follows; Secretary Brunner and her staff made absolutely no effort to verify any of that information, even knowing that the information was solicited from and compiled and submitted primarily by Summit County Democrat officials. *Id.* at p. 117, 124, 148.

More disturbing, Secretary Brunner took her actions based in information for the most part secretly collected by her and her staff, in concert with Democrat Finance Chairman Wayne Jones, and without any disclosure to the Summit GOP Executive Committee or its recommended appointee. Arshinkoff Aff. Rel. Vol. III, p.787.

Fundamental fairness, which is essential to Due Process, is denied when a government official takes action based upon information secretly collected and not disclosed. *Ohio Bell Tel Co. v. Public Utilities Commission of Ohio*, 301 U.S. 292 (1937) Fundamental fairness also dictates that, in the exercise of her statutory authority, a decision by Secretary Brunner to deny the appointment of the local party's recommended

appointee must be based on more than unsigned, unsworn, unauthenticated, and unverified letters and newspaper articles. O.R.C. § 1.47. To allow otherwise, would render the right of a local party executive committee to make a recommendation totally meaningless. All the Secretary of State would have to do, as she did in this case, is solicit negative personal opinions and allegations about recommended appointees from someone in the opposing party and use that unverified information as a “reason” to disapprove all of the recommended appointees of that recommending party until she can appoint someone of her choosing not recommended by that party. Such action defeats the very “object sought” (bipartisan balance) by the General Assembly in enacting Section 3501.07. Such manipulation of Section 3501.07 is improper and in violation of that statute. O.R.C. § 1.49. *Mishr, supra*.

Finally, the unsworn and hearsay information cited as the basis for rejecting Mr. Daley is not probative or reliable, or even relevant. The two newspaper editorials are merely the personal opinion of editors expressed in the context of unrelated matters. They are what they purport to be - - an expression of a newspaper editor’s opinion on a certain (but unrelated) subject- - not facts. The e-mail from Democrat Hudson Council Member Mike Moran is nothing more than Mr. Moran’s personal assault of Brian Daley, based in his personal animus, opinions, and mischaracterizations- -again, not facts. Moreover, Mike Moran is a political nemesis of Brian Daley. Daley Aff. Rel. Vol.III, pp. 782-783. The Moran Letter and two newspaper editorials are the only items cited by Secretary Brunner in her statutorily required letter notifying the Summit GOP Executive Committee that she was not accepting that committee’s recommendation of Mr. Daley. Rel. Vol. III A, p. 812. Secretary Brunner did not have any information from, or

conversation with, Hudson Mayor William Currin prior to making her decision rejecting Mr. Daley. Brunner Dep., Rel. Vol. IA, p. 137; Secretary Brunner also did not have any of the unauthenticated Summit County Common Pleas Court pleadings in the City of Hudson v. William E. Vagas, et al litigation included in Volume VII of Respondent's Evidence. Secretary Brunner did not cite to that litigation or any correspondence or documents received by Mr. or Mrs. Vagas as a basis for her rejecting Brian Daley's appointment in her statutorily required notice to the Summit GOP Executive Committee. Rel. Vol. IIIA, p. 812. Moreover, the City of Hudson's Law Director, Charles T. Riehl, has aptly described the Vagas litigation as follows:

“with respect to the City of Hudson (“Hudson”) this case involved nothing more than the City's attempt to enforce its applicable local regulations adopted pursuant to the City's police powers granted by Article XVIII, Section 3 of the Ohio Constitution, and for the protection of the public health and safety ” (Emphasis added)

See certified copy of the City of Hudson Brief in Opposition filed with the Summit County Common Pleas Court on March, 3, 2008 at p.2, Rel. Vol. III, p. 784.

Since Secretary Brunner is required by Section 3501.07 to “state in writing to the chairman of such executive committee” all of “the reasons” for rejecting a local party recommended appointee, Secretary Brunner is estopped from using the Hudson litigation, Currin deposition testimony, and Vagas pleadings, and all other affidavits and documents obtained by Secretary Brunner and filed as Evidence herein obtained after she rejected Mr. Daley's appointment as an ex post facto basis or reason for rejecting Brian Daley's appointment.

To allow otherwise, would give the Secretary of State the ability to summarily and arbitrarily deny approval of a local political party's recommended board appointee,

state some general nominal reason for that disapproval, and then subsequently trump up reasons to support her action after the fact. Such circumvention of the local party's appointment recommendation power would certainly violate the "object sought" - - bipartisan balance - - by Section 3501.07, in violation of that statute. O.R.C. § 1.49. Such ex post facto evidence gathering also violates fundamental Due Process. O.R.C. § 147.

If mere suspicion is not suitable to support a Secretary of State's rejection of a local political party executive committee's recommended board appointee Dimora Case, State ex rel. Cuyahoga County Democratic Party Executive Committee v. Taft, Secretary of State, 67 Ohio St. 3d 1(1993), anonymous letters, unsubstantiated personal opinions, unverified and unsworn allegations, and unrelated and unverified newspaper editorials and articles cannot legally form the basis for finding that a competent individual, such as Brian Daley, is not qualified to serve on the Summit BOE. Id. To hold otherwise, would condone the Star Chamber-like tactics improperly employed by Secretary Brunner in this case. Secretary Brunner told Wayne Jones send me "the evidence". Brunner Dep., Rel, Vol. I, p. 70. Unsworn letters, personal opinions and rank hearsay does not constitute evidence.

Based on the unsworn, unverified, unauthenticated, and mostly non-factual information before Secretary of State Brunner on February 29, 2008, when she rejected Brian Daley's recommended appointment, that rejection was arbitrary and unreasonable, and the product of a gross abuse of her statutory authority under Section 3501.07.

Dimora Case, supra. Relator is entitled to a writ of mandamus to correct that abuse and the related breach of Secretary Brunner's legal duty to appoint Brian Daley to the summit BOE.

C. Secretary Brunner cannot use Quorum or lack of Quorum as a reason or justification for rejecting Brian Daley's appointment to the Summit BOE.

Secretary Brunner cannot now assert an alleged lack of quorum as a reason or justification for rejecting Brian Daley's appointment for the following reasons:

- (ii) **Secretary Brunner's has no authority to make a legal determination or adjudication as to Quorum at a political party committee meeting because her authority under Section 3501.07 is limited to determining the competency of a local political party recommended appointee.**

Under Section 3501.07, Secretary Brunner only has the authority to determine whether the individual recommended by the local party executive committee is competent. *Dimora Case, supra*. Secretary Brunner has no authority under Section 3501.07 to make legal determinations or to adjudicate questions of law. *State ex rel Derwort v. Hummel*, 146 Ohio St. 653 (1946).

Additionally "[t]he Secretary of State is not concerned with the affairs of any political party or organization and has no part as such official in the political management or control of any party." *State ex rel. O'Neil v. Griffith, Secretary of State*, 136 Ohio St. 526, 530 (1940).

No member of the Summit GOP Executive Committee has filed any legal challenge to the propriety of the committee's February 26, 2008 vote to recommend Brian Daley for appointment to the Summit BOE. Secretary Brunner has no legal standing to challenge that Republican political party action and she does not have the authority to make a legal determination to adjudication as to that question of law. *Hummel, supra*. Furthermore, Secretary Brunner has no legal authority to interject herself into the affairs of the Summit County Republican Party any further than she has already has improperly transgressed in this case. *O'Neil, supra*.

(ii) **Section 3501.07 does not specify or contain any quorum requirement.**

Section 3501.07 simply requires that a local party executive committee, in the exercises of its right to recommend a board of elections appointee to the Secretary of State, must determine who that appointee will be “at a meeting.” Section O.R.C. 3501.07. Nowhere in that statute does the Legislature describe or mandate the method or vote standard for making that determination. *Id.* The method for making such a determination is left solely to the local political party and its executive committee. The Secretary of State “has no part as such official in the political management or control of that party”. *O’Neil, supra.* Indeed, a local party could decide to select its recommended appointee by drawing a name out of a hat, as long as the drawing is conducted at a meeting.

By contrast, the Ohio Revised Code mandates a quorum requirement when a vote is taken to fill a vacancy in a village or municipal office. O.R.C. Section 731.43. The Legislature promulgated no such quorum requirement when a local party votes to fill a vacancy in a county office or mayor’s office. O.R.C. § 305.02, § 733.08.

Secretary Brunner has no legal authority to write a quorum requirement into Section 3501.07 when the Legislature did not expressly include such a requirement in that statute. Compare Section 350107 with O.R.C. Section 731.43 (Quorum requirement for meeting to replace village officials and city councils, O.R.C. §305.02 (no Quorum requirement for meeting to replace County official), and O.R.C. Section 733.08 (meeting to replace mayor).

(iii) **A quorum was present at the meeting of the Summit GOP Executive Committee on February 26, 2008.**

While there is no statutory requirement for a quorum and Secretary Brunner has

no legal authority to challenge or adjudicate that legal issue, the evidence in the record establishes that a quorum was present at the February 26, 2008 meeting at which the Summit GOP Executive Committee recommended Brian Daley for appointment to the Summit BOE. Kotsatos Aff., Rel. Vol.III, p. 854. This action is presumptively valid. *State ex rel. O'Neil v. Griffith, Secretary of State*, 136 Ohio St. 526, 530 (1940) (“there is no presumption of invalidity of the County Committee assuming to act.”)

Based on the evidence before this Court, a quorum was present. *Id.*

- (iv) **Secretary Brunner is estopped from challenging the quorum because she stated in her statutory writing the Summit GOP Executive Committee that “Procedural issues relating to the February 26 Meeting . . . are not the reason” for her rejecting Brian Daley’s appointment.**

Under Section 3501.07, Secretary Brunner was required to “state in writing to the chairman of the [Summit] County Executive Committee” the “reasons” for rejecting Brian Daley’s recommended appointment. O.R.C. § 3501.07. Secretary Brunner signed and issued that letter February 29, 2008. Rel. Vol.IIIA, p.812 . In her letter, Secretary Brunner addressed the quorum issue and then stated:

“Procedural issues relating to the February 26 meeting, however are not the reason for my decision to reject the nomination of Mr. Daley to the Summit County Board of Elections....(Emphasis added)

Rel. Vol.IIIA, p. 813; Brunner Dep., Rel. Vol. I, pp. 96-97.

Section 3501.07 mandates that Secretary Brunner state all of her reasons, in writing, for rejecting a local party recommended appointee at the time she give notification of that rejection. In this matter, Secretary Brunner expressly stated that the procedural issue concerning quorum was not one of those reasons. Secretary Brunner is estopped and statutorily precluded from now asserting an alleged lack of quorum as an

after-the-fact reason to justify her improper and unconscionable rejection of Brian Daley's appointment. Asserting quorum now (quorum also was not raised as a defense in Respondent's Answer) is nothing more than a desperate act in response to the reality that Secretary Brunner's house of cards, built on unsigned, unsworn, unauthenticated and unverified information secretly invited from and funneled to her by fellow Democrat Wayne Jones, is about to collapse under the stress of judicial scrutiny.

D. Secretary Brunner has breached her statutory duty under Section 3501.07 by appointing an individual recommended by a high ranking Summit County Democrat official without providing the Summit GOP Executive Committee with the statutory required opportunity to make another recommendation or pursue a mandamus action.

Under O.R.C. Section 3501.07, Brunner has a legal duty to solicit and obtain the recommendation of the Summit GOP Executive Committee for all appointees to the Summit County Board of Elections. O.R.C. Section 3501.07.

Under O.R.C. Section 3501.07, Brunner had no legal authority to appoint someone other than the Summit GOP Executive Committee's recommended appointee Brian Daley to the Summit County BOE until Brunner has provided written notice of her reasons for not appointing Mr. Daley and provides the Summit County GOP Executive Committee with the opportunity to either recommend another elector or apply to this Court for a writ of mandamus. In this case, Brunner violated her legal duty under O.R.C. Section 3501.07 by unilaterally and prematurely appointing democrat Wayne Jones hand picked appointee, Donald Varian, to the Summit County BOE before providing the Summit GOP Executive Committee with the opportunity to exercise that Committee's statutory rights either to recommend another Republican elector or to file and adjudicate a mandamus action. *Dimora Case, supra.*; Brunner Dep.. Rel. Vol. I, p.48.

Under O.R.C. Section 3501.07, Brunner also had no legal authority to appoint her own choice person to a local county board of elections unless the local county party executive committee failed to recommend an elector as provided in Section 3501.07 or had unsuccessfully adjudicated a mandamus action.

The Summit GOP Executive Committee has made a recommendation of a competent elector in this case; in fact, two competent electors. Therefore, Brunner is statutorily and legally precluded from unilaterally appointing Democrat Wayne Jones recommended appointee, Donald Varian, to the Summit County BOE. O.R.C. § 3501.07.

Secretary Brunner has a legal duty not to appoint Donald Varian to the Board of Elections since such appointment violates O.R.C. Section 3501.07. Brunner has a legal duty not to violate Ohio Elections Laws.

Brunner has not asked for or received the recommendation of Donald Varian for the position of the Summit County BOE from the Summit GOP Executive Committee. Arshinkoff Aff. Vol. IIIA, p.823. Farrell, Dep., Rel. Vol. II, p.503.

Brunner has breached her statutory duty requiring a recommendation of an appointee to the board of elections by the Summit GOP Executive Committee and has circumvented that duty by unilaterally attempting to appoint Democrat Wayne Jones recommended appointee, Donald Varian, without providing the Summit GOP Executive Committee with the opportunity to make another recommendation after Brunner arbitrarily, and without valid reason rejected the Summit GOP Executive Committee's recommendation of Brian Daley, a competent elector, for that appointment. *Id.*

Relator is entitled to a writ of mandamus mandating and requiring that Brunner provide the Summit County GOP Executive Committee with the opportunity to make

another recommendation for the Board of Elections or to pursue and complete this mandamus action before Brunner can lawfully appoint Donald Varian or any other person to the Summit County Board of Elections.

Relator, Summit GOP Executive Committee also is entitled to a writ of prohibition against Brunner (a) prohibiting and precluding Brunner from allowing Donald Varian or any other person to the Summit County BOE until this mandamus action has been completed, and (b) invalidating any such appointment allegedly made prior to the filing of this action.

E. Relator is Entitled to an Other Writ to Enforce the Administration of Justice and Undo the Injustice caused by Secretary Brunner's failure to perform her Duties in Accordance with Section 3501.07.

Secretary Brunner's unlawful appointment of Donald Varian to the Summit BOE has resulted in Mr. Varian's unlawful participation in the firing of seven long-time board employees at the board's March 5, 2008 reorganization meeting. Affidavit of Brian Williams, Rel. Vol. III, P.808; Jack Morrison Affidavit, Rel. Vol. IIIA, p.782. Upon this Court's granting of the Writ of Mandamus requested herein, Brian Daley will take his lawful position on the Summit County BOE. *Dimora, Case, supra*. That will restore the 2-2 political balance of the Summit County BOE. That balance, however, will not allow Mr. Daley and the other Republican board member to restore the status quo before the Secretary of State improperly allowed Donald Varian to sit and vote on that board. Jack Morrison Aff., Rel. Vol. IIIA, p. 782. The only way that justice can be restored in this case once mandamus has been granted is for this Court to issue another writ ordering that all 3-1 Summit County BOE decisions in which Donald Varian voted with the majority be declared null and void. *Id.* Such action by this Court is "necessary to enforce the

administration of justice and redress the harm caused by Secretary Brunner's improper and, unlawful, and premature appointment of Democrat Summit BOE board member Wayne Jones' hand-selected appointee to that board. Smith v. Granville Twp. Bd. of Trustees, 77 Ohio St. 3d 1215 (1996).

Ohio Revised Code Section 2503.40 authorizes this Court to issue, in addition to the original jurisdiction conferred by Section 2, Article IV of the Ohio Constitution, "writs of supersedeas in any case, and other writs not specifically provided for and not prohibited by law, when necessary to enforce the administration of justice." Smith v. Granville Twp. Bd. of Trustees (1996), 77 Ohio St.3d 1215.

Given the actions already taken and further expected by Donald Varian while unlawfully sitting on the Summit County BOE, Morrison Aff., Rel. Vol. IIIA, p. 782, Relator Summit GOP Executive Committee is entitled to a writ directing that Brunner withdraw her unlawful appointment of Mr. Varian until Relator can complete this statutorily permitted mandamus action as said writ is "necessary to enforce the administration of justice."

The writ requested from this Court in this action is not specifically provided for or specifically prohibited by law.

In light of Secretary Brunner's unconscionable circumvention of Relator's rights under Section 3501.07, Relator, Summit GOP Executive Committee, is entitled to a special and other writs as requested in the Verified Petition.

V. CONCLUSION

The State of Ohio indisputably has a compelling interest in preserving the

integrity of its election process Purell v. Gonzalez, 127 S.Ct 5(2006). Preserving that integrity is essential to the preservation of a participating democracy. *Id.*

In Ohio, the Legislature has built into the election process a bipartisan balance of two Democrat recommended appointees and two Republican recommended appointees to local boards of election. O.R.C. Section 3501.07. Secretary Brunner has deliberately disrupted that delicate bipartisan balance in Summit County by inviting one of the opposite party election board members, Democrat Finance Chairman Wayne Jones, to actively subvert the Section 3501.07 process through the secret submission of unsigned, unsworn, unauthenticated, and unverified documents and unrelated newspaper editorials and articles. Along the way, Secretary Brunner has thrown fundamental fairness and constitutional Due Process to the wind and turned the Summit County Republican Party's statutory right to recommend an appointee for the Summit County BOE into an exercise in futility.

It was Wayne Jones, the Finance Chairman for the Summit County Democratic Party, who told the Secretary Brunner that Summit County GOP Chairman Alex Arshinkoff should not be reappointed to the elections board, despite his twenty-nine years of exemplary service on that board.

It was Democrat Wayne Jones who sent the anonymous, unsigned, unsworn, and unverified Anti-Arshinkoff letter to Secretary Brunner's elections chief through her field representative.

It was Democrat Jones who told Secretary of State Jennifer Brunner that she should reject Brian Daley, the Republican Party's recommended replacement for Arshinkoff.

And, it was Democrat Jones who recommended that Secretary Brunner appoint Akron attorney Don Varian to the position even though Mr. Varian was not considered or recommended by the Summit GOP Executive Committee.

Secretary Brunner, decided in mid-February, 2008, not to reappoint Alex Arshinkoff, who had been on the board and had chaired the Summit County Republican Party for nearly 30 years. This was after Wayne Jones talked to her and submitted the anonymous Anti-Arshinkoff Letter. Secretary Brunner then summarily rejected, Brian Daley, a former Hudson city council president and the Republican party's recommended replacement for Arshinkoff. Both actions were consistent and compliant with Democrat Finance Chairman Wayne Jones' recommendations to Secretary Brunner. These actions were based on unsworn and unverified accusations and personal opinions, all of which were obtained and collected by Secretary Brunner after Wayne Jones voiced his opposition to the respective appointments and with his active participation and assistance. Many of the documents were sent with the anonymous letter from Democrat Jones. These actions were not consistent with the statutory recommendations of the Summit County Republican Executive Committee. Secretary Brunner instead appointed Donald Varian, who is involved in an effort to unseat Arshinkoff as local Republican party chairman. Secretary Brunner made the Varian decision before she gave the Summit County Republican Party Executive Committee the opportunity to make another recommendation or file a mandamus action, as provided in Section 3501.07.

In her testimony, Secretary Brunner admitted that she and Wayne Jones, who is one of two Democratic members of the Summit County BOE, had a discussion in January about the board. During that discussion, Democrat Wayne Jones said, 'Well, then you

should not reappoint Alex Arshinkoff," Secretary Brunner said. "I said to him[Jones], 'I cannot simply not reappoint him[Arsnikoff]. If there's evidence, you would have to send it to me.'" Mr. Jones did just that- -secretly, anonymously, one-sided, unsigned, unsworn and unauthenticated.

Secretary Brunner said that in mid-February, 2008, she received the unsigned Anti-Arshinkoff Letter that she reviewed. She said she did not know who provided her with that information. Her field representative, James Hardy, admitted that he picked up that file from Democrat Wayne Jones and mailed it to his boss, Secretary Brunner's elections chief, David Farrell. Mr. Farrell claims that those documents were anonymously "dropped off" by someone at the Secretary of State's "walk" in counter in Columbus.

Secretary Brunner said Wayne Jones also was subsequently critical of Brian Daley, whom the Republican Party's Executive Committee had recommended to replace Arshinkoff. Democrat Jones took issue with the Daley appointment with Secretary Brunner during a voters forum she held in Akron on February 27th. Secretary Brunner said Wayne Jones told her "there were people who had information" about Mr. Daley. And, after talking with Mr. Jones, Brunner's employee, James Hardy, went to work with Mr. Jones to generate and submit the Anti-Daley information generated from those "people" and sent it to Secretary Brunner. Mr. Hardy also had time to go to dinner with Democrat Wayne Jones and Brian Daley's chief antagonist, Democrat Mike Moran. Hardy Dep. Rel. Vol. IV, p.861, 862. Once again, Secretary Brunner relied the these materials from Wayne Jones' "people" to the detriment of the Summit GOP Executive Committee's recommended appointee.

Secretary Brunner said she asked Democrat Jones, "What other Republicans are there?" Democrat Jones then recommended Donald Varian.

When asked if Secretary Brunner ever talked to either Alex Arshinkoff or Brian Daley before making her appointment decisions, Secretary Brunner' defiantly answered, "No, I was not required to."

Comply with fundamental constitutional Due Process requirements, Secretary Brunner says she "was not required to."

Maintain even the façade of bi-partisanship under Section 3501.07, Secretary Brunner apparently believes that she "was not required to."

Secretary Brunner may claim that she somehow was not influenced by Democrat Wayne Jones, who Secretary Brunner spoke to about these appointments on at least two occasions (which is two more times than she spoke about these appointments with anyone currently on the Summit GOP Executive Committee), in making her decision in this case, but such a claim rings hollow and begs credulity. Secretary Brunner relied on anonymous, unsigned, unsworn, unauthenticated, and unverified information either submitted by Wayne Jones or procured by Brunner's staff with the assistance and at the suggestion of Wayne Jones. Secretary Brunner admittedly took counsel from Democrat Wayne Jones at each critical point - - the disapproval of Alex Arshinkoff, the disapproval of Brian Daley, and the approval of Donald Varian. Moreover, there are incriminating inconsistencies in the testimony of Secretary Brunner, David Ferrell and James Hardy as to the source of the Anti-Arshnikoff Letter and who recommended Donald Varian to Secretary Brunner.

Secretary Brunner's actions with respect to Alex Arshinkoff, and Brian Daley are unconscionable, arbitrary unreasonable, and constitute a gross abuse of discretion.

The ultimate authority on elections laws in Ohio is this Court, not the Secretary of State. *State ex Rel. Donofrio v. Henderson*, 4 Ohio App. 2d 183, 211 N.E. 2d 854 (7th Dist. 1965). The exercise of that authority by this Court in this case is critical (1) to preserve the integrity of the elections process in Summit County, and (2) to ensure, the ability of a local political party to control and manage its affairs in its own best interests when filling a vacancy to which it, as a party, is entitled by Section 3501.07. *O'Neil, supra*.

Under O.R.C. 3501.07, Secretary Brunner has a legal duty to appoint Brian K. Daley to the Summit County Board of Elections. *State Ex Rel. Cuyahoga Democratic Party Executive Committee v. Taft, Secretary of State*, 67 Ohio St.3d 1(1993). (the *Dimora* Case.)

Secretary Brunner has failed to perform and has refused to perform her legal duty to appoint Brian K. Daley to the Summit County Board of Elections Secretary Brunner and has attempted to frustrate that legal duty by appointing someone else, who was recommended by Democrat Wayne Jones, not the Summit GOP Executive Committee, to that position before the Summit GOP Executive Committee could seek mandamus pursuant to O.R.C. Section 3501.07.

Relator Summit County GOP Executive Committee has no other adequate remedy at law because (a) Relator's statutory remedy at law under O.R.C. Section 3501.07 is a mandamus action, and (b) given that the Summit County Board of Elections is conducting business with the participation of Donald Varian, the unlawful appointee of

Secretary Brunner, no other remedy will be sufficiently speedy or effective and the denial of the requested writ will result in injury for which no other adequate remedy exists in the ordinary course of law. State ex rel. Brady V. Blackwell, 112 Ohio St.3d 1(2006)

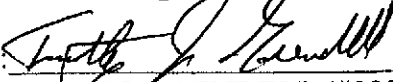
For all of the reasons discussed and as evidenced by Relator's Evidence of record, Relator is entitled to a writ of mandamus, pursuant to O.R.C. 3501.07, mandating and directing that Brunner appoint the competent Brian Daley to the Summit County Board of Elections as overwhelmingly recommended by the Summit GOP Executive Committee and such other writs as requested by Relator in its Verified Petition.

Respectfully submitted,

Grendell & Simon Co., L.P.A.

6640 Harris Road

Broadview Heights, Ohio 44147

By: 

TIMOTHY J. GRENDELL (#0005827)

Phone No.: (440) 746-9600

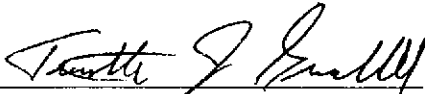
Fax No.: (330) 659-2278

E-mail: grendellandsimon@yahoo.com

CERTIFICATE OF SERVICE

Counsel for Relator has served a copy of this *Relator's Merit Brief* by U.S. mail
postage prepaid this 19th Day of March 2008 to:

Coglianesse, Richard (66830)
Becker, William (13476)
Brown, Amy (79650)
Chin, Pearl (78810)
Schuler, Michael (82390)
Sikora, Damian (75224)
Ohio Attorney General's Office
Constitutional Division
30 East Broad St., 16th Floor
Columbus, Ohio 43215-2872



Timothy J. Grendell
Attorney for Relator

STATE OF OHIO)
)
COUNTY OF SUMMIT)

AFFIDAVIT OF BRIAN K. DALEY

I, Brian K. Daley, being first duly sworn according to law, deposes and states as follows:

1. My name is Brian K. Daley.
2. I reside at 132 S. Main Street, Hudson, Ohio.
3. The factual matters stated in this Affidavit are based upon and made on the basis of my personal knowledge. I am competent to testify as to all matters stated in this affidavit.
4. The attached Exhibit "A", Resume, truly and accurately describes my work and professional experience and community involvement.
5. I was elected by the citizens of the City of Hudson's Ward 1 as their City Councilman in 2003.
6. Separately, my daughter Kristina Roegner was elected as an At-Large Member of Hudson City Council in 2005.
7. In 2005, I was elected President of Hudson City Council by my peers on City Council.
8. In my tenure on Hudson City Council, I focused on serving the best interests of the citizens of Hudson by reducing the size of City government, lowering costs, and expanding the services that the City of Hudson provided its citizens without increasing the size of government or citizens' tax burdens.
9. I opened the activities of the Hudson city government to its citizens by initiating the keeping of full and proper minutes of all Hudson City Council workshop meetings (which had not been done in the past), videotaping and replaying (on public access TV) all council workshop, budget and long range planning meetings and publishing in advance council meeting agendas in the local newspaper.
10. Often my efforts to reduce the cost of City government and open its activities were rebuffed by certain colleagues on Council. However, I voted my conscience and took the actions that I believed to be in the best interests of the citizens of Hudson.

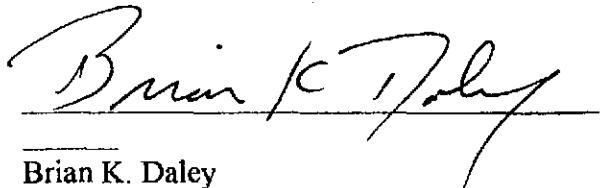
11. The nature of Hudson's "weak mayor" charter can create some natural friction (depending upon the personality of the mayor) between the elected Mayor and City Council.
12. I have never had any criminal convictions other than a few minor traffic tickets.
13. I had no ethics violations filed against me during or after my tenure on City Council.
14. In 2006, without action by Hudson City Council, the City of Hudson, through its Solicitor, initiated a lawsuit against William and Debra Vagas concerning their violation of Hudson's Codified Ordinances and in the interest of enforcing its local police regulations and protecting the public health and safety. Because this action related to a violation of the Codified Ordinances, Hudson City Council approval was not required. The City Solicitor filed this action without any direction by me or authorization from me. Mr. and Mrs. Vagas' violation of the Codified Ordinances stems from a waterline which services their home, but runs from the street through my property (under my house) and continues through my backyard (under my two-car garage) and then onto their property.
15. On February 26, 2008, the Summit County Republican Executive Committee recommended my appointment to the Summit County Board of Elections with all members except one voting in favor.
16. At no time following the recommendation of my appointment for the Summit County Board of Elections did Secretary of State Jennifer Brunner or any one in her office contact me concerning my qualifications or competence or provide me or the Summit County Republican Executive Committee with an opportunity to respond to allegations she received concerning my qualifications and/or competence.
17. It is my understanding that Secretary Brunner based her decision on a letter by Michael Moran, an Akron Beacon Journal editorial and potentially statements by George Roth and Mr. and Mrs. Vagas. Each of these individuals has expressed disagreement with my efforts to reduce the size of Hudson City government or bears other personal grudges against me. To wit:

- A. Mr. Moran, a fellow councilman, was a vocal opponent of certain of my efforts to lower city costs; including, elimination of a part-time economic development director position.

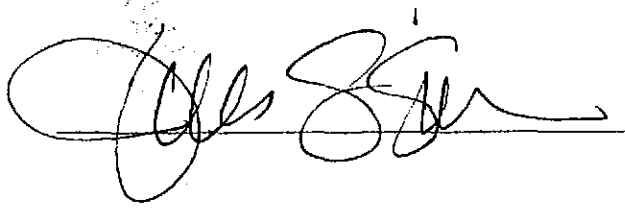
- B. Mr. Roth, a former Hudson Chamber of Commerce (HCOC) board member and former city council president, disagreed with my position of refusing to attend regularly scheduled luncheon meetings of the HCOC and opposing having certain city staff attend. Rather, I preferred that the HCOC meet in public and discuss issues at public meetings, so that Hudson residents would have an opportunity to hear their concerns. Additionally, Mr. Roth disagreed with my efforts to reduce Hudson's expenditures and participated in a failed attempt to prevent me from running for re-election (in November 2007) through a failed charter amendment, which would have prevented duly elected relatives from serving on city council (my daughter was elected to an at-large council seat in 2005). Mr. Roth ran against me for the Hudson Ward 1 Council seat in November 2007. According to his campaign finance report his PAC spent over \$10,000 to win this \$10 per month position.

- D. Mr. and Mrs. Vagas have sued me and my wife for a prescriptive easement in connection with their water service which illegally runs through my property and under a portion of my and my wife's house and garage.

Further, Affiant sayeth naught.


 Brian K. Daley

SWORN TO before me and subscribed in my presence this 13th day of March, 2008.



Notary Public

JAMES S. [unclear] Attorney-At-Law
 Notary Public State of Ohio
 My Commission Expires [unclear] expiration date
 Sec. 147.03 R.C.

Brian K. Daley
132 S. Main Street
Hudson, OH 44236
(330) 342-1115

1987 **TRW Inc.**, Cleveland, OH
to \$10 billion automotive and space & defense conglomerate
1998

Director-Finance, TRW Steering Wheel Systems, N.A. (1996-1997).

Responsible for all financial and MIS functions of TRW's North American steering wheel operations, including capital equipment planning and financing. Additionally, since January 1998, I worked periodically for TRW, on a consulting basis, on various business acquisition and financial reporting matters.

Director/Manager - Internal Audit (1987-1996).

Responsible for managing numerous concurrent audits of TRW's \$7.0 billion worldwide automotive operations.

Also, during its 1992/1993 automotive sector restructuring, served as project finance director for the divestiture of TRW's non-core businesses in the US and Europe. In this capacity, I worked with investment bankers, tax attorneys and prospective buyers in establishing sales terms and evaluating various financial structuring alternatives to maximize transaction benefits.

1976 **BATUS Inc.**, Louisville, KY
to \$6.5 billion subsidiary of British American Tobacco U.K., Ltd.
1987 with interests in retail, tobacco and paper

Controller, Gimbel's Department Stores (1986-1987).

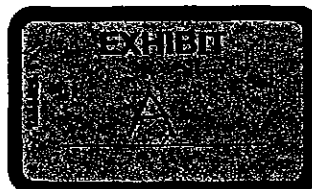
A \$500 million retailer with 20 department stores in the New York and Philadelphia areas.

Director - Corporate Audit, BATUS (1983-1985).

Directed the central audit function, comprised of 32 professionals, in financial, operational and EDP audits and was functionally responsible for an additional 38 auditors at operating companies.

Asst. Controller - Brown & Williamson Tobacco Company (1976-1983).

Established and directed comprehensive audit program for all domestic and international operations. Expanded audit scope to include advertising agencies, sales promotion, market research, transportation and manufacturing. Also, directed risk management department and was responsible for special financial analysis of major capital projects.



- 1973 **Seeburg Industries, Inc.**, New York, NY
to Major manufacturer and marketer of leisure time devices and consumer products.
1976
- Audit Director, Seeburg Industries, Inc.
Responsible for internal audit activities of the company's manufacturing and distribution operations.
- Controller, Seeburg Products Division
Responsible for all accounting and financial reporting functions of the division.
- 1971 **Howard Johnson Company**, Braintree, MA
to A leading motor lodge and restaurant chain.
1973
- Served as Audit Manager, and later as Motor Lodge Division Controller
- 1966 **General Electric Company**, Lynn, MA and Schenectady, NY
to Employed in a variety of financial positions while a participant in the
1971 General Electric Company Financial Management Program. Joined
Corporate Audit Staff upon completion of the program.

Education/Professional

BS in Business Administration (Accounting Major), Northeastern University, 1965.
General Electric Company - Financial Management Program, 1968.
Northwestern University (Kellogg School) - Institute for Management, 1983.

Certified Internal Auditor (CIA), 1972.
Kentucky Governor's Executive Management Commission, 1980.
Budget Committee of the Tobacco Institute, Washington, DC, 1983.
Board of Directors, National Retail Merchants Association, Audit Group,

Brian K. Daley – Supplemental information

- In 1998, retired as Director-Finance, TRW Steering Wheel Systems, N.A.
- Through 2005, worked on a consulting basis in the U.S. and Europe, for three large corporations. This work was in the areas of mergers and acquisitions, controllership, financial reporting and auditing.
- Served on Hudson City Council from December of 2003 until December 2007; the last two years as Council president.
- Married, three children and five grandchildren